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Title 6—AGRICULTURAL CREDIT

Chapter III—Farmers Home Administration, Department of Agriculture

SUBCHAPTER E—ACCOUNT SERVICING

[FHA Instruction 451.6]

PART 365—REFINANCING OF LOAN ACCOUNTS

Credit Counseling and Graduation of Borrowers to Other Credit Sources

Part 365, Title 6, Code of Federal Regulations (20 F.R. 8279) is revised to read as follows:

Sec.
365.1 Scope.
365.2 Policy.
365.3 Credit counseling.
365.4 Graduation of Farmers Home Administration borrowers to other sources of credit by voluntary means.
365.5 Action when borrower fails to graduate by refinancing

AUTHORITY: §§ 365.1 to 365.5 issued under R.S. 161, secs. 41, 6, 50 Stat. 528, as amended, 870, sec. 510, 63 Stat. 437, sec. 10, 68 Stat. 735, sec. 4, 64 Stat. 100; 5 U.S.C. 22, 7 U.S.C. 1015, 16 U.S.C. 590w, 42 U.S.C. 1480, 16 U.S.C. 590x-3. Interpret or apply secs. 1, 3, 21, 44, 2, 50 Stat. 522, as amended, 523, as amended, 524 as amended, 530, as amended, 869, as amended, sec. 5, 54 Stat. 1122, as amended, secs. 2, 12, 14, 60 Stat. 1062, as amended, 1076, as amended, 1078, as amended, secs. 1, 2, 1, 501, 502, 503, 504, 509, 1, 63 Stat. 43, as amended, 44, as amended, 82, 432, 433, 434, 436, 883, 1038, sec. 2, 64 Stat. 98, secs. 9, 10, 1, 2, 68 Stat. 735, 999, as amended, sec. 16, 69 Stat. 553 as amended, secs. 1, 8, 70 Stat. 525, 1090, secs. 18, 11, 72 Stat. 840, 841; 7 U.S.C. 1001, 1003, 1007, 1018, 16 U.S.C. 590s, 590z-3, 7 U.S.C. 1001 Note, 1005b, 1005d, 12 U.S.C. 1148a-1 and Note, 1148a-2, 42 U.S.C. 1471, 1472, 1473, 1474, 1479, 7 U.S.C. 1006a, 40 U.S.C. 440, 16 U.S.C. 590x-2, 590x-3, 12 U.S.C. 1148a-1 Note, 7 U.S.C. 1006c, 16 U.S.C. 1006a, 7 U.S.C. 1006e, 16 U.S.C. 590x-4. Other statutory provisions interpreted or applied are cited to text in parentheses.

§ 365.1 Scope.

This part prescribes the policies to be followed (a) when counseling with applicants and other persons making inquiry at Farmers Home Administration offices concerning agricultural credit assistance, (b) when counseling with Farmers Home Administration borrowers concerning the use of Farmers Home Administration and other credit, and (c) in the graduation of such borrowers to other sources of suitable credit, as soon as they have progressed to the point where such credit is available to them.

§ 365.2 Policy.

The Farmers Home Administration credit programs will be administered in a manner to assure that they will not supplant or compete with suitable credit available to farmers from other reliable sources.

§ 365.3 Credit counseling.

(a) *Responsibilities of the County Supervisor.* The County Supervisor is responsible for counseling with applicants and borrowers concerning (1) the manner in which credit should be used to make sound and profitable adjustments and improvements in their farming operations, (2) the other credit sources available to farmers in the area and the general conditions under which credit from such sources is available, and (3) how farmers and ranchers should present their requests for credit services to other lenders.

(b) *Credit counseling with farmers and ranchers inquiring about Farmers Home Administration credit sources.* Inquiries and applications are received in County Offices periodically from individuals who either (1) should be able to obtain suitable credit from other sources because of the resources available to them or (2) are unable to qualify for Farmers Home Administration credit assistance, due to lack of resources or for some other valid reason, but may be able to obtain some credit from another source to enable them to continue in business if their proposed farm and home operations and requests for credit can be properly adjusted. County Supervisors will provide credit counseling assistance to such individuals, as well as to appli-

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FEDERAL REGISTER

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(As of January 1, 1959)

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Title 46, Parts 146–149, 1958 Supplement 2 ($1.50)

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cants who appear to qualify for Farmers Home Administration credit service. They will also offer to assist such individuals in adjusting their plans of operations and their requests for credit if this appears to be needed to enable them to obtain credit from another source.

(c) *Credit counseling with Farmers Home Administration borrowers concerning use of Farmers Home Administration and other credit.* County Supervisors will assist borrowers in planning for a proper use of Farmers Home Administration and other credit when loans are being made. They will also advise with borrowers concerning the use of such credit at other appropriate times such as during farm and home visits, year-end analysis discussions, and office contacts. Effective credit counseling in the following situations will help assure the early graduation of successful borrowers to other sources of credit.

(1) Borrowers indebted for loans secured by chattels who have made reasonable progress and are in a financial position to obtain annual recurring operating credit from other sources on the basis of crop liens, unsecured notes or open accounts ordinarily should be encouraged to do so even though they cannot refinance the Farmers Home Administration indebtedness secured by liens on livestock or equipment. When necessary the County Supervisor will assist the borrower in discussing his proposed farming operations and credit needs with local lenders for this purpose. Mutual understanding must be reached in such cases concerning the amount of credit to be advanced during the year and the sources of income from which debt payments will be made.

(2) Borrowers indebted for loans secured by chattels who need to purchase additional major items of equipment such as tractors, trucks, and harvesting equipment or replace such items and who are able to make satisfactory arrangements for such purchases from other sources ordinarily should be encouraged to do so. County Supervisors should thoroughly analyze with these borrowers the need for such equipment and their ability to meet the additional debt payments required. The borrowers' plans of operation for the year should include the expenditures for such items and provide for meeting the payments due the Farmers Home Administration and other creditors.

§ 365.4 Graduation of Farmers Home Administration borrowers to other sources of credit by voluntary means.

(a) *Reaching understandings with applicants and borrowers concerning graduation to other sources of credit.* To properly implement the policies set forth in this part, the conditions with respect to graduation to other sources of credit under which Farmers Home Administration credit assistance is made available must be (1) thoroughly discussed with applicants for Farmers Home Administration loans at the outset, (2) re-emphasized periodically with borrowers during farm visits and office contacts, and (3) reviewed with borrowers during year-end analysis or contacts for collection purposes by relating their progress to the possibility of graduating to other sources of credit. Experience shows that where these three steps are properly carried out borrowers fully understand why they are expected to obtain other suitable credit as soon as possible, and there ordinarily is a continuous graduation of borrowers to other sources of credit on a voluntary basis.

(b) *When borrowers should be advised to refinance their Farmers Home Administration indebtedness.* Ordinarily borrowers indebted for loans other than for annual operating expenses only, will be advised to obtain credit from other sources to refinance their Farmers Home Administration indebtedness when they have acquired sufficient equity in their property to enable them to obtain credit for this purpose from other reliable sources at rates and terms generally available to other farmers in the area. Borrowers indebted for both Farmers Home Administration chattel and real estate loans are expected to refinance their chattel indebtedness when they are able to do so even though they are unable at that time to refinance their real estate indebtedness. The converse of this situation also is true. No further loans will be made to such borrowers unless it becomes clearly evident that they are unable to obtain the credit they need from other sources.

§ 365.5 Action when borrower fails to graduate by refinancing.

(a) *Review by County Supervisor and County Committee.* At least once each year during the period designated by the State Director, each County Supervisor will review the status of those borrowers who have been advised to refinance their Farmers Home Administration indebtedness with other credit but have failed to do so within a reasonable period. The County Supervisor will submit the names of such borrowers to the County Committee along with sufficient information concerning their financial situation, progress, and availability of credit to enable the Committee to arrive at a recommendation as to what further action should be taken. The minutes of the committee meeting will include the names submitted by the County Supervisor and the recommendations in each case by the Committee. The County Supervisor, after considering the recommendations of the Committee, will determine the further action to be taken in each case.

(b) *Notice to borrowers who fail to graduate by refinancing.* Each borrower who the County Supervisor determines should seek refinancing will be reminded in writing of the previous discussions with respect to refinancing and that it appears he has progressed to the point where he can refinance the Farmers Home Administration debt involved. At the same time, the borrower will be asked to inform the County Supervisor within 60 days of the progress he is making in refinancing his indebtedness and if he is unsuccessful in refinancing his Farmers Home Administration debt, he should also be asked to inform the County Supervisor of the credit sources contacted.

(c) *Action when borrower fails to respond to advice and written notice regarding refinancing.* (1) Borrowers indebted for any Farm Ownership loans approved after October 31, 1946, or Operating loans, who appear to be able to obtain suitable credit to refinance their Farmers Home Administration indebtedness at rates not exceeding five percent per annum and borrowers indebted for Farm Housing loans and Soil and Water Conservation loans (not coded J) who appear to be able to obtain suitable credit at rates and terms they could reasonably be expected to fulfill:

(i) *Action by County Supervisor.* At the expiration of the 60-day period, the County Supervisor will determine what action should be taken with respect to those borrowers who have not made arrangements to refinance their Farmers Home Administration indebtedness. In order to determine in individual cases whether credit is available, it may be necessary for the County Supervisor to contact the sources of credit approached by the borrower and any other suitable sources of agricultural credit available in the area.

(*a*) If the investigation by the County Supervisor establishes the fact that suitable credit as described in this subparagraph is not available to the borrower to refinance his indebtedness, such borrower will be considered as falling within either of the categories referred to in subparagraph (2) or (3) of this paragraph, depending upon the individual's situation.

(*b*) For each borrower who the County Supervisor determines could have refinanced his indebtedness at the rates and terms described in this subparagraph but failed to do so, the County Supervisor will prepare a report on Form FHA-133, "Request for Legal Action."

(ii) *Action by State Director.* The State Director will review each case submitted to him and determine, on the basis of the facts and recommendations and other information available to him, what action should be taken.

(*a*) The State Director will advise the County Supervisor of the names of those borrowers he has determined have not defaulted in their refinancing agreements. These cases will then be handled in accordance with either of the categories referred to in subparagraph (2) or (3) of this paragraph, depending upon the individual's situation.

(*b*) Each of the remaining borrowers will be informed in writing by the State Director that, on the basis of available information, it appears that credit is available to refinance his Farmers Home Administration indebtedness and that he will be expected to make arrangements to obtain credit for that purpose or to

submit additional facts regarding his failure to do so within 30 days.

(c) If the borrower fails to comply with the request or fails to furnish satisfactory evidence within 30 days of his inability to obtain the necessary credit, the State Director will refer the case to the Attorney in Charge with his recommendations for foreclosure.

(2) Borrowers who are indebted for Farm Ownership loans approved after October 31, 1946, or Operating loans, who can obtain suitable credit to refinance their Farmers Home Administration indebtedness but only at rates exceeding five percent per annum and borrowers indebted for other types of Farmers Home Administration loans (except Farm Housing loans and Soil and Water Conservation loans (not coded J)), who can obtain suitable credit to refinance their Farmers Home Administration loans: County Supervisors will continue to encourage borrowers during farm and home visits, office contacts, year-end analysis discussions, or collection contacts to refinance their Farmers Home Administration indebtedness.

(3) Borrowers who were requested to refinance their Farmers Home Administration indebtedness but were in fact unable to do so: County Supervisors will notify these borrowers in writing that the Farmers Home Administration will not require them to make further efforts toward refinancing for at least the remainder of that year.

(Sec. 42, 50 Stat. 529, as amended, sec. 508, 63 Stat. 426; 7 U.S.C. 1016, 42 U.S.C. 1478)

Dated: January 29, 1959.

[SEAL] H. C. SMITH,
Acting Administrator,
Farmers Home Administration.

[F.R. Doc. 59-962; Filed, Feb. 3, 1959; 8:52 a.m.]

Title 7—AGRICULTURE

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

[Amdt. 6]

PART 728—WHEAT

Subpart—Wheat Marketing Quota Regulations for 1958 and Subsequent Crop Years

EXCESS ACREAGE UTILIZATION DATES

Basis and purpose. The amendment herein is issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, and is issued for the purpose of providing final dates for the disposal of excess wheat acreage in Alabama and Mississippi and to change the final dates for disposition in the States of Colorado, Kansas, Nebraska, North Dakota, Oklahoma, and Oregon. Since the determination of 1959 wheat acreage is now being made in many counties it is important that State and county committees be notified of the amendment herein as soon as possible so that producers with 1959 excess wheat acreage may be notified of the final date for utilization of such excess acreage as wheat cover crop. Accordingly it is hereby found that compliance with the public notice, procedure and 30-day effective date provisions of section 4 of the Administrative Procedure Act is impracticable and contrary to the public interest. Therefore, the amendment shall become effective upon its publication in the FEDERAL REGISTER.

Section 728.855(b) is amended as follows:

1. Insert at the beginning of the list of States and disposition dates therefor the following:

ALABAMA

May 1: Autauga, Baldwin, Barbour, Bullock, Butler, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Dallas, Elmore, Escambia, Geneva, Henry, Houston, Lowndes, Macon, Mobile, Monroe, Montgomery, Pike, Russell, Washington, Wilcox.

May 15: Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Choctaw, Clay, Cleburne, Colbert, Coosa, Cullman, DeKalb, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Madison, Marengo, Marion, Marshall, Morgan, Perry, Pickens, Randolph, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Winston.

2. Under Colorado, change the date of "August 15" for the counties of Almosa, Archuleta, Conejos, Costilla, Rio Grande and Saguache to "August 1".

3. Under Kansas, delete the county of "Mitchell" from June 1 counties and insert "Mitchell" in the May 25 counties between the counties of "Miami" and "Morris".

4. Insert between the list of disposition dates for the States of Minnesota and Missouri the following:

MISSISSIPPI

April 20: All counties.

5. Under Nebraska, delete "June 1" and insert "May 15"; delete "June 15" and insert "June 1"; and delete "June 20" and insert "June 1".

6. Under North Dakota, delete "July 5" and insert "July 8".

7. Under Oklahoma, delete all dates and counties and enter the following in lieu thereof:

OKLAHOMA

April 15: Beckham, Caddo, Comanche, Cotton, Grady, Greer, Harmon, Jackson, Jefferson, Kiowa, Stephens, Tillman, Washita.
May 10: Ellis, Harper, Woods, Woodward.
May 20: Beaver, Texas.
June 1: Cimarron.
April 25: All other counties.

8. Under Oregon, delete all dates and counties and enter the following in lieu thereof:

OREGON

County	Area or Type of Wheat	Dates
Baker	Winter	July 15.
	Spring	August 1.
Benton	Winter	June 15.
	Spring	July 1.
Clackamas	Winter	June 15.
	Spring	July 1.
Clatsop	All wheat	June 15.
Columbia	do	June 15.
Coos	do	June 15.
Crook	do	August 1.
Curry	do	June 15.
Deschutes	do	July 15.
Douglas	Winter	July 1.
	Spring	July 15.

OREGON—continued

County	Area or Type of Wheat	Dates
Gilliam	Under 2,000 feet	June 15.
	Over 2,000 feet	July 15.
Grant	Under 2,000 feet	July 15.
	Over 2,000 feet	August 15.
Harney	All wheat	August 1.
Hood River	do	June 15.
Jackson	Winter	July 1.
	Spring	July 15.
Jefferson	Nonirrigated	July 20.
	Irrigated	August 1.
	Warm Springs area	August 1.
Josephine	Winter	July 1.
	Spring	July 15.
Klamath	Nonirrigated	August 1.
	Irrigated	August 15.
Lake	All wheat	August 1.
Lane	Winter	July 1.
	Spring	July 15.
Lincoln	All wheat	June 15.
Linn	Winter	June 15.
	Spring	July 1.
Malheur	Under 3,000 feet	July 1.
	Over 3,000 feet	July 15.
Marion	Winter	June 15.
	Spring	July 1.
Morrow	Under 2,000 feet	June 15.
	Over 2,000 feet	July 15.
Multnomah	All wheat	June 15.
Polk	Winter	June 15.
	Spring	July 1.
Sherman	Under 2,000 feet	June 15.
	Over 2,000 feet	July 15.
Tillamook	All wheat	June 15.
Umatilla	Under 2,000 feet	June 15.
	Over 2,000 feet	July 15.
Union	Winter	July 1.
	Spring	July 15.
Wallowa	Winter	July 20.
	Spring	August 20.
Wasco	Winter	June 15.
	Spring	July 15.
	Warm Springs area	August 1.
Washington	Winter	June 15.
	Spring	July 1.
Wheeler	All wheat	August 1.
Yamhill	Winter	June 15.
	Spring	July 1.

(Sec. 375, 52 Stat. 66, as amended; 7 U.S.C. 1375. Interpret or apply sec. 374, 52 Stat. 65, 68 Stat. 904; 7 U.S.C. 1374)

Issued at Washington, D.C., this 30th day of January 1959.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F.R. Doc. 59-960; Filed, Feb. 3, 1959; 8:52 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Reg. 154, Amdt. 2]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges

as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of navel oranges grown in Arizona and designated part of California.

Order, as amended. The provisions in paragraph (b) (1) (i) and (ii) of § 914.454 (Navel Orange Regulation 154, 24 F.R. 559, 726) are hereby further amended to read as follows:

(i) District 1: 716,100 cartons;
(ii) District 2: 392,700 cartons.

(Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c)

Dated: January 30, 1959.

[SEAL] FLOYD F. HEDLUND,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 59-929; Filed, Feb. 3, 1959; 8:46 a.m.]

PART 938—IRISH POTATOES GROWN IN RED RIVER VALLEY OF NORTH DAKOTA AND MINNESOTA

Fiscal Period; Expenses and Rate of Assessment

Notice of proposed rule making regarding the establishment of the dates for fiscal periods and expenses and rates of assessment to be made effective under Marketing Agreement No. 135 and Order No. 38 (7 CFR Part 938), regulating the handling of Irish potatoes grown in certain designated counties of North Dakota and Minnesota (the counties of Pembina, Walsh, Cavalier, Towner, Grand Forks, Nelson, Steele, Traill, Cass, Richland, and Ramsey of the State of North Dakota, and Kittson, Marshall, Red Lake, Pennington, Polk, Norman, Mahnomen, Wilken, Otter Tail, Becker, and Clay of the State of Minnesota), was published in the FEDERAL REGISTER (January 9, 1959, 24 F.R. 238). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.). This notice afforded interested persons an opportunity to file data, views, or arguments in regard thereto not later than fifteen days after publication in the FEDERAL REGISTER. None was filed. After consideration of all relevant matters, including the proposals set forth in the aforesaid notice which were adopted and submitted for approval by Red River Valley Potato Committee, established pursuant to the aforesaid marketing agreement and order, it is hereby found and determined that:

§ 938.201 Fiscal period.

The initial fiscal period shall begin on August 3, 1958, the effective date of § 938.300, and shall end on May 31, 1959. Thereafter, each fiscal period shall begin on June 1 of each year and end May 31 of the following year, both dates inclusive.

§ 938.202 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred by the Red River Valley Potato Committee, established pursuant to Marketing Agreement No. 135 and this part, to enable such committee to perform its functions pursuant to the aforesaid marketing agreement and order, during the fiscal period ending May 31, 1959, will amount to $13,000.00.

(b) The rate of assessment to be paid by each handler pursuant to Marketing Agreement No. 135 and this part shall be $0.00125 per 100 pounds handled by him as the first handler thereof during said fiscal period.

(c) The terms used in this section shall have the same meaning as when used in Marketing Agreement No. 135 and this part.

(Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c)

Dated: January 29, 1959, to become effective 30 days after publication in the FEDERAL REGISTER.

[SEAL] FLOYD F. HEDLUND,
Acting Director, Fruit and Vegetable Division.

[F.R. Doc. 59-958; Filed, Feb. 3, 1959; 8:51 a.m.]

Title 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board-Federal Aviation Agency

SUBCHAPTER B—ECONOMIC REGULATIONS

[Reg. ER-251]

PART 234—FLIGHT SCHEDULES OF CERTIFICATED AIR CARRIERS; REALISTIC SCHEDULING REQUIRED

Reporting of Flight Delays

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 29th day of January 1959.

A notice of proposed rule making was published in the FEDERAL REGISTER on August 22, 1957, (22 F.R. 6802) and circulated to the industry as Draft Release No. 86, dated August 16, 1957, which proposed the amendment of Part 234 of the Board's Economic Regulations so as to require all domestic certificated carriers to file monthly reports of the number of flights operated on schedule and the number of flights delayed, both on a block-to-block basis and time-of-arrival basis. A standard reporting form was prescribed in the proposed rule.

Extensive comments were received on Draft Release 86 recommending the simplification and clarification of the form of report. Also, several discussions were held between the industry and the Board's staff to reconcile the major areas of difference. Upon consideration of the nature of the problem and all relevant matter presented, the Board has decided to adopt the proposed reporting amendment with modifications designed to reduce the burden without sacrificing the value of the report.

Non-stop and one-stop operations, generally susceptible to competitive impact, are of the most significance with respect to the promotion of realistic scheduling. In recognition of this fact, the Board is requiring that the report of flight delays relate solely to the time-of-arrival of non-stop and one-stop trips. The data to be reported regarding time-of-arrival performance are compressed into four categories showing the number of trips arriving on time and within 5 minutes thereof, 5 to 15 minutes late, 15 to 30 minutes late, and over 30 minutes late. In disclosing such information, the reports will highlight the major situations where carriers are not complying with the block-to-block standard of the regulation. At the same time, the administrative burden on the carriers and the Board's staff will be minimized.

Various other features have been included in this amendment with a view to further limiting the reporting burden. The rule as promulgated permits the use of an IBM-type of report, in lieu of the Board's form, where the same information is being submitted as contained in the prescribed form. The time within which the reports must be filed is extended to 45 days after the close of the month, thus allowing the carriers greater leeway in processing their statistical work. The reporting requirement is also limited to flights which are operated in scheduled passenger service. Although cargo flights which transport mail are subject to Part 234, no need appears for requiring that the carriers file monthly reports covering these operations. In addition, the Board is adopting the reporting requirement for an experimental period of one year commencing on May 1, 1959, which date falls immediately after the seasonal revision of air carrier schedules. This delay in the implementation of the reporting requirement will permit the carriers to make necessary intracompany arrangements to provide the data and, particularly, to obtain preprinted IBM forms, as needed.

Consistent with the purpose of the regulation to encourage greater schedule reliability, the information reported pursuant to this amendment will be a matter of public record. In this posture, each carrier will know that its schedules and flight operations may be compared not only by the Board but also by any interested member of the public, including a carrier's competitor. Such publication will thus serve to provide more incentive to carriers to construct realistic schedules and to operate in conformance with such schedules.

In addition to the comments submitted in response to Draft Release No. 86, petitions were filed with the Board requesting reconsideration, repeal,, or amendment of Part 234. These petitions sought an evidentiary hearing or oral argument at which time the petitioners would at-

tempt to prove matters going to the need for any regulation, the merits of the regulation adopted by the Board or, alternatively, the desirability of amending the present regulation in certain respects. Inasmuch as the Board's rules of practice make no provision for the filing of a petition for reconsideration in a rule-making proceeding, the Board has treated these filings as petitions for the issuance of a new notice of proposed rule making. Nothing has been shown in these petitions which would justify, in the Board's mind, further proceedings on the content of the basic regulation or the desirability of some alternative thereto. The unreliability of past schedules and the absence of any showing that the industry has progressed toward effective self-regulation is a matter of record. Therefore, the initiation of discussions of what shall be regarded as unrealistic scheduling or the means of achieving proper scheduling, at this juncture, would only serve to delay the positive action which was long overdue and which is being afforded under the present regulation. The fact that the regulation empowers the Board's staff to excuse the lack of performance where unforeseeable conditions exist, together with the fact that the Board has already received the carriers' views in numerous conferences as well as in oral argument, removes the need for any evidentiary hearing on this matter. Therefore, the Board concludes that these petitions do not disclose sufficient reasons to justify the institution of public rule making procedures.

Interested persons have been afforded an opportunit to participate in the making of this amendment, and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 234 of the Economic Regulations (14 CFR Part 234) effective May 1, 1959, as follows:

By adding a new § 234.8 to read as follows:

§ 234.8 Reporting of flight delays.

For a period not extending beyond April 30, 1960, each certificated air carrier shall file, for each month, in duplicate, CAB Form No. 438, entitled "Monthly Statement of Schedule Performance on One-Stop and Non-Stop Passenger Flights",[1] or in lieu thereof any comparable IBM-type report, in accordance with the instructions accompanying such form and the requirements of this section.[2] Each such certificated air carrier shall establish all records needed in order to accomplish full compliance with the reporting requirements of this part and shall preserve such records in accordance with the provisions of Part 249 of this subchapter. Such reports shall be filed within 45 days after the termination of each prescribed reporting period and shall be certified to be correct by a responsible officer of the reporting air carrier.

The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(Sec. 204(a), 72 Stat. 743; 49 U.S.C. 1324. Interpret or apply secs. 404(a), 405(e), 407, and 411, 72 Stat. 760, 766, 769; 49 U.S.C. 1374, 1375, 1377, 1381)

By the Civil Aeronautics Board.

[SEAL] MABEL MCCART, *Acting Secretary.*

[F.R. Doc. 59-955; Filed, Feb. 3, 1959; 8:50 a.m.]

[1] Filed as part of the original document.

[2] CAB Form No. 438 is obtainable from the Publications Section, Civil Aeronautics Board, Washington 25, D.C., and should be filed with the Board's Office of Carrier Accounts and Statistics. Any IBM-type form submitted in lieu thereof shall be filed in duplicate and shall contain the same columnar headings arranged in the same order of sequence as those in CAB Form No. 438.

[Reg. ER-252]

PART 299—EXEMPTION OF AIR CARRIERS FROM CERTAIN REQUIREMENTS OF SECTION 408 OF THE FEDERAL AVIATION ACT

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 29th day of January, 1959.

Section 408 of the Federal Aviation Act of 1958, prohibits, among other things, the acquisition of aircraft by a direct air carrier from another air carrier of a person engaged in a phase of aeronautics without such direct air carrier's obtaining prior approval from the Board.

Experience with these equipment transactions has shown that such transactions, for the most part, have been entered into after arm's length bargaining, have involved a small number of aircraft in each transaction, and in terms of their impact upon the public interest have not been of sufficient importance or complexity to warrant a hearing. Moreover, in many cases the need or the opportunity to purchase or lease aircraft arises suddenly and requires immediate and final action by the carrier if a decrease in service or a failure to obtain suitable aircraft on favorable terms is to be avoided. Under such circumstances, the continued processing of applications by air carriers for prior approval of such equipment transactions on an individual basis is an undue burden on such air carriers by reason of the limited extent of, or unusual circumstances affecting the operations of such air carriers and is not in the public interest.

Accordingly, a Notice of Proposed Rule-making was published in the FEDERAL REGISTER on April 10, 1958 (23 F.R. 2352) and circulated to the industry as Economic Regulations Draft Release No. 93, dated April 3, 1958, which proposed the adoption of a new Part 299 of the Economic Regulations which would grant a limited exemption from sections 408(a) (2) and (3) of the Act to any direct air carrier which is a party to an aircraft purchase or lease transaction fileable under these subsections, provided that certain conditions are met. The proposed regulation would apply only where there has been arm's length bargaining, there are no affiliations or interlocking or control relationships between the parties and the agreement meets certain other requirements. A certification to this effect would be required to be filed with the copy of the purchase or lease agreement.[1]

Each of the comments received by the Board endorsed in principle an exemption of the type of equipment transactions embraced in the proposed rule. However, to make the regulation administratively feasible from the standpoint of the carrier seeking to purchase or lease aircraft, it was suggested that the Board redefine the obligation of the carrier to determine that certain prohibited relationships do not exist between the parties to the agreement. It was felt that the exemption should be applicable if the prohibited relationships described in the regulation are not involved "to the knowledge of the carrier." The Board sees no need for this change. The certification required to be executed would permit a carrier to qualify its statement on certain control relationships by stating that no such relationships exist "to his best knowledge and belief." This qualification serves to limit any undue hardship on a carrier. In view of this qualification in the certification and the relaxation of certain other proposed restrictions, hereinafter described, it is believed that a carrier would be in a position to readily ascertain whether any of the remaining relationships exist.

It was also suggested that certain changes be made in the type of relationship that would be disqualifying under the regulation. Specifically, it was contended that the regulation should exclude from the prohibited relationships reference to common stockholders or employees and to any interests not beneficially held. The Board sees merit in certain of these recommendations. The Board does not believe that comparing a list of common stockholders (redefined herein as a person directly or beneficially owning more than 5 percent of the carrier's stock) would impose an undue burden on a carrier in view of the limited number of persons who could qualify as stockholders. On the other hand, the benefits of the rule could be nullified by the time consuming task of procuring and comparing a list of employees of two companies to determine whether any were common to both. Accordingly, the rule as adopted does not include a restriction necessitating such a comparison. However, the benefits of this rule do not extend to a transaction between an employer and employee.

Similarly, this regulation does not extend to transactions between persons having a present or prospective financial interest in the other. This also would preclude financial interests embracing beneficial relationships as well as legal relationships. Thus, a purchase or lease of aircraft pursuant to an agreement which is negotiated between persons having any financial interest in the other

[1] It should be noted that the exemption herein granted does not release a party to an aircraft sale or lease agreement from conditions in any Board order prohibiting or limiting transactions involving such party.

or which involves the acquisition of a financial interest (including but not limited to stock) by one party in the other, will not come within the terms of the exemption, notwithstanding the fact that the financial interest may be held by a third person or that the agreement from which the financial interest arises is not yet executed.

Another change suggested was that the Board eliminate the proposed limit on the number of aircraft which may be transferred by a certificated air carrier[2] under the regulation. In those cases where aircraft of a certificated air carrier are being acquired, the exemption would have applied, if no more than 5 aircraft or 20 percent of a certificated carrier's total aircraft, whichever is less, are purchased or leased by an air carrier in a single transaction or in successive transactions within a six month period. It is contended that other limitations in the regulations are more than adequate to assure that substantial transactions will not be exempted from the Act and that the standard of "5 aircraft" would have the effect of requiring carriers to file an agreement and the accompanying certification in instances where the Board has traditionally disclaimed jurisdiction. The need for a numerical as well as a percentage limit on the number of aircraft which may be transferred without prior Board approval becomes self-evident in view of the requirement of the statute that the Board pass upon transactions of a substantial nature. However, the Board has concluded that transactions involving as many as 10 aircraft should be exempted under this regulation. Of course even where 10 or less aircraft will not exceed 20 percent of the total market value of a certificated air carrier's aircraft the transaction could involve the public interest in a manner to require a hearing, making necessary the addition of a $10 million limitation on transactions to be covered by the regulation. Neither the Act nor the Board's rules or decisions define the words "substantial part" as used in section 408 and, thus, because of doubt, carriers have continually filed requests for disclaimers of jurisdiction. This regulation will eliminate this area of uncertainty and will accomplish what otherwise is decided in many instances by a disclaimer of jurisdiction. In the Board's opinion, the broad relief granted far outweighs any future disadvantages which might result in limited instances.

Another comment suggested that the originally proposed limitation should be extended to the so-called "supplemental" air carriers. Essentially, this limitation is designed to prevent possible restraints on competition and the possibility of a certificated carrier's disposing of its equipment in a manner which might impair its ability to provide adequate service under its certificate without the prior knowledge and consent of the Board. Supplemental carriers typically own a smaller number of aircraft and are not subject to the same requirements in providing adequate service. Thus the same public interest reasons do not exist for imposing a similar limitation on such supplemental air carriers.

In response to other comments suggested, language changes have been made in the regulation which more clearly define the scope of the exemption afforded by the regulation. As modified, the regulation defines "aircraft" to include spare parts, appurtenances and accessories maintained for installation or use therein; provides that a copy of a memorandum of oral understanding may be submitted where the transaction is consummated without written agreement, and makes the regulation applicable to lease arrangements which involve purchase options.

Interested persons have been afforded an opportunity to participate in the formulation of this regulation, and due consideration has been given to all relevant matter presented. Since this regulation relieves restrictions it may be made effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends the Economic Regulations (14 CFR Ch. I) effective February 4, 1959, by adding thereto a new Part 299 to read as follows:

Sec.
299.1 Definitions.
299.2 Exemption.
299.3 Filing requirements.
299.4 Effect of exemption.

§ 299.1 Definitions.

For the purposes of this part:

(a) "Aircraft" means any aircraft, together with spare parts, appurtenances and accessories maintained for installation or use therein.

(b) "Certificated Air Carrier" means any air carrier which holds a certificate of public convenience and necessity issued under section 401 of the Act, other than an air carrier which holds a certificate of public convenience and necessity for supplemental air service.

(c) "Stockholder" means a person who directly or beneficially owns 5 percent or more of the outstanding stock of a company.

§ 299.2 Exemption.

An air carrier which engages directly in the operation of aircraft in air transportation shall be exempt from sections 408(a)(2) and 408(a)(3) of the Federal Aviation Act of 1958,[1] insofar as the provisions thereof relate to the purchase, lease, or lease with purchase option of aircraft from another air carrier or from any person engaged in any phase of aeronautics, if the underlying agreement has been entered into after arm's length bargaining and does not involve:

(a) A purchase, lease, or lease with purchase option by an air carrier:

(1) Which has an officer, director, proprietor, member, partner, employee or stockholder who is, or has a representative or nominee who represents such person as, an officer, director, proprietor, member, owner, partner, or stockholder of the person whose aircraft are being purchased or leased;

(2) Which owns, directly or beneficially, any financial interest in the person whose aircraft are being purchased or leased;

(3) In which any financial interest is owned, directly or beneficially, by the person whose aircraft are being purchased or leased;

(4) Which controls, is controlled by, or is under the common control with, a person whose aircraft are being purchased or leased; and

(5) Which is a party to an executory agreement with the person whose aircraft are being purchased or leased which will, or may upon consummation thereof, result in any of the relationships set forth in this paragraph.

(b) A purchase lease, or lease with purchase option by an air carrier from a certificated air carrier of aircraft of more than

(1) $10,000,000 in market value, or

(2) 10 in number, or

(3) 20 percent of either the total number, total market value, or total lift capacity (pay load) of aircraft of a certificated air carrier,

whichever is less, either in a single transaction or in successive transactions within a six month period. For purposes of computing total aircraft in accordance with subparagraph (3 of this paragraph, all aircraft of the certificated air carrier shall be included except aircraft which is under lease to such carrier for six months or less, and aircraft which is owned by such carrier but is under lease to some other person for a period of more than six months.

(c) A lease with crew or an aircraft interchange agreement.

§ 299.3 Filing requirements.

A copy of the agreement to purchase, lease, or lease with option to purchase aircraft, or a memorandum of oral understanding where the transaction is consummated without written agreement, shall be filed with the Board within 15 days after the date of execution thereof,[2] together with a statement containing a certification of a duly authorized official of the air carrier in substantially the following form:

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[2] "Certificated air carrier" wherever used herein does not embrace carriers issued certificates for supplemental air service.

[1] This exemption does not release a party to an aircraft sale or lease agreement from conditions in any Board order prohibiting or limiting transactions involving such party. It should be further noted that an air carrier subject to Part 42 of this chapter must, as required by § 42.11, have the exclusive use of all large aircraft operated by it for the carriage of goods or persons for compensation or hire. Section 42.1 defines the exclusive "use of an aircraft for flight arising from either (i) a lease or other agreement or arrangement under which the air carrier is to have the right to such possession, control, and use for a period of at least six consecutive months from the date of such lease or other agreement or arrangement, or (ii) ownership of the aircraft."

[2] To the extent that an agreement coming within this regulation is also subject to section 412, the air carrier must comply separately with the filing requirements of Part 261 of this chapter and, if involving supplemental carriers, with any prior approval requirements imposed on them. An outright sale or lease of aircraft without crew is not deemed to be within the purview of section 412.

The attached agreement was entered into on _____, 19__, and is being filed with the Board by _____ pursuant to Part 299 of the Board's Economic Regulations. In submitting this agreement, the undersigned herein certifies that such agreement (1) has been entered into after arm's length bargaining, (2) to his best knowledge and belief and so far as he could reasonably determine does not involve any of the relationships set forth in paragraph (a) (4) of § 299.2, and (3) does not involve any of the other prohibited relationships set forth in paragraph (a) of § 299.2.

Insofar as applicable, a statement should also be submitted containing a recital of the specific data relied upon by the air carrier in concluding that the transaction does not exceed any of the limitations of paragraph (b) of § 299.2.

§ 299.4 Effect of exemption.

The exemption granted by this part shall not be deemed to constitute a determination for rate-making purposes of the reasonableness of the transaction or an "order made under sections 408, 409 and 412" within the meaning of section 414 of the Act.

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

By the Civil Aeronautics Board.

[SEAL] MABEL MCCART, *Acting Secretary.*

[F.R. Doc. 59-954; Filed, Feb. 3, 1959; 8:50 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 54776]

PART 81—IMPORTATION OF ARTICLES IN CONNECTION WITH THE OREGON STATE CENTENNIAL EXPOSITION AND INTERNATIONAL TRADE FAIR AT PORTLAND, OREGON, UNDER PUBLIC LAW NO. 85-409, 85TH CONGRESS [1]

The following regulations under Public Law No. 85-409, 85th Congress, approved May 16, 1958, relate to the entry of articles in connection with the Oregon State Centennial Exposition and International Trade Fair to be held at Portland, Oregon, June 10 to September 20, 1959, inclusive.

Sec.
81.1 Invoices; marking; bond.
81.2 Entry; appraisement; procedure.
81.3 Compliance, provisions of Plant Quarantine Act of 1912, and Federal Food, Drug, and Cosmetic Act.
81.4 Detail of customs officers to protect revenue; expenses.
81.5 Withdrawal of articles from exhibition for exportation, abandonment, destruction, or for consumption or entry under the general tariff law; involuntary abandonment.

AUTHORITY: §§ 81.1 to 81.5, issued under Pub. Law 85-409, 85th Cong.

§ 81.1 Invoices; marking; bond.

(a) Articles intended for exhibition under the provisions of Public Law No. 85-409, 85th Congress, and valued at over $500, are subject to the usual special customs invoice requirements if of a class for which such invoices are required under the Tariff Act of 1930, as amended, and the regulations issued thereunder. The invoices shall be on either customs Form 5515 or on foreign service Form 138 and shall contain the information prescribed under section 481 of the Tariff Act of 1930 (19 U.S.C. 1481).

(b) The marking requirements of the Tariff Act of 1930, as amended, and the regulations promulgated thereunder will not apply to articles imported under the regulations in this part except when such articles are withdrawn for consumption or use in the United States, in which case they shall be released from customs custody only upon a full compliance with the marking requirements of the tariff act, as amended, and the regulations promulgated thereunder.

(c) The Oregon State Centennial Exposition and International Trade Fair shall give to the collector of customs at Portland, Oregon, a bond in an amount to be determined by the collector and containing such conditions for compliance with Public Law No. 85-409, 85th Congress, and the regulations in this part, as shall be approved by the Bureau of Customs.

§ 81.2 Entry; appraisement; procedure.

(a) All entries under the regulations in this part shall be made at the port of Portland, Oregon, in the name of the Oregon State Centennial Exposition and International Trade Fair which shall be deemed for customs purposes the sole consignee of the merchandise entered under the act and which shall be held responsible to the Government for all duties and charges due to the United States on account of such entries; but, in the case of merchandise withdrawn from entry under the regulations in this part, an entry under the general tariff law in the name of any person duly authorized in writing by the Oregon State Centennial Exposition and International Trade Fair to make such entry may be accepted by the collector.

(b) Articles to be entered under the regulations in this part which arrive at ports other than Portland, Oregon, shall be entered for immediate transportation without appraisement to the latter port in the manner prescribed by the general customs regulations.

(c) Upon the arrival at the port of Portland, Oregon, of articles to be entered under the regulations in this part, they shall be entered on a special form of entry to read substantially as follows:

ENTRY FOR EXHIBITION

Entry No. ____

Entry at the port of Portland, Oregon, of articles consigned or transferred to the Oregon State Centennial Exposition and International Trade Fair under _____ _____ I.T. No. _____, ex S.S. _____ from _____ on the _____ day of _____ 19__, for exhibition purposes under Public Law No. 85-409 of the 85th Congress, approved May 16, 1958.

[1] "* * * That any article which is imported from a foreign country for the purpose of exhibition at the Oregon State Centennial Exposition and International Trade Fair to be held at Portland, Oregon, from June 10, 1959, to September 20, 1959, inclusive, by the Oregon State Centennial Exposition and International Trade Fair (hereinafter called the "exposition"), or for use in constructing, installing, or maintaining foreign exhibits at such exposition, upon which article there is a tariff or customs duty, shall be admitted without payment of such tariff or customs duty or any fees or charges, under such regulations as the Secretary of the Treasury shall prescribe.

"SEC. 2. It shall be lawful at any time during or within three months after the close of such exposition to sell within the area of the exposition any articles provided for in this Act, subject to such regulations for the security of the revenue and for the collection of import duties as the Secretary of the Treasury shall prescribe. All such articles, when withdrawn for consumption or use in the United States, shall be subject to the duties, if any, imposed upon such articles by the revenue laws in force at the date of their withdrawal; and on such articles which shall have suffered diminution or deterioration from incidental handling or exposure, the duties, if payable, shall be assessed according to the appraised value at the time of withdrawal from entry under this Act for consumption or entry under the general tariff law.

"SEC. 3. Imported articles provided for in this Act shall not be subject to any marking requirements of the general tariff laws, except when such articles are withdrawn for consumption or use in the United States, in which case they shall not be released from customs custody until properly marked, but no additional duty shall be assessed because such articles were not sufficiently marked when imported into the United States.

"SEC. 4. At any time during or within three months after the close of the exposition, any article entered under this Act may be abandoned to the United States or destroyed under customs supervision, whereupon any duties on such article shall be remitted.

"SEC. 5. Articles which have been admitted without payment of duty for exhibition under any tariff law and which have remained in continuous customs custody or under a customs exhibition bond and imported articles in bonded warehouses under the general tariff law may be accorded the privilege of transfer to and entry for exhibition at such exposition, under such regulations as the Secretary of the Treasury shall prescribe.

"SEC. 6. The exposition shall be deemed, for customs purposes only, to be the sole consignee of all merchandise imported under the provisions of this Act. The actual and necessary customs charges for labor, services, and other expenses in connection with the entry, examination, appraisement, release, or custody, together with the necessary charges for salaries of customs officers and employees in connection with the supervision, custody of, and accounting for, articles imported under the provisions of this Act, shall be reimbursed by the exposition to the United States, under regulations to be prescribed by the Secretary of the Treasury. Receipts from such reimbursements shall be deposited as refunds to the appropriation from which paid, in the manner provided for in section 524 of the Tariff Act of 1930, as amended (19 U.S.C. 1524)." (Pub. Law No. 85-409)

Mark	Number	Package and contents	Quantity	Invoice value

OREGON STATE CENTENNIAL EXPOSITION AND INTERNATIONAL TRADE FAIR

By _____

(d) Upon such entry being made, the collector shall issue a special permit for the transfer of the articles covered thereby to the buildings in which they are to be exhibited or used, or, in the discretion of the collector, to the appraiser's stores for examination and subsequent transfer to the buildings in which they are to be exhibited or used. The articles shall be tentatively appraised prior to their exhibition or use. All imported exhibits entered under the regulations in this part shall be kept segregated from domestic articles and imported duty-paid articles and shall not be removed from the exhibition building except in accordance with § 81.5(a).

(e) If for any reason articles imported for entry under the regulations in this part are not upon their arrival to be delivered immediately at an exhibition building, the importer should so indicate to the collector in writing, who will cause such articles to be placed in a bonded warehouse under a "general order permit" at the importer's risk and expense, and such articles may be entered at any time within one year from the date of importation for exhibition, as herein provided for, or under the general tariff law, or for exportation. If not so entered within such period, they will be regarded as abandoned to the Government.

(f) Articles which have been admitted without payment of duty for exhibition under any customs law and which have remained in continuous customs custody or under a customs exhibition bond may be transferred to entry for exhibition at the fair in the manner prescribed in § 10.49(c) of this chapter, except that in each case an entry under paragraph (c) of this section shall be filed, which shall supersede any previous entry, and no new bond other than that specified in paragraph (c) of this section shall be required. Imported articles in bonded warehouses under the general tariff law may be transferred to entry for exhibition at the fair in the manner prescribed in § 8.33 of this chapter.

§ 81.3 Compliance, Provisions of Plant Quarantine Act of 1912, and Federal Food, Drug, and Cosmetic Act.

The entry of plant material subject to restriction under the Plant Quarantine Act of 1912, as amended (7 U.S.C. 151–164a, 167), shall not be permitted except under permits issued therefor by the Plant Quarantine Branch of the Agriculture Research Service, Department of Agriculture, and in accordance with the plant quarantine regulations. The entry of food products shall conform to the requirements of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 et seq.), and regulations issued thereunder.

§ 81.4 Detail of Customs Officers to Protect Revenue; Expenses.

(a) The collector of customs at Portland, Oregon, shall detail an officer to act as his representative at the fair and shall station inside the exhibition buildings as many additional customs officers and employees as may be necessary to properly protect the revenue.

(b) All actual and necessary charges for labor, services, and other expenses in connection with the entry, examination, appraisement, release, or custody of imported articles, together with the necessary charges for salaries of customs officers and employees in connection with the supervision and custody of, and accounting for, articles imported for exhibition at the fair or transferred thereto for exhibition, shall be reimbursed by the Oregon State Centennial Exposition and International Trade Fair to the Government, payment to be made monthly to the collector of customs, Portland, Oregon, for deposit to the credit of the Treasurer of the United States as a refund to the appropriation "Salaries and Expenses, Bureau of Customs."

§ 81.5 Withdrawal of articles from exhibition for exportation, abandonment, destruction, or for consumption or entry under the general tariff law; involuntary abandonment.

(a) Any article entered under the regulations of this part may be withdrawn for exportation, for abandonment to the Government, for destruction under customs supervision, or for consumption or entry under the general tariff law, but not otherwise, at any time prior to the opening of the fair or at any time during or within three months after the close of the fair. Upon the withdrawal of such articles for consumption or for entry under the general tariff law, or at the expiration of three months after the close of the fair in the case of articles not previously so withdrawn, they shall be appraised with due allowance made for diminution or deterioration from incidental handling or exposure. Such appraisal shall be final in the absence of an appeal to reappraisement, as provided in section 501 of the Tariff Act of 1930, as amended (19 U.S.C. 1501). In the case of such articles withdrawn for entry under the general tariff law under a warehouse bond or a bond conditioned upon exportation, the statutory period of the bond and any extension thereof shall be computed from the date of withdrawal from entry under the provisions of Public Law No. 85–409, 85th Congress.

(b) At any time prior to the opening of the fair, or at any time during or within three months after the close of the fair, any article entered hereunder may be abandoned to the Government or destroyed under customs supervision, as provided in § 15.4 of this chapter.

(c) Any articles entered under the regulations in this part which have not been withdrawn for consumption, entry under the general tariff law, or exportation, or which have not been abandoned to the Government or destroyed under customs supervision, before the expiration of three months after the close of the fair, shall be regarded as abandoned to the Government.

[SEAL] RALPH KELLY,
Commissioner of Customs.

Approved: January 28, 1959.

A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 59-937; Filed, Feb. 3, 1959; 8:48 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 17—BAKERY PRODUCTS; DEFINITIONS AND STANDARDS OF IDENTITY

Addition of Wheat Gluten To List of Optional Ingredients

In the matter of amending the definition and standard of identity for bread:

A notice of proposed rule making was published in the FEDERAL REGISTER of July 30, 1958 (23 F.R. 5737), setting forth a proposal to amend the definition and standard of identity for bread to add wheat gluten to the list of optional ingredients, and inviting all interested persons to submit written comments.

After consideration of the information furnished by the petitioner and that submitted in response to the invitation for comments together with other relevant information, it is concluded that it will promote honesty and fair dealing in the interest of consumers to amend the definitions and standards of identity for bakery products, as hereinafter set out; and, pursuant to the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended, 70 Stat. 919; 21 U.S.C. 341, 371) and delegated to the Commissioner of Food and Drugs by the Secretary (23 F.R. 9500): *It is ordered*, That the definitions and standards of identity in Part 17 (21 CFR Part 17) be amended as follows:

1. In § 17.1 (Bread, white bread, and rolls, white rolls, or buns, white buns; identity; * * *), the following amendments are made:

a. Paragraph (a) is amended by changing the words "one or more of the optional ingredients prescribed by subparagraphs (1) to (14), inclusive, of this paragraph may be used:" in the fourth sentence to read as follows: "one or more

of the optional ingredients specified in this paragraph may be used, and if the food is baked in the form of rolls or buns, the optional ingredient specified in paragraph (b)(2) of this section may be used:".

b. Paragraph (b) is amended by designating the present text of the paragraph as subparagraph (1) and by adding to paragraph (b) the following new subparagraph (2):

(2) The optional ingredient referred to in paragraph (a) of this section, that may be used in rolls or buns, is suitable wheat gluten in a quantity, not to exceed 4 parts for each 100 parts by weight of flour used. For the purposes of this section "suitable wheat gluten" means gluten which is not denatured as determined by the test prescribed in this subparagraph. It is made from wheat flour from which starch has been removed by washing with water until the gluten contains not less than 75 percent protein on a moisture-free basis. The flour used for preparing such gluten complies with the requirements of the definition and standard of identity for wheat flour in § 15.1 of this chapter, except that the ash content may exceed the limit specified in the standard, but may not exceed 2.3 percent on a moisture-free basis. The ash content of the flour and the protein content of the gluten are determined by the methods prescribed in § 15.1(c) of this chapter. To determine whether the wheat gluten is denatured, use a laboratory sigma mixer of 1-pint capacity (Carl Heinrich Company, Boston, Massachusetts, or other mixer which will give equivalent results). With 100 milliliters of water at 25° C. in the mixer, start it operating and sprinkle in 30 grams of the gluten to be tested. Observe the suspension for a visual change of consistency, indicating that the gluten is beginning to agglomerate, and when this is noted, stop the mixer. If the pieces of agglomerated gluten can be combined into a single homogeneous mass of dough which shows definite elasticity and film-forming properties, the gluten is deemed not to be denatured. If the pieces cannot be so combined, put them back in the water and continue the mixing. If a dough with the properties specified in this subparagraph is not obtainable within a total mixing time of 1 hour, the gluten is deemed to be denatured.

2. In § 17.2 (Enriched bread and enriched rolls or enriched buns; identity; * * *), the following amendments are made:

a. Paragraph (b) is amended by designating the present text of the paragraph as subparagraph (1) and by adding to paragraph (b) the following new subparagraph (2):

(2) The optional ingredient specified in paragraph (b)(2) of § 17.1 may be used in enriched rolls or enriched buns.

3. In § 17.4 (Raisin bread and raisin rolls or raisin buns; identity; * * *), paragraph (a) is amended by adding thereto a new subparagraph (6) as follows:

(6) The optional ingredient specified in paragraph (b)(2) of § 17.1 may be used in raisin bread and in raisin rolls or raisin buns.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of publication of this order in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, shall specify with particularity the provisions of the order deemed objectionable and the grounds for the objections, and shall request a public hearing upon the objections. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall become effective 60 days from the date of its publication in the FEDERAL REGISTER, except as to any provision that may be stayed by the filing of objections thereto. Notice of the filing of objections, or lack thereof, will be announced by publication in the FEDERAL REGISTER.

(Sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 371. Interprets or applies sec. 401, 52 Stat. 1046, as amended; 21 U.S.C. 341)

Dated: January 28, 1959.

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

[F.R. Doc. 59-938; Filed, Feb. 3, 1959; 8:48 a.m.]

PART 29—FRUIT BUTTERS, FRUIT JELLIES, FRUIT PRESERVES, AND RELATED PRODUCTS; DEFINITIONS AND STANDARDS OF IDENTITY

Order Staying Amendment of Standard of Identity for Fruit Jelly

In the matter of amending the standard of identity for fruit jelly:

An order was published in the FEDERAL REGISTER of November 13, 1958 (23 F.R. 8791), amending the standard of identity for fruit jelly by listing artificial red coloring as a permitted optional ingredient with cinnamon flavoring in apple and/or crabapple jelly and by specifying label statements to be used on such jelly. Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 701(e), 52 Stat. 1055, as amended 70 Stat. 919; 21 U.S.C. 371(e)), the order included a notice that any person who would be adversely affected could file written objections, showing wherein he would be adversely affected, specifying the provisions in the order deemed objectionable, stating grounds for the objections, and requesting a public hearing. Written objections having been filed to the order cited, it will be necessary to hold a public hearing on the question of amending the fruit jelly standard as set out in the order.

Now, therefore, pursuant to the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (supra) and delegated to the Commissioner of Food and Drugs by the Secretary (23 F.R. 9500): *It is ordered,* That the amendments to the definition and standard of identity for fruit jelly as published in the FEDERAL REGISTER of November 13, 1958 (23 F.R. 8791) shall be stayed. This stay shall continue until final action is taken disposing of the objections after public hearing thereon.

Notice of a public hearing to receive evidence on the objections to amend the identity standard for fruit jelly as herein stayed will be announced by publication in the FEDERAL REGISTER.

(Sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 371)

Dated: January 28, 1959.

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

[F.R. Doc. 59-939; Filed, Feb. 3, 1958; 8:48 a.m.]

Title 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

SUBCHAPTER O—LEASING AND PERMITTING

PART 131—LEASING AND PERMITTING

Miscellaneous Amendments

Section 131.3 is revised to read as follows:

§ 131.3 Applicability of regulations and reserved authority by the Secretary.

The regulations in this part are of general application. Notwithstanding any limitations contained in the regulations of this part the Secretary retains the right to approve any lease or permit the terms of which meet statutory requirements when he finds that the lease or permit is in the best interest of the Indian owner.

(R.S. 161, as amended, 5 U.S.C. 22)

FRED A. SEATON,
Secretary of the Interior.

JANUARY 28, 1959.

[F.R. Doc. 59-918; Filed, Feb. 3, 1959; 8:45 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATION

PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGULATIONS

Manual For Control of Government Property in Possession of Contractors

The following definitions were inadvertently omitted from Amdt. 14 of this subchapter; they should have appeared

at 21 F.R. 6414 under paragraph 103 of § 30.2, Appendix B:

(p) Salvage means property recoverable for further use or which, because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or as serviceable property without major repairs or alterations but which has some value in excess of its scrap value.

(q) Scrap means property in such condition that it has no reasonable prospect of being sold, except for the recovery value of its basic material content.

(r) Property account means the official records of the Government property provided to a contractor by a Department, which are established and maintained under the provisions of this subchapter, in accordance with the Departmental procedures. Separate property accounts will be maintained either on an individual contract basis or contractor basis.

(s) Stock record means a perpetual inventory form of record which shows, by nomenclature, the quantities received and issued, and the balances on hand.

MAURICE W. ROCHE,
Administrative Secretary,
Office of the Secretary of Defense.

JANUARY 30, 1959.

[F.R. Doc. 59-922; Filed, Feb. 9, 1959; 8:46 a.m.]

Chapter V—Department of the Army

SUBCHAPTER E—ORGANIZED RESERVES

PART 561—ARMY RESERVE

Appointment in the Judge Advocate General's Corps Branch

Section 561.17 is revised to read as follows:

§ 561.17 Appointment as reserve commissioned officers of the Army for assignment to The Judge Advocate General's Corps Branch.

(a) *General.* This section prescribes the special requirements for appointment of qualified male personnel for assignment to The Judge Advocate General's Corps Branch.

(b) *Grade.* (1) Officers of any Reserve component and former officers of any of the Armed Forces of the United States who have served satisfactorily either by appointment in or assignment to The Judge Advocate General's Corps, or who have served in an assignment corresponding to an assignment in The Judge Advocate General's Corps, may be appointed under either subdivision (i) or (ii) of this subparagraph.

(i) In the highest grade (or comparable grade if such service was performed in other than the Army) held while serving in such specialty, based on their prior service, or

(ii) In the highest grade for which they can qualify by education and experience as indicated in subparagraph (2) of this paragraph.

(2) Qualified persons, with or without military service, may be appointed in the grades authorized in subparagraph (3) of this paragraph based on education and or experience as provided in this section.

(3) The grades in which appointments in The Judge Advocate General's Corps under this section are authorized are first lieutenant through colonel. Upon determination under subparagraph (4) of this paragraph of the "years of service in an active status," which may be credited to the applicant, his grade will be determined as set out below. The "years of service in an active status" required for appointment in each grade are as follows:

Years of service in an active status	*Grade*
3 years or more, but less than 7 years.	First Lieutenant.
7 years or more, but less than 14 years.	Captain.
14 years or more, but less than 21 years.	Major.
21 years or more, but less than 23 years.	Lieutenant Colonel.
23 or more years	Colonel or Lieutenant Colonel as the Department of the Army shall determine.

(4) "Years of service in an active status," credited under the provisions of this section to officers appointed in the Army Reserve for assignments to The Judge Advocate General's Corps will be computed as indicated below. No period of time may be used more than once in computing an individual officer's "years of service in an active status." In addition to a minimum of 3 years of "service in an active status," an applicant appointed for assignment in The Judge Advocate General's Corps will be credited with the number of years, months, and days in which he has been engaged in the practice of law between the date of his admission to the bar and date of appointment, except that each year of professional experience in excess of 21 years will be given one-half credit for each year "served in an active status." However, individuals who are appointed on the basis of prior service (subparagraph (1)(i) of this paragraph) for assignment to The Judge Advocate General's Corps will not be constructively credited with "years of service in an active status," but such individuals will be credited with promotion service as computed for rank in any other branch.

(5) "Years of service in an active status" credited in accordance with subparagraph (3) of this paragraph which are in excess of the minimum required for appointment in the grade for which found eligible shall be credited as "promotion service" in the grade in which appointed.

(c) *Special requirements.* (1) Former Judge Advocate General's Corps officers of any component of the Army or of the Army of the United States without component must meet the requirements outlined in §§ 561.2 to 561.9 and in subparagraph (2)(i)(*b*) and (ii) of this paragraph.

(2) Applicants for initial appointment and former officers who have not held appointment in or assignment to The Judge Advocate General's Corps must meet the following requirements in addition to those shown in §§ 561.2 to 561.9, except that consideration will be given by the Department of the Army to waiver of subdivision (i)(*c*) of this subparagraph in the case of outstanding applicants who have been admitted to practice before the highest court of a State of the United States or a Federal Court subsequent to 1950, and whose services are desired for immediate active duty:

(i) *Professional qualifications.* Applicants must:

(*a*) Have been graduated from an approved law school, with a professional degree.

(*b*) Have been admitted to practice, and have membership in good standing of the bar of the highest court of a State of the United States or a Federal Court.

(*c*) Be actively engaged in the private practice of law, teaching of law, or hold judicial office.

(ii) *Maximum age.* (*a*) Applicants must not have reached the age indicated below prior to appointment in the grade indicated.

	Age
First lieutenant	33
Captain	39
Major	48
Lieutenant Colonel	51
Colonel	55

(*b*) Age limits shown in (*a*) of this subdivision may be increased for former officers of the Army by an amount not to exceed previous length of service in the grade to which appointment is authorized, except that such increase is not authorized if the applicant would have less than 2 years to serve before being removed from an active status. (Previous service means, for this purpose, any period of commissioned service that an officer has served on active duty in the Army or has held an appointment in the federally recognized National Guard or retained active status as a Reserve of the Army.)

[C 7, AR 140-100, Dec. 15, 1958] (Sec. 280, 70A, Stat. 14; 10 U.S.C. 280)

[SEAL] R. V. LEE,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 59-917; Filed, Feb. 3, 1959; 8:45 a.m.]

Chapter XVI—Selective Service System

[Amdt 80]

PART 1617—REGISTRATION CERTIFICATE

Return of Certificate to Local Board

The Selective Service Regulations are hereby amended by adding the following new section to Part 1617 immediately following § 1617.12:

§ 1617.13 Return of registration certificate to local board.

Whenever a registrant at the time he receives a duplicate Registration Certificate (SSS Form No. 2) from his local board has in his possession any such certificate previously issued to him by the local board or thereafter finds or regains possession of any such certificate previously issued to him, it shall be the duty of the registrant to immediately return to the local board the certificate previously

issued to him upon his receipt of the duplicate certificate or upon his thereafter finding or regaining possession of such certificate previously issued to him.

(Sec. 10, 62 Stat. 618, as amended; 50 U.S.C. App. 460)

The foregoing amendment to the Selective Service Regulations shall become effective upon filing with the Division of the Federal Register.

[SEAL] LEWIS B. HERSHEY,
Director of Selective Service.

JANUARY 29, 1959.

[F.R. Doc. 59-940; Filed, Feb. 3, 1959; 8:48 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 96—AIR CARRIERS

Miscellaneous Amendments

A. In § 96.1 *Carriers responsibility*, amend paragraph (e) by striking out the sentence reading "Three copies must be filed with the Assistant Controller, Bureau of Finance, Post Office Department, Washington 25, D.C."

NOTE: The corresponding Postal Manual section is 531.15.

B. In § 96.5 *Submission of claims* make the following changes:

1. Amend paragraph (a)(2) as follows:

a. Amend (*e*) of subdivision (i) to read as follows:

(*e*) Enter the composite pound rate in the approximate "Rate or Miles" boxes. (Helicopter carriers should use scheduled miles flown in airmail service.)

b. In (*f*) of subdivision (i) strike out the words "mileage or" and insert in lieu thereof the word "composite."

c. In subdivision (i) strike out (*i*).

d. In subdivision (ii) strike out (*c*) and insert in lieu thereof the following:

(*c*) List excepted shipments on a worksheet which contains the following columns:

Carrier serial No. of 2734	Flight No.	Flight date	Air stop points—		Pounds	Rate per pound between A & B [1]	Amount
			A	B			
			Actually off loaded	Waybilled by POD			

[1] Line-haul and terminal charge as contained in the mileage and rate manual. (Helicopters use scheduled miles flown in airmail service and extend pound miles.)

e. In subdivision (ii) amend (*d*) to read as follows:

(*d*) List Forms 2734 (Air Mail Exception Record) on the worksheet in ascending serial number order.

2. Strike out paragraph (a)(3) and insert in lieu thereof new paragraph (a)(3) to read as follows:

(3) *Claims prepared on punchcards.* (i) Carriers will support Form 2703 (Carrier Claims for Air Mail) with a deck of punchcards, Forms 2730 (U.S. Air Mail Billing Cards—Domestic) processed from Forms 2729 (Air Mail Dispatch Record), 2733 (Interline Air Mail Record), and 2734. Forms 2730 shall be submitted in serial number order to support a one line entry on Form 2703. Form 2703 and deck of Forms 2730 must be submitted to the designated paying regional controller.

(ii) Air carriers will prepare Forms 2730 in accordance with the following card layout.[1]

3. Redesignate paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e) respectively.

4. Insert new paragraph (b) to read as follows:

(b) *Stub end airmail claims*—(1) *Forms used.* Carriers must submit claims on Form 2703 supported with copies of Forms AV-7 bearing the signature of postal representative at the receiving exchange office. Forms AV-7 will be arranged in the same order as they are listed on machine listings or Forms 2732 (Monthly Summary of Air Mail Carried).

(2) *Claims prepared on punched cards.* (i) Prepare from Forms AV-7 a continuous machine listing for each pair of cities for all trips made in a calendar month or postal accounting period. Prepare in such a manner as to develop pound totals for each segment within each trip. Listings must show the following information for each item of service claimed:

(*a*) *Items of Service.* (*1*) Date of service. (*2*) Route number. (*3*) Trip number. (*4*) Origin. (*5*) Destination. (*6*) Composite rate. (*7*) Pounds.

(ii) List items of service in ascending date order by trip and segment and show total pounds for each segment. From these totals, prepare a brief summary showing computation of total charge for each segment; enter totals on Form 2703.

(3) *Claims prepared manually.* Prepare from Forms AV-7 a separate Form 2732 in triplicate for each origin point within each flight as follows:

(i) Enter route, trip number, origin code, and period of service in appropriate boxes at top of forms.

(ii) Enter stop point at exchange office of destination in the "Dest." boxes. Use letter code in ascending alphabetical order.

(iii) Enter weights in pounds (converted to pounds from kilograms as shown on Form AV-7) in appropriate "Dest." column and on line with flight date. Add totals of weights shown on each Form AV-7 for a particular destination and date.

(iv) After all entries have been made to Form 2732, add, cross-add, and cross-foot the pound columns.

(v) Enter appropriate pound rate in the "Rate or Miles" box. (AV-7's prepared at exchange offices other than at the originating point on the foreign airmail route will show on the "Carrier, flight and routing" line, the point from which the mileage shall be computed. For example, air mail billed from New York to Mexico on American Airlines Flight 87 (AM-4) would show the dispatching office as New York, the airport of delivery as Mexico City and on the routing line will show "DAL AAL 159" or "DAL FAM 26-159.")

(vi) Multiply the total pounds by the related rate and enter result in "Total Pound Miles or Charge" box.

(vii) Total all columns to determine the grand total charge for each Form 2732.

(viii) Add the grand total or charge on each Form 2732 and enter these totals to Form 2703.

5. Former paragraph (c) redesignated as (d) above is amended to read as follows:

(d) *States-Alaska and Intra-Alaska.* Carriers operating over States-Alaska and intra-Alaska routes (except NWA) must prepare and submit Form 2703 in accordance with CAB rate orders and specific instructions issued by the Department.

6. Former paragraph (d) redesignated as (e) above is amended to read as follows:

(e) *Designated regional controllers.* Claims must be submitted to the appropriate Regional Controller as follows:

Regional Controller and Airlines

Regional Controller, Post Office Department, P.O. and Courthouse, Boston 9, Mass.; Northeast Airlines.

Regional Controller, Post Office Department, Main Post Office Building, New York 1, N.Y.; New York Airways.

Regional Controller, Post Office Department, Main Post Office Building, Philadelphia 1, Pa.; Mohawk Airlines.

Regional Controller, Post Office Department, Atlas Bank Building, Annex, Cincinnati 2, Ohio; Lake Central Airlines.

Regional Controller, Post Office Department, Parcel Post Annex, Richmond 19, Va.; Allegheny Airlines, Capital Airlines, Eastern Air Lines, Piedmont Aviation, Riddle Airlines.

Regional Controller, Post Office Department, Federal Annex Building, Atlanta 3, Ga.; American Air Export and Import Co., Caribbean-Atlantic Airlines, Delta Air Lines, National Airlines, Southern Airways.

Regional Controller, Post Office Department, Main Post Office Building, Chicago 100, Ill.; Chicago Helicopter Air Service.

Regional Controller, Post Office Department, 5709 Waterman Boulevard, St. Louis 12, Mo.; Ozark Air Lines, Trans World Airlines.

Regional Controller, Post Office Department, Main Post Office Building, Minneapolis 1, Minn.; Northwest Airlines, North Central Airlines.

Regional Controller, Post Office Department, 1628 George Washington Boulevard, Wichita 16, Kans.; American Airlines.

Regional Controller, Post Office Department, Main Post Office Building, Dallas 21, Tex.; Braniff Airways, Central Airlines, Slick Airways, Trans-Texas Airways.

Regional Controller, Post Office Department 1011 Bryant Street, San Francisco 19, Calif.; Bonanza Airlines, Flying Tiger Line, Hawaiian Airlines, Los Angeles Airways, Pacific Air Lines, Trans Pacific Airlines, Western Air Lines.

[1] Filed as part of the original document.

Regional Controller, Post Office Department, Federal Center, Building 56, Denver 2, Colo.; Continental Air Lines, Frontier Airlines, United Air Lines.

Regional Controller, Post Office Department, Main Post Office Building, Portland 8, Oreg.; Alaska Airlines, Alaska Coastal Airlines, Cordova Airlines, Ellis Air Lines, Northern Consolidated Airlines, Pacific Northern Airlines, Pan American World Airways (Alaska Division), Reeve Aleutian Airways, Wien Alaska Airlines, West Coast Airlines.

NOTE: The corresponding Postal Manual section is 531.

(R.S. 161, as amended, 396, as amended, sec. 405, 72 Stat. 760, as amended; 5 U.S.C. 22, 369, 49 U.S.C. 1375)

[SEAL] HERBERT B. WARBURTON, *General Counsel.*

[F.R. Doc. 59-942; Filed, Feb. 3, 1959; 8:49 a.m.]

PART 111—POSTAL UNION MAIL

Miscellaneous Amendments

In Part 111—*Postal Union Mail*, make the following changes:

A. In § 111.1 *All categories* amend subparagraph (2) of paragraph (c) to read as follows:

(2) *How paid.* Postage, registration fees, and insurance fees can be prepaid by means of United States postage stamps or by meter stamps of a bright red color. Precanceled stamps may be used under the same conditions as in the domestic mails. Airmail stamps may be used on airmail articles only. Prepayment of postage on printed matter may also be indicated by means of permit imprints. Permit imprints must show the amount of postage paid and may be black or any other color. For method of paying postage on second-class matter mailed by the publishers or by registered news agents to Canada see § 111.2(d)(5)(iii).

NOTE: The corresponding Postal Manual section is 221 132.

(R S 161, as amended, 396, as amended, 398, as amended; 5 U S.C. 22, 369, 372)

B In § 111.2 *Specific categories*, as amended by Federal Register Document 58-9233 (23 F.R. 8622-8623), and by Federal Register Document 58-9420 (23 F R 8748), amend subparagraph (5) of paragraph (d) to read as follows:

(5) *Preparation and mailing*—(i) *Wrapping and closing.* Prints must be placed either under wrapper, in rolls, between cardboard, in an open case, or in an unsealed envelope, provided, if need be, with easily removable fasteners offering no danger, or be fastened with a string which can be easily untied. Articles of printed matter should not be prepared in such a manner as to allow other articles to slip into them. Prints of the shape and consistency of a card (unfolded or folded only once) may be mailed without wrapper envelope, or fastener. Do not seal articles mailed at printed matter rates.

(ii) *Marking.* Envelopes, cards, or packages to be mailed at printed matter rates must be marked so that the nature of the article can be readily associated with the appropriate rate of postage. Endorse the address side of your envelope, card, or packages as follows:

"Printed Matter—Books" or "Printed Matter—Sheet Music" for books or sheet music to be mailed at the special rates prescribed for this category of mail. If a single volume is enclosed in a package exceeding the weight limit for prints in general, mark the package "Printed Matter—Book (Single Volume)".

"Printed Matter—Second Class" for publications to be mailed by the publishers or by registered news agents at the special rates prescribed for second-class publications, except those addressed to Canada. Second-class publications enclosed in envelopes (unsealed) to be mailed at pound rates to Canada must be identified in the manner prescribed in paragraph (b)(6) of § 16.1 of this chapter.

"Printed Matter" for mail that does not qualify for one of the reduced rates stated in paragraph (d)(1) of this section.

(iii) *Prepayment.* (a) Postage on all printed matter, except second-class for Canada, must be paid in the manner prescribed in § 111.1(c)(2). This means that postage stamps, meter stamps, or permit imprints showing the amount of postage on each piece must be used.

(*b*) Postage on second-class publications for Canada entitled to pound rates may be paid in the manner prescribed in paragraph (f)(6) of § 16.1 of this chapter. Publishers and registered news agents must report the Canadian copies on a separate Form 3542 and must submit a marked copy to show the advertising portion, for use of the post office in computing the postage charges. See § 16.1(e)(1) of this chapter.

(iv) *Mailing.* Except in the case of second-class publications mailed to Canada at publisher's pound rates, newspapers, periodicals, or other articles of printed matter addressed to several different subscribers or addressees must not be enclosed in the same package with postage stamps affixed only to the outside wrapper of the package: However, several newspapers, periodicals, or other articles of printed matter, without separate address, may be enclosed in the same package. Unless otherwise specified in this section, the conditions applying to second-class matter mailed domestically apply also to such matter for Canada.

(v) *Return request.* Senders desiring that ordinary (unregistered) prints be returned if they prove to be undeliverable as addressed must place on the package their return address and a notation, in a language known in the country of destination, requesting its return.

(vi) *Dutiable prints.* Prints which are known to be dutiable in the country to which they are addressed should have a green (customs) label, Form 2976, fixed to the address side of the article. (See § 111.1(e)(1)). You may obtain information as to rates of duty from the Bureau of Foreign Commerce, Washington 25, D.C., or from any field office of that Department.

NOTE: The corresponding Postal Manual sections are 221.241, 221.242, 221.243, 221.244, 221.245.

(R.S. 161, as amended, 396, as amended, 398, as amended; 5 U.S.C. 22, 369, 372)

[SEAL] HERBERT B. WARBURTON, *General Counsel.*

[F.R. Doc. 59-941; Filed, Feb. 3, 1959; 8:49 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 12295]

PART 11—INDUSTRIAL RADIO SERVICES

Modulation Requirements

In the matter of amendment of Parts 10, 11 and 16 of the Commission's rules to change the effective date of narrow-band technical standards in the 25-50 and 152-162 Mc bands.

The Commission's Supplemental Order No. Four—Part 11, adopted and released on January 26, 1959, is corrected in the following respect:

Section 11.105(a) should read as follows:

§ 11.105 Modulation requirements.

(a) The maximum audio frequency required for satisfactory radiotelephone intelligibility in these services is considered to be 3000 cycles per second; in any transmitter not subject to the provisions of paragraph (d), (e) or (f) of this section, the over-all frequency response of the audio and modulating circuits nevertheless shall correspond approximately with that required thereby.

Released: January 30, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS, *Secretary.*

[F.R. Doc. 59-944; Filed, Feb. 3, 1959; 8:49 a.m.]

[Docket No. 12648; FCC 59-70]

[Rules Amdt. 12-11]

PART 12—AMATEUR RADIO SERVICE

Who May Operate an Amateur Station; Logs

In the matter of petition for amendment of Part 12 of the Commission's rules, Amateur Radio Service, to permit unlicensed persons to transmit by amateur radio using radio teleprinter equipment under the control and supervision of the amateur station licensee.

1. A notice of proposed rule making in the above-entitled proceeding was adopted October 29, 1958 (FCC 58-1034). Ample opportunity was afforded all interested parties to file comments in support of and in opposition to the proposal which, if adopted, would permit unlicensed persons to transmit by amateur radio using radio teleprinter equipment under the control and supervision of the amateur station licensee. The proposed

rule changes would extend to the use of radio teleprinter equipment the same privileges already extended to the use of microphones for voice transmissions over amateur stations.

2. Rule changes proposed in this proceeding were engendered by a petition filed by Mr. Boyd Phelps, 4232 Scott Terrace, Minneapolis 16, Minnesota. The Commission has received a number of comments from individuals and from organizations representing a large number of interested parties, including the Office of Civil and Defense Mobilization (OCDM), the American Radio Relay League, Inc. (ARRL), and amateur clubs. All comments received were in support of the adoption of the proposed rule changes. The ARRL stated, in part: "The League offers no objection to the proposal to amend the amateur rules to provide that unlicensed persons are permitted to communicate by amateur radio using radio teleprinter equipment under the control and supervision of the station licensee. The League believes that the arguments submitted by petitioner are valid and meritorious." Comments of the OCDM included the following: "* * * We support the proposal contained in Paragraph 2 of the Proposed Rule Making 'to permit unlicensed persons to communicate by amateur radio using radio teleprinter equipment under the control and supervision of the station licensee' * * * The Office of Civil and Defense Mobilization has a continuing interest in improving the non-military defense capability of all our communications resources. Permitting supervised operation of teleprinter equipment by unlicensed personnel will greatly enhance the effectiveness of the Radio Amateur Civil Emergency Service (RACES) program at the State and local levels." No comments in opposition to the proposal have been received.

3. In view of the foregoing, the Commission concludes that the public interest will be served by amending the rules in the manner proposed.

4. *Accordingly, it is ordered,* Pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, that Part 12 of the Commission's rules be and is amended, effective February 28, 1959, as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U. S. C. 303)

Adopted: January 28, 1959.

Released: January 30, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

1. Section 12.28 is amended to read as follows:

§ 12.28 Who may operate an amateur station.

An amateur radio station may be operated only by a person holding a valid amateur operator license. Such station may be operated by the licensee only in the manner and to the extent provided in his amateur operator license. Persons other than the station licensee, when operating such station, may operate it only to the extent and in the manner authorized to the licensee of the station and not exceeding the operating authority of such person's own amateur operator license. When an amateur station is used for telephony or radio teleprinter transmissions the station licensee may permit any person to transmit by voice or teleprinter, provided during such transmission call signs are announced or transmitted as prescribed by § 12.82 and a duly licensed amateur operator maintains actual control over the emissions, including turning the carrier on and off for each transmission and signing the station off after communication with each station has been completed.

§ 12.136 [Amendment]

2. Section 12.136(b) is amended to read as follows:

(b) The signature of each licensed operator who manipulates the key of a radiotelegraph transmitter; the signature of each licensed operator who operates a transmitter of any other type; and the name of any person not holding an amateur operator license who either directly or by recording transmits by voice over a radiotelephone transmitter or operates a teleprinter keying a radiotelegraph transmitter. The signature of the operator need only be entered once in the log, in those cases when all transmissions are made by or under the supervision of the signatory operator, provided a statement to that effect also is entered. The signature of any other operator who operated the station shall be entered in the proper space for that operator's transmission.

[F.R. Doc. 59-945; Filed, Feb. 3, 1959; 8:49 a.m.]

[Docket No. 12169]

[Rules Amdt. 16-39]

PART 16—LAND TRANSPORTATION RADIO SERVICES

Policy Governing Assignment of Frequencies

In the matter of amendment of Parts 2, 6, 7, 8, 9, 10, 11, and 16 of the Commission's rules to reduce separation between assignable frequencies in the 42-50 Mc band, to effect changes in the 25-50 Mc and 150.8-152 Mc bands, and to effect other changes relating to the use of frequencies in the 25-50 Mc band.

The Commission having under consideration its First Report and Order in the above-entitled matter (FCC 57-1393) adopted December 18, 1957; and

It appearing, that under the terms of the subject Report and Order, Part 2 of the Commission's rules was amended as set forth therein, and that Parts 6, 7, 8, 9, 10, 11, and 16 of such rules were amended to conform to the frequency-availability changes indicated therein, the formal codification of such latter changes to be accomplished by subsequent orders of the Commission; and

It further appearing, that the addition of the frequency band 150.8-152.0 Mc by the above action to the band 152-162 Mc which was previously allocated to non-Government use, thus making the entire band 150.8-162 Mc a single non-Government allocation, should be reflected in § 16.8(b) of the Commission's rules by listing the lower limit of that band (150.8 Mc) in lieu of the previous lower limit (152 Mc); and

It further appearing, that the foregoing amendment to § 16.8(b) of the Commission's rules conforms without substantive change to the provisions of the Commission's First Report and Order in this proceeding and is, therefore, editorial in nature, requiring no further public notice of rule making thereon; and

It further appearing, that an additional amendment to § 16.8(b) of the Commission's rules becomes desirable at this time to reflect the admission of Alaska to statehood, and that such amendment, being editorial in nature, may also be made without prior notice of proposed rule making; and

It further appearing, that public interest, convenience and necessity would be served by making the amendments ordered hereby effective immediately; and

It further appearing, that the amendments ordered hereby are issued pursuant to authority contained in sections 4(i), 5(d) and 303 of the Communications Act of 1934, as amended, and section 0.341 of the Commission's Statement of Delegation of Authority;

It is ordered, This 30th day of January 1959, that effective February 1, 1959, § 16.8(b) of Part 16 of the Commission's rules, Land Transportation Radio Services, is amended as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U S C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S C. 303)

Released: January 30, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

Amend § 16.8(b) to read as follows:

(b) In the State of Alaska, and in areas outside the continental limits of the United States and the waters adjacent thereto, frequencies above 150.8 Mc, listed elsewhere in this part as available for assignment to base stations or mobile stations in particular services, are further available for assignment to operational fixed stations in the same services on the condition that no harmful interference be caused to mobile service operations.

[F.R Doc 59 946, Filed, Feb 3, 1959; 8 49 a m]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 902]

[Docket No. AO-293]

HANDLING OF MILK IN WASHINGTON, D.C., MARKETING AREA

Notice of Revised Recommended Decision and Opportunity to File Written Exceptions Thereto With Respect to Proposed Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this revised recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to a proposed marketing agreement and order regulating the handling of milk in the Washington, D.C., marketing area. Interested parties may file written exceptions to this recommended decision with the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D.C., not later than the close of business the 10th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

Preliminary statement. A public hearing on a proposed marketing agreement and order was called by the Agricultural Marketing Service, United States Department of Agriculture, following receipt of a petition filed by the Maryland and Virginia Milk Producers Association. The hearing was held in Washington, D.C., on April 8–19, 1957, pursuant to a notice duly published in the FEDERAL REGISTER on February 27, 1957 (22 F.R. 1116). The period until June 14, 1957, was allowed interested parties for the filing of briefs on the record.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on May 26, 1958 (23 F.R. 3719), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision on all issues except the issue of Class I price. It was stated in the decision that the hearing would be reopened to receive further evidence on this issue. The period until July 2, 1958 was provided for the filing of written exceptions to the recommended decision.

The reopened hearing was held on September 22–25, 1958, pursuant to a notice duly published in the FEDERAL REGISTER (23 F.R. 6909). The notice set forth a revised Class I price proposal made by the proponent cooperative association and stated that interested parties might submit additional evidence on all issues included in the original hearing notice. The period until November 3, 1958, was allowed interested parties for the filing of briefs on the record.

In arriving at the conclusions and recommendations set forth in this revised decision consideration has been given to the record evidence of the reopened hearing and to the exceptions filed to the initial recommended decision.

The material issues of record related to:

1. Whether the handling of milk in the market is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce in milk or its products;
2. Whether marketing conditions justify the issuance of a marketing agreement or order; and
3. If an order is issued what its provisions should be with respect to:
   (a) Scope of regulation;
   (b) The classification of milk;
   (c) The level and method of determining class prices;
   (d) The method to be used in distributing proceeds among producers; and
   (e) Administrative provisions.

Findings and conclusions. Upon the evidence adduced at the hearing and the record thereof, it is hereby found and concluded that:

Character of commerce. The handling of milk in the Washington, D. C., marketing area is in the current of interstate commerce and directly burdens, obstructs, or affects the handling of milk and its products.

The Washington fluid milk market is an interstate market encompassing not only the District of Columbia but the immediately adjacent counties of both Maryland and Virginia. Within this market there is a substantial and continuing interstate commerce, both in the procurement of milk and in the sale of fluid milk and its products.

The District of Columbia which is but a part of the area comprising the whole market, is entirely urbanized and must rely completely on movements of milk in interstate commerce for its supply. Milk for the market is regularly supplied by dairy farmers in the four-State area of Maryland, Pennsylvania, Virginia, and West Virginia. Statistics presented by the Maryland and Virginia Milk Producers Association, whose members produce approximately 90 percent of the total market supply, indicate that for the month of March 1956, 49 percent of their milk originated from farms located in the State of Virginia, 46 percent from farms in the State of Maryland, 2 percent from farms in the State of Pennsylvania and 2 percent from farms in the State of West Virginia. In addition, at least two substantial handlers in the market procure their milk supply from other sources. One of these dealers procures his supply through the Capitol Milk Producers Association from farms located in the States of Virginia and Maryland. The other dealer, whose bottling and distributing plant is located outside the District of Columbia in the State of Maryland, procures his supply primarily from two cooperative associations, one of whose plants is located in the State of Pennsylvania and the other in the State of Virginia. Milk from the Virginia plant is supplied by dairy farmers located in Virginia and in West Virginia. The milk from the Pennsylvania plant is supplied by dairy farmers in Pennsylvania, Maryland and in West Virginia.

Distributors whose plants are located in the District of Columbia have regular and substantial route sales, both wholesale and retail, extending into the adjacent counties of both Virginia and Maryland. One such distributor also makes regular sales into the State of Delaware as well as on the Eastern Shore of Maryland and Virginia. Distributors whose plants are located in nearby Maryland and distributors whose plants are located in nearby Virginia regularly compete with distributors whose plants are located in the District of Columbia for contract sales to Federal and/or State installations in the District of Columbia and in Maryland and Virginia. One substantial handler processes and packages frozen concentrated milk at his Washington, D. C., plant which milk is later transported to naval installations in the State of Florida. In addition, the Maryland and Virginia Milk Producers Association makes substantial spot sales of bulk milk to outlets in the States of New Jersey, North Carolina and Florida.

Milk produced for the local fluid market, but which may be in excess of current fluid needs, is processed into manufactured milk products in nearby manufacturing plants which products are sold on the national market in competition with similar products from all parts of the country. In addition manufactured dairy products such as cottage cheese, sour cream and ice cream are distributed in the local market from sources outside of the District of Columbia or the States of Maryland and Virginia.

From the foregoing it is evident that the vast majority of the milk in the Washington market does move in the current of interstate commerce and directly burdens, obstructs or affects interstate commerce of milk and its products.

Need for an order. Marketing conditions in the Washington, D. C., marketing area justify the issuance of a marketing agreement and order.

For a period of about 14 years from February 1940 to August 1954, marketing conditions in the Washington market were, in general, orderly and stabilized. During the period from February 1940 until April 1947 the market was regulated under Federal Order 45. That order was terminated effective April 1, 1947, at the request of the Maryland and Virginia Milk Producers Association, a cooperative association representing the majority of the producers supplying the market. Throughout the period in which the

order was in effect the market was generally in short supply and supplemental outside milk was regularly imported to meet the fluid needs of the market. After the termination of the order the market continued to be in short supply until early in 1951. Throughout the period in which the market was in short supply the blended prices returned to all producers on the market were very near the Class I price.

Subsequent to the termination of the Federal order the Maryland and Virginia Milk Producers Association continued to market the milk of its producer-members on a classified use basis and to return a blended price to its members. The Capitol Milk Producers Association, which markets the milk of its producer-members through one substantial handler in the market, on the other hand, has sold the milk of its members on a flat price basis which price has approximated the blended price which the Maryland and Virginia Milk Producers Association has returned to its members. The handler who purchases this milk has maintained a very high Class I utilization, currently about 95 percent. The utilization of the Maryland and Virginia Milk Producers Association, while varying, has in some months of 1956 been as low as 65 percent in Class I.

A substantial handler who prior to October 1, 1954 purchased his milk from the Maryland and Virginia Association on a classified use basis now purchases his milk from two cooperatives, one in Virginia and one in Pennsylvania, on a negotiated flat price basis. The handler's current utilization approximates 95 percent in Class I. The loss of this Class I outlet has increased the volume of milk from members of the Maryland and Virginia Milk Producers Association utilized in manufacturing uses, thus lowering the blended prices returned to the members of this association, and indirectly, the returns to members of the Capitol Milk Producers Association whose milk is purchased on a price related to the Maryland and Virginia blended price. At the same time the advantage which the handler buying milk through the Capitol Milk Producers Association has maintained over other handlers in the market in the cost of Class I milk has been further enhanced. The record evidence does not reveal the prices paid by the one handler to the two cooperatives who supply his needs. However, it does show that the prices paid to the two cooperatives are not necesarily the same and do vary from month to month.

The trend of increasing milk supplies in the Washington market is typical of the dairy industry generally throughout the country. With the increase in milk supplies locally and in adjacent markets, Washington handlers who purchase their milk on a classified use basis have encountered increasing competition in their regular route distribution as well as on contract sales to Federal Government installations. Government contract purchases in the Washington area represent a substantial part of the total Class I sales in the market. In recent years Washington area handlers have encountered increased competition from outside dealers using milk surplus to their normal market with the result that bid prices to supply Class I milk to Government installations currently reflect values only slightly in excess of milk disposed of in manufacturing use.

In an effort to preserve their established Class I outlets the Maryland and Virginia Milk Producers Association has priced milk to its buyers at prices calculated to meet the competition from the flat price buyers in their regular trade and the outside dealers on contract business for Government installations. One substantial handler testified that his company paid as many as six different Class I prices for the same quality milk. This must be presumed to be typical of all other handlers in the market since the association witnesses pointed out that all of the regular buyers purchasing milk for any particular outlet were charged the same prices. Notwithstanding the efforts of the local producers to hold their Class I outlets, local handlers have not been entirely successful in holding the contract business.

The Maryland and Virginia Milk Producers Association currently supplies nearly 90 percent of all the Class I milk for the market and an even greater proportion of the reserve supply. In earlier years arrangements with one of the larger handlers in the market who maintains a receiving and manufacturing plant at Frederick, Maryland, provided a basis whereby the cooperative association could direct milk to the several handlers in the quantities and at the time needed. Milk not needed for fluid uses was held at the Frederick plant for manufacturing uses. In order to better service the market and to return the highest possible prices to its producer-members the association in 1955 acquired its own manufacturing plant. This acquisition has provided substantially greater flexibility in marketing on the part of the association. Notwithstanding, the loss of Class I outlets, and the extensive price cutting which has prevailed over an extended period, have resulted in increasing market instability, which if continued, may lead to a complete breakdown of the marketing system. This situation constitutes a continuing and serious threat to a dependable supply of pure and wholesome milk for the Washington area.

It is concluded that the issuance of a marketing agreement and order for the Washington market will contribute substantially to the stabilization of the fluid milk market and will tend to effectuate the declared policy of the Act. The adoption of a classified price plan based on audited utilization of handlers will provide a uniform system of pricing of milk to all handlers and will assure a fair division of returns to all producers. The public hearing procedure required by the Agricultural Marketing Agreement Act will provide opportunity for representation of producers, handlers and to the public to present information on marketing conditions and participate in the determination of prices for milk in the area.

The marketing area. The Washington, D. C., marketing area should include all of the territory in the District of Columbia; the city of Alexandria and the Counties of Arlington, Fairfax, Prince William, all in the State of Virginia, and the Counties of Prince Georges (exclusive of the corporate limits of the town of Laurel), Montgomery, Charles, and St. Marys; the southern portion of Calvert County and the southern portion of Frederick (including the City of Frederick), all in the State of Maryland, together with all piers, docks and wharves connected therewith and including all territory within such boundaries which is occupied by Government (municipal, State, or Federal) installations, institutions or other establishments.

The maximum area of regulation as set forth in the several proposals contained in the hearing notice included, in addition to the area herein proposed, the counties of Accomack and Northampton in Virginia and the counties of Talbot, Dorchester, Wicomico, Worcester, Somerset, the remaining portion of Calvert County and portions of the counties of Washington, Howard and Anne Arundel, and the town of Laurel in Prince Georges County, all in the State of Maryland.

The population of the area as herein proposed, according to the 1950 census, is in excess of 1,500,000 persons of which approximately 800,000 are in the District of Columbia. Unofficial population estimates introduced in the record of the hearing indicate an over-all population growth in this area from 1950 through 1956 of more than 33 percent, the greater part of which has taken place in the nearby Maryland and Virginia counties. The principal populated areas outside of the District of Columbia include: Alexandria, Arlington, Falls Church, Fairfax and Manassas, Virginia; Bethesda, Chevy Chase, Rockville, Silver Spring, Hyattsville, Riverdale, Mt. Rainier, College Park, LaPlata, Leonardtown, Prince Frederick, and Frederick, Maryland. The major Federal installations in the area include Andrews Air Base, Bolling Field, Bethesda Naval Hospital, Cameron Station, Fort Belvoir, Fort Myer, Fort McNair, Mt. Alto Veteran's Hospital, National Institute of Health, Naval Air Station, Naval Gun Factory, Naval Receiving Station, Patuxent Air Station, Quantico Marine Base, St. Elizabeths and Walter Reed Hospital.

Milk for the marketing area as herein proposed is produced under the applicable health regulations of the District of Columbia, or the States of Maryland and Virginia and in some instances local jurisdictions. Milk produced under District of Columbia inspection is sold throughout the area since it is acceptable under all of the applicable ordinances. Milk produced under State or local health inspections, while generally of similar quality, cannot be distributed in the District of Columbia and it is not clear from the record to what extent the respective State or local health authorities accept reciprocal inspection. Distributors from the District of Columbia compete with one another throughout most of the area herein proposed. The greater part of their business is done in the highly urbanized area comprised of the District of Columbia, Montgomery and Prince Georges Counties in Maryland and the City of Alexandria and the

Counties of Arlington and Fairfax in Virginia. Throughout this area District of Columbia handlers are the primary handlers. However, they meet substantial local competition in both Virginia and Maryland.

District of Columbia handlers also do the preponderance of the overall fluid milk business in Charles and St. Marys Counties, Maryland, and are substantial handlers in the southern portion of Calvert County and the Frederick County, Maryland, area and in Prince William County, Virginia. These areas, though substantially more rural in character than the other parts of the proposed area, represent substantial sales areas in which District of Columbia handlers operate.

The Frederick County area herein proposed for inclusion was specifically requested by local handlers who are the primary distributors there but who would be brought under full regulation by virtue of the sales which they make into Montgomery County. A local Frederick handler appeared at the reopened hearing to support the inclusion of additional territory in Frederick County, contending that he had substantial business beyond the proposed limits of the marketing area and would be disadvantaged in the sale of milk outside the marketing area in competition with unregulated milk.

The area in question was not noticed in either the original or the reopening notice of hearing and no point in this regard was raised in exceptions filed to the recommended decision. Inclusion of territory not previously noticed in accordance with the applicable rules of practice and procedure cannot be considered on the basis of this record. However, if after an order is promulgated it appears desirable to consider inclusion of additional territory in Frederick County in the marketing area this may be accomplished through an amendment hearing.

It was concluded in the initial recommended decision that all of Calvert County, Maryland, should be included in the marketing area. On the basis of exceptions filed to the recommended decision and evidence adduced at the reopened hearing, it is now concluded that Baltimore handlers do the preponderance of business in the northern portion of this county and accordingly, that only the area of Calvert County which lies south of Maryland State Highways 507 and 263 appropriately should be included in the marketing area.

Prince William County has experienced a very considerable suburban development in recent years, particularly in the Manassas area. With the exception of the southernmost tip, the county is served exclusively by District of Columbia handlers and by local Virginia handlers who would be regulated by virtue of their business in other parts of the proposed area.

Proponents for inclusion of the Quantico Marine Base contend that under present circumstances the contract milk distributed through the base commissary is a serious disruptive factor over a wide area of Prince William County. The Quantico Marine Base has been a substantial outlet for handlers who will be brought under regulation by the order. While such handlers have not exclusively held this contract they have been the primary suppliers. In order to remove this source of disruption to orderly marketing within the regulated area Quantico Marine Base must be included.

The record indicates that the boundaries of the Quantico Marine Base extend beyond Prince William County into Stafford County. However, that portion of the base in Stafford County is exclusively used as a maneuver and firing range. The inclusion in the marketing area of that portion of the base within Prince William County will encompass all of the administrative barracks, quarters and sales area of the base and will tend to implement the intent of regulation.

A dealer who operates a plant at Fredericksburg, Virginia, proposed that the portion of the Fredericksburg area of the Virginia State Milk Central Commission which lies in Prince William County, with the exception of the Quantico Marine Base, be excluded from the marketing area. This particular dealer was the principal proponent for the inclusion of the Quantico Marine Base in the area. It would be impractical to exclude this area if the Quantico Marine Base is included. The extent of business done by this dealer in the immediately surrounding area is such that with little adjustment in his business he may become fully regulated or remain outside the scope of regulation as he deems best. In any event, the provisions of the order are so drafted that he has substantial latitude of choice in the matter of impact of regulation upon his operations. In the interest of orderly marketing, it is necessary that the entire area of Prince William County be included in the marketing area.

It is intended that the sales of fluid milk from piers, docks, and wharves and to crafts moored thereat be included in the marketing area. It is also intended that the area include all the territory occupied by Government reservations, institutions or other such establishments whether municipal, State or Federal if they fall within the limits of the area as defined. The record indicates that in general the quality requirements for milk for such installations are patterned after the U. S. Public Health Standards and are similar to those for milk sold in other parts of the marketing area. These, by location and past performance represent logical areas of distribution for Washington, Virginia and Maryland dealers who are in substantial competition with one another in the marketing area. Unless they are included, regulated handlers will be placed at a serious competitive disadvantage in competing with unregulated dealers for such sales. The inclusion of these areas will tend to assure uniform and equal costs as between handlers.

The marketing area as herein defined comprises a contiguous, generally heavily populated territory served by the same handlers. Such area is in reality a single milk market, all parts of which are regulated by health ordinances generally similar in scope and enforcement, which constitutes a practical unit for the proposed regulation.

The town of Laurel, in Prince Georges County, Maryland, historically has been served almost exclusively by Baltimore distributors. While Washington area handlers who would be brought under regulation by this order, have some sales there, such sales are a minor portion of their total sales and the inclusion of the town might bring under regulation Baltimore distributors who do the major portion of their business beyond the limits of distribution of Washington handlers.

Although the extreme southern portion of Anne Arundel County and a portion of Howard County were proposed for inclusion in the marketing area, the record provides no basis for determining the extent of business done in this area by Washington dealers and it is not possible to ascertain whether in fact Washington, Baltimore, or local dealers are the primary distributors. It is apparent that distribution here by Washington handlers is not extensive and inclusion of these areas under regulation is unnecessary at this time.

While one substantial Washington handler distributes milk through an independent vendor in the Eastern Shore Counties of Dorchester, Somerset, Talbot, Wicomico, Worcester, Accomack, and Northampton, this area is basically rural in character and its inclusion in the area would bring under regulation a number of distributors doing a large portion of their business in other parts of Maryland and the State of Delaware where Washington area handlers have little or no distribution. This distribution by the Washington handler constitutes a minor portion of his overall fluid business. It is neither administratively feasible nor necessary to include within the marketing area all of the territories in which Washington handlers do any business. Ideally, the established marketing area boundaries should encompass that area in which handlers who would be regulated do the preponderance of their business and should leave a minimum of competition with unregulated handlers outside the area. The inclusion of any part of the Eastern Shore area would not tend to implement this position, but would place local handlers serving the area in a disadvantageous position relative to their competition in their normal area of distribution outside of the marketing area.

Although a portion of Washington County, Maryland, was proposed for inclusion in the marketing area the record fails to substantiate the fact that any handler who would be regulated is presently serving this area and its inclusion at this time is unnecessary.

Milk to be priced. The plants which distribute milk in the Washington, D. C., marketing area disposed of the major portion of their milk receipts for fluid consumption. Milk intended for fluid consumption in the Washington area is required to be produced in compliance with inspection requirements of the duly constituted health authorities having

jurisdiction in the area. The minimum class prices of the order should apply to such milk which is regularly received from dairy farmers at plants primarily engaged in the fluid milk business and which pasteurize and bottle milk for fluid distribution on retail or wholesale routes (including routes of vendors) or through plant stores in the marketing area or which is received at plants which are regular and substantial suppliers of milk to such pasteurizing, bottling or distributing plants. This milk may be identified by providing appropriate definitions of the terms: "Approved plant", "Pool plant", "Handler", "Dairy farmer", "Dairy farmer for other markets", "Producer", "Producer-handler", "Producer milk", and "Other source milk".

These definitions are designed to identify the supplies of milk on which the market regularly and normally depends. However, under the terms of the order herein proposed milk may be disposed of for fluid consumption in the marketing area by and from plants not meeting such criteria. It is necessary, therefore, to establish definitive standards of performance which may be used in determining which plants and what milk constitute the regular sources of supply and therefore become fully subject to regulation. Such standards are set forth in the order and apply uniformly to all plants wherever located. Any plant, regardless of location, may bring itself under regulation by performing in the manner required. Any plant may relieve itself from regulation by no longer operating in a way that brings it within the scope of the order. Under the circumstances, the decision as to whether a plant will be regulated or unregulated is determined by the decision of the plant operator.

The Class I price under a Federal order is fixed at a level which exceeds the value of milk for manufacturing uses. This value or differential over milk used for manufactured dairy products is essential as an incentive to producers to supply the market with an adequate supply of pure and wholesome milk for fluid consumption. The extra cost incurred by producers who supply milk which meets the requirements for Class I milk must be borne by that portion of the milk which is marketed as Class I milk. Milk in excess of Class I uses, although an essential part of the fluid milk business, cannot be expected to return producers more than a manufacturing value. The only outlet for reserve milk not needed for fluid uses is in the form of manufactured milk products and such products must be marketed on a national market in competition with similar products which can be, and are, made throughout the country from ungraded milk.

In establishing an appropriate Class I price it is intended that the level shall be such as will attract only that volume of milk which is needed to meet the fluid needs of the local market plus the necessary reserve to assure an adequate supply throughout the year.

Because of the distances that eastern fluid markets are from areas of alternative supply in the Midwest, the price for milk for fluid uses in eastern markets is higher in relation to manufacturing milk values than is the case in the Midwest. Under such circumstances there might be an incentive for dealers in unregulated adjacent markets to seek a Class I outlet in the Washington market for temporary or seasonal surpluses in excess of their local market needs. Because of the substantial number of Government installations in the area which procure their milk supplies on a competitive bid basis for relatively short periods there is a considerable opportunity, unless appropriate safeguards are provided, for such unregulated dealers to market milk excess to their local needs at prices below the value of milk for fluid uses. They may do this by bidding off available contracts at such Government installations. This situation, would be a serious disruptive factor to orderly marketing in the Washington marketing area. It is essential, therefore, that the order be constructed in a manner which will safeguard the market from serving as a surplus disposal area for surrounding markets.

As indicated elsewhere in this decision, marketwide pooling of producer returns is considered essential to the stable and orderly functioning of the market. One of the primary problems in setting up a marketwide pool is to establish appropriate standards which accommodate the sharing of Class I sales among those dairy farms who constitute the regular source of supply for the marketing area. Performance standards, therefore, should be such that any milk plant which has as its major function the supplying of milk for fluid use in the marketing area would participate in the marketwide equalization pool. On the other hand, such standards should be sufficiently flexible to permit intermittent shipment of milk from supply plants not regularly identified with the local market and direct distribution from plants which have only a minor part of their overall fluid business in the area without subjecting such plants to full regulation.

Full regulation of such plants is unnecessary to accomplish the purposes of the order and might result in placing such plants at a competitive disadvantage in supplying the unregulated but primary markets with which they are normally associated.

Any plant which disposes of milk in the marketing area as Class I milk or which supplies milk to a plant which disposes of Class I milk in the area is intended to be an "approved plant". An approved plant other than that of a producer-handler, from which Class I milk equal to not less than 50 percent of its receipts of milk from dairy farmers is disposed of in the form of Class I milk during the month on routes (including routes operated by vendors) or through plant stores to wholesale or retail outlets and which disposes of not less than 10 percent of such receipts on such routes in the marketing area should be a fully regulated pool plant. The pool plant definition should also include an approved plant which has no direct distribution in the marketing area but which disposes of 50 percent of its receipts from dairy farmers during any month(s) of October through February or 40 percent of such receipts during any month(s) of March through September to another plant(s) which disposes of Class I milk equal to 50 percent or more of its receipts from dairy farmers and receipts from other approved plants and which disposes of at least 10 percent of such receipts as Class I milk on routes in the marketing area.

Any plant distributing fluid milk in the marketing area and which disposes of less than 50 percent of its total receipts from dairy farmers as Class I milk cannot be considered as primarily in the fluid milk business and any distributing plant which does less than 10 percent of its total fluid business in the marketing area cannot be considered as substantially associated with the local market.

In like manner, any supply plant which during the shortest production months does not ship at least 50 percent of its total receipts from dairy farmers to fully regulated distributing plants cannot be considered as primarily associated with the market. Any such plant which is a pool plant in each of the months of October through February should be a qualified pool plant in each of the months of March through September regardless of the quantity then shipped unless the operator thereof elects to withdraw the plant from regulation. This provision will accommodate the pooling of all milk primarily associated with the market under changing supply-demand relationships which occur from season to season.

A plant which was a nonpool plant during any of the months of October through February should not be permitted pool plant status in any of the immediately following months of March through September in which it is operated by the same handler, an affiliate of the handler or any person who controls or is controlled by the handler. It would be inappropriate to permit a handler pooling status during the flush months of production if his milk were used to supply outside Class I markets during the short production months when such milk would be most needed by the local market. This provision, however, will permit a handler, who during certain short production months ships the required percentages, to pool his plant(s) in those months in which the standards are met. If the milk is utilized for other markets during part of the short season, it will not permit the pooling of such supplies during the months of flush production.

It is recognized that the demand for milk from supply plants may vary seasonally and will be greatest during the season of low production. During the months of flush production supplies of milk received at plants located in or near the marketing area may be sufficient to supply the Class I outlets, in which case it would be more economical to leave the most distant milk in the country for manufacturing and utilize the nearby milk for Class I use. Performance standards under the order should not

force milk to be transported to distributing plants during the flush months merely for the purpose of maintaining eligibility for pooling.

To avoid uneconomic movements of milk provision should be made whereby a plant may maintain pool status throughout the year if it supplies a substantial portion of its producer milk to the market during the normal low production months. The order, however, should not force such a supply plant to pool during the flush if it does not meet the current supply requirements and the operator thereof elects to withdraw his plant from the pool. The order provisions are drafted to require qualification of a supply plant on the basis of the current month's performance except that a plant which has previously qualified in each of the months of October through February may retain pool status during the March through September period unless application is made to the market administrator to be a nonpool plant during those months.

Provision should be made whereby pool plant status is accorded any manufacturing plant operated by a cooperative association if the production of at least 70 percent of its members is regularly received at other pool plants. The Maryland and Virginia Milk Producers Association, whose members supply nearly 90 percent of the milk for the market, operates a manufacturing plant to provide for orderly disposition of the excess or reserve milk in the market. This association, acting as the marketing agent for all of its producer members, daily moves milk (by assigning producers) directly from the farm or through receiving stations to its buyers in the amounts required for Class I and related uses. Milk not so needed in the market and for which no Class I outlet is available is moved to the association plant for processing. The volume of receipts at this plant varies from day to day and month to month depending on the needs of the several handlers and the variation in production. Although the operation of this plant is very beneficial to the orderly marketing of milk for this market, the nature of the operation carried on would not result in pool status under the standards for distributing or supply plants.

The qualification for pool plant status is a means of establishing identity of plants with the fluid market. In this regard, however, it must be recognized that the arrangement of the Maryland and Virginia Milk Producers Association is unique and does not lend itself to performance requirements of the usual nature. The milk of its producer members which is received at its manufacturing plant is a part of the regular supply for the local fluid market and is available to the several handlers in the market whenever needed. While the manufacturing plant does not carry District of Columbia health approval, this in no way affects its status as a surplus disposal plant or its functions of carrying the reserve supply of milk for the market.

The performance standards herein provided for a manufacturing plant operated by a cooperative association describe a particular basis of operation in this market and will accommodate the pooling of milk regularly associated with this market.

It was proposed at the hearing that provision be made whereby a system of distributing and supply plants could qualify as a unit if the overall system met the distributing plant pooling requirements. It was concluded in the recommended decision that the system pooling requested was not needed and that the pooling requirements, as recommended, were reasonable and necessary to define those plants which were sufficiently associated with the fluid market to be included in the pooling arrangement. The proponent for a system pooling arrangement excepted to this conclusion stating that it was essential that the company's two manufacturing plants be accorded pooling status and that the provisions as recommended were inappropriate in that they would not accomplish this end. Exceptor further stated that if the pooling provisions were not revised some other procedure must necessarily be devised to permit their manufacturing operations access to pool milk.

It is not clear why exceptors hold that the pool should furnish a milk supply for their manufacturing operations. It is apparent that the market now operates almost exclusively under bulk tank handling and that the plants in question now have little function as supply plants. While they at one time may have been intimately associated with the market as receiving plants and/or as balancing plants, much in the same way as the cooperative association's plant now operates, they no longer are essential to the market as a whole in this role.

The order is intended to assure an adequate, but not excessive, supply of quality milk to meet the fluid needs of the market only. The pooling requirements herein recommended are minimum standards and under the existing market structure it is expected that virtually all distributing plants will have a substantially higher Class I utilization than the 50 percent requirement established. To permit system pooling of supply plants and distributing plants as requested would tend to implement the inclusion in the pool of plants with little or no direct association with the market and primarily engaged in manufacturing operations.

Plants primarily engaged in manufacturing operations and not meeting the pool plant qualifications herein recommended should not be granted pool status, nor should the order be so drafted that handlers are encouraged to develop a milk supply solely for manufacturing uses. It is recognized that processing facilities must be available to the market to permit orderly disposition of the necessary market reserve and seasonal surplus resulting from day to day and month to month variations in supply and demand. To the extent that such surpluses exist, handlers with nonpool manufacturing operations need not be encumbered in their ability to process such surpluses through their own facilities. This can be accomplished through appropriate diversion provisions which will permit direct delivery from the farm to such nonpool plants without loss of pool status for the milk involved. However, to promote the integrity of regulation such diversion should be accommodated only to the extent necessary to assure orderly handling of the necessary market surplus. The diversion provisions hereinafter set forth will accomplish this end.

It was concluded in the recommended decision that when milk moves to market in tank trucks owned or operated by, or under contract of a cooperative association the cooperative should be held as the responsible handler. A number of exceptions were filed to this conclusion. Exceptors state that milk now moves to market via independent haulers and that holding the cooperative as the responsible handler would adversely affect present handler-producer relationships and quality programs which are currently being carried on. Certain proprietary handler exceptors also contend that if the cooperative were made the responsible handler the order must necessarily make clear that such cooperative would absorb any shrinkage between the farm and plant of first receipt. Cooperative exceptors on the other hand state that they would be placed in a disadvantageous position if required to absorb such shrinkage.

The record is not clear as to precisely what extent the cooperative actually controls the independent hauler. In view of the fact that proprietary handlers have expressed a desire to be held as the responsible handlers and the proponent cooperative is reluctant to accept the shrinkage resulting from farm to plant movements it is concluded that the operator of the pool plant at which producer milk is first received should be held the responsible handler. However, in the case of milk which is first received at the plant of a cooperative association and which is subsequently disposed of to a proprietary handler the order should require that such handler pay the cooperative association not less than the minimum order prices applicable at the location of the transferee plant. The Act clearly establishes the intent that no cooperative association may sell milk to any handler at less than the prescribed order class prices.

Some milk distributed in the marketing area may be from plants which are fully subject to the classification and pricing provisions of other Federal milk marketing orders. To extend the application of this order to cover such plants which dispose of the major portion of their receipts in another area would result in unnecessary application of regulation. Accordingly, the order proposed herein provides that a distributing plant which would otherwise be subject to the classification and pricing provisions of another order and which disposes of a greater volume of Class I milk in such other area than in the Washington area shall not be regulated by this order. Also, any supply plant which disposes of a greater volume of milk under another order and which would be subject to the classification and pricing provisions of the other order would be ex-

empted from regulation under this order. This condition would not be applicable during the months of March through September, however, if such plant had been a supply plant under this order in each of the preceding months of October through February. While some milk may be distributed in the marketing area from plants regulated under another order and will not be subject to regulation under this order, such plants should be required to report their receipts and utilization to the market administrator so their exact status under the order can be determined.

A "handler" should be defined as (1) any person in his capacity as the operator of one or more approved plants or any other plant which is a pool plant, and (2) any cooperative association with respect to the milk of any producer which it causes to be diverted to a nonpool plant for the account of such association.

Inclusion in the handler definition of the operator of any approved plant which does not qualify as a pool plant, including a producer-handler, is necessary in order that the market administrator may require reports as he deems necessary to determine the continuing status of such individual. In the case of an approved plant which is a distributing plant but does not acquire pool status because of insufficient direct sales in the marketing area, such reports are necessary to determine the amount payable by the operator of such plant on the milk distributed in the marketing area.

The handler definition should be sufficiently broad so as to include a cooperative association with respect to producer milk diverted by it from a pool plant to a nonpool plant for the account of such association. This arrangement will permit the cooperative association to divert milk for Class I use which might otherwise be used or disposed of by the proprietary handler in Class II and thus will promote efficient utilization of producer milk in the highest available use class. The handler definition should also include a cooperative association with respect to its operations of a manufacturing plant which meets the requirements of a pool plant hereinbefore described.

The term "dairy farmer" means any person who produces milk which is delivered in bulk to a plant. The term "dairy farmer for other markets" as herein proposed is intended to designate those dairy farmers whose milk production is primarily associated with other markets and which should not be accorded pooling status along with regular producers for the market.

Under usual circumstances the Washington market is adequately supplied with milk. Any needed supplemental supplies would most likely be required during the short production months. This is also the period when milk would be in greatest demand in other surrounding fluid markets which represent alternative outlets for milk produced by local dairy farmers. Under the marketwide type of pooling herein provided any dairy farmer or group of farmers with an alternative outlet during the short season might find it advantageous to leave the Washington market during those months when milk is in greatest demand and seek to return during the flush production months when the outside market was no longer available. While it is not intended that Federal regulation should preserve a market for any particular qualified producers to the exclusion of other qualified dairy farmers, the regulation should not provide a means whereby through manipulation certain dairy farmers may preserve their Class I outlets for themselves and dispose of their surplus in the pool. Under the terms of the order as hereafter set forth a dairy farmer delivering milk to a pool plant during the flush production months of March through September, who during the preceding short production months of October through February delivered his milk to a nonpool plant operated by the same handler, or an affiliate thereof, would be considered a dairy farmer for other markets during the flush months of March through September.

The "dairy farmer for other markets" definition should also include those dairy farmers whose milk is received at the manufacturing plant of a cooperative association, which plant is a pool plant, for the account of another cooperative association which has no membership among producers delivering to other pool plants. The manufacturing plant of the Maryland and Virginia Milk Producers Association, herein proposed to be a pool plant, from time to time processes milk purchased from a cooperative association in the neighboring Baltimore market which milk is in excess of the fluid needs of the Baltimore market. Such milk is not available for fluid distribution in the local market. It is handled in the manufacturing plant of the local cooperative as a service to the Baltimore cooperative and hence cannot be construed to be a part of the normal milk supply for the Washington market. A continuation of this relationship will in no way adversely affect the application of regulation and will facilitate orderly marketing of milk both in the Washington and Baltimore area.

The term "producer" should be defined to mean any person other than a producer-handler or a dairy farmer for other markets, who produces milk which is approved by the appropriate health authority having jurisdiction in the marketing area for consumption as fluid milk in the area and which milk is received at a pool plant.

The definition should be sufficiently broad to include a dairy farmer whose milk is ordinarily so received but is diverted by a handler to a nonpool plant for his account on not more than 8 days (4 days in the case of every-other-day delivery) during any month of October through February and at any time during the months of March through September. In order that milk which is so diverted continues to be included in the regular pool computations, it should be treated as if received at the pool plant from which it was diverted.

As previously indicated, it is intended that the order shall assure an adequate, but not excessive, supply of milk for the fluid market. The order provisions should not be so drawn as to encourage an excess volume of milk to associate with the pool. During the months of October through February it is not necessary to accommodate diversions to nonpool plants except insofar as may be necessary to assure orderly handling of the weekend surpluses which accrue because plant bottling operations may be suspended during weekends.

The months of March through September are the months of greatest production during which unlimited diversion privileges are desirable in order to expedite the orderly disposition of the necessary surplus.

Milk disposed of to government installations under contract sales is required to meet specified standards patterned after the U. S. Public Health standards which are similar to those in effect in other parts of the area. It is intended that dairy farmers whose milk is received at a plant used to fill contracts for government installations in the marketing area shall be considered as qualified producers in such month(s) when their milk is so disposed of if the plant at which their milk is first received is a fully regulated pool plant during such month(s).

In the case of milk regularly received at a manufacturing plant operated by a cooperative association which is pooled on the basis of its function as a reserve plant, further identification standards are needed to properly define those dairy farmers whose milk is approved for fluid consumption in the marketing area. Without such identification milk may be received and included in the pool which does not meet the sanitation requirements for fluid consumption in the marketing area.

Under usual circumstances dairy farmers producing milk for fluid distribution in the marketing area hold individual farm inspection permits issued by the appropriate health authority having jurisdiction in the marketing area. However, under certain circumstances, milk may be received at distributing or supply plants serving the area from dairy farmers which do not hold such permits. It must be presumed in such cases that the milk is acceptable to the appropriate health authority having jurisdiction and therefore any dairy farmer whose milk is so received should be considered to be a producer.

The manufacturing plant of the local cooperative association as hereinbefore explained, does not have health approval to move milk to other pool plants for fluid consumption. Hence, it is possible that some of the milk received at this plant is not qualified for fluid distribution in the market. It would be impractical to require the market administrator to make individual determination as to whether each dairy farmer's milk so received is of acceptable quality for fluid use. It is therefore appropriate in the case of dairy farmers who deliver their milk to a manufacturing plant owned by a cooperative association, which is pooled on the basis of its function as a reserve plant for the

market, to require that such farmers in order to acquire producers status hold valid farm permits issued by the appropriate health authority having jurisdiction in the marketing area.

The definition of producer as herein provided will identify those persons who deliver milk to pool plants which is acceptable to the appropriate health authorities for fluid consumption in the marketing area. It also identifies those persons to whom the minimum prices are to be paid and who share in the marketwide pool under the terms of the proposed order.

The term "producer milk" is intended to include all skim milk and butterfat contained in milk produced by producers and received at pool plants directly from such producers. As previously stated certain diversions are permitted and such diverted milk is considered as a receipt at the plant from which it is diverted.

A "producer-handler" is defined as any person who operates a dairy farm and an approved plant from which Class I milk is disposed of in the marketing area and who received no other source milk or milk from other dairy farmers. Since a producer-handler receives only milk of his own production or pool milk from other handlers it is unnecessary to subject such an operation to the pooling and payment provisions of the order. However, as previously indicated it is necessary that the plant operator in his status as a handler be required to make reports to the market administrator in order that his continuing status as a producer-handler can be ascertained and to facilitate accounting with respect to transfers from other handlers.

The classification provisions of the proposed order should provide that any milk in the form of Class I products transferred by a pool handler to a producer-handler will be Class I milk. Any supplemental supplies of milk which may be obtained from other handlers, by virtue of the type of operation involved, may be presumed to be needed by the producer-handler for fluid use and should be classified in the supplying handler's pool plant as Class I milk. A producer-handler may receive pool milk from other handlers and still maintain his status as a producer-handler.

Any milk which a handler receives from a producer-handler should be "other source milk" and would, therefore, be allocated to the lowest class utilization at the pool plant after the allocation of shrinkage on producer milk. Milk disposed of to another handler by a producer-handler must be presumed to be surplus to the operation of the producer-handler and since other producers do not share in the Class I utilization of the producer-handler it would be unfair to ask such producers to share their Class I utilization with the excess milk of a producer-handler. This method of allocating producer-handler milk will preserve producers' priority on the Class I sales in the market.

Exceptors to the above conclusion suggested that some further limitation should be placed on producer-handlers, by restricting their ability to use milk other than own farm production, by limiting the number of farms which such individuals might operate or by limiting their volume of distribution. The record indicates that there are few producer-handlers operating in the market and there is no showing that they have been a disturbing factor in the market. Accordingly, it is concluded that further limitations of the proposed nature are not necessary at this time.

The term "other source milk" should be defined as all skim milk and butterfat utilized by a handler in his operation except milk and milk products in the form of Class I milk received from pool plants, inventory in the form of Class I milk and current receipts of producer milk. The term should include all skim milk and butterfat in products other than Class I products from any source, including those produced at the handler's plant during the same or an earlier month, which are reprocessed or converted to other products during the month. Other source milk is intended to represent all skim milk and butterfat from sources not subject to the classification and pricing provisions of the attached order. If other source milk is disposed of in Class I products, partial pricing and regulation is provided under compensatory payment provisions. Defining other source milk in this manner will insure uniformity of treatment to all handlers under the allocation and pricing provisions of the order.

Classification of milk. All milk and milk products received by pool handlers should be classified on the basis of skim milk and butterfat according to the form in which, or the purpose for which, such skim milk and butterfat was used or disposed of as either Class I milk or Class II milk.

Under an order, only producer milk is priced. Milk is received, however, at pool plants directly from producers, from other handlers and from other sources. Milk from all of these sources is intermingled in the handler's plant(s). It is necessary, therefore, to classify all receipts of milk to properly establish classification of producer milk.

The conditions in this market make it appropriate to provide for a two class classification scheme. Class I milk should include those products which are required by the local health authorities in the various segments of the marketing area to be made from milk from approved sources. Class II milk should include those products which compete on a national market with similar products. Such products are not required by the local health authorities to come from approved sources under their jurisdiction. Products which are permitted by the local health authorities to be sold in the area from milk from unapproved sources include ice cream, cottage cheese, sour cream, eggnog, evaporated milk, aerated whips, and milk in hermetically sealed containers. Although local health authorities require local handlers to use approved milk in their fluid milk plants in the manufacture of such manufactured products they permit similar and competing products to be sold in the marketing area from unapproved sources. Under such circumstances it would not be feasible economically to classify and price such products in Class I. To do so would place local handlers at a competitive disadvantage in the disposition of such products and would virtually deny a market for the reserve milk supplies of the market. Moreover, the classification and pricing of such products in Class I would extend regulation beyond the limits necessary for orderly and stable marketing.

The extra cost of getting quality milk produced and delivered to the market in the condition and quantities required makes it necessary to provide a price for milk used in Class I products somewhat above manufacturing milk prices. This higher price should be at such level that it will yield a blend price to producers that will encourage production of sufficient quantities of milk to meet the market needs for these Class I products and the necessary market reserve.

Milk not needed seasonally or at other times for Class I use must be disposed of for use in manufactured products. These products must be sold in competition with products made from unapproved milk. Milk so used should be classified as Class II and priced in accordance with its value in such outlets.

Under the proposed classification scheme, Class I milk would comprise all skim milk (including that used to produce concentrated milk and reconstituted or fortified skim milk) and butterfat: (1) Disposed of (other than in hermetically sealed container) in fluid form or as frozen concentrated milk for human consumption as milk, flavored milk, skim milk, flavored skim milk, cultured skim milk, buttermilk, cream (except sour cream) including any mixture of cream and milk or skim milk containing less butterfat than the regular standard for cream; and (2) not specifically accounted for as Class II milk.

Class I products such as skim milk drinks and buttermilk to which extra solids have been added, or concentrated whole milk disposed of for fluid use, should be included under the Class I definition. The quality requirements for the milk used to produce such milk solids or concentrated milk are the same as for the milk used to produce the skim milk to which such solids are added and other products included in Class I. The classification scheme herein established provides for a full accounting of all skim milk and butterfat and in the event products classified as Class II are later disposed of in a different form any reclassification should apply to the respective volumes of skim milk and butterfat originally used to produce such products.

All skim milk and butterfat used to produce products other than those classified in Class I should be Class II milk. This classification would include all of those products which are generally considered as manufactured milk products not required by the health authorities to be made from approved milk.

Handlers have inventories of milk and milk products at the beginning and end of each month which enter into the accounting for the receipts and utilization. The accounting procedure will be facilitated by providing that end of the month inventories of all Class I products be

classified as Class II milk, regardless of whether such products are held in bulk or in packaged form. Inventories of such products on hand will then be subtracted under the proposed allocation procedure from any available Class II disposition in the following month. The higher use values of any Class I product in inventory assigned to current producer receipts during the month and which may be allocated to Class I milk in the following month should be reflected in returns to producers. The mechanics of the attached order provide for the reclassification of inventories on that basis.

Inventories of Class I products on hand at a pool plant at the beginning of any month during which such plant first becomes a pool plant should likewise be allocated to any other available Class II utilization at the plant during the month. This will preserve the priority of assignment of current producer receipts to current Class I use.

Under usual circumstances in the operation of a fluid milk plant, small unavoidable losses of both skim milk and butterfat are experienced. Such losses are normally referred to in the trade as "shrinkage". Since it is intended that a handler be required to make a full accounting for all plant receipts on a classified use basis, it is necessary that provision be made for the classification of such plant shrinkage.

The operations carried on by local handlers are such that plant shrinkage experience in this market is somewhat lower than the average market. The record clearly establishes that an allowable shrinkage on producer milk of not more than one and one-half percent will cover normal plant operations. Accordingly, it is concluded that shrinkage of producer milk not in excess of one and one-half percent of total producer receipts should be classified as Class II and any shrinkage in excess of that quantity should be classified as Class I.

In the determination of shrinkage of producer milk, total shrinkage should first be prorated between receipts of producer milk and receipts of other source milk. None of the shrinkage should be assigned to milk received from other pool plants since shrinkage on such milk is allowed to the transferring handler. All shrinkage of other source milk should be classified as Class II. The classification procedure herein recommended gives adequate protection in the classification of shrinkage on producer milk and it is unnecessary to limit the classification of shrinkage on other source milk in Class II.

Skim milk and butterfat are not used in most products in the same proportions as contained in the milk received from producers, and therefore should be classified separately according to their separate uses. The skim milk and butterfat content of milk products, received and disposed of by a handler, can be determined through certain recognized testing procedures. Some of these products such as ice cream and condensed products, present a more difficult problem of accounting in that some of the water contained in the milk has been removed. It is proposed, in the case of such products, that the respective volumes of skim milk and butterfat be ascertained by the use of adequate plant records made available to the market administrator or by use of standard conversion factors of skim milk and butterfat used to produce such products. The accounting procedure to be used in the case of any concentrated products such as condensed milk and nonfat solids should be based on the pounds of milk or skim milk required to produce such products.

Each handler must be held responsible for a full accounting of all of his receipts of skim milk or butterfat in any form. The handler who first receives milk from producers should be responsible for establishing the classification thereof, and for making payment to producers. This principle is followed consistently in federally regulated markets and is necessary to assure effective administration of the order.

Except for that shrinkage which may be classified in Class II under conditions previously described in this decision, all skim milk and butterfat which is received and for which the handler cannot establish utilization should be classified as Class I milk. This provision is necessary to remove any advantage to handlers who fail to keep complete and accurate records and to assure that producers receive full value of their milk on the basis of its use.

Because of spoilage or as a result of the handler's inability to salvage route returns butterfat and skim milk in the form of Class I products may be disposed of from time to time, for livestock feeding. It is provided that such a disposition shall be classified as Class II if verifiable evidence of such disposition is available to the market administrator.

From time to time handlers may find it necessary to dump skim milk. Under such circumstances, the market administrator must be provided opportunity to witness the actual dumping, if he deems it necessary, and to otherwise have verifiable evidence to substantiate such reported disposition. Such Class II utilization may be allowed only when the handler during normal business hours has given the market administrator at least 3 hours advance notice of intention to dump and information regarding the quantity of skim milk involved.

No allowance is made for butterfat dumped even though the skim milk dumped, and for which a Class II classification is provided, is a component of a fluid milk product from which the butterfat has not been removed. Under normal circumstances, the butterfat component of any fluid milk product is salvagable and it is not desirable to permit dumping of butterfat under other than a Class I classification.

Producer proponents at the hearing proposed a three-class classification scheme similar to the plan which they now employ in marketing their milk with handlers in the market. As previously indicated, under the order as herein proposed skim milk and butterfat are classified separately in accordance with their actual dispositions and are priced in the class in which they are utilized. Under such circumstances it is unnecessary to provide for more than two classes of utilization. All of those products which are designated as Class I are required by the local health authorities to be made from approved milk. Those products designated as Class II are not subject to this requirement and local producer milk so disposed of must compete on a national market with similar products made from unregulated milk. To establish a separate classification and a higher pricing for milk disposed of in any of these products could seriously restrict such outlets as a disposition for the necessary reserve of the local market.

One handler proposed that milk which was disposed of as frozen concentrated milk to military installations for use outside the continental United States be classified in a Class I-A and be priced below the price of milk disposed of in other Class I products. Official notice is taken that the quality specifications established by the Defense Department for such milk are the same as those for fresh fluid milk. Under such circumstances it would be improper to classify and price milk so utilized as other than Class I.

As previously indicated classification of skim milk and butterfat used for the production of Class II products should be considered to have been established when the product is made. Classification of skim milk and butterfat used to produce Class I products should be established when such products are actually disposed of. Classification of such Class I products disposed of by transfer to another plant, under certain circumstances, should be determined on the basis of their utilization in the transferee plant.

Skim milk and butterfat in the form of any Class I product transferred to the pool plant of another handler, should be classified as Class I unless both handlers indicate in their reports to the market administrator that such classification should be Class II. However, sufficient Class II utilization must be available in the transferee plant to cover any claimed Class II classification after the prior allocation of shrinkage, other source milk, and inventory of Class I products. Skim milk and butterfat disposed of in bulk in the form of any Class I product to an approved plant other than a pool plant or the plant of a producer-handler should be classified as Class I milk up to the extent of such plant's disposition of skim milk and butterfat, respectively, as Class I milk in the marketing area. Any remaining amount of such transfer or diversion should be assigned to the highest remaining utilization in the transferee plant after the prior assignment of receipts at such plant from dairy farmers who the market administrator determines constitute its regular source of approved supply for the outside area. This procedure will complement the application of the compensatory payment provision and will provide the nonpool handler with Class I sales in the marketing area with the opportunity to choose whether he shall offset such Class I sales with pool purchases or make compensatory payments to the pool. In either event the pool handlers have assurance that nonpool handlers

will not have a price advantage on milk disposed of in the marketing area. It is not intended that pool milk should displace a nonpool handler's regular receipts from dairy farmers which meet the quality requirements of the health authority having jurisdiction in the area in which his outside sales are made. However, because of the known high quality of pool milk, transfers of pool milk to a nonpool distributing plant should take priority assignment in the highest available use class ahead of other receipts of milk at such plant except regular receipts from dairy farmers meeting local health approval.

Skim milk and butterfat disposed of in bulk in the form of milk, skim milk or cream to a nonpool plant other than an approved plant either by transfer or diversion should be Class I unless specified conditions are met. If the transferee plant is located not more than 300 miles distance from the zero milestone in Washington, D. C., by shortest highway distance the transferring handler should be permitted to claim classification as other than Class I. In such instance the transferee handler must maintain adequate books and records of utilization of all skim milk and butterfat in his plant which are made available to the market administrator, if requested, for verification purposes and must have utilized at least an equivalent amount of skim milk and butterfat, respectively, in the reported use. Provision for verification by the market administrator is reasonable and necessary to assure that producer milk will be paid for in accordance with its utilization. The record shows that there are ample manufacturing facilities within a 300-mile distance of Washington to handle any prospective surplus of the market. Unless some limitation is provided on the distance beyond which shipments of milk, skim milk and cream are permitted in Class II classification, it would be necessary for the market administrator to follow any such shipments of milk, skim milk and cream to their destination to determine utilization and classification. Such procedure would of necessity increase the costs of administering the order. Under usual circumstance in this market, milk, skim milk and cream which is moved in excess of 300 miles distance from the zero milestone in Washington, D. C., is for fluid uses. It is appropriate therefore both for administrative convenience and for the conservation of market administrative funds to provide automatic classification in Class I for milk, skim milk and cream which is moved more than 300 miles distance from the zero milestone in Washington, D. C.

The class prices established by the order apply only to producer milk. Accordingly, since a plant may receive skim milk or butterfat from sources other than producer milk a procedure must be established whereby it may be determined what quantities of milk in each plant should be assigned to producer milk. The milk from producers who are regular suppliers of milk for the Washington market should be given priority of the assignment of Class I utilization at pool plants. When milk is received from other sources it should be assigned to Class II milk first. Unless this procedure is followed there can be no assurance that such other source milk would not be used to displace producer milk in Class I when it is advantageous to the purchasing handler. If the order permitted handlers to obtain other source milk for Class I uses whenever it was advantageous to do so while producer milk in the plant was utilized in Class II the order would not be effective in carrying out the purposes of the act and the market would be deprived of a dependable supply of milk.

In the assignment of other source milk, any such milk received from sources not regulated by an order issued pursuant to the act should be first assigned to Class II milk. The plant(s) supplying such milk may not have purchased it from dairy farmers on a classified use basis and it is not feasible to determine this or other conditions of sale. Following the assignment of such unregulated other source milk, other source receipts in the form of Class I products received from plants regulated by other orders issued under the act should be assigned to the lowest remaining available use classification. Under this procedure a handler has assurance that if his producer receipts are inadequate to meet his Class I needs and he purchases regulated milk from another Federal order market such milk will be assigned to Class I. Since it is not intended that there be any compensatory payment on other source milk which is fully regulated under another order and which is disposed of for Class I use in this market, this sequence of assignment will tend to minimize the application of the compensatory payment provision.

One proprietary handler proposed that following the assignment of unregulated other source milk an amount equal to 10 percent of the receipts from regular producers be allocated to Class II prior to the allocation of other source milk from a regulated plant under another Federal order. Proponent contended that such procedure would protect the handler in months when his over-all receipts from producers equalled or exceeded his fluid needs but were inadequate during certain days of the month.

The record evidence shows no need for such allocation during recent years. In fact, since 1951 there has been no milk purchased by Washington handlers from outside sources to supplement local producer deliveries for utilization in fluid products. Production by local producers has been running in excess of Class I requirements during all months of the year. Further, the Maryland and Virginia Milk Producers Association has readily moved milk from surplus plants to its buying handlers for fluid uses. During recent years the Maryland and Virginia Association had supplied an adequate amount of local producer milk to meet all their fluid needs during every month of the year. With adequate supplies of milk available from local producers and with marketwide movements of such milk to the local handlers when needed, it would be inappropriate to permit such other source milk to displace producer milk in Class I in this market.

If after making the various assignments of skim milk and butterfat pursuant to the allocation provisions of the order, the total of all Class I and Class II milk assigned to producer milk exceeds the amount of producer milk reported to have been received by the handler for whose pool plants the computation is being made, such "overage" should be assigned first to the available Class II utilization and any remainder to Class I. Such overage should be paid for by the handler at the applicable class prices. In the allocation procedure recognition is taken of all receipts of other source milk reported by the handler. When utilization records indicate a disposition greater than receipts it must be presumed that the handler underreported his receipts of producer milk.

The accounting procedure as herein proposed would establish a calendar month as the accounting period. One handler proposed at the hearing that some flexibility be provided in the accounting period so that a handler might in as many as three months during any one year choose to break a calendar month into two accounting periods. It was contended that such a provision would provide reasonable assurance to a handler that in any month in which the relationship between his supply of producer milk and his Class I utilization fluctuated to the point that during a part of such month he had a more than adequate supply, and during the remainder of such month an inadequate supply, his producer milk would not displace his necessary purchases of other source milk in Class I. The Washington market is presently adequately supplied with milk from local producers and carries a sufficient reserve supply to meet all handlers' needs in all months of the year. This reserve supply, which when not needed for fluid uses, is processed at the manufacturing plant of the principal cooperative association in the market is available to all handlers in the market and may be readily shifted from plant to plant as needed. Under such circumstances no need was shown for this proposed provision in this market.

The level and method of determining class prices. In order to restore and maintain orderly marketing conditions in the Washington, D.C., marketing area, it is essential that minimum prices for Class I and Class II milk be established at such levels as will maintain an adequate but not excessive supply of quality milk for the fluid market and assure the orderly disposition of the necessary market surplus.

The production area for the Washington market is largely coextensive with that for the Baltimore market and in certain areas overlaps the production areas for the Philadelphia and New York markets as well as a number of local markets. It is essential in order to restore and maintain orderly marketing of milk in the area that producer returns maintain a close alignment with competitive prices paid to dairy farmers supplying these neighboring markets.

Class I price. A basic Class I price of $5.10 per hundredweight for the months of March through June and $5.55 per hundredweight for the months of July through February should be established for the Washington market to be effective for the first 18 months in which the order is in operation. An adjustment mechanism should be provided which will move such price either upward or downward, as the case may be, to reflect the average movement in the Class I price levels in the Philadelphia, New York and Chicago markets.

Proponents at the original hearing proposed that a basic Class I price level of $5.86 be established and that movements in the U.S. Wholesale Commodity Price Index, as published by the Bureau of Labor Statistics, United States Department of Labor, be used as a temporary mechanism for adjusting the basic price to meet current economic conditions. They pointed out that a committee of nationally recognized economists and specialists were then engaged in a detailed study of the local market with the purposes of developing a specific proposal for a pricing mechanism to reflect the peculiarities of the local market and of recommending an appropriate level for the Class I price.

It was concluded in the initial recommended decision that the record did not support a price level of $5.86 and that the use of the U.S. Wholesale Price Index did not provide an adequate basis for maintaining the local price in alignment with milk values in the national market. It was further concluded that the hearing should be reopened on the issue of Class I price after the committee had completed its investigations and a specific proposal had been received setting forth its recommendation for a Class I pricing formula.

Members of the committee appeared at the reopened hearing and presented their recommendations and the reasons therefor. They proposed a basic annual price level of $5.55 with a price of $5.10 to be applicable during the months of April, May, and June and a price of $5.70 to be applicable in other months of the year. They further proposed that changes (from levels prevailing in the same months of 1957) in the Federal order Class I prices for the Chicago, Philadelphia and New York markets be used as a basis for automatic adjustment of the Washington Class I price to assure continuing alignment of the local price with those of other markets and with changing conditions of supply and demand both regionally and nationally. And finally, they proposed that such pricing mechanism be made effective for a period of from 12 to 18 months and that after a year's operation of the order the provisions thereof be reviewed, and if necessary modified in light of experience under the order.

The committee, in recommending an annual Class I price level of $5.55 concluded that such price, in conjunction with the Class II price set forth in the original recommended decision, would return to dairy farmers a blended price approximating that which they had actually received in 1957. While they recognized that there had been a steadily increasing supply of milk over an extended period of time and that current supplies were somewhat in excess of the fluid needs of the market, they took the position that such excess was not unreasonably large and that there were positive indications of a leveling off of supplies. They therefore concluded that the blended prices actually returned to producers in the previous year could be considered as an appropriate level of prices for the first 12 to 18 months under an order.

While the committee was inclined to view the general leveling off of supply which occurred in late 1957 and through the spring of 1958 as an indication that prices were not sufficiently high to attract greater volumes of milk, such factors as the pool quality of feed resulting from the 1957 summer drought and the wet, cold spring of 1958 undoubtedly had an influence on production during this period. It is apparent that there is, and has been, a somewhat larger than necessary milk supply and that there are no physical barriers to further increased production. Moreover, even though proponents suggested that bulk tank handling will tend to deter such increase, the record indicates that only about half of the bulk tank milk is presently delivered daily and that farm tanks generally are not being used to capacity.

In any event, the Class I price in the local market cannot be established at a level which would exceed the cost of securing dependable alternative supplies. The Chicago milkshed represents an appropriate area for determining such alternative cost, because of its existing dependable reserve supply and its past experience as a supply of milk to fluid markets throughout the country.

The 55–70 mile zone Class I price under the Chicago Federal order during 1957 averaged $4.03 and in 1958 will approximate $3.92, both exclusive of supply-demand adjustments which reduced the price approximately 18 and 19 cents, respectively in such years. Since the supply-demand adjuster in the Chicago order is intended to reflect the supply-demand situation in the local market it need not be a consideration in establishing the basic price level in a market as far distant as the Washington market.

Milk would not likely move to outside markets from near-in Chicago plants and it is appropriate therefore that price comparisons be related to the order prices in that market's surplus supply area. The committee suggested Shawano, Wisconsin, as an appropriate point from which milk might move to the Washington market. Shawano is in the 12th zone under the Chicago order and a 22-cent location adjustment is applicable at that point. According to Rand McNally Road Atlas, Shawano is 914 highway miles from Washington, D.C. The schedule of transport rates for fluid milk issued by Dairyland Transport Company, a nationally recognized transport company doing considerable business in hauling between the midwest and eastern markets, which was presented in evidence at the hearing, indicates a charge of $1.52 per hundredweight for moving milk 920 miles. The Chicago average 12th-zone price for 1958 adjusted for transportation to Washington, D.C., would suggest $5.22 as the appropriate level of Class I price for Washington.

Proponents, however, contend that any price based on comparative costs from Chicago should recognize the mark up which the seller of spot milk customarily includes in his selling price. They suggest that such charges may vary from 0 to 75 cents depending upon the market involved, the season and alternative outlets for milk.

In establishing an appropriate price level for the Washington market, the available alternative supply sources must be considered as a potential regular supply source in which case the charges, of the nature suggested, would not be applicable. Under the Federal order program it is a generally accepted principle that producers should bear the cost of moving milk from the farm to the central market. This is accomplished by pricing milk at the location of the plant of first receipt and by providing appropriate location differentials to reflect transportation costs to the market. When milk is received directly at the city the handler bears the costs associated with physical receipt of the milk.

In some instances handlers operate country receiving plants where milk is received, assembled and cooled for shipment to the city. In such cases, the country plant performs many of the necessary functions otherwise performed at the city plant. Whether milk is received at country plants, or directly at the city is largely the choice of the individual handler whose decision is undoubtedly related to his physical plant set up and can be presumed to result in the most economical overall cost to him. Hence, it is not appropriate that producers be asked to bear the cost of operating country receiving plants.

Nevertheless, it seems apparent, in the case of milk movements from the Chicago area to Washington, that the selling handler in recognition of his alternative outlets and use of such milk would pass on to the purchaser the cost of services performed in receiving, assembling and cooling. Under normal circumstances such costs should approximate the costs Washington handlers incur in direct receipt at city plants. Hence, costs of loading milk at the Chicago plant and unloading at the Washington plant, which costs are directly related to and for this purpose may be considered a part of the transportation cost, are additional necessary costs which may appropriately be considered in determining the cost of alternative supplies.

Official notice is taken of the decision of the Assistant Secretary on proposed amendments to the Philadelphia order issued on November 25, 1957 (22 F.R. 9600) in which it was found that the fixed costs associated with loading a tanker approximated 10 cents per hundredweight and that the cost of receiving tanker milk at the city approximated 5.5 cents per hundredweight. It seems likely that such cost would not vary substantially between markets. Hence, it

is appropriate for this analysis that a figure of 15.5 cents be added to transportation costs between Chicago and Washington to secure an appropriate alternative cost figure for establishing a Washington market price.

The addition of 15.5 cents to the Shawano, Wisconsin, Chicago order price plus transportation would provide a price level of $5.375 per hundredweight which for administrative convenience is rounded to $5.40. This is concluded to provide an appropriate annual price level for the Washington market for the initial 18 months.

Milk prices in fluid milk markets throughout the country normally vary seasonally, being highest in the short production months and lowest in the months of flush production. Notwithstanding the fact that producers in the Washington market have not sold milk to dealers at seasonally varying prices (for reasons later explained) it is desirable that some seasonality be provided to insure that the cost of alternative supplies during the flush production months will not be sufficiently below the Washington price to encourage handlers to drop local milk during this period in favor of cheaper supply sources. The months of normal flush production in the several markets vary somewhat due primarily to variations in weather and pasture conditions. The months of March through July, however, are generally considered to constitute the period of flush production. Washington is a notable exception in that July is the month of lowest production. Under these circumstances, it is concluded that an appropriate intermarket pricing relationship can be maintained throughout the year if a price of $5.10 and $5.55 respectively is provided for the periods of March through June and July through February.

Notwithstanding the fact that the pricing herein recommended is limited to a period of 18 months, it is essential that some mechanism be provided to assure that the price during such period will reflect the current supply-demand situation in the market and maintain an appropriate relationship with prices in surrounding markets. Lack of market-wide information at this time deters the formulation of a supply-demand adjuster based on local market conditions. The committee recommended an adjustment mechanism based on the average movements in the Philadelphia, New York and Chicago Federal order Class I prices. They pointed out that the Washington market production area overlaps that of Philadelphia and to a degree that of New York and hence bulk milk supplies regulated by these orders are, in many instances, within easy trucking distance of Washington. They concluded, therefore, that notwithstanding the need for general price alignment with Chicago, for reasons previously stated, it is essential that a close alignment also be maintained between Class I prices in the Washington, Philadelphia and New York markets.

Since the adjustment mechanisms of the New York and Philadelphia orders are based on broad economic indications and the Chicago order uses a mechanism that relates the Class I price to values of manufacturing milk, the relating of Washington price movements to the average price movements in these three markets will have the effect of bringing each of these to bear on the Washington price.

It is concluded that this mechanism will produce appropriate changes in the Washington Class I price which reflect changes on the national market for milk and cost factors affecting the supply and demand for milk and will maintain a reasonable alignment of price between markets during the interim period of operation of the order. Since the interim Class I price herein recommended is based on 1958 data it is appropriate that the three-market average movements be related to the same month in 1958 rather than 1957 as recommended by the committee.

The Washington market has not been accustomed to frequent price changes. Frequent price changes of a few cents would serve no useful purpose in this market. The committee recommended that the interim Class I price be effective without adjustment within a range of plus or minus 15 cents from the three-market average for each month when compared to the corresponding month of the base year (1958) and that movements in the three-market average in excess of 15 cents but not exceeding 35 cents in total provide an adjustment of 20 cents in the Washington price. Subsequent adjustment to the Washington price would be made in 20-cent multiples following each 20-cent change in the three-market average price. The committee recommendations in this regard are concluded to represent an appropriate procedure for maintaining the desired intermarket price alignment.

Proponents for a larger marketing area than that herein recommended requested that, if their marketing area proposal was not acceptable, a separate classification and pricing mechanism be provided for fluid milk products sold outside the marketing area which would assure a price competitive with that of unregulated handlers in such area. It is concluded that such a provision would not be appropriate.

The essentials of the classified pricing plan as herein proposed and generally applicable to all Federal orders issued by the Secretary are to establish one level of price for milk which is sold as fluid milk or fluid milk products for fluid consumption and another lower price or prices for the necessary surplus of the market which is disposed of in lower-valued manufactured products. It is intended that the Class I price herein proposed will bring forth a sufficient supply to meet the demands of milk for the marketing area, but not necessarily to fulfill the requirements of outside markets. Producer milk sold for fluid uses outside the marketing area has the same characteristics of bulk and perishability, is produced under identical conditions and cost and is subject to the same transportation costs in moving from the farm to the handlers' pool plant, as is milk disposed of in the marketing area. Different health and sanitation requirements in markets outside the marketing area might result in different costs of producing milk for those markets only, but would have no effect on the production costs of producer milk sold to Washington handlers.

Neither is it intended, moreover, that adjacent outside markets be used as dumping grounds for milk in excess of a regulated market's needs. The fixing of a lower price for milk sold in other markets could have a depressing effect on the price paid farmers by competing unregulated distributors in such markets. Such action would also tend to lower blended returns to producers in the Washington market with the result that the level of price for milk to be sold within the regulated market might have to be raised to provide incentive for the production of a sufficient supply to fulfill the market needs.

Class II price. Some milk in excess of Class I requirements is necessary in order to maintain an adequate supply of fluid milk for the market on an annual basis. This excess milk must be disposed of in manufactured products which under the proposed classification system would be Class II. The Class II price should be maintained at the highest level consistent with facilitating the movement of Class II milk to manufacturing outlets when it is not needed in the market for Class I purposes. Such price should not be established at a level so low as to encourage handlers to procure milk supplies solely for the purpose of converting them into Class II products.

The available manufacturing facilities associated with the market are sufficient to handle any prospective market surplus. The Maryland and Virginia Milk Producers Association, which handles the bulk of the market surplus, proposed that milk disposed of for other than Class I purposes be priced on the basis of butterfat values as reflected in the Philadelphia market cream price quotations and skim values as reflected in the Chicago market dry milk price quotations. Substantially the same formula which proponents proposed, and which was generally supported by handlers in the market, has been used in the market as a basis for pricing milk surplus to fluid needs over an extended period of years dating back to and including the time during which Order No. 45 was in effect.

The formula as herein proposed would base the butterfat value on the Philadelphia market weekly quotations per 40-quart can of 40 percent sweet cream approved for Pennsylvania and New Jersey for each week ending within the month as reported by the United States Department of Agriculture, and would provide a make allowance of $2.00 per can of cream. In order that butterfat values may not be unduly depressed by local market conditions in the Philadelphia area as reflected in such cream price it is provided that the butterfat value shall not be less than the average Grade A (92-score) butter price at New York as reported by the United States Department of Agriculture for the month less 17 cents. This arrangement will pro-

vide assurance to local producers that the Class II price will continuously reflect competitive eastern butterfat values.

The skim milk value under the formula as herein proposed would be based on the average of the Chicago daily market quotations for roller and spray nonfat dry milk as reported by the Department of Agriculture for the period from the 26th day of the preceding month through the 25th day of the month for which the Class II price is being determined and reflects a make allowance of approximately five and one-half cents per pound of powder.

It is concluded that values determined from the proposed formula will provide a proper basis of pricing Class II milk in the Washington market. The formula as herein proposed would have yielded an average Class II price of $3.23 for the year 1957. While such price is 17 cents higher than the New York Class III price, it is only two cents over the Philadelphia Class II price and appropriately reflects the value of milk going into manufactured products in this market. This level of Class II pricing should provide for the orderly disposition of milk in excess of fluid needs and at the same time will return to producers a competitive use value for such milk. A higher price for Class II milk than that herein proposed might result in a loss of outlets for local producer milk for manufacturing uses and hence, would not be in the interest of orderly marketing.

The classification system hereinbefore set forth provides for a full accounting of all skim milk and butterfat. While milk is priced to handlers at a basic test it is intended that the butterfat values be as precisely related to open market cream or butter values as is practical. Hence, the price to handlers for differential butterfat is rounded to the nearest one-tenth cent. For reasons later explained the butterfat differential to producers is rounded to the nearest full cent. Since a different butterfat differential is charged to handlers than is paid to producers it is necessary that the payments for differential butterfat be cleared through the producer-settlement fund.

The health regulations applicable in the marketing area permit the standardization of milk for consumer use. Open market cream can be sold in a substantial part of the marketing area. Excess cream must be disposed of in the open market or utilized in manufactured products. Producer milk delivered to Washington handlers is intended primarily for fluid milk requirements of the market and the butterfat differential should be designed to encourage the production of milk with a butterfat content about the same, or at least as high, as the butterfat content of fluid milk products sold by handlers. To set the butterfat differential above competitive values would encourage handlers to utilize alternative sources of butterfat. Setting the producer butterfat differential at a higher level than competitive prices would encourage producers to produce milk with a higher butterfat content than needed for fluid uses.

The basic test at which milk has been sold to handlers and uniform prices paid to producers historically has been 3.5 percent in this market. Both producers and handlers proposed that the 3.5 percent basic test be maintained. Producers and handlers generally supported a proposal that the butterfat differential be determined on the basis of open market cream values.

It is concluded that the Class I butterfat differential value should directly reflect the open market value of sweet cream for fluid uses as determined from current price quotations on the Philadelphia cream market. Such value may be derived by dividing by 334.8 the average of all weekly quotations for 40-quart cans of 40 percent sweet cream approved for Pennsylvania and New Jersey in the Philadelphia market as reported each week ending within the month by the United States Department of Agriculture.

Should the Class II butterfat differential exceed the value determined through this calculation, however, the Class II butterfat differential should be used as the Class I butterfat differential value.

The Class II butterfat differential should be directly related to the butterfat values in the Class II pricing formula. Such values reflect the competitive value of butterfat for manufacturing uses and will implement the orderly disposition of butterfat in excess of fluid needs.

Location differentials. Location differentials should be established for milk received at plants located a substantial distance from the marketing area. Such differentials recognize the principle that milk similarly used and located should be similarly priced. Milk which originates nearest the market should command a higher price than milk more distantly located in order to reflect the difference in cost of transporting it to the marketing area. No advantage can be accorded any particular group of producers if the location differentials established realistically reflect only differences in transportation cost.

Since virtually all of the milk produced for the Washington market moves from the farm in tank trucks, it would be inappropriate to establish differentials within the radius from which milk would normally move directly from farms to bottling and distributing plants in the area. Accordingly, it is concluded that no differential should be established on Class I milk received at plants located within a 75-mile radius of the zero milestone in Washington, D. C. In the case of plants located more than 75 miles from the zero milestone in Washington, D. C., it is concluded that a differential on Class I milk of 12 cents per hundredweight plus 1.5 cents for each additional 10 miles distance, or fraction thereof which such plants are located from Washington by the shortest hard-surfaced highway distance as determined by the market administrator should be appropriate. Such location differentials provide adequate allowances for transporting milk in bulk tankers between plants in the Washington area.

Milk may be received at a fluid milk bottling plant directly from producers as well as from one or more receiving plants. Under such circumstances it is necessary to designate an assignment sequence which will protect producers from unnecessary transportation costs involving transfers for other than Class I uses. It is provided, therefore, that for purposes of computing allowable Class I location differentials for each handler, the Class I disposition from a fluid milk pasteurizing or bottling plant shall first be assigned to direct producer receipts at such plant and any remaining Class I use shall be assigned to receipts from other pool plants in order of their nearness to Washington.

The value of milk used in manufactured dairy products is affected, little, if any, by the location of the plant receiving and processing such milk in contrast to the situation with respect to Class I milk. The milk received at country plants need not be transported to the city for utilization in Class II. Accordingly, a location differential should apply only to milk received at country plants and utilized in Class I or disposed of to plants which dispose of milk on routes in the marketing area.

The pricing provisions herein proposed utilize a number of reported prices and indexes from various specified sources. From time to time it is possible that such individual price(s) or index may not be reported or published. Under such circumstances it is necessary to provide that the market administrator shall use a price or index determined by the Secretary to be equivalent to or comparable with the unreported or unpublished factor or price.

Payments on other source milk. As pointed out previously, the minimum class prices established under the order apply only on producer milk received at plants subject to full regulation under the order. However, milk may be disposed of for Class I utilization by and from plants not subject to full regulation of the order. Such unregulated plants may sell milk in bulk form to pool plants that in turn use it in supplying their Class I outlets, or they may sell Class I milk directly on routes as defined herein, including sale to government installations.

The role of the compulsory classification system and the minimum prices as set forth in a Federal milk order is to insure that the price competition from reserve and excess milk will not break the market price for Class I milk, thereby destroying the incentive necessary to encourage adequate production. Because the classified program of the order is applicable only to fully regulated plants, it is necessary, in order to provide continued stability of the market, to remove any advantage unregulated plants may attain with respect to sales in the regulated market. Such plants have a real financial incentive to find a means to sell excess milk at prices somewhat less than current Class I levels so long as the price is higher than its value when used in manufactured dairy products. If unregulated plant operators were allowed to dispose of their surplus milk for Class I purposes in the regulated marketing area without some compensating or neutralizing provision of the order, it is

clear that the disposition of such milk, because of its price advantage relative to fully regulated milk, would displace the fully regulated milk in Class I uses in the marketing area. The plan of Congress as contemplated under the Agricultural Marketing Agreement Act of 1937, as amended, of returning minimum prices to the producers for the regulated marketing area, would be defeated.

In the absence of any competitive or regulatory force which compels all handlers to pay producers for milk used in fluid outlets at a rate commensurate with its value for such use, the position of any handler who pays the Class I price is insecure, if not untenable, whenever cheaper milk is available to the market. A classified pricing program under regulation cannot hope to be successful in the long run in insuring returns to producers at rates contemplated by the act if it is possible for some handlers to purchase outside milk for Class I use at less than the Class I price. Any handler who finds himself in a situation where his competitors pay less for fluid milk than he pays will be compelled to resort to the same methods, if possible. A price advantage in using unregulated milk is a compelling force in promoting its greater use and as a result it is probable that regular sources of regulated milk will eventually be abandoned by handlers, thus creating insecurity for themselves, producers, and consumers alike.

It is concluded, therefore, that the inclusion of compensation payment provisions in the order is necessary to insure against the displacement of producer milk for the purpose of cost advantage. This is essential to preserve the integrity of the classified pricing program of the order. Since minimum class prices may not be set under the order for handlers who do not participate in the marketwide equalization, the only alternative is to levy a charge against unpriced milk, for the removal of any advantage that there may be in using unregulated milk in Class I instead of regular producer milk.

While there are few handlers who now have regular direct distribution in the marketing area and who would maintain unregulated status under the terms of the order as herein proposed; nevertheless, there are a very large number of substantial handlers in the immediately adjacent markets, many of whom could readily extend their distribution routes into the marketing area and by preserving their unregulated status could operate with a substantial price advantage over regulated handlers unless provision is made to assure that all competing handlers pay the minimum class prices. The interrelationship of the supply areas of these adjacent markets with the Washington market emphasizes the need for application of the compensatory payment provision on such distribution. As was earlier pointed out the utilization in the Washington market was as low as 65 percent Class I in some months. Hence, unless provision is made to protect the integrity of regulation there exists a substantial opportunity for unregulated handlers to exploit the local fluid market to the detriment of both regular producers and regulated handlers.

The compensatory payments applicable to other source milk disposed of in the marketing area from approved plants which are not pool plants should be the same as those applicable to other source milk distributed from pool plants. It would not be possible to stabilize this market under the classified pricing program in the market if nonpool plants were allowed to distribute unpriced milk in the marketing area without compensatory payments. Handlers distributing such unpriced milk in the marketing area have the same opportunity to buy milk at the opportunity cost level as do the operators of the pool plants who purchase other source milk. In addition, however, the operator of a nonpool plant in all probability has surplus milk in his own plant which he would willingly dispose of on any basis that would yield a higher return than the surplus value. It would be particularly easy to dispose of such milk for Class I use in the marketing area by bidding for large contracts such as hospitals, defense establishments or other types of institutions. With surplus outlets as the alternative, and no compensatory payments to make, the nonpool handlers would have considerable incentive or margin to underbid the seller of priced milk for such sales. Providing for some method of compensating for, or neutralizing the effect of, the advantage created for unregulated milk, therefore, is an essential and necessary provision of this order.

It is concluded that the compensatory payment on other source milk utilized in Class I should be the difference between the Class II price and the Class I price under the Washington order. The Class II price established by the order is a fair and economic measure of the value of milk in surplus uses in the Washington area and hence, represents the actual value of other source milk.

By choosing a rate of compensatory payment which reflects the cost of the cheapest other source milk which may be expected to be available to regulated handlers, any advantage to one handler relative to others, in obtaining such cheap milk and substituting it for producer milk in Class I, is removed insofar as administratively possible and no handler is given the clear opportunity to gain an unfair advantage which would otherwise exist. Although the unfair advantage of obtaining other source milk is removed by the particular rate of payment herein provided, nevertheless, if other source milk is to be purchased, the incentive for purchasing the cheapest of such milk remains, because the lower the price which a handler pays for other source milk, the lower will be his total cost of purchasing such milk.

All funds collected from compensatory payments should be added to the producer-settlement fund. The handler regulated by the order should be obligated to make compensatory payments to the producer-settlement fund. There will be no difference in actual price paid for milk whether the payment is made by the regulated handler or by the operator of the unregulated plant from which the other source milk was obtained. Because the regulated handler makes the actual distribution of the milk in the marketing area and because he reports its utilization to the market administrator he is, from the administrative viewpoint, the logical one to make the payment.

For the reasons set forth in this decision, Class I milk under the order is priced at the plant where the milk is first received from producers, hence, the compensatory payment on other source milk should be computed at the same stage of the marketing process to be directly comparable. No allowances are made in the order for cost and profits of handlers in moving producer milk to subsequent stages of marketing; neither should they be made for other source milk.

(d) *Distribution of proceeds to producers.* The order should provide for the distribution of returns to producers through a marketwide type of equalization pool. Under this type of pooling all producers receive a uniform price which varies only to reflect differences in butterfat content and location of plant of receipt.

As has been previously indicated the principal cooperative association in the market carries the bulk of the necessary surplus of the market which is processed through its manufacturing plant. It is imperative, therefore, that a procedure for pooling be established which will provide for an equitable sharing by all producers of the lower returns realized from the handling of this necessary reserve supply of milk.

A marketwide pool will facilitate the activities of the cooperative in moving milk supplies among handlers to meet their individual needs and will encourage processing of the necessary surplus of the market at the plants which can make the most efficient use of such milk.

This method of paying producers will require a producer-settlement fund for making adjustments in payments, as among handlers, to the end that the total sums paid by each handler shall equal the value of milk received by him at the prices fixed in the proposed marketing agreement and order.

Under this pooling arrangement handlers who are required to pay more for their milk on the basis of their utilization than they are required to pay to producers or cooperative associations will pay the difference to the producer-settlement fund; all handlers who are required to pay more to producers or cooperative associations than they are required to pay for their milk on the basis of utlizations will receive the difference from the producer-settlement fund. The market administrator in making payment to any handler from the producer-settlement fund should offset such payments by the amount of payments due from such handler. This is sound business practice. Without this provision the market administrator might be required to make payments to a handler who may have obtained money

from the producer-settlement fund by filing incorrect reports or who owes money to the producer-settlement fund but who is financially unable to make full payment of all of his debts.

If at any time, the balance in the producer-settlement fund is insufficient to cover payments due to all handlers from the producer-settlement fund, payments to such handlers should be reduced uniformly per hundredweight of milk. The handlers may then reduce payment to producers by an equivalent amount per hundredweight. Amounts remaining due such handlers from the producer-settlement fund should be paid as soon as the balance in the fund is sufficient, and handlers should then complete payments to producers. In order to reduce the likelihood of this occurring, milk received by any handler who has not made the required payments into the producer-settlement fund for the preceding month should not be considered in the computation of the uniform price in current month.

The order should provide that in the case of a cooperative association which is authorized to collect payments otherwise due its producer-members, and which requests such payments in writing, the handler shall make payment to the cooperative of the amount otherwise due its producer members. Under the provisions of the order as hereinafter proposed a cooperative association by definition has "full authority in the sale of milk of its members" and is engaged in "making collective sales of or marketing milk or its products for its members". As the duly authorized agent of its producer-members there can be no question of its authority to receive the payments otherwise due such producers. This privilege is specifically provided for in the act and the practice is being followed by all of the cooperatives operating in the market.

In order that the cooperative may have the proper records on which to pay the individual producer members, the handler should, on or before the 8th day after the close of the month, be required to furnish the cooperative association with a statement showing the name, address and code number, if any, of each producer for whom payment is to be made to the cooperative association, the volume and average butterfat content of milk delivered by each such producer, and the amount of and reason for any deduction which the handler is withholding from the amount payable to each producer. This information is necessary in order that the cooperative association can make proper distribution of monies to its producer members for whom it makes collections.

In making payments to producers for milk received at plants located at least 75 miles distance from Washington the price should be reduced 12 cents plus 1.5 cents for each additional 10 miles distance or fraction thereof which such plant is located from Washington. Such a location differential will reflect cost of hauling milk to market by an efficient means and should tend to distribute returns to producers fairly.

Provision should also be made for the handler, if authorized in writing by the producer, to make proper deductions for goods or services furnished to or for payments made on behalf of the producer.

Proponents of the order proposed that the order provide for a "take-out and pay-back" plan to encourage a level production program. They pointed out that their association had operated such a plan for several years with satisfactory results to their membership.

Another cooperative in the market has successfully operated a base rating plan which has provided a seasonality of production which meet the fluid needs of its buyers.

The two plans, each intended to promote an even production over the year, have operated independently of each other without apparent adverse effects upon the market as a whole. A seasonality of pricing is provided in the Class I pricing formula hereinbefore set forth. If further seasonality is desirable, there is good reason to allow the seasonal returns plans of the several cooperative associations to be continued outside the structure of the order.

The order should provide that each handler pay each producer, for milk received from such producer, and for which payment is not made to a cooperative association, on or before the 15th day after the end of each month. This is the date on which producers have been accustomed to receiving payment and provides a reasonable time for reporting, computation and announcement of the blended price and the drawing of individual checks. All reporting, announcement, and payment dates herein provided are synchronized to permit payment on this date.

When payment is to be made to a cooperative association, such payment should be made on or before the 13th day after the end of each month. This will permit the cooperative association to prepare and mail individual checks to its producer-members by the 15th, the same date on which nonmember producers receive payment.

In the event a handler has received milk from producers which has an average butterfat content of more or less than 3.5 percent, the returns to such producers should be adjusted by a differential which reflects the weighted average values of the butterfat and skim milk in producer milk utilized in the respective classes. This follows the same principle as the payment of a uniform price to all producers. Since each producer shares equally in the total value of the handlers' Class I and Class II utilization at the basic test of 3.5 percent butterfat, it is equally appropriate that each should receive the average utilization value of the butterfat and skim milk components for milk testing above or below 3.5 percent. The producer butterfat differential should be rounded to the nearest full cent. Such adjustment will tend to minimize audit adjustments and will recognize that producers have long been paid on a fixed differential basis and are not accustomed to constantly changing values.

Administrative provisions. The marketing agreement and order should provide for other general administrative provisions which are common to all orders and which are necessary for proper and efficient administration of the order.

In addition to the definitions discussed earlier in this decision which define the scope of regulation, definition of certain other terms is necessary for brevity and to assure that each usage of such terms denotes the same meaning. These include the terms "Act", "Secretary", "Department of Agriculture", "Person" and "Cooperative Association".

Provision should be made for the appointment by the Secretary of a market administrator, and the order should define his powers and duties, prescribe the information to be reported by handlers each month, set forth the rules to be followed by the market administrator in making computations required by the order, and provide for the liquidation of the order in the event of its suspension or termination.

The powers of the market administrator as set forth in the order are specifically provided in section 8c (7) (C) of the Agricultural Marketing Agreement Act of 1937, as amended, and the proposed language is essentially that of the statute.

The duties of the market administrator as set forth are essentially those which are found in all Federal milk marketing orders and are necessary to define specifically the responsibilities of the market administrator.

Handlers should be required to maintain adequate records of their operations and to make the reports necessary to establish classification of producer milk and payments due for such milk. Time limits must be prescribed for filing such reports and for making payments to producers. It should be provided that the market administrator report to each cooperative association, which so requests, the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the utilization of members' milk in each handler's plant will be prorated to each class in the proportion that total receipts of producer milk were used in each class by such handler.

Handlers should maintain and make available to the market administrator all records and accounts of their operations and such facilities as are necessary to determine the accuracy of the information reported to the market administrator as he may deem necessary or any other information upon which the classification of producer milk or payments to producers depends. The market administrator must likewise be permitted to check the accuracy of weights and tests of milk and milk products received and handled to verify all payments required under the order.

It is necessary that handlers maintain records to prove the utilization of the milk received from producers and that proper payments were made therefor. Since the books of all handlers associated with the market cannot be audited immediately after the milk has been de-

livered to a plant, it is necessary that such records be kept for a reasonable period of time.

The order should provide for specific limitations of the time that handlers should be required to retain their books and records and of the period of time in which obligations under the orders should terminate. Provision made in this regard is identical in principle with the general amendment made to all milk orders in operation on July 30, 1947, following the Secretary's decision of January 26, 1949 (14 F. R. 444). That decision covering the retention of records and limitations of claims is equally applicable in this situation and is adopted as a part of this decision.

Each handler should be required to pay the market administrator as his pro rata share of the cost of administering the order not more than 4 cents per hundredweight or such lesser amounts as the Secretary may, from time to time prescribe on (a) producer milk (including such handler's own production), (b) other source milk in pool plants which is allocated to Class I milk, and (c) Class I milk disposed of in the marketing area (except to a pool plant) from a nonpool plant.

The market administrator must have sufficient funds to enable him to administer properly the terms of the order. The act provides that such cost of administration shall be financed through an assessment on handlers. One of the duties of the market administrator is to verify the receipts and disposition of milk from all sources. Equity in sharing the cost of administration of the order among handlers will be achieved, therefore, by applying the administrative assessment to all producers' milk (including handler's own production) and other source milk allocated to Class I milk.

Plants not subject to the classification and pricing provisions of the order may distribute limited quantities of Class I milk in the marketing area. These plants must be checked to verify their status under the order. Assessment of administrative expense on such milk sold in the marketing area will help defray the cost of such checking.

In view of the anticipated volumes of milk and the cost of administering orders in markets of comparable circumstances, it is concluded that an initial rate of 4 cents per hundredweight is necessary to meet the expenses of administration. Provision should be made to enable the Secretary to reduce the rate of assessment below the 4 cents per hundredweight maximum without necessitating an amendment to the order. This should be done at any time experience in the market reveals that a lesser rate will produce sufficient revenue to administer the order properly.

A provision should be included in the order for furnishing market services to producers, such as verifying the tests and weights of producer milk and furnishing market information. These should be provided by the market administrator and the cost should be borne by the producers receiving the service. If a cooperative association is performing such services for any member producers and is approved for such activities by the Secretary, the market administrator may accept this in lieu of his own service.

There is need for a marketing service program in connection with the administration of the order in this area. Orderly marketing will be promoted by assuring individual producers that payments received for their milk are in accordance with the pricing provisions of the order and reflect accurate weights and tests of such milk. To accomplish this fully, it is necessary that the butterfat test and weights of individual producer deliveries of milk as reported by the handler be verified for accuracy.

An additional phase of the marketing service program is to furnish producers with correct market information. Efficiency in the production, utilization and marketing of milk will be promoted by the dissemination of current information on a marketwide basis to all producers.

To enable the market administrator to furnish these marketing services, provision should be made for a maximum deduction of 5 cents per hundredweight with respect to receipts of milk from producers for whom he renders marketing services. If later experience indicates that marketing services can be performed at a lesser rate, provision is necessary for the Secretary to adjust the rate downward without the necessity of a hearing.

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

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

Revised recommended marketing agreement and order. The following order regulating the handling of milk in the Washington, D.C., marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the proposed order.

DEFINITIONS

§ 902.1 Act.

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

§ 902.2 Secretary.

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

§ 902.3 Department of Agriculture.

"Department of Agriculture" means the United States Department of Agriculture or any other Federal agency as may be authorized by Act of Congress, or by Executive order, to perform the price reporting functions specified in this part.

§ 902.4 Person.

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

§ 902.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

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

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

§ 902.6 Washington, D.C., marketing area.

"Washington, D.C., marketing area" hereinafter called "the marketing area" means all of the territory situated within the District of Columbia; the counties of Arlington, Fairfax and Prince William and the City of Alexandria all in the State of Virginia; the counties of Prince Georges (excluding the corporate limits of the town of Laurel), Montgomery, Charles, and St. Marys; that portion of Calvert County lying south of a line beginning at the Western terminus of Maryland State Highway 507, continuing easterly along said highway to its intersection with Maryland State Highway 2, continuing northerly along said Highway 2, to its intersection with Maryland State Highway 263 and then easterly along said Highway 263 to its terminus at the Chesapeake Bay, and that part of Frederick lying south of a line beginning at the intersection of the Washington-Frederick County line with Alternate U.S. Route 40, following Alternate U.S. Route

40 easterly to the western boundary of the corporate limits of the City of Frederick, thence along the western, northern and eastern boundary of the city to its eastern junction with Alternate U.S. Route 40 and then southeasterly along Alternate U.S. Route 40 to the Frederick-Carroll County line, all in the State of Maryland; together with all piers, docks and wharves connected therewith and including all territory within such boundaries which is occupied by Government (Municipal, State or Federal) installations, institutions or other establishments.

§ 902.7 Plant.

"Plant" means the land, buildings, surroundings, facilities and equipment whether owned and operated by one or more persons constituting a single operating unit or establishment for the receiving and processing, or packaging of milk or milk products.

§ 902.8 Approved plant.

"Approved plant" means:

(a) Any plant which is approved by the applicable health authority having jurisdiction in the marketing area for the handling of milk for disposition as Class I milk and from which Class I milk is disposed of on routes to retail or wholesale outlets in the marketing area, and

(b) Any plant which is approved by the applicable health authority having jurisdiction in the marketing area to supply milk to a plant specified in paragraph (a) of this section and from which milk is moved during the month to such plant.

§ 902.9 Pool plant.

"Pool plant" means:

(a) An approved plant other than the plant of a producer-handler: (1) During any month within which a volume of milk equal to not less than 10 percent of its receipts of milk from dairy farmers, approved by the applicable health authority for fluid disposition in the marketing area, is disposed of as Class I milk on routes in the marketing area: *Provided,* That the total quantity of Class I milk disposed of from such plant, both inside and outside the marketing area is equal to not less than 50 percent of such plant's total receipts from such dairy farmers; or (2) during any month of October through February in which at least 50 percent, and during any month of March through September in which at least 40 percent, of its receipts of milk from dairy farmers, approved by the applicable health authority for fluid disposition in the marketing area, is shipped in the form of milk, skim milk or cream to a plant which disposes of not less than 10 percent of its receipts of approved milk from dairy farmers and from other approved plants as Class I milk on routes in the marketing area and not less than 50 percent of such receipts are disposed of as Class I milk both inside and outside the marketing area: *Provided,* That any such plant which was a pool plant in each of the preceding months of October through February shall be a pool plant for the months of March through September, unless the handler gives written notice to the market administrator on or before the first day of such month that the plant is a nonpool plant: *And provided further,* That any such plant which was a nonpool plant during any of the months of October through February shall not be a pool plant in any of the immediately following months of March through September in which it was owned by the same handler or affiliate of the handler or by any person who controls, or is controlled by, the handler.

(b) Any manufacturing plant which is operated by a cooperative association 70 percent or more of whose membership are qualified producers whose milk is regularly received during the month at other pool plants.

§ 902.10 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of an approved plant (whether or not such approved plant is a pool plant) or any plant qualified as a pool plant pursuant to § 902.9(b), and

(b) Any cooperative association with respect to the milk of any producer which it causes to be diverted in accordance with the proviso of § 902.15 from a pool plant to a nonpool plant for the account of such cooperative association.

§ 902.11 Pool handler.

"Pool handler" means any person in his capacity as the operator of a pool plant or a cooperative association qualified as a handler pursuant to § 902.10(b).

§ 902.12 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and an approved plant from which Class I milk is disposed of on route(s) in the marketing area and who during the month received no milk from any source other than his own farm production and from pool plants.

§ 902.13 Dairy farmer.

"Dairy farmer" means any person who produces milk which is delivered in bulk to a plant.

§ 902.14 Dairy farmer for other markets.

"Dairy farmer for other markets" means:

(a) Any dairy farmer whose milk is received by a handler at a pool plant during the months of March through September from a farm from which the handler, an affiliate of the handler, or any person who controls or is controlled by the handler, received milk other than as producer milk during any of the preceding months or October through February; and

(b) Any dairy farmer whose milk is received at a pool plant qualified pursuant to § 902.9(b) for the account of a cooperative association which has no membership among producers delivering milk to other pool plants.

§ 902.15 Producer.

"Producer" means any dairy farmer, except a producer-handler or dairy farmer for other markets, who produces milk which is approved by the applicable health authority having jurisdiction in the marketing area for fluid disposition within the marketing area and which is received at a pool plant or is diverted to a nonpool plant during any month(s) of March through September or on not more than 8 days (4 days in the case of every-other-day delivery) during any month(s) of October through February: *Provided,* That the milk so diverted shall be deemed to have been received by the diverting handler at a pool plant at the location from which it was diverted: *And provided further,* That the criterion for determination of qualification under this definition for a dairy farmer delivering milk to a pool plant qualified under § 902.9(b) shall be the holding of a valid farm inspection permit issued by the applicable health authority having jurisdiction in the marketing area. This definition shall not include any dairy farmer whose milk is diverted during the month on more than the number of days specified in this section.

§ 902.16 Producer milk.

"Producer milk" means any skim milk or butterfat contained in milk received directly at a pool plant from producers, or diverted in accordance with the proviso of § 902.15.

§ 902.17 Other source milk.

"Other source milk" means all receipts of skim milk and butterfat other than that contained in (a) producer milk, (b) receipts from pool plants, or (c) Class II products disposed of in the form in which received without further processing by the handler.

§ 902.18 Route.

"Route" means any delivery (including any delivery by a vendor or disposition at a plant store or from vending machines) of any Class I product to a wholesale or retail stop, including a Federal, State or municipal institution or installation, but excluding any delivery to a plant.

MARKET ADMINISTRATOR

§ 902.20 Designation.

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

§ 902.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To make rules and regulations to effectuate its terms and provisions;

(c) To receive, investigate, and report to the Secretary complaints of violations; and

(d) To recommend amendments to the Secretary.

§ 902.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part,

including, but not limited to the following:

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

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

(c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds received pursuant to § 902.88:

(1) The cost of his bond and the bonds of his employees,

(2) His own compensation, and

(3) All other expenses except those incurred under § 902.87, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

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

(f) Publicly announce at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 5 days after the date upon which he is required to perform such acts, has not made reports pursuant to § 902.30 or payments pursuant to §§ 902.80 to 902.88,

(g) Submit his books and records to examination by the Secretary, and furnish such information and reports as the Secretary may request;

(h) Verify all reports and payments of each handler, by audit, if necessary, of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends;

(i) Prepare and make available for the benefit of producers, consumers, and handlers, such general statistics and information concerning the operation of this part as do not reveal confidential information;

(j) On or before the date specified, publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, the following:

(1) The 5th day of each month, the Class I price computed pursuant to § 902.50(a) for the current month, and the Class II price computed pursuant to § 902.50(b) and the handler butterfat differentials computed pursuant to § 902.51, both for the preceding month; and

(2) The 10th day of each month, the uniform price computed pursuant to § 902.71 and the producer butterfat differential computed pursuant to § 902.81 both for the preceding month; and

(k) On or before the 10th day after the end of each month, report to each cooperative association which so requests, the class utilization of milk purchased from such association or delivered to the pool plant(s) of each handler by producers who are members of such cooperative association. For the purpose of this report, the milk so purchased or received shall be allocated to each class in the same ratio as all producer milk received by such handler during such month.

REPORTS, RECORDS AND FACILITIES

§ 902.30 Reports of receipts and utilization.

(a) On or before the 8th day after the end of each month each pool handler, shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) The quantities of skim milk and butterfat contained in (i) receipts of producer milk (including such handler's own production), (ii) receipts from other pool plants in the form of products designated as Class I milk pursuant to § 902.41 (a)(1), and (iii) receipts of other source milk.

(2) Inventories of products designated as Class I milk pursuant to § 902.41 (a)(1) on hand at the beginning and end of the month; and

(3) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph.

(b) Each nonpool handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

§ 902.31 Other reports.

(a) Each pool handler, shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) On or before the 20th day after the end of the month, for each of his pool plants, his producer payroll for such month, which shall show for each producer; (i) his name and address, (ii) the total pounds of milk received from such producer, (iii) the average butterfat content of such milk, and (iv) the net amount of the handler's payment, together with the price paid and the amount and nature of any deduction;

(2) On or before the first day other source milk is received in the form of milk, fluid skim milk or cream at his pool plant(s) his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(3) Such other information with respect to receipts and utilization of butterfat and skim milk as the market administrator shall prescribe.

(b) Promptly after a producer moves from one farm to another, or starts or resumes deliveries to any of a handler's pool plants, the handler shall file with the market administrator a report stating the producer's name and post office address, the health department permit number, the date on which the change took place, and the farm and plant location involved.

(c) Each pool handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to § 902.80(b) shall on or before the 10th day after the end of each month report to such cooperative association concerning each producer-member of such cooperative association from whom he received milk during the month as follows:

(1) The name, address and code number, if any;

(2) The total deliveries and the number of days on which delivery was made;

(3) The average butterfat test of the milk delivered; and

(4) The nature and amount of any deductions to be made in payments due such producer.

(d) Each handler dumping skim milk pursuant to § 902.41(b)(3) shall give the market administrator during normal duty hours, not less than 3 hours advance notice of intention to make such disposition and of the quantities of skim milk involved.

§ 902.32 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations together with such facilities as are necessary for the market administrator to verify or establish the correct data for each month, with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form;

(b) The weights and tests for butterfat and other content of all milk and milk products handled;

(c) The pounds of skim milk and butterfat contained in or represented by all items in inventory at the beginning and end of each month required to be reported pursuant to § 902.30(a)(2); and

(d) Payments to producers and cooperative associations, including any deductions and the disbursement of money so deducted.

§ 902.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided,* That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further 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 OF MILK

§ 902.40 Skim milk and butterfat to be classified.

All skim milk and butterfat received within the month at pool plants and which is required to be reported pursuant to § 902.30 shall be classified by the market administrator.

§ 902.41 Classes of utilization.

Subject to the conditions set forth in §§ 902.42 to 902.46 the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including that used to produce concentrated milk and reconstituted or fortified skim milk) and butterfat: (1) Disposed of (other than in hermetically sealed containers) in fluid form or as frozen concentrated milk for human consumption as milk, flavored milk, skim milk, flavored skim milk, cultured skim milk, buttermilk, cream (except sour cream) including any mixture of cream and milk or skim milk containing less butterfat than the regular standard for cream; and (2) not specifically accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce any product other than those designated as Class I milk pursuant to paragraph (a)(1) of this section; (2) disposed of for livestock feed; (3) contained in skim milk dumped if the conditions of § 902.31(d) are met by the handler; (4) contained in inventory of products designated in paragraph (a)(1) of this section on hand at the end of the month; (5) in actual plant shrinkage not to exceed one and one half percent of skim milk and butterfat, respectively, in producer milk; and (6) in shrinkage of other source milk.

§ 902.42 Shrinkage.

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

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

(b) Allocate the resulting amounts pro rata to skim milk and butterfat, respectively, in producer milk and other source milk.

§ 902.43 Responsibility of handlers and the reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk and butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 902.44 Transfers.

Skim milk or butterfat disposed of during the month from a pool plant shall be classified:

(a) As Class I milk if transferred in the form of any product designated as Class I milk pursuant to § 902.41(a)(1) to a pool plant of another handler unless utilization as Class II milk is claimed by both handlers in their reports submitted for the month to the market administrator pursuant to § 902.30(a): *Provided,* That the skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in Class II milk in the plant of the transferee handler after the assignment of other source milk pursuant to § 902.46 and any additional amounts of such skim milk or butterfat shall be assigned to Class I milk: *And provided further,* That if either or both handlers 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 the producer milk at both plants.

(b) As Class I milk if transferred in the form of any product designated as Class I milk pursuant to § 902.41(a)(1) to a producer-handler.

(c) As Class I milk if transferred or diverted in the form of any product designated as Class I milk pursuant to § 902.41(a)(1) to an approved plant, other than a pool plant or the plant of a producer-handler, to the extent of such plant's disposition of skim milk and butterfat, respectively, as Class I milk in the marketing area: *Provided,* That any remaining amount of such transfer or diversion shall be assigned to the highest remaining utilization in the transferee plant after the prior assignment of receipts at such plant from dairy farmers who the market administrator determines constitute its regular source of supply.

(d) As Class I milk if transferred or diverted in bulk in the form of milk, skim milk or cream, to a nonpool plant, other than an approved plant, located less than 300 miles from the zero milestone in Washington, D.C., unless (1) the handler claims Class II utilization in his report submitted pursuant to § 902.30(a), (2) the operator of the transferee plant maintains books and records showing the utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification, and (3) not less than an equivalent amount of skim milk and butterfat was actually utilized in such plant during the month in the use indicated in such report: *Provided,* That if upon inspection of the records of such plant it is found that an equivalent amount of skim milk and butterfat was not actually used in such indicated use the remaining pounds shall be classified as Class I milk.

(e) As Class I milk if transferred or diverted in bulk in the form of milk, skim milk or cream, to a nonpool plant other than an approved plant located 300 miles or more from the zero milestone in Washington, D.C.

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

For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization submitted pursuant to § 902.30(a) for the pool plant(s) of each handler and shall compute the pounds of skim milk and butterfat in Class I milk and Class II milk for such handlers.

§ 902.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 902.45 the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler as follows:

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

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk in producer milk classified pursuant to § 902.41(b)(5);

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received during the month in a form other than products specified in § 902.41(a)(1);

(3) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of products specified in § 902.41(a)(1) from plants which are not fully subject to the pricing provisions of another order issued pursuant to the Act;

(4) Subtract from the pounds of skim milk remaining in each class in series beginning with Class II milk the pounds of skim milk in other source milk received in the form of products specified in § 902.41(a)(1) from a plant(s) which is fully subject to the pricing provisions of another order issued pursuant to the Act;

(5) Subtract from the pounds of skim milk remaining in each class in series beginning with Class II milk, the pounds of skim milk contained in inventory of products specified in § 902.41(a)(1) on hand at the beginning of the month;

(6) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk received from the pool plants of other handlers in the form of products specified in § 902.41(a)(1) according to the classification thereof as determined pursuant to § 902.44(a).

(7) 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

(8) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in each class in series beginning with Class II milk. Any amount so subtracted shall be known as "overage."

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

(c) Add the pounds of skim milk and the pounds of butterfat allocated to the producer milk in each class computed pursuant to paragraphs (a) and (b) of this section, and determine the weighted average butterfat content of each class.

MINIMUM PRICES

§ 902.50 Class prices.

Subject to the provisions of §§ 902.51 and 902.52 each handler shall pay, at the time and in the manner set forth in

§ 902.80 for each hundredweight of milk containing 3.5 percent butterfat received at his pool plant(s) during the month from producers or a cooperative association not less than the following prices per hundredweight for the respective quantities of milk in each class computed pursuant to § 902.46.

(a) *Class I price.* During the first 18 months after the effective date of this part the price for Class I milk shall be $5.55 for the months of July through February and $5.10 for the months of March through June: *Provided,* That such price in any month shall be adjusted to reflect the deviation of the average of the Federal order Class I prices for the Philadelphia, New York and Chicago markets for such month from such average price in the corresponding month of 1958, as follows:

3-market average deviation from corresponding month of 1958 (cents), plus or minus:	*Washington price adjustment (cents) plus or minus*
0–15	0
15.1–35	20
35.1–55	40
55.1–75	60
75.1–95	80

(b) *Class II price.* The price for Class II milk shall be the sum of the values of butterfat and skim milk computed as follows:

(1) *Butterfat.* Add all weekly quotations per 40-quart can of 40 percent sweet cream approved for Pennsylvania and New Jersey in the Philadelphia market as reported each week ending within the month by the United States Department of Agriculture, divide by the number of quotations, subtract $2.00, divide by 33.48, multiply by 3.5: *Provided,* That such butterfat value shall not be less than 3.5 times 120 percent of the average Grade A (92-score) butter price at New York as reported by the United States Department of Agriculture for the month for which payment is to be made less 17 cents.

(2) *Skim milk.* The average of carlot prices per pound for nonfat dry milk, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area, as reported for the period from the 26th day of the preceding month through the 25th day of the current month by the Department of Agriculture shall determine the skim values as follows:

Average price per pound of nonfat solid-spray and roller process:	*Skim value*
$0.065 or below	$0.075
$0.066 to $0.075	.15
$0.076 to $0.085	.225
$0.096 to $0.105	.30
$0.106 to $0.115	.375
$0.116 to $0.125	.45
$0.126 to $0.135	.525
$0.136 to $0.145	.60
$0.146 to $0.155	.675
$0.156 to $0.165	.75
$0.166 to $0.175	.825
$0.176 to $0.185	.90
$0.186 to $0.195	.975

§ 902.51 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices pursuant to § 902.50 shall be increased or decreased, respectively, for each one-tenth of one percent butterfat by the appropriate rate, rounded in each case to the nearest one-tenth cent, determined as follows:

(a) *Class I milk.* Add all weekly quotations per 40-quart can of 40 percent sweet cream approved for Pennsylvania and New Jersey in the Philadelphia market as reported each week ending within the month by the United States Department of Agriculture, divide by the number of quotations and divide the resulting value by 334.8: *Provided,* That if the result is less than the Class II differential determined pursuant to paragraph (b) of this section, such Class II differential shall also be applicable to Class I milk; and

(b) *Class II milk.* Divide by 35 the butterfat value determined pursuant to § 902.50(b)(1).

§ 902.52 Location differentials to handlers.

For that milk which is received from producers at a pool plant located 75 miles or more from the milestone in Washington, D.C., by the shortest hard-surfaced highway distance as determined by the market administrator, and which is assigned to Class I milk, the Class I price as specified in § 902.50(a) shall be reduced at the rate set forth in the following schedule:

Distance (miles):	*Rate per hundredweight (cents)*
75	12.0
For each additional 10 miles or fraction thereof	1.5

Provided, That for the purpose of calculating such location differential, products designated as Class I milk which are transferred between pool plants shall first be assigned to any remainder of Class II milk in the transferee plant after making the calculations prescribed in § 902.46(a)(1) to (5), and the comparable steps in § 92.46(b) for such plant, such assignment to the transferring plant to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 902.53 Use of equivalent prices or indexes.

If for any reason a price quotation or index required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price or index determined by the Secretary to be equivalent to the price or index which is required.

APPLICATION OF PROVISIONS

§ 902.60 Producer-handler.

Sections 902.40 to 902.46, 902.50 to 902.52, 902.62, 902.70 to 902.71 and 902.80 to 902.89 shall not apply to a producer-handler.

§ 902.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be considered as a nonpool plant except that the operator of such plant shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 902.30) and allow verification of such reports by the market administrator.

(a) Any plant qualified pursuant to § 902.9(a)(1) which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the Secretary determines that a greater volume of Class I milk is disposed of from such plant on routes in the Washington marketing area than in a marketing area regulated pursuant to such other order.

(b) Any plant qualified pursuant to § 902.9 (a)(2) or (b) which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless such plant has qualified as a pool plant pursuant to the first proviso of § 902.9(a)(2) for each month during the preceding October through February.

§ 902.62 Payments on other source milk.

Within 11 days after the end of each month handlers shall make payments to producers through the producer-settlement fund as follows:

(a) Each pool handler who received other source milk which is allocated to Class I pursuant to § 902.46 (a)(2) and (b) shall make payment on the quantity so allocated at the difference between the Class I price and the Class II price applicable at the location of his pool plant qualified pursuant to § 902.9(a).

(b) Each pool handler who received other source milk which is allocated to Class I pursuant to § 902.46 (a)(3) and (b) shall make payment on the quantity so allocated at the difference between the Class I price and the Class II price applicable at the zone location of the nearest nonpool plant(s) from which an equivalent amount of such other source milk was received; and

(c) Each handler operating an approved plant, other than a pool plant, which is not subject to the classification and pricing provisions of another order issued pursuant to the Act and from which Class I products are disposed of on routes in the marketing area during the month shall make payment on the total hundredweight of skim milk and butterfat so disposed of which is in excess of his receipts of skim milk and butterfat, respectively, from pool plants at the difference between the Class I price and the Class II price applicable for the zone location of such plant.

DETERMINATION OF UNIFORM PRICE

§ 902.70 Computation of the value of producer milk for each handler.

For each delivery period, the market administrator shall compute the value of milk for each pool handler as follows:

(a) Multiply the pounds of producer milk in each class computed pursuant to § 902.46 by the applicable class price and total the resulting amounts;

(b) Add the amount of any payments due from such handler pursuant to § 902.62 (a) or (b);

(c) Add the amounts computed by multiplying the pounds of "overage" deducted from each class pursuant to § 902.46 (a)(8) and (b) by the applicable class price;

(d) Add the amount computed by multiplying the difference between the appropriate Class II price for the preceding month and the appropriate Class I price for the current month by the hundredweight of producer milk classified in Class II during the preceding month less allowable shrinkage allocated pursuant to § 902.46 (a)(1) in such month, or the hundredweight of milk subtracted from Class I pursuant to § 902.46 (a)(5) and (b) for the current month, whichever is less;

(e) Add the amount computed by multiplying the difference between the appropriate Class II price for the preceding month and the appropriate Class I price for the current month by the hundredweight of milk allocated to Class I pursuant to § 902.46 (a)(5) and (b) for the current month which is in excess of (1) the hundredweight of milk for which an adjustment was made pursuant to subparagraph (d) of this paragraph and (2) the hundredweight of milk assigned to Class II pursuant to § 902.46 (a)(4) and (b) for the previous month and which was classified and priced as Class I under the other Federal order; and

(f) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months.

§ 902.71 Computation of the uniform price.

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

(a) Combine into one total the net obligations computed pursuant to § 902.70 for all handlers who made reports prescribed in § 902.30(a) for the month and who were not in default of payments pursuant to § 902.84 for the preceding month.

(b) Subtract, if the weighted average butterfat content of producer milk included under paragraph (a) of this section is greater than 3.5 percent, or add, if such average butterfat content is less than 3.5 percent, an amount computed as follows: Multiply the amount by which the average butterfat content of such milk varies from 3.5 percent by the producer butterfat differential computed pursuant to § 902.81 and multiply the resulting figure by the total hundredweight of such milk;

(c) Add an amount equal to the sum of deductions to be made from producer payments for location differentials pursuant to § 902.82;

(d) Add an amount equal to not less than one-half of the unobligated balance on hand in the producer-settlement fund;

(e) Divide the resulting amount by the total hundredweight of producer milk included under paragraph (a) of this section; and

(f) Subtract not less than 4 nor more than 5 cents from the amount computed pursuant to paragraph (e) of this section.

PAYMENTS

§ 902.80 Time and method of payment.

(a) Except as provided in paragraph (b) of this section, each pool handler on or before the 15th day after the end of each month shall make payment to each producer from whom milk is received during the month for the quantity of milk so received at not less than the uniform price per hundredweight computed pursuant to § 902.71 adjusted by the butterfat differential computed pursuant to § 902.81 and by the location differential computed pursuant to § 902.82 less proper deductions authorized in writing by the producer: *Provided,* That if by such date such handler has not received full payment from the market administrator pursuant to § 902.85 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the 2d day prior to the date on which payments are due individual producers, pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator, an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section; and

(c) In the case of milk received by a handler from a cooperative association in its capacity as a handler such handler shall on or before the second day prior to the date on which payments are due individual producers, pay to such cooperative association for milk so received during the month, an amount not less than the value of such milk computed at the applicable class prices for the location of the plant of the buying handler.

§ 902.81 Producer butterfat differential.

In making payments pursuant to § 902.80 (a) or (b) the uniform price shall be adjusted for each one-tenth of one percent of butterfat content in the milk of each producer above or below 3.5 percent, as the case may be, by a butterfat differential equal to the average of the butterfat differentials determined pursuant to § 902.51 (a) and (b) weighted by the pounds of butterfat in producer milk in each class and rounded to the nearest full cent.

§ 902.82 Location differential to producers.

In making payments to producers or to a cooperative association pursuant to § 902.80 (a) or (b) a handler shall deduct with respect to all milk received at his pool plant(s) located 75 miles by shortest highway distance from the zero milestone in the District of Columbia, as determined by the market administrator, 12 cents per hundredweight plus 1.5 cents for each 10-mile additional distance, or fraction thereof, which such plant is located from such milestone.

§ 902.83 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 §§ 902.62 (c), 902.84 and 902.86 and out of which he shall make all payments pursuant to §§ 902.85 and 902.86: *Provided,* That the market administrator shall offset any such payment due to any handler against payment due from such handler.

§ 902.84 Payments to the producer-settlement fund.

On or before the 11th day after the end of each month, each handler, including a cooperative association which is a 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 is greater than the sum required to be paid producers by such handler pursuant to § 902.80 (a) and (b).

§ 902.85 Payments out of the producer-settlement fund.

On or before the 12th day after the end of the month, 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 § 902.80(a) and (b) is greater than the net pool obligations of such handler: *Provided,* That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 902.86 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the marketing administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 902.87 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments directly to producers for

milk (other than milk of his own production) pursuant to § 902.80(a) shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions to the market administrator on or before the 18th day after the end of the month. Such money shall be expended by the market administrator to provide market information and to verify the weights, samples and tests of milk of producers who are not receiving such service from a cooperative association; and

(b) In the case of producers for whom the Secretary determines a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made directly to such producers pursuant to § 902.80(a) as are authorized by such producers on or before the 18th day after the end of each month and pay such deductions to the cooperative rendering such services.

§ 902.88 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler, including any cooperative association which is a handler, shall pay to the market administrator on or before the 18th day after the end of the month, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, for each hundredweight of skim milk and butterfat contained in (a) producer milk (including such handler's own farm production), (b) other source milk allocated to Class I milk pursuant to § 902.46 (a)(2), (3), and (b), or (c) Class I milk for which a payment is due pursuant to § 902.62(c).

§ 902.89 Termination of obligations.

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

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the 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 that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin until the first day of the month following the month during which all such books and records pertaining to such obligations 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; and

(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 month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time files, pursuant to section 8c(15)(A) of the act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

§ 902.90 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 § 902.91.

§ 902.91 Suspension or termination.

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

§ 902.92 Continuing obligations.

If under the suspension or termination of any or all provisions of this part, there are any obligations thereunder, the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 902.93 Liquidation.

Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignment or other instruments necessary or appropriate to effectuate any such disposition. If the liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 902.100 Agents.

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

§ 902.101 Separability of provisions.

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

Issued at Washington, D.C., the 30th day of January 1959.

[SEAL] ORIS V. WELLS, *Administrator.*

[F.R. Doc. 59-957; Filed, Feb. 3, 1959; 8:51 a.m.]

[7 CFR Part 997]

[Docket No. AO-205-A2]

FILBERTS GROWN IN OREGON AND WASHINGTON

Notice of Hearing With Respect to Amendment of Marketing Agreement and Order

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and in accordance with applicable rules of practice and procedure governing proceedings to formulate marketing agreement and orders (7 CFR Part 900, 23 F.R. 4027, 4779 and 9831), a notice is hereby given of a public hearing to be held at 9:30 a.m., P.s.t., on February 19, 1959, in the Conference Room, Second Floor, Ross Building, 209 Southwest Fifth Avenue, Portland 4, Oregon, with respect to proposed further amendment of Marketing Agreement No. 115 and Order No. 97 (7 CFR Part 997) regulating the handling of filberts grown in Oregon and Washington. The proposed amendment has not received the approval of the Secretary of Agriculture.

The public hearing will be held for the purpose of receiving evidence with respect to the proposals hereinafter set

forth, or appropriate modifications thereof.

The following have been proposed by the Filbert Control Board, the administrative agency under the Filbert Marketing Agreement and Order:

1. Delete §§ 997.5 and 997.6.
2. Renumber § 997.7 as § 997.5.
3. Renumber § 997.8 as § 997.6.
4. Delete §§ 997.10, 997.11, 997.12, 997.13, and 997.15.
5. Renumber § 997.16 as § 997.7 and amend it to read as follows:

§ 997.7 To handle.

"To handle" means to sell, consign, transport or ship (except as a common or contract carrier of filberts owned by another person), or in any other way to put filberts 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 handlers within the production area shall not be considered as handling.

6. Renumber § 997.9 as § 997.8 and amend it to read as follows:

§ 997.8 Handler.

"Handler" means any person who handles filberts.

7. Renumber § 997.14 as § 997.9 and amend it to read as follows:

§ 997.9 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 § 997.45.

8. Add new § 997.10 to read as follows:

§ 997.10 Certified filberts.

(a) *Inshell.* "Certified inshell filberts" means all inshell filberts inspected pursuant to § 997.46 and certified as meeting the grade, size and quality requirements prescribed pursuant to § 997.45.

(b) *Shelled.* "Certified shelled filberts" means all shelled filberts inspected pursuant to § 997.46 and certified as meeting the grade, size and quality requirements prescribed pursuant to § 997.45.

9. Add a new § 997.11 to read as follows:

§ 997.11 Substandard filberts.

"Substandard filberts" means filberts or filbert material that does not meet the grade and size regulations effective pursuant to § 997.45.

10. Add a new § 997.12 to read as follows:

§ 997.12 Restricted percentage.

"Restricted percentage" for each fiscal year shall be that portion of the available inshell supply in excess of inshell trade demand within the Continental United States as established by the Secretary.

11. Renumber § 997.18 as § 997.13.
12. Delete §§ 997.17 and 997.20.
13. Renumber § 997.22 as § 997.14, and amend it to read as follows:

§ 997.14 Board.

"Board" means the Filbert Control Board established pursuant to § 997.30.

14. Renumber § 997.19 as § 997.15, and amend it to read as follows:

§ 997.15 Inshell handler carryover.

"Inshell handler carryover" as of any given date means all certified inshell filberts wherever located, then held by handlers or for their accounts, whether or not sold, including the estimated certified equivalent of those inshell filberts then held by handlers in graded or ungraded lots which have not theretofore been certified and are intended for handling as inshell filberts.

15. Renumber § 997.21 as § 997.16, and amend it to read as follows:

§ 997.16 Inshell trade demand.

"Inshell trade demand" means the quantity of inshell filberts acquired from all handlers during a fiscal year for distribution in the Continental United States.

16. Renumber § 997.23 as § 997.17.

FILBERT CONTROL BOARD

17. Amend § 997.30 to read as follows:

§ 997.30 Establishment and membership.

There is hereby established a Filbert Control Board consisting of nine members, each of whom shall have an alternate. The nine member positions shall be allocated as follows:

(a) One handler member to represent cooperative handlers;

(b) One handler member to represent independent handlers;

(c) One handler member to represent cooperative handlers or independent handlers whichever group of such handlers handled more than 50 percent of the filberts handled by all handlers during the preceding fiscal year;

(d) Two grower members to represent growers whose filberts are handled through cooperative handlers;

(e) Two grower members to represent growers whose filberts are handled through independent handlers;

(f) One grower member to represent growers whose filberts are handled through cooperative handlers or independent handlers whichever group of such handlers handled more than 50 percent of the filberts handled by all handlers during the preceding fiscal year; and

(g) One member who is neither a grower nor a handler.

18. Renumber § 997.32 as § 997.31 and amend it to read as follows:

§ 997.31 Nominations.

(a) Nominees for the respective member and alternate member positions specified in § 997.30 (a) to (g) shall be chosen by ballot in an election conducted by the Board as follows:

(1) Nominees for the respective grower and handler member positions on the Board shall be submitted by the Board to the Secretary on or before June 1 of each year together with such related information as he may require. The Board shall mail or otherwise make available to handlers and independent growers ballots and necessary voting information, including the names of all candidates proposed to the Board. At the time ballots are distributed, the Board shall furnish pertinent information on balloting through press releases to publications of its selection having general circulation in filbert producing localities. Nominees for each member and alternate member position shall be voted upon separately by members of the group they are to represent.

(2) Each handler's vote shall be weighted by the quantity of filberts (inshell basis) handled by him during the preceding fiscal year. The nominee for each handler member position shall be the candidate receiving the highest vote for the position.

(3) Growers whose filberts are handled through cooperative handlers shall vote for nominees for grower member positions through such handlers. Each such cooperative handler's vote for a candidate for each grower member shall be weighted in the same manner as handler's votes. The nominee for each position shall be the person receiving the highest vote for that position.

(4) Growers whose filberts are handled through independent handlers shall vote for nominees for each grower member position representing such group. The nominee for each position representing such grower group shall be the candidate receiving the highest number of votes for that position. No such grower may vote for or be any such nominee to serve on the Board who during the then current fiscal year handled any filberts other than of his own production.

(b) Nominees for the member and alternate member positions specified in § 997.30 (g) shall be chosen by the other eight members following their selection by the Secretary.

19. Renumber § 997.31 as § 997.32 and amend it to read as follows:

§ 997.32 Selection and term of office.

(a) *Selection.* Members and their respective alternates shall be selected by the Secretary from nominees submitted by the Board or from among other qualified persons.

(b) *Term of office.* The term of office for each member and alternate position shall be two years beginning August 1 (provided that the initial term of office of the two newly created grower member positions and the two handler member positions specified in § 997.30 (a) and (b) shall expire at the end of the fiscal year following the effective date of this subpart, as amended). Members and alternates shall serve in such capacities for the portions of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

20. Amend § 997.33 to read as follows:

§ 997.33 Qualification.

Any person selected to serve as a member or an alternate of the Board shall qualify by filing with the Secretary a written acceptance of his appointment. Any member or alternate member who at the time of his selection was a member or employed by a member of the group which nominated him shall upon ceasing to be such member or employee become

disqualified to serve further and his position on the Board shall be deemed vacant.

21. Renumber § 997.36 as § 997.34 and amend it to read as follows:

§ 997.34 Vacancy.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member or alternate of the Board, a successor for his unexpired term shall be selected by the Secretary after consideration of nominations or recommendations which may be submitted by members of the group in which such vacancy exists unless selection is deemed unnecessary by the Secretary.

22. Combine and renumber §§ 997.34 and 997.35 as § 997.35 and amend the provisions thereof to read as follows:

§ 997.35 Alternates.

(a) An alternate for a member of the Board shall act in the place of such member in his absence or in the event of his death, removal, resignation or disqualification until a successor for his unexpired term has been selected and has qualified.

(b) If a member of the Board and his alternate are unable to attend a Board meeting, the Board may designate any other alternate from the group in § 997.30 represented by such absent member to serve in the member's place.

23. Renumber § 997.40 as § 997.36 and amend it to read as follows:

§ 997.36 Procedure.

(a) Seven members of the Board shall constitute a quorum at an assembled meeting of the Board, and any action of the Board shall require the concurring vote of at least six members. At any assembled meeting all votes shall be cast in person.

(b) The Board may vote by telephone, telegraph, or other means of communication provided that any votes so cast shall be confined promptly in writing. When any proposition is submitted for voting by any such method one dissenting vote shall prevent its adoption.

24. Renumber § 997.38 as § 997.37.

25. Renumber § 997.39 as § 997.38 and amend it to read as follows:

§ 997.38 Duties.

The Board shall have among others the following duties:

(a) To select from among its members such officers and adopt rules or bylaws for the conduct of its meetings as it deems advisable;

(b) To act as intermediary between the Secretary and any handler or grower;

(c) To keep minute books and records which will clearly reflect all of its acts and transactions, and maintain such books and records available for examination by the Secretary at any time;

(d) To furnish to the Secretary such available information as he may request;

(e) To appoint such employees as it deems necessary and determine the salaries, define the duties and fix the bonds of such employees;

(f) To cause the books of the 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 Board deems necessary or as the Secretary may request, and to file with the Secretary three copies of the reports of all audits made;

(g) To investigate the growing, shipping, and marketing conditions with respect to filberts and assemble data in connection therewith;

(h) To give the Secretary the same notice of the meetings of the Board as is given to its members; and

(i) To furnish to the Secretary a verbatim report of the proceedings of each meeting of the Board held for the purpose of making marketing policy recommendations.

MARKETING POLICY

26. Renumber § 997.62 as § 997.40 and amend it to read as follows:

§ 997.40 Board's estimates and recommendations.

(a) Each fiscal year prior to the time the new crop filberts are available for handling the Board shall hold a meeting for the purpose of recommending to the Secretary a marketing policy for such year. Such recommendation shall include the following:

(1) *Inshell allocation.* (i) The Board's estimate of the quantity of inshell filberts to be produced during such year which could be made available for inshell use;

(ii) The Board's record of the inshell handler carryover of filberts on August 1 of such year;

(iii) The Board's recommendation for inshell handler carryover of filberts at the end of such year which will be available for inshell use thereafter;

(iv) The Board's estimate of the inshell trade demand for filberts for such year taking into consideration trade carryover at the beginning and end of the year, imports, prices, prospective shelled filbert market conditions and other factors affecting inshell trade demand during such year;

(v) The Board's recommendation as to the restricted percentage to be established for such year.

(2) *Grade and size regulations.* The Board shall review the grade and size regulations in effect and may recommend modifications.

(b) *Revisions.* At any time prior to May 1 of each fiscal year the Board may recommend to the Secretary revisions in its marketing policy for such year.

27. Combine and renumber §§ 997.60, 997.61 and 997.70(a), as § 997.41 and amend the provisions thereof to read as follows:

§ 997.41 Restricted percentage.

Whenever the Secretary finds, on the basis of a Board recommendation or other information, that limiting the quantity of inshell filberts which may be handled during a fiscal year would tend to effectuate the declared policy of the act, he shall establish a restricted percentage for such year. Similarly, the restricted percentage may be decreased at any time by the Secretary, and the decreased percentage shall remain in effect until superseded. Prior to establishment of a restricted percentage by the Secretary for a fiscal year, the restricted percentage for the previous year shall remain in effect.

GRADE AND SIZE REGULATION

28. Renumber § 997.50 as § 997.45 and amend it to read as follows:

§ 997.45 Establishment of grade and size regulations.

(a) *Minimum standards.* No handler shall handle any inshell or shelled filberts unless such inshell filberts meet requirements of Oregon No. 1 grade and medium size and such shelled filberts meet the requirements of Oregon Standards for Shelled Filberts as defined in the then effective regulations of the Oregon State Department of Agriculture except as may be provided in § 997.56. These minimum standards may be modified by the Secretary on the basis of a recommendation of the Board or other information. Such minimum standards and the provisions of this part relating to the administration thereof shall continue in effect irrespective of whether the season average price of filberts is above the parity level specified in section 2(1) of the act.

(b) *Additional grade and size regulations.* When the season average price of filberts is not determined to be above parity, the Secretary shall establish additional grade and size regulations for inshell and/or shelled filberts, if he finds, on the basis of a recommendation of the Board or other information, that such regulations would tend to effectuate the declared policy of the act.

29. Combine and renumber §§ 997.51 and 997.52 as § 997.46 and amend the provisions thereof to read as follows:

§ 997.46 Inspection and certification.

(a) Before or upon handling or withholding any filberts, each handler shall, at his own expense, cause such filberts to be inspected and certified by the Federal-State Inspection Service as meeting the then effective grade and size regulations. The handler obtaining such inspection of filberts shall cause a copy of the certificate issued by the Inspection Service with regard to such filberts to be furnished to the Board.

(b) All filberts so inspected and certified shall be identified by seals, stamps, tags or other identification prescribed by the Board. Such identification shall be affixed to the containers under direction and supervision of the Board or the Federal-State Inspection Service, and shall not be removed or altered by any person except under direction and supervision of the Board.

(c) Whenever the Board determines that the length of time in storage or conditions of storage of any lot of filberts which has been previously inspected, have been or are such as to normally cause deterioration, such lot of filberts shall be reinspected at the handler's expense prior to handling.

30. Renumber § 997.53 as § 997.47 and amend it to read as follows:

§ 997.47 Substandard filberts.

The Board shall, with the approval of the Secretary, establish such reporting

and disposition procedures as it deems necessary to insure that filberts which do not meet the in-shell or shelled minimum standard requirements do not enter normal market outlets for certified filberts.

CONTROL OF DISTRIBUTION

31. Delete § 997.63.

32. Renumber §§ 997.64 and 997.72 as § 997.50 and amend the provisions thereof to read as follows:

§ 997.50 Restricted obligation.

(a) No handler shall handle in-shell filberts unless prior to or upon shipment thereof, he has withheld from handling a quantity, by weight, of certified in-shell filberts equal to the restricted percentage applicable to such filberts handled or has shelled an equivalent quantity of uncertified filberts pursuant to § 997.51: *Provided,* That the restricted obligation may be temporarily deferred pursuant to the bonding provisions in § 997.53. The Board, with the approval of the Secretary, may establish such rules and regulations governing both the withholding of certified in-shell filberts and the subsequent production of shelled filberts therefrom and the certification of shelled filberts produced from uncertified in-shell filberts as may be deemed necessary to adequately maintain their respective identities.

(b) Certified filberts withheld by a handler in satisfaction of his restricted obligation shall be held by him subject to examination by and accounting control of the Board until disposed of pursuant to this part.

(c) Any handler having in-shell filberts which have been certified in the then current fiscal year but which he intends to handle during the succeeding fiscal year may, prior to the close of the current fiscal year, declare in writing such intention to the Board. Upon such declaration he shall comply with all obligations that would accrue upon handling such filberts during the current fiscal year.

(d) Whenever the restricted percentage for a fiscal year is reduced, each handler's restricted obligation shall be reduced to conform with the new restricted percentage. Any handler who, upon such reduction, is withholding certified in-shell filberts in excess of his restricted obligation may have excess quantities freed from withholding by complying with such procedures as the Board may require to insure identification of the remaining certified in-shell filberts withheld.

33. Add a new § 997.51 to read as follows:

§ 997.51 Restricted credit for shelled filberts.

Any handler shall be credited with satisfaction of any or all of his restricted obligation to the extent that he shells uncertified filberts under the direction or supervision of the Board, and has such filberts inspected and certified as meeting the minimum standard for shelled filberts. The weight of shelled filberts to be so credited shall be the in-shell equivalent of the certified weight of such shelled filberts, based on a shelling ratio established by the Board. In establishing the shelling ratio, the Board shall take into consideration seasonal variations in the yield of filbert kernels from in-shell filberts and the general size and quality of the filberts.

34. Combine and renumber §§ 997.74 and 997.75 as § 997.52 and amend the provisions thereof to read as follows:

§ 997.52 Disposition of withheld filberts.

Certified inshell filberts withheld from handling as inshell filberts pursuant to § 997.50 may be sold or delivered to another handler as provided in § 997.55, or be disposed of as follows:

(a) *Shelling.* Any handler may dispose of such filberts by shelling them under the direction or supervision of the Board.

(b) *Export.* Any handler desiring to export certified inshell filberts to meet his restricted obligation shall deliver such filberts to the Board. Sales of such filberts for shipment to export outside the United States shall be made only by the Board. The 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 Board is unable to export, shall be returned to the handler delivering them. A handler may be permitted to act as an agent of the Board upon execution of an Export Agreement with the Board and upon subsequent compliance with such terms and conditions as the Board may require in negotiating and executing export sales. When acting as an agent of the Board, a handler shall be entitled to receive a selling commission of 5 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 restricted certified inshell filberts are so sold by the Board. Any handler failing to comply with such terms and conditions with respect to any such lot shipped in export, pursuant to this section, shall forfeit any restricted credit he may have received for such lot.

(c) *Other outlets.* In addition to the dispositions prescribed in paragraphs (a) and (b) of this section, the Board may designate such other dispositions, or outlets into which such filberts may be disposed of, which it determines are noncompetitive with normal domestic markets for inshell filberts.

35. Combine and renumber §§ 997.65, 997.66, 997.67, and 997.70(b) as § 997.53 and amend the provisions thereof to read as follows:

§ 997.53 Deferring satisfaction of restricted obligation.

(a) *Bonding.* Any handler may defer satisfaction of his restricted obligation to any date not later than May 1 of the fiscal year, unless specifically extended by action of the Board, upon filing with the Board a bond or bonds, secured by a surety or sureties acceptable to the Board, that prior to such date he will have fully satisfied his restricted obligation. Such bonds shall at all times, during their effective period, be no less than the total value of the deferred restricted obligation based on the bonding rate established by the Board.

(b) *Bonding rates.* The bonding rate for each fiscal year shall be an amount per pound of inshell filberts based on the weighted average opening price of such pack as is designated by the Board, of the minimum number of handlers who, during the preceding fiscal year, handled more than 50 percent of the inshell filberts handled within the Continental United States by all handlers. Such bonding rate shall also continue in effect during the subsequent fiscal year until a new bonding rate is established by the Board.

(c) *Disposition of sums collected through default on bonds.* Any sums collected through the default of a handler on his bond shall be distributed among all handlers in proportion to the quantity of inshell filberts handled by the respective handlers during the fiscal year in which the default occurred. Collection upon any defaulted bond shall be deemed a satisfaction of the restricted obligation represented by the collection.

36. Renumber § 997.71 as § 997.54, and amend it to read as follows:

§ 997.54 Exchange of certified inshell filberts withheld.

Any handler who has withheld from handling certified inshell filberts pursuant to the requirements of § 997.50 may exchange therefor an equal quantity, by weight, of other certified inshell filberts. Any such exchange shall be made under the direction or supervision of the Board.

37. Renumber § 997.68 as § 997.55 and amend it to read as follows:

§ 997.55 Interhandler transfers.

(a) Within the area of production, uncertified filberts may be sold or delivered by one handler to another for packing or shelling and the receiving handler shall be responsible for compliance with the regulations effective pursuant to this part with respect to such filberts.

(b) Within the area of production, certified inshell filberts withheld by a handler in satisfaction of his restricted obligation may be sold or delivered to another handler for shelling or export.

(c) Within the area of production, certified shelled filberts may be sold or delivered by one handler to another and the transferring handler shall be responsible for compliance with the regulations effective pursuant to this part unless specified and agreed upon in writing by both handlers that the receiving handler shall be responsible for such compliance and a copy of such agreement is furnished to the Board.

(d) All interhandler transfers of filberts pursuant to this section shall be made under the direction or supervision of the Board.

38. Delete §§ 997.69 and 997.71.

39. Renumber § 997.73 as § 997.56 and amend it to read as follows:

§ 997.56 Exempt shipments.

The Board, with the approval of the Secretary, may exempt from handling and assessment requirements such quantities of filberts and types of shipment as do not interfere with the volume and

quality control objectives of this part and may exempt from inspection shelled filberts produced from certified inshell filberts. The Board shall require such reports, certifications or other assurance as it deems necessary to ensure that such filberts are handled or used only as authorized pursuant to this section.

EXPENSES AND ASSESSMENTS

40. Delete § 997.76.

41. Combine and renumber §§ 997.37 and 997.90 as § 997.60 and amend the provisions thereof to read as follows:

§ 997.60 Expenses.

(a) *Authorization.* The Board is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred for its maintenance and functioning and for such purposes as the Secretary may determine to be appropriate pursuant to the provisions of this part.

(b) *Budget.* At the beginning of each fiscal year, the Board shall submit to the Secretary its recommendations as to the budget of expenses for such fiscal year, together with all information supporting such recommendations. On the basis of the Board recommendation and other information, the Secretary shall establish a budget of expenses which he finds are reasonable and likely to be incurred by the Board to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to defray such expenses shall be acquired by levying assessments as provided in § 997.61.

(c) *Compensation of Board members and alternates.* The members of the Board and their alternates shall serve without compensation, but members and alternates acting as members shall be allowed their necessary expenses, provided that, the Board may request the attendance of one or more alternates not acting as members at any meeting of the Board, and such alternates may be allowed their necessary expenses.

42. Renumber § 997.91 as §997.61 and amend it to read as follows:

§ 997.61 Assessments.

For each fiscal year the Secretary shall fix an assessment rate per pound of certified inshell filberts, or the inshell equivalent of certified shelled filberts, which will provide sufficient funds to meet the authorized expenses and reserve requirements of the Board. At any time during or after a fiscal year when he determines on the basis of a Board recommendation or other information that a different rate is necessary, the Secretary may modify the assessment rate and the new rate shall be applicable to all filberts handled or declared for handling during such year. Each handler shall pay to the Board on demand assessments on all certified filberts handled or declared for handling by him during the fiscal year at the rate established by the Secretary.

43. Add a new § 997.62 to read as follows:

§ 997.62 Accounting.

(a) *Operating reserve.* The Board with the approval of the Secretary may establish and maintain an operating reserve in an amount not to exceed 50 percent of the average fiscal year Board expenses for the five preceding fiscal years. Funds in such reserve may be used:

(1) To defray expenses incurred during any fiscal year prior to the time assessment income is sufficient to cover such expenses;

(2) To cover deficits during any fiscal year when assessment income is less than expenses;

(3) To defray expenses during any fiscal year when assessment income is not available due to suspension of any or all of the provisions of this part.

(b) *Refunds.* After the end of each fiscal year funds in excess of the fiscal year's expenses and reserve requirements shall be refunded to handlers from whom collected prorated on the basis of the ratio of each handler's assessment obligation to the total assessment obligations of all handlers for such fiscal year. Such pro rata amount, less any indebtedness to the Board, shall be refunded to each handler upon request or credited to his account with the Board.

(c) *Termination.* Upon termination of this subpart any money remaining unexpended in possession of the Control Board shall be distributed in such manner as the Secretary may direct: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

RECORDS AND REPORTS

44. Renumber § 997.80 as § 997.65 and amend it to read as follows:

§ 997.65 Carryover reports.

On or before January 15 and August 5 of each year each handler shall report to the Board his inventory of filberts as of January 1 and August 1 respectively of such year. Such reports shall be submitted on a form supplied by the Board and shall show whether such filberts are in shell or shelled, certified or uncertified, graded or ungraded, or are substandard.

45. Renumber § 997.81 as § 997.66 and amend it to read as follows:

§ 997.66 Reports of disposition of certified inshell filberts withheld.

(a) Each handler, before he disposes of any quantity of certified inshell filberts withheld by him, shall file with the Board a report of his intention to dispose of such quantity.

(b) Each handler, promptly after the disposition of such quantity of certified inshell filberts, shall file with the Board a report of the actual disposition of such quantity. Such reports shall be certified to the Board and to the Secretary as to their correctness and accuracy.

46. Renumber § 997.82 as § 997.67 and amend it to read as follows:

§ 997.67 Other reports.

Each handler shall furnish to the Board such other reports as the Board, with the approval of the Secretary, may require to enable it to perform its administrative functions pursuant to the provisions of this part.

47. Renumber § 997.83 as § 997.68 and amend it to read as follows:

§ 997.68 Verification of reports.

For the purpose of checking and verifying reports submitted by handlers, the Board through its duly authorized agents, shall have access to each handler's premises at any time during reasonable business hours, and shall be permitted to inspect any filberts held by such handler and all records of the handler with respect to filberts held or disposed of by such handler. Each handler shall furnish all labor necessary to facilitate such inspections as the Board may make of such handler's holdings of any filberts. Each handler shall store filberts in such manner as to facilitate inspection, and shall maintain adequate storage records which will permit accurate identification of all such filberts held or disposed of.

48. Renumber § 997.84 as § 997.69 and amend it to read as follows:

§ 997.69 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 kept in the custody and under the control of one or more employees of the Board, and shall be disclosed to no person except the Secretary.

49. Add a new § 997.70 to read as follows:

§ 997.70 Records.

Each handler shall maintain such records of filberts received, held and disposed of by him as may be prescribed by the Board in order to perform its functions under this subpart. Such records shall be retained and be available for examination by authorized representatives of the Board or the Secretary for a period of two years after the end of the fiscal year in which the recorded transactions are completed.

MISCELLANEOUS PROVISIONS

50. Add a new § 997.90 to read as follows:

§ 997.90 Right of the Secretary.

The members of the Board (including successors, alternates, or other persons selected by the Secretary), and any agent or employee appointed or employed by the 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 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.

51. Renumber §§ 997.95 through 997.102 as §§ 997.91 through 997.98, respectively.

52. Amend § 997.100 (renumbered as § 997.96) by changing present paragraph

(c) to (d) and adding a paragraph (c) to read as follows:

(c) All rules and regulations issued or approved by the Secretary pursuant to this part, which are in effect immediately prior to the date of this amendment shall continue in effect under this subpart as originally issued, or subsequently modified, until such rules and regulations are changed, modified, or suspended in accordance with this subpart.

53. Make such changes in the marketing agreement and order as may be necessary to make the entire marketing agreement and order conform to any amendment proposals which may be adopted as a result of this hearing.

Copies of this notice may be obtained from the Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, 1218 Southwest Washington Street, Portland 5, Oregon, or from the Hearing Clerk, Administration Building, United States Department of Agriculture, Washington 25, D.C., or may be there inspected.

Dated: January 29, 1959.

[SEAL] F. R. BURKE,
Acting Deputy Administrator, Marketing Services.

[F.R. Doc. 59-916; Filed, Feb. 3, 1959; 8:45 a.m.]

[7 CFR Part 1021]

[AO-307]

TOMATOES GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Decision With Respect to Proposed 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.; 68 Stat. 906, 1047), and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Edinburg, Texas, November 5-7, 1958, pursuant to notice thereof which was published in the FEDERAL REGISTER (23 F.R. 7944, upon proposed Marketing Agreement No. 136 and Order No. 121, regulating the handling of tomatoes grown in the Lower Rio Grande Valley in Texas.

On the basis of the evidence introduced at the aforesaid hearing and record thereof, the Deputy Administrator, Agricultural Marketing Service, on December 23, 1958, filed with the Hearing Clerk, United States Department of Agriculture, the recommended decision in this proceeding. The notice of the filing of such recommended decision affording opportunity to file written exception thereto was published December 31, 1958, in the FEDERAL REGISTER (23 F.R. 10541).

Rulings. Within the period provided therefor, exceptions were filed by Sid L. Hardin, Edinburg, Texas, as attorney for opponents (H. Rouw Company, Wallace Fruit & Vegetable Company, Interstate Fruit & Vegetable Co., Inc., and others (unidentified)) protesting the adoption of a marketing agreement and order program for tomatoes grown in the Lower Rio Grande Valley, Texas. Each point in the exceptions was given careful consideration in conjunction with the evidence pertaining thereto in arriving at the findings and conclusions set forth herein.

Special exception numbered 1 is taken to a purported finding in the recommended decision of the Deputy Administrator that Federal jurisdiction extends to all tomatoes shipped out of the production area in intrastate commerce upon the theory that such tomatoes eventually find their way into interstate commerce, on the ground that such a finding is not supported by the hearing record. The findings and conclusions of the Deputy Administrator with respect to the right to exercise Federal jurisdiction do not include a finding as stated in this exception nor is the right to exercise Federal jurisdiction based upon such a finding. The right to exercise Federal jurisdiction is based upon record evidence, upon which the findings and conclusions set forth in the recommended decision establish that the shipments of tomatoes out of the production area are in interstate commerce or are in the current of interstate commerce through the sale or transportation of such tomatoes which burdens, affects or obstructs interstate commerce. The substantial evidence in support of these findings and conclusions is set forth with particularity in the recommended decision and is not based on the theory referred to in this exception. Hence, this exception is erroneously taken and without merit.

Special exception No. 2 is taken to a finding in the recommended decision that a need for the proposed marketing agreement and order exists on the ground that such a finding is not supported by the record evidence in that the area was subject to a State program during the period of 1945-51 and the evidence shows that only one percent of total shipments are culls. The period of 1945-51 cited in the recommended decision related to statistical data on the range of shipments from the production area and the hearing record contains no evidence pertaining to the State program during this period. The finding that a need for the program exists is based on the several reasons set forth in the recommended decision wherein, among others, the shipment of low quality tomatoes, including culls, and their adverse effect on the market, is discussed in detail. This exception presents no new argument pertaining thereto, hence, the exception is denied.

Opponents' special exceptions numbered 3 through 26 are related to specific provisions in the proposed marketing order and are ruled upon as follows:

3. Opponents' exception to the indefiniteness of "various degrees" of ripeness in definition in § 1021.12 *Maturity* is accepted and the definition of maturity is changed to read "specific degrees" in place of "various degrees."

4. Opponents' exception to the composition of the committee as proposed in § 1021.22 indulges the assumption that the six producer-members will be unqualified to make proper decisions and the further assumption that certain types of handlers will be excluded from producer-handler representation on the committee. The findings and conclusions of the recommended decision consider at length the hearing record evidence on the adequacy and appropriateness of representation on the committee. These findings and conclusions adequately support the composition of the committee as set forth in § 1021.22. The exception therefore, is based essentially on assumptions and is denied.

5. Opponents' exception to the Secretary's authority in § 1021.27 to designate particular agencies to assist him in convening meetings for the selection of committee members is argumentative and speculates that discrimination will result against producers who are not members of particular producer or shipper groups. The hearing record does not support any assumption that discrimination will result against any producers by reason of such designation, particularly in view of the record evidence that the Extension Service and similar organizations are the agencies or groups contemplated as of possible assistance in such matters; hence, this exception is denied.

6. The exception to § 1021.33 contending that the expense of committee members and alternates is without control is denied inasmuch as all expenses are subject to budgetary approval, committee review, and audit.

7. The exception to § 1021.35 on the ground that no limit is placed on salaries and number of employees is denied for the same reason set forth under No. 6 above and for the additional reason that review by the committee and by the Department provides a reasonable check to determine adequate and appropriate limitations. However, that portion of this exception contending that the words "or other appropriate means" should be stricken from the proposed order as it permits funds to be handled without a fidelity bond (§ 1021.35(d)) is accepted. Each committee member, employee, agent or committee representative responsible for committee funds or other important assets should be properly bonded as protection for the committee assets.

8. Exception to § 1021.35 contending that the prospective committees will be unqualified to recommend a marketing policy is denied in that it is unsupported by the record of hearing and indulges an assumption as to the competency of prospective committee members and staff.

9. Exception to § 1021.40 is based on the assumption that handlers may be required to pay advance assessments. The proposed marketing order contains no authority requiring the payment of assessments in advance of handlings, hence, this exception is without foundation and is denied.

10. Exception to § 1021.41 is taken on the grounds that it is vague and indefinite as to rates of assessments, how, and

upon what levied. The provision that a budget of estimated income and expenditures shall be required at the beginning of each fiscal period establishes a basis for calculating assessments per lug or other customary shipping unit so that handlers may better know at the beginning of each season their approximate unit costs of operation. The exception, therefore, is denied.

11. The exception taken to § 1021.42 on the ground that it authorizes an increase or decrease in assessments is denied since the authority established therein is based on the record of hearing and a means is thereby provided by which the industry pays the expenses of administering the program that may vary due to varying circumstances.

12. Exception is taken to § 1021.48 as authorizing duplicate research activities. The exception is denied. The evidence in the hearing record establishes that any research activities recommended for consideration or approval by the Secretary would avoid duplication of any known existing research activities concerned with the same problem.

13. Exception to § 1021.50 is made upon the grounds that producers can control the action of the committee and are unqualified for committee responsibilities. This exception is denied as it indulges in unwarranted assumptions and is repetitious of former exceptions that are denied.

14. Exception to § 1021.52 argues that the section vests the committee with authority to prohibit all shipments from which it is contended that the committee has the power of life and death over the industry and the section is unconstitutional. The committee's authority under the proposed marketing agreement and order is administrative and, as specifically set forth in this section, its functions with respect to marketing regulations which may be issued thereunder is advisory. The exception is in error in ascribing regulatory authority to the committee as regulations may be issued only by the Secretary. Moreover the hearing record conclusively shows that under the order no such action as complete prohibition of all shipments is contemplated or intended to be authorized. The argument, therefore, is without merit and the exception is denied.

15. Exception to § 1021.52 contends that handlers will thereby be prevented from obtaining containers in advance of the season. Such contention assumes without foundation the taking of action adverse to the interest of handlers. Since the exception is based on this assumption it is without merit and is denied.

16. Exception is taken to § 1021.55 in that the term "reasonable time" (should be "reasonable notice"), as that term is used in connection with notice of change in regulations, is not defined. The exception is denied inasmuch as specific determination of reasonable notice depends upon the facts existing at the time of regulation or changes in regulation. Reasonable notice in emergency situations may well differ from reasonable notice under ordinary circumstances.

17. Exception to § 1021.60 contends that the section requires inspection before tomatoes are graded and sized by the handler which misinterprets the requirements of this section and the definition of "handle" (§ 1021.7). The term handle, means to transport, sell or in any way to place tomatoes in the current of commerce between the production area and any point outside thereof: *Provided,* That such terms will not include the transportation, sale or delivery within the production area of tomatoes to a handler who is registered as such with the committee. The provisions of §§ 1021.60 and of 1021.7 specifically recognize that customarily Lower Valley Texas tomatoes are inspected after they have been graded and sized by packing house operators and that sales of such tomatoes are based upon inspected tomatoes. Therefore, the exception is denied.

18. The exception to § 1021.71 on the ground that the granting of exemptions as therein authorized will burden the market with low-grade tomatoes and nullify the objectives of the proposed marketing agreement and order misinterprets the purpose of this section. The objectives of the exemption provisions are not to nullify regulations but to provide equitable participation in marketing opportunities by producers or handlers whose crops are adversely affected by circumstances beyond their control or reasonable expectation, consequently, the exception is denied.

19. The exception to § 1021.74(b) relating to the purported delegation of authority by the Secretary is denied, inasmuch as this section merely reiterates the inherent authority of the Secretary under the act.

20. The arguments made under the exception to § 1021.81 that the section authorizes regulation of shipments of tomatoes to retail stores in Texas and such tomatoes are consumed locally and therefore not subject to Federal jurisdiction are not material or relevant to the provisions of this section which is concerned exclusively with compliance by handlers with the provisions of the order and the rules and regulations issued thereunder. On the question of the right to exercise Federal jurisdiction in the handling of Lower Rio Grande Valley tomatoes between the production area and any point outside thereof, see the ruling on special exception numbered 1, above. Accordingly, the exception is denied.

21. Exception is taken to § 1021.82 on the ground that the right of the Secretary as stated therein with respect to the proposed marketing agreement and order is an unlawful delegation of power to the Secretary and that it is contrary to our American system and way of life. The right of the Secretary as set forth in this section is a reiteration of the inherent authority of the Secretary under the act. Since the exception is merely argumentative, it is denied.

22. Exception to § 1021.84(c) is taken on the assertion that this section contains no provision for a referendum to be initiated by the producers for termination of the order. The terms of this subsection set forth the requirements established in the act under which an order must be terminated, if growers in appropriate numbers and volume indicate that termination is favored. Insomuch as a marketing order is issued by the Secretary only the Secretary can terminate it, but the Secretary can be required to terminate the order under the conditions set forth in § 1021.84(c). Since the exception is at variance with the applicable provisions of the act, the record of hearing, and the findings and conclusions thereon, it is denied.

23. Exception is taken to § 1021.90 in that it exempts committee members and employees from personal responsibility for possible errors of judgment or mistakes. Such an exemption is customary in vegetable marketing orders, is incidental to and not inconsistent with the terms and provisions of the act, and is necessary to effective administration of the order. Exemption from personal responsibility does not extend to acts of dishonesty, willful misconduct, or gross negligence. Inasmuch as this exception is without merit, it is denied.

24. (Improperly designated 25 by attorney for opponents.) Exception is taken to § 1021.95 on the ground that the section does not specify the qualifications of a registered handler with the committee. The exception is not material or relevant to § 1021.95, which is concerned exclusively with an indication by handlers that by signing a marketing agreement they favor or approve the issuance of an order containing the same terms as the marketing agreement. Accordingly, the exception is denied.

25. (Improperly designated 26 by attorney for opponents.) This exception to the inclusion of the Lower Rio Grande Valley fall crop of tomatoes under the proposed marketing agreement and order is denied on the basis of the hearing record evidence that such crop can also benefit from the use of the program.

26. (Improperly designated 27 by attorney for opponents.) Exceptions taken to the ruling in the recommended decision on points 1 through 12, inclusive, of opponents' brief filed prior to the recommended decision are denied for the reasons set forth in the recommended decision.

To the extent that the special exceptions of Interstate Fruit and Vegetable Company, Inc., adopt the above mentioned exceptions of the opponents and are substantially the same as opponents' exceptions they are approved or denied, as the case may be, in like manner as opponents' exceptions.

The special exception of Interstate Fruit and Vegetable Company, Inc., with respect to its position as the only handler processing, packing, and shipping pink tomatoes in the Lower Rio Grande Valley of Texas is considered at length in the recommended decision of the Deputy Administrator. The findings and conclusions in connection therewith set forth the basis for regulatory authority in proposed marketing order No. 121 providing that repacked tomatoes, such as "pinks" handled in considerable volume by Interstate Fruit and Vegetable Company, Inc., can be treated differently under regulations, to the point that they may be free from regulation. In this

connection, the proposed marketing order authorizes regulation only of tomatoes produced in the Lower Rio Grande Valley area of production as therein defined. The hearing record indicates at length that Interstate Fruit and Vegetable Company, Inc., also handles considerable quantities of mature green tomatoes from Lower Rio Grande Valley, and that considerable quantities of these Lower Rio Grande Valley tomatoes are often repacked as pink tomatoes. Accordingly, the exception is denied.

The exception relating to grades for "green wrapped mature tomatoes" and pink tomatoes overlooks the authority established in the proposed marketing order that grades and sizes may be established in terms of modifications of U.S. Standards for Fresh Tomatoes which authorizes the committee and the Secretary to consider appropriate differences, if any, between attributes of green wrapped tomatoes and those of greater degrees of maturity. Consequently, the exception is without merit and is denied.

The exceptions with respect to (3) the location of repackers in Florida, (5) specific mention in the proposed marketing order of the Interstate Fruit and Vegetable Company, Inc., (7) the range of shipments during the period 1945–51, and (8) the number of years' experience of the operator of Interstate Fruit and Vegetable Company, Inc., are not relevant to the provisions of the proposed marketing order and are lacking in foundation for exception.

The exception as to (6) containers is based upon an assumption that any container regulation shall be inimical to the interest of the Lower Valley tomato repacker. This assumption is not sustainable in that any regulation of containers issued under this specific authority must be in the interest of more orderly marketing tending to increase growers' prices towards parity. The exception, therefore, is denied.

The allegation in the final special exception that "The findings conclude that all tomatoes moved outside the area of production are destined for interstate commerce * * *" is in error. It is essentially the same as special exception numbered 1 above and is denied for the reasons there stated.

To the extent that the exceptions taken by opponents' attorney and by the Interstate Fruit and Vegetable Company, Inc., may otherwise be at variance with the findings and conclusions decided upon herein such exceptions are hereby denied.

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

(1) The existence of the right to exercise Federal jurisdiction;

(2) The need for the proposed regulatory program to effectuate the declared purposes of the act;

(3) The definition of the commodity and determination of the production area to be affected by the marketing agreement and order;

(4) The identity of the persons and transactions to be regulated; and

(5) The specific terms and provisions of the marketing agreement and order including:

(a) Definitions of terms used therein which are necessary and incidental to attain the declared objectives of the act, and including all those set forth in the notice of hearing, among which are those applicable to the following additional terms and provisions;

(b) The establishment, maintenance, composition, powers, duties, and operation of a committee, which shall be the administrative agency for assisting the Secretary in administration of the program;

(c) The authority to incur expenses and to levy assessments on shipments;

(d) The authority for the establishment of tomato marketing research and development projects;

(e) The method for limiting the handling of tomatoes grown in the production area;

(f) The methods for establishing minimum standards of quality and maturity;

(g) The methods for authorizing special regulations applicable to the handling of tomatoes for specified purposes or to specified outlets under special regulations that are modifications of, or amendments to, grade, size, and quality regulations;

(h) The necessity for inspection and certification of shipments;

(i) The relaxation of regulation in hardship cases and the methods and procedures applicable thereto;

(j) The procedure for establishing reporting requirements upon handlers;

(k) The requirements of compliance with all provisions of the marketing agreement and order and with regulations issued pursuant thereto; and

(l) Additional terms and conditions as set forth in §§ 1021.80 through 1021.95 and published in the FEDERAL REGISTER (23 F.R. 7944; 7998) on October 15 and 16, 1958, which are common to marketing agreements and orders.

Findings and conclusions. The findings and conclusions on the aforementioned material issues, all of which are based on the evidence introduced at the hearing and the record thereof, are as follows:

(1) Findings with respect to the right to exercise Federal jurisdiction. The Lower Rio Grande Valley, also commonly referred to as the Lower Valley, as that term is hereinafter used, is comprised of Cameron, Hidalgo, Starr, and Willacy Counties in Texas, and is one of the important tomato producing sections in the United States. Tomatoes in the Lower Valley are planted primarily for fresh market. Some tomatoes grown in the Lower Valley are canned but these usually represent salvage operations rather than production originally intended for canning purposes. The Lower Valley tomato crop is marketed during the "early spring deal," i.e. the early spring season, normally from about mid-April through the major part of June, and also during the "late fall deal", i.e., in the late fall season, usually in November and December, occasionally carrying over, weather and competition permitting, into early January.

Tomato acreage in this four county area along the southern border of Texas during the 1951–57 period, according to United States Department of Agriculture official crop reports, averaged slightly more than half the total U.S. early spring planted acreage and a similar proportion of harvested acreage, while production averaged 985,000 hundredweight annually or about 35 percent of total U.S. early spring crop production. In the late fall crop, Texas planted acreage during the same 1951–57 period averaged about ½ of the total U.S. late fall crop, with harvested acreage representing about the same proportion, while average annual production was 146,000 hundredweight approximating 12 percent of the U.S. late fall total.

Texas early spring tomato production in 1957 was 946,000 hundredweight compared with 3,434,000 hundredweight for the total U.S. early spring crop. Comparable figures for 1958 show 1,400,000 hundredweight for Texas and 3,380,000 hundredweight for the total U.S. early spring tomato crop. The same sources show 64,000 for the 1957 late fall Texas crop out of a group total for the U.S. of 1,156,000 hundredweight.

Tomatoes are transported from the Lower Valley to market by rail and by truck. In the 1956 early spring season 2589 rail cars and 911 truck lots were officially reported as marketed from the Lower Valley. The following season 2464 cars and 926 carlot equivalents by truck were reported as marketed from the Lower Valley between April 18 and June 6, 1957. In the 1958 season, 2466 rail carlots and 1366 truck lots were marketed from the Lower Valley early spring tomato crop.

The great bulk of tomatoes grown in the Lower Valley are marketed outside the Valley, both outside of and within the State of Texas. In 1957 Lower Valley tomatoes were distributed in 70 of the 100 principal cities in the United States and 5 Canadian cities reporting carlot unloads of Texas tomatoes during the months of April, May, June, and July. In the 1957 fall deal unloads of Texas tomatoes were reported in 20 of the 100 cities during November and December. Unloads of Lower Valley tomatoes are officially reported for Amarillo, Dallas, El Paso, Fort Worth, Houston, and San Antonio, Texas during each of the past three seasons, which are representative of seasonal marketings from this area.

Representative handlers of Lower Valley tomatoes reported 75 to 80 percent of their shipments were marketed outside and the balance within the State, also that markets within the State of Texas are an important outlet for Lower Valley tomatoes. Lower Valley tomatoes are distributed extensively in the States lying east of the Rocky Mountains and particularly in the areas north of the Ohio River and east of the Mississippi. Canadian markets, particularly those in eastern Canada, also are important outlets.

In other instances, handlers consign unsold tomatoes to receiving markets, or in some instances consign cars of unsold tomatoes to points in Texas, such as San Antonio, Houston, or Dallas, with the idea of diverting them to points outside

of the State when the sales contract has been concluded. In these latter cases shipments consigned to the points within the State frequently are diverted to points outside the State. Some tomatoes from the production area are transported and sold in Canada, others in Mexico.

Lower Valley tomatoes sold or transported to San Antonio or to other Texas handlers often are reworked, repacked, and transported in the current of commerce to markets in Oklahoma, Louisiana, Kansas and similar out of state markets. In addition, tomatoes from shipping points outside the State of Texas, such as Florida, California, and Mexico, are transported and sold in the current of interstate commerce in San Antonio, Dallas, Fort Worth, Houston, Amarillo, and other markets within Texas. Lower Valley tomatoes compete directly with these other tomatoes then being marketed by burdening the total supply of tomatoes in these markets, and in turn, being burdened by the over-all supply. Market prices for tomatoes in cities and towns within Texas, including shipping point prices in the Lower Valley, are directly affected by supplies of tomatoes from outside Texas and the market for tomatoes produced outside the State is directly affected by the supply of, and market prices for, Lower Valley tomatoes.

Growers and handlers of Lower Valley tomatoes maintain close, constant communication through telephone, telegraph, teletype, radio, market news reports, commercial bulletins, letters, personal visits, and other modern media, with receiving markets outside the Lower Valley such as San Antonio, Houston, Dallas, Kansas City, Chicago, New York, Montreal and similar important areas of distribution. Both shipping point sellers and terminal receivers exchange information as to supplies and prices. Prices at shipping point in the production area and at terminals outside the production area tend to move together around average price levels each day, and even during each hour of the marketing day. Factors affecting supplies at shipping points are soon known and reflected in prices both at shipping point and receiving markets outside the production area. Also, shifts in supplies at terminal markets, either in quantity or quality on hand, or estimated as available or to become available, affect prices at terminals and, due to the rapid, constant communication between terminal markets and handlers within the Lower Valley such changes and prices are soon reflected in the offerings and bids between these buyers and sellers, and the resultant sales prices are inevitably reflected in prices to growers in the production area. Prices at which tomatoes are sold by handlers in the production area are directly related by close tie-in with prices for tomatoes in receiving markets outside the production area.

Tomatoes are often sold by Lower Valley handlers on a basis of delivery at receiving markets, also in other cases on the basis of buyers taking title at shipping points in the production area. In either instance, the seller quotes and sells on the basis of prices at his packing shed as basic market prices for the product. At the same time, sales prices at packing sheds for packed tomatoes establish the basis for prices paid to farmers for tomatoes delivered to the packing shed.

On the basis of the facts as herein found it is determined that all sales of tomatoes grown in the production area which are destined for distribution outside of such production area and all transportation of such tomatoes between points within the production area and any point outside such production area are in the current of interstate or foreign commerce, or directly burden, obstruct or affect such commerce. The right to exercise Federal jurisdiction with respect to the marketing agreement and order for Lower Rio Grande Valley tomatoes, grown in the production area comprised of Starr, Hidalgo, Cameron, and Willacy Counties in the State of Texas, as hereinafter set forth, is, therefore, established.

(2) Findings on the need for a marketing agreement and order program for Lower Rio Grande Valley tomatoes. The Lower Rio Grande Valley of Texas is the most important vegetable producing area in the State, with tomatoes the leading vegetable crop. Marketings in terms of carlot shipments have ranged from a 1945 peak of 9,650 cars to a low of 2,307 cars in 1951. Since 1948 the movement has been less than 5,000 cars annually.

The tomato crop of the Lower Rio Grande Valley is grown on a relatively large scale. Acreages ranging from 10 to 25 are common among tomato growers, while occasionally growers may have more than 100. Some packing house operators also grow tomatoes, with some operators producing two hundred or more acres, with additional acreages controlled through financing or other arrangements.

During the 1951–57 period, the farm value of early spring Texas tomatoes for fresh market ranged from 2.9 million dollars to 6.1 million dollars and averaged 4.6 million dollars. During the same period the farm value of late fall Texas tomatoes ranged from 0.4 million to 1.8 million dollars, and averaged 0.9 million dollars.

The season average farm price of Texas early spring tomatoes during the 1948–57 period ranged from $3.30 per hundredweight to $6.50 per hundredweight and averaged $4.55 per hundredweight. These prices represent a range of 75 to 145 percent of Texas parity for early spring Texas tomatoes, returning less than parity in six and more than parity in four of these ten seasons. The season average price for early spring Texas tomatoes in 1958 was $2.75 per hundredweight or 49 percent of Texas parity. That the 1958 early spring seasonal average price was well below Texas parity is corroborated by the testimony of some handlers who introduced excerpts from their business records showing average price per pound paid to growers on representative days during the season, total amount paid to growers during the season, and similar statistical information.

Season average prices of late fall crop Texas tomatoes ranged from $4.15 per hundredweight to $8.00 per hundredweight in the 1948–57 period which represented a range of 66 to 129 percent of Texas parity price for tomatoes. During this period Texas tomato growers received less than parity for their fall tomatoes during six and more than parity during four of the ten seasons.

Prices of Lower Valley tomatoes are affected by the size of the crop grown in the production area, also by the quality and size of the tomatoes available for market from the area, as well as by the volume and quality of competing supplies. The quality and sizes of tomatoes marketed from the Lower Valley production area have a direct effect upon prices received by handlers and, in turn, upon prices per pound which handlers pay to growers for the fruit.

F.o.b. shipping point prices, according to official reports, for early spring tomatoes in the Lower Rio Grande Valley fluctuated from day to day throughout the season, during each of the seasons 1955 through 1958. Also, price differentials are shown between sizes with the size 6 x 6 and larger selling for more than size 6 x 7. Price fluctuations from day to day throughout the season for packed tomatoes, as well as the price differences from one season to the next, are also directly reflected in fluctuations in price per pound returned to Lower Valley growers.

Experienced handlers reported usual price differentials applied between U.S. No. 1 and U.S. No. 2 grade Lower Valley tomatoes, and that an additional differential applied to culls at the packing house or other shipping point in the Lower Valley. Growers usually receive no returns for cull tomatoes irrespective of the manner or method followed in disposal of his crop. Prices of size 6 x 6 and larger Lower Valley tomatoes range higher than prices of 6 x 7 of the same grade. Also, prices of 7 x 7 in the same quality are generally lower than the two larger sizes. The f.o.b. prices of U.S. No. 2, 6 x 6 and larger generally is considerably less than the price of the comparable size No. 1 quality, while the price of the next smaller size, 6 x 7, is generally less than the price on the same size of No. 1 grade, and usually less than ½ the price of U.S. No. 1, 6 x 6 and larger.

Market News Reports for the 1958 seasons show f.o.b. shipping point prices for Lower Valley tomatoes fluctuated throughout the season with the f.o.b. price changes being reflected, in turn, in prices paid tomato growers. The reports also show that U.S. No. 1, 6 x 6 and larger tomatoes generally return a dollar or more higher prices than size 6 x 7 of the same quality and, in turn, size 7 x 7's returned a lower price than size 6 x 7's of the same grade. Also, size 6 x 6, U.S. No. 2, returned less than the comparable size of No. 1, and U.S. No. 2 quality, 6 x 7, sold for less than U.S. No. 2 quality, 6 x 6's, and less than U.S. No. 1 quality 6 x 7's.

Experienced handlers reported that although many packing house operators dump the culls or dispose of them in a manner calculated to incur the least possible expense, some handlers sell their packing house culls to other handlers, who in turn work them over and

sell at least a portion of them, sometimes a fairly high proportion, both in local Texas markets and out of State markets. Handlers with many years' experience selling Lower Valley Texas tomatoes reported the sale of cull tomatoes in such markets as San Antonio, as well as in other markets in Texas, Oklahoma and Louisiana substituted for better quality tomatoes in those markets. Also, the sale in those markets of Lower Valley cull tomatoes at discounted prices tended to drive down the market for the bulk run of tomatoes of No. 1 and No. 2 quality in such markets. In turn, the adverse effect which sales of cull tomatoes have upon tomato market prices both at f.o.b. shipping points, as well as other Texas points, and at terminal markets outside the State have a direct effect upon prices which handlers pay to growers for their tomatoes. Although many packing house operators do not care to handle any culls between the Lower Valley and points outside thereof and they do not sell culls in competition with better quality tomatoes, some Lower Valley tomato handlers do sell culls and the sale of such culls in competition with the No. 1 and No. 2 and other better quality tomatoes in Lower Valley f.o.b. and terminal tomato markets has become such a common practice that many Lower Valley tomato handlers report that, as long as other handlers are allowed to sell culls or to transport them to market outside the Lower Valley, growers' prices for all Lower Valley tomatoes are thereby adversely affected because of the marketing conditions which such practices create and aggravate.

All relevant testimony relating to growers' prices for Lower Valley tomatoes establishes that such prices directly reflect the volume of supply and the composition, as reflected by grade and size, of such supply of tomatoes. Daily price levels for such tomatoes are established by the impact of buyers and sellers judgments in the bargaining and sales process and, in turn, individual growers' prices are established by relating such levels to the grade and size composition of lots of tomatoes being delivered and sold to packing houses and other handlers.

There is a need for a marketing agreement and order to help growers and handlers in the Lower Valley to prevent the sale and transportation of cull tomatoes which have an adverse and depressing effect on the price farmers receive for better grades of tomatoes.

Handlers of Lower Valley tomatoes proved a need for a marketing agreement and order to help the industry develop orderly marketing practices and to prevent abuses from overweight containers, as well as from lack of uniform sizing of tomatoes within different packs.

Lower Valley tomato farmers and shippers have no other adequate means of helping to promote and improve marketing conditions for their tomato crop through quality, grade and size control which will allow them to keep price depressing off-qualities and small sizes off the market.

The relationship of season average prices received by growers of early crop Texas tomatoes and late fall crop Texas tomatoes has been below parity in most recent seasons so the need for assistance of the type which a marketing agreement and order may provide is apparent and substantial. In addition, there is a need for promotion of more orderly marketing conditions to eliminate abuses in the sale of off-grade or off-size tomatoes. Consequently, it is found and concluded that the need for a program is determined sufficient to warrant consideration of the terms and provisions of the marketing agreement and order which follow.

(3) Findings on material issue No. 3. The vegetable commonly known as "tomatoes" is a well known leading vegetable commonly recognized by growers and handlers within the production area. It is important in the economy of the Lower Valley both as an early spring and as a late fall crop vegetable. Also, tomatoes are readily recognized as an important product of commerce within the Lower Valley of Texas, as well as in commerce between the Lower Valley and points outside thereof. The term tomatoes as used in the proposed marketing agreement and order means all varieties of the edible fruit, Lycopersicon esculentum. This fruit is commonly referred to as tomato in the production area as well as throughout the United States. The definition as set forth in the marketing agreement and order applies to all tomatoes, both late fall and early spring crops, grown within the production area. This provides a basis for identifying the agricultural commodity for which regulation is authorized.

"Production area" is defined to include all of the territory in the counties of Cameron, Hidalgo, Starr and Willacy in the State of Texas and, as a contiguous area, comprise the tomato producing area in the Lower Rio Grande Valley. Growing and climatic conditions are about the same in the four counties. There are no appreciable and sizeable acreages of tomatoes grown within approximately 100 miles of this area.

Minor variations in practices and methods of production, harvesting and marketing of tomatoes may occur between counties and within specific counties, nevertheless grading and quality standards for commercial sales are the same throughout the production area. Any variations in cultural practices, methods of production, harvesting and marketing, are quite minor and the similarity of such practices is by far greater than the variations. The tomato marketing season is approximately the same for each county, as shown by official records. Tomatoes marketed from each county within the production area share and compete in common markets at the same time. Grades, sizes, qualities and maturities of tomatoes, whether of preferred or discounted marketing attributes, have the same effect in the market on prices paid for Lower Valley tomatoes irrespective of the county in which produced.

The four counties of the Lower Rio Grande Valley differ from the surrounding counties in that these four have been developed for intensive farming of fruits and vegetables, including tomatoes, which are grown largely under irrigation. This section is commonly recognized as a separate and distinct production area by growers and handlers operating there, also by the produce trade in terminal markets, and by official publications reporting on tomato and other vegetable crops. The natural barriers of the Gulf, the international border, the insulation of range land, and the separate characteristics of the production and marketing problems encountered there by producers and handlers establish it as a distinct entity which is so recognized by growers, handlers and others dealing in tomatoes. The customary recognition of the four counties as a production area for tomatoes provides a proper basis for the definition of production area. There is no reasonable method or basis for dividing the production area into two or more areas for purposes of separate marketing agreements and orders. All territory included within the boundaries of the production area constitutes the smallest regional production area that is practical and consistent with carrying out the policy of the act. Accordingly, the production area should be defined as including all area within the four counties as hereinafter set forth in the proposed marketing agreement and order.

(4) Findings on material issue No. 4. "Handler" and "shipper" are synonymous and mean those persons who handle tomatoes in the manner described and set forth in the definition of "handle". The persons who are subject to the regulations and upon whom rests the obligation of complying with regulations authorized by the marketing agreement and order are identified and established by the definition of handler. Any person who is engaged in the act or acts of handling tomatoes grown in the production area or who causes such tomatoes to be handled is a handler. The responsibility for handling may involve more than one person in that the person who makes a sale of tomatoes may be a handler and, in turn, any other person who transports Lower Valley tomatoes in the current of the commerce between the production area and any point outside thereof also is a handler. Each party is subject to the definition of handler and is responsible for complying with regulations issued under the proposed marketing agreement and order.

A common or contract carrier transporting tomatoes which are owned by another person is performing a handling function, which handling may not be regulated under the marketing agreement and order because such carriers are not responsible for the grade, size, quality, maturity, or pack of the tomatoes being transported, neither are they the persons who caused the introduction of such tomatoes in the stream of interstate commerce. Also, the only interest of common or contract carriers of such tomatoes is to transport them for a service charge to destinations given by others. The person or persons delivering tomatoes to a common or contract carrier should be responsible for

the grade, size, quality and maturity of such tomatoes, also for the pack of such tomatoes and the containers in which they are packed. As defined, therefore, the term "handler" or "shipper" means any person (except a common or contract carrier of tomatoes owned by another person) who handles tomatoes or causes tomatoes to be handled.

"Handle" is defined to establish the specific marketing transactions which are primarily responsible for placing Lower Valley tomatoes in the current of the commerce between the production area and points outside thereof and to provide a basis for determining the marketing functions relating to Lower Valley tomatoes which are subject to regulation under authority of the proposed marketing agreement and order. "Handle" and "ship" are used synonymously and the definition should so indicate.

The act provides that a producer in his capacity as a producer is not subject to the provisions of a marketing order. The following activities are found to be within the producer exclusion. The growing of Lower Valley tomatoes is a producer function within the above exception. The harvesting of tomatoes by a producer, or by his employees, or by persons under his direct supervision and control also is a producer function within the above exceptions. The transportation of Lower Valley field run tomatoes within the production area for delivery of such tomatoes to a packing house, i.e., to a recognized or registered handler within the production area, for customary grading and packing and the sale of field run tomatoes by a Lower Valley producer to a packing house, i.e., to a recognized or registered handler within the production area, are also producer functions.

The act or acts of handling are comprised of those procedures or processes employed in preparation for market and include the market attributes of grade, size, quality and container in which the tomatoes are marketed. The quantity of Lower Valley tomatoes and the market attributes above referred to affect the current of commerce in such tomatoes between the production area and any point outside thereof through sale of the fruit in which price is a measure of quantity and quality factors. The current of commerce in such tomatoes is also affected by transportation of the commodity between the production area and points outside thereof which makes the commodity a part of the available supply moving to market and, therefore, a part of the current of interstate commerce.

Prior to entering the current of commerce in which tomatoes are marketed, the great bulk of Lower Valley tomatoes is usually subjected to grading and packing operations at recognized, established packing houses. Sometimes this is in or close to the fields where grown or at other convenient, wayside points. For the great bulk of Lower Valley tomatoes marketed in fresh form, the packing house operator is responsible for preparing them for market. Lower Valley tomatoes immediately after picking are customarily hauled to the packing house platform. Title to the tomatoes is usually transferred from the grower to the handler at this point.

The customary function of a Lower Valley tomato packing house is to process field run tomatoes from their own or other growers' production and, by washing, waxing, grading, sizing, and packing them, to make them a part of the visible, available supply of marketable tomatoes. Lower Valley tomato packing house operators usually sell or transport their packed fruit, including off-grades or discounted sizes that are sold or transported, in the current of the commerce between the production area and markets outside thereof.

Packing house operators, or their agents, sell Lower Valley tomatoes at shipping point to other packing house operators, to truckers, or to other buyers. They also sell their tomatoes f.o.b. shipping point to repackers, brokers, wholesalers, or other buyers in terminal markets in metropolitan or other areas both within or outside Texas.

It is also commonplace and customary for packing house operators to sell Lower Valley tomatoes on a delivered basis in markets outside the production area. In some instances packing house operators also consign Lower Valley tomatoes to auctions or other receivers in terminal markets.

Sale or transportation of Lower Valley tomatoes by packing house operators regardless of the quality or size of the fruit, places the tomatoes in the current of the commerce between the production area and points outside thereof. Either or both of these marketing functions constitute handling.

Some Lower Valley tomatoes are graded and packed in the field where grown or at nearby points other than customary, established packing houses. Tomatoes from portable or temporary grading setups of this type are then often sold by a producer to truckers who transport them in the current of the commerce in tomatoes or sometimes they are transported by tomato producers in the current of the commerce in tomatoes between the production area and points outside thereof. Each sale of such tomatoes, also any transportation of such tomatoes in the current of the commerce in tomatoes constitutes handling, whether by a producer, a trucker, or any other person, and such activity is subject to the authority of the proposed marketing agreement and order.

As previously found, the sale of Lower Valley field run tomatoes to a recognized or registered handler, and the transportation of tomatoes to a recognized or registered handler within the production area, are excepted from the definition of handle. Producers delivering or selling tomatoes to an established packing house accept as a fact, from experience and personal knowledge of customary marketing practices for Lower Valley tomatoes, that packing house operators normally accept responsibility for complying with marketing requirements, including the grades, sizes, qualities, packs, and types of containers the buying trade or regulatory agencies may require. These marketing requirements also include responsibility for inspection, when required.

Established packing house operators may be recognized and registered by the committee, the administrative agency established under the proposed marketing agreement and order. Registration in this instance is intended to recognize the customary responsibility of such persons for grading, sizing, and packing Lower Valley tomatoes and for having them inspected after they have been prepared for market. Any other person, including truckers, brokers, or other buyers, may also register with the committee for the purpose of indicating their ability and responsibility for complying with marketing requirements, such as meeting grade, size, quality, pack, container, and inspection requirements issued pursuant to authority of the proposed marketing agreement and order. Accordingly, the committee should under appropriate rules authorized by the proposed marketing agreement and order, prepare and maintain a current register of all known handlers. The sale or transportation within the production area of Lower Valley tomatoes to a registered handler shall be excepted from the definition of handle, but all other sales or transportation of Lower Valley tomatoes in the current of the commerce in tomatoes, whether such sale or transportation is by a producer or any other person, are included in the definition of handle, except that the sale or transportation of tomatoes for consumption within the production area is not a handling activity under this program. The definition of "handle" does not include the sale at retail of tomatoes by a person in his capacity as a retailer.

In summary, the sale or transportation of Lower Valley tomatoes which is in or places them in the current of the commerce in tomatoes between the production area and any point outside thereof is included within the definition of handle. Such sale or transportation of Lower Valley tomatoes may be performed or caused by any one or more persons, such as packing house operators or their agents, producers in their capacity as handlers, truckers, brokers, or any other person engaged in marketing such tomatoes. The failure of one person selling or transporting such tomatoes to comply with marketing regulations does not relieve subsequent sellers or transporters from responsibilities therefor. With the exception of the activities specifically excluded from the definition by the above findings all sales and transportation of Lower Valley tomatoes are found and determined to be in the current of commerce between the production area and points outside thereof and, therefore, such activities are included in the definition of handle.

(5) Findings on material issues set forth under No. 5. Certain terms applying to specific individuals, agencies, legislation, concepts, or things are used throughout the marketing agreement and order. Such terms should be defined for the purpose of designating specifically their applicability in establishing the approximate limitation of

their respective meanings wherever they are used.

(a) The definition of "Secretary" should include not only the Secretary of Agriculture of the United States, but also in order to recognize the fact that it is physically impossible for him to perform personally all of the functions and duties imposed upon him by law, any other officer or employee of the United States Department of Agriculture who is, or who may hereafter be authorized to act in his stead.

The definition of "Act" provides the correct legal citation for the statute pursuant to which the proposed regulatory program is to be operative. It makes it unnecessary to refer to such citation when used thereafter in the marketing agreement and order.

The definition of "person" follows the definition of that term as set forth in the act, and will insure that it will have the same meaning as when used in the act.

"Producer" should be defined to mean any person who is engaged in a proprietary capacity in the production of tomatoes within the production area, and who is producing such tomatoes for market. A definition of the term "producer" is necessary for appropriate determinations as to eligibility to vote for, and to serve as, members or alternate members of the committee and for other reasons.

Insomuch as a person is defined as an individual, partnership, corporation, association, or any business unit, each such person establishes a legal entity. Each person or legal entity whether an individual, partnership, joint venture, or corporation engaged in the production of tomatoes for market, should be allowed to qualify as a producer and to participate in the rights and privileges accorded a producer under the proposed marketing agreement and order.

The term producer should be limited to those who have an ownership interest in the tomatoes which gives them title or authority to pass title to such tomatoes. The person who owns and farms land resulting in his ownership of the tomatoes produced on such land should clearly be considered as the producer of such tomatoes. The same is true with respect to the person who rents and farms land resulting in his ownership of all or a portion of the tomatoes produced thereon. Likewise a person who owns land which he does not farm but as rental for such land obtains the ownership of a portion of the tomatoes produced thereon should be regarded as a producer of that portion received as rent and the tenant on such land should be regarded as a producer of the remaining portion produced on such land. In each of the above situations where the person acquires ownership of all of the particular tomatoes such person regardless of whether he is an individual, partnership, association, corporation or other business unit should be considered as one producer and entitled to one vote. However, in cases where the ownership is divided, that is where one person obtains ownership of only a portion of the commodity produced on a particular piece of land and another person obtains ownership of another portion of such production, such as in a landlord-tenant relationship, each such person should be considered as a producer and entitled to one vote. However, in the case of a partnership, the partnership must vote as a unit.

The most common type of partnership appears to be the arrangement whereby one person puts up all or part of the capital and the other contributes machinery or skill, or both. Another arrangement provides that one person is responsible for selling the crop and another for growing and harvesting the tomatoes. Capital, machinery and labor may be contributed in varying degrees by each partner. The partnership, however, is an entity and under the definition of "producer" should have only one vote when participating in nominee elections, the same as an individual or corporation. Any action with respect to such an organization regarding voting matters depends, therefore, on the partnership agreement and action by the partners pursuant thereto, irrespective of whether the partnership is composed of individuals, corporations, or combinations thereof.

Persons engaged in tomato growing operations and paid for their services on a wage or per unit of production basis should not have a producer status in the marketing agreement and order if such persons do not have title to any of the tomatoes.

"Producer-handler" is defined to identify the persons who can qualify for committee membership both as a producer and a handler of Lower Valley tomatoes. Several witnesses, commonly recognized and accepted as commercial handlers of Lower Valley tomatoes, stated they own, control or operate packing house facilities including organizations for buying and selling tomatoes. Those persons who qualify in this manner, by reason of their connection with a packing house and its sales organization, are included within the definition of producer-handler. In order to qualify for participation in election of committee nominees such person, whether individual, partnership, or corporate, shall be entitled to exercise the rights and privileges granted any person under the proposed marketing agreement and order. Any person qualifying for committee membership under the above definition shall be an individual who is a producer-handler, or an officer or an employee of a producer-handler, or an officer or employee of a cooperative association of tomato producers which markets the tomato production of its members.

Definitions of "grade" and "size" are incorporated in the marketing agreement and order to enable persons affected thereby to determine the basis for application of grade and size limitations to the product they handle. "Grade" and "size", the essential terms in which regulations are issued, should be defined as encompassing the meanings assigned to these terms in the official United States Standards for Fresh Tomatoes issued by the United States Department of Agriculture and to modifications or amendments of such standards and to variations of such standards by regulations under the marketing agreement and order. Regulations under the order can then incorporate such terms (grade, size and maturity) with the constant meaning assigned thereto in such standards or in such modified or amended standards. Also, such regulations can vary such terms by prescribing, for example, a percentage of grade. Official inspectors are qualified to certify to the grade, size, and maturity of tomatoes grown in the production area under the terms of the aforesaid standards or modification or amendment based thereon.

"Grade" and "size" should also be defined as comprehending the equivalents of the meanings assigned these terms in the official United States Consumer Standards for Fresh Tomatoes issued by the United States Department of Agriculture and to modifications or amendments to such standards and variations of such standards by regulations under the marketing agreement and order. The United States Standards for Fresh Tomatoes are generally used as a basis for inspecting shipments of tomatoes from the production area. However, with the increase in importance of tube packing in the shipment of "pinks" from the Lower Valley the use of the United States Consumer Standards for Fresh Tomatoes may increase and they should be available as a basis for regulation under the marketing agreement and order.

"Pack" should be defined as a basis for distinguishing the various units in which tomatoes are prepared for market, and shipped. The term "pack" is commonly used throughout the tomato trade and refers to a combination of factors relating to grade, size, and maturity of tomatoes and frequently to quantity and type of container. For example, U.S. No. 1 grade tomatoes, 6 x 6's, when put in 60-pound wire bound crates may be referred to as a specific pack. U.S. No. 2, 6 x 7's, also may be termed as a specific pack and with additional differentiation when packed in lugs or other various types of containers. The term "pack" should mean any pack of tomatoes as set forth in the United States Standards for Fresh Tomatoes and, in addition, it should include any other packs recommended by the committee and approved by the Secretary. Since some Texas tomatoes are "jumble" packed as opposed to the "place pack", the committee should be permitted under its rules and regulations to define and establish such packs in terms of size tolerances, grades allowed, weight of contents, and maturity in their relationship to the unit being marketed, in addition to United States Standard packs as set forth in the official standards.

"Maturity" should be defined as set forth in the marketing agreement and order. The bulk of Lower Valley tomatoes are marketed as "mature green", but "pink" and other riper tomatoes are also marketed. Though harvested as and for mature green, some tomatoes are "pinks" at time of picking and others become "pinks" during processing or awaiting shipment. Consequently, some pinks are unavoidable in commercial

practice. In other instances some Lower Valley growers or handlers attempt to supply demand for pinks or riper fruit. Tomatoes of varying degrees of ripeness are treated differently in sorting and packing processes, due to differences in tenderness and other marketing attributes. Also, the demand for tomatoes is related to price differentials in varying degrees of maturity per unit, as well as in the manner and units of packing tomatoes. Commercially accepted marketing differences in tomatoes due to their different degrees of ripeness should be recognized in the authority established in the proposed marketing agreement and order. The definition of maturity establishes a basis in the proposed program for recognizing such different degrees of ripeness and providing a basis for making appropriate market distinctions on such differences.

The term "container" should be defined in the marketing agreement and order to mean a box, bag, crate, hamper, basket, package, tube, or any other type of receptacle which may be used in the packaging, transportation, sale, shipment, or other handling of tomatoes. The definition of the term is needed to serve as a basis for differentiation among the various shipping receptacles in which tomatoes are sold or moved to market for which different regulation could be applicable.

The term "varieties" is included in the marketing agreement and order so that the committee may recognize the market differences in characteristics of different varieties and different types of tomatoes, and the differences in types of regulations which might be considered and recommended therefor. The principal variety grown at the present time for the Lower Valley spring deal is the Rutgers. The Grothen Globe is the leading fall crop variety. However, new varieties, which differ in some respects from the aforementioned varieties, are introduced from time to time and may become commercially important. Also, there is an increase in marketing different types of tomatoes grown in the production area. For example, the "mature green" are the most important type, but "pink" tomatoes are increasing in importance. The definition of varieties is appropriate for determining different varieties or types of tomatoes grown in the production area so that a basis for regulating some and not regulating others may be established.

The definition "committee" is incorporated in the marketing agreement and order to identify the administrative agency which is responsible for assisting the Secretary in the administration of the program. Such committee is authorized by the act and the definition thereof minimizes the use of words in referring to the administrative agency in the marketing agreement and order.

A definition of "fiscal period" should be incorporated in the marketing agreement and order to establish the beginning and ending of a suitable period for fiscal accounting. Such period was set forth in the notice of hearing as beginning March 1 and ending on the last day of February of the following year. Two crops of tomatoes are normally produced in the production area, i.e., a late fall crop and an early spring crop. The fiscal period should begin reasonably near the time active regulation of the commodity is anticipated in order to insure that collections will be made in adequate amounts to cover the costs of operations so that at the beginning of each season monthly deficits can be avoided to the extent possible. Beginning the fiscal period reasonably near the beginning of active regulation, which at this time would presumably be at the time of the handling of the spring crop, would tend to hold such deficits to a minimum. An appropriate time for such period at the present time would be beginning on March 1 and ending on the last day of the following February and it is concluded that such beginning and ending dates should be the ones adopted for initial use.

Because of the continuing desirability of starting the fiscal period as close as reasonably practicable to the beginning of active regulation, some latitude should be given for changing the beginning and ending dates to meet changed circumstances. This latitude will be afforded by the addition of an authorization for changing the beginning and ending dates of the fiscal period.

"District" should be defined in the marketing agreement and order as referring to each of the geographical sections, or divisions, of the production area either as initially established or as later reestablished in order to provide a basis for the nomination and selection of committee members for regulatory purposes.

"Export" should be defined in the marketing agreement and order as any shipment of tomatoes beyond the boundaries of the continental United States. Separate treatment for export shipments may be necessary because the requirements of certain export markets may differ from those of the domestic market and therefore different or special regulations or even no regulations may be justified with respect to such shipments. It is found from the evidence that Lower Valley tomato producers and handlers customarily consider an important distinction between such export markets as Canada and Mexico. Authority should be provided to permit different regulations for each of these markets, as well as for other markets, as circumstances may warrant. Territories and possessions of the United States should be included under the term "export" because any shipments to such markets would tend to satisfy a different type of demand than domestic shipments.

(b) The proponents of the proposed marketing agreement and order established a need for an administrative agency, called the Texas Valley Tomato Committee, to locally administer the program. The committee should be composed of nine members of whom six should be producers and 3 producer-handlers. The number of committee members and qualifications for membership were widely discussed by proponents and others. According to the testimony, the composition of the committee has broad support in the Lower Valley tomato industry. It is concluded that the committee should be composed mostly of growers, also that producer-handlers should have representation so that the benefits of handler viewpoints may be available to the committee in its deliberations. The primary purpose of the proposed marketing agreement and order is to improve marketing conditions for the Lower Valley tomatoes so that farmers prices will be raised towards parity. Consequently, the requirement that each committee member and alternate must be a producer of Lower Valley tomatoes and three of the members must also be producer-handlers is determined to be an equitable representation of the tomato producing and tomato handling interests in the Valley. Also, such representation should help to provide sound, experienced judgments by the committee so that the objectives of the act with respect to improving growers prices should be promoted. As alternates serve for their respective members in the event of the absence or disqualification of the latter, it should also be required that at least three of the nine alternate members be producer-handlers.

Each person selected as a member of the committee should be a producer or an officer, or employee of a producer, of tomatoes in the district for which selected, and should also be a resident of the production area. "Producer" is defined as meaning any person engaged in the proprietary capacity in the production of tomatoes for market. In addition, producer-handler members should be persons engaged in commercial packing of Lower Valley tomatoes and in selling or transporting them, or persons who are officers or employees of a producer-handler as that term is defined herein. Cooperative associations of tomato producers operate in the area by marketing tomatoes for their grower members. An officer or employee of such a cooperative should be deemed to be eligible to serve as a producer-handler member or alternate member of the committee. The requirement that a producer or producer-handler member of the committee should be a producer or producer-handler or an officer or employee of a producer or a producer-handler should provide qualified individuals for serving on the committee. A person with such qualifications should be intimately acquainted with problems of producing or marketing tomatoes grown in the production area and each may be expected to present accurately the problems incident to production or marketing of tomatoes grown in his district. Qualifications for each alternate should obviously be the same as for the respective member for whom he may act. Such qualifications should help to assure that the interests of the group from which each is selected will be adequately represented in committee deliberations.

Each committee member and his respective alternate should serve for a one-year term of office ending as of July 31 and for any additional period needed for the selection and qualification of his successor. Such a term of office is reasonable and will allow the tomato industry to express its approval or dis-

approval of the committee membership at the end of any season and prior to beginning a new season. August 1 is an appropriate date for the beginning of a term of office because it is between the end of the spring growing season and the beginning of the fall growing season. In addition, no shipments of tomatoes grown in the production area are being made at that time of the year. By beginning the term of office on August 1, each new committee will be authorized to start its term between the end of an old season and the beginning of a new. Committee members and alternates should be selected for the term of office during which they are to serve and until their successors are selected and have qualified in order to insure continuity of committee operation.

Districts should be established to provide a basis for the selection of committee members. The districts as initially established were worked out by the industry and they represent the best basis which could be devised at this time for providing a fair, adequate and equitable representation on the committee.

The proposed production area, comprising four counties, is divided into four districts, one for each county. These districts are logical and practical, because county lines are well defined, and producers and handlers are familiar with county boundaries. Each person qualified for voting can easily establish the county within which his holdings are located.

The provision for redistricting is desirable because it allows the committee to consider from time to time whether the basis for representation could be improved and how such improvement should be made. The guides, as set forth in the marketing agreement and order, which the committee should keep in mind in considering redistricting are appropriate and desirable points of reference that relate directly to the welfare of the tomato industry.

It is practical and equitable that selection of committee members and alternates should be on a geographical basis such as the districts provided for in the marketing agreement and order. Such geographical basis should be, and for purposes of initial membership has been, related to the number of producers and the production of tomatoes within the production area so that a practical basis for establishing equitable representation has been reached.

Proponents supported the position that not more than two producer-handlers from any one district should be selected as members on the committee. This is intended to preclude selection of all three producer-handlers from the same district or county. Alternate members for producer-handlers should be selected from the same district as the member for whom they are alternates.

Procedure for the election of nominees by producers and producer-handlers for membership on the committee should be prescribed in the marketing agreement and order. Such provisions will provide the Secretary with assistance by the tomato industry in selecting members and alternates for the committee. Nomination of prospective members and alternates at meetings of producers and producer-handlers in the respective districts is the customary and practical method of providing the Secretary with the names of persons whom the industry desires to serve on the committee. In order to obtain an indication of the industry's preference for membership on the initial committee, meetings of producers and producer-handlers should be sponsored by the United States Department of Agriculture or by any agency or group requested to do so by the Department. This sponsorship should provide a practical and appropriate means for the industry to express its wishes and preferences with respect to committee membership, inasmuch as no committee would be in existence to assume such responsibility at that time.

Nomination meetings for succeeding members and alternates on the committee should be called by the committee, because it is practical, proper, and appropriate that the responsibility for calling nomination meetings for succeeding members should rest with the committee as the administrative agency for program operations. The committee should also be permitted to utilize the services of other agencies, such as, but not limited to, Extension Service representatives, to assist in conducting such nomination meetings.

It is appropriate and proper that the committee should be required to hold meetings for nominations for successor members and alternates not later than June 15th of each year, since the term of office of committee members and alternates will begin as of August 1 of each year. Nomination meetings for such successor members and alternates should be held in sufficient time to assure that nominations will be forwarded to the Secretary in time for him to make his selections prior to the beginning of each new term of office.

If the committee wishes to hold nomination meetings in connection with other meetings that are conducted on tomatoes in any or all districts, it is appropriate and proper that such nomination meetings may be so held. If, on the other hand, the committee wishes to hold separate nomination meetings it is a matter of judgment and responsibility which should properly fall within the judgment of committee members.

At least one nominee should be designated for each position as member and each position as alternate. Producers and producer-handlers voting at such industry meetings may ballot for nominees to indicate the ranking of their choice for each position to be filled. Nomination lists should be supplied to the Secretary not later than July 15 of each year, so that the Secretary may have sufficient time in which to select committee members prior to the beginning of the succeeding term of office.

Only producers and producer-handlers should participate in nominating members and alternates for the committee, because they are the persons who will be concerned with program operations and the persons whom the program will be designed to benefit.

If a person produces tomatoes in more than one district, such person must select the district in which he wishes to cast his vote for nominees on the committee. Any other procedure would give such persons a greater voice than other producers in the nomination of committee members.

Each producer, as a producer only or as producer-handler, participating in the industry meetings for the election of nominees to the committee should be limited to one vote on behalf of himself, his agents, subsidiaries, affiliates, or representatives. Voting on any other basis would not provide for equitable representation, because it would give producers or producer-handlers with interests in more than one district a greater voice in the election of nominees than persons operating in only one district. The limitation of each producer's or producer-handler's right to cast one vote on behalf of himself should be construed to mean that one vote may be cast for each position which is to be filled. For example, if three members and three alternates are to be nominated from a district, then each qualified producer or producer-handler should be able to cast one vote for each member position and one vote for each alternate position. Such votes should be cast only in the district in which a producer or producer-handler elects to vote. Each producer or producer-handler presumably is interested in nominating well qualified prospective members and will desire to participate in the district where their major interest lies.

The Secretary should be authorized to fill committee vacancies without regard to nominations if the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs. This provision is intended to insure continuity in case the industry fails to forward nominations to the Secretary in time for the selection to be made. The Secretary should have recourse to such means of filling vacancies in order to maintain continuity of agency operation and to insure that all portions of the production area are equitably represented in the conduct of committee business. In order that there will be an administrative agency at all times to administer the marketing agreement and order, the Secretary should be authorized to select committee members and alternates without regard to nominations if nominations are not submitted to him in conformance with the prescribed procedure. Such selection should be on the basis of the representation provided in the marketing agreement and order so that the composition of the committee will continue as prescribed.

Each person selected by the Secretary as a committee member or alternate should qualify by filing with the Secretary written acceptance of his willingness and intention to serve in such capacity. Such requirement is necessary so that the Secretary will have definite knowledge as to whether or not the position has been filled. In order to prevent excessive delay in obtaining full membership on the committee such accept-

ance should be filed within 10 days after notification of appointment.

An alternate member should be authorized to act in the place and stead of the member for whom he is an alternate in such member's temporary absence. An alternate should be authorized to act in a member's absence when such absence is due to death, removal, resignation, or the disqualification of the member. Alternates acting in the place and stead of members should continue to act in such capacity until the successor for the member has been selected and has qualified. This would assure continuity of marketing agreement and order operations, prevent the committee from being without sufficient members to carry on its business, and assure adequate representation from all districts at committee meetings.

At least six of the nine members of the committee should be necessary to constitute a quorum. This would require a two-thirds majority of the committee membership and should provide ample representation from each district. Six concurring votes should also be necessary to pass any committee action at an assembled meeting. Two-thirds majority of the committee membership for a quorum and for approval of any committee action is deemed reasonable and provides a basis for adequately reflecting industry thinking in marketing problems. At assembled meetings all votes should be cast in person so the participating members will have the benefit of discussion when casting their votes.

The committee should have the authority to hold meetings by telephone, telegraph, or other means of communication because marketing conditions affecting tomatoes often change rapidly and it may be necessary for the committee to take speedy action which would be delayed by calling an assembled meeting. Any vote cast at such a meeting should be confirmed promptly in writing in order to provide a written record of the votes cast. In addition, any action taken as a result of a vote at an unassembled meeting should be unanimous, because members will not have the opportunity for discussion at such meetings. If a question should be controversial with unanimity lacking, an assembled meeting should be held so the matter can be fully discussed.

Committee members and alternates should be reimbursed for necessary expenses incurred in the performance of services to the committee. Such expenses will necessarily be incurred in attending meetings in connection with the marketing agreement and order, or in performing duties for the committee outside the committee meetings. Such expenses might include travel, meals, hotel accommodations, and similar expenses. In other words, they should include actual expenses reasonably necessary to be incurred in the performance of duties in connection with the marketing agreement and order, but should not include per diem reimbursement for time involved.

The committee should be given those specific powers which are set forth in section 8c(7)(C) of the act. Such powers are authorized to be granted by the enabling statutory authority and they are necessary for an agency of the character set forth in the marketing agreement and order to function properly.

The committee's proposed duties, as set forth in the marketing agreement and order, are necessary for the discharge of its responsibilities. The duties established for the committee are generally similar to those specified for administrative agencies under other programs of this character. It should be recognized that these specified duties are not necessarily all inclusive in that it may develop that there are other duties which are incidental to and not inconsistent with the terms and conditions of the marketing agreement and order and which the committee may also need to perform.

(c) Operation of the proposed program will necessarily involve expenditures, hence, it is found that under the terms of the proposed marketing agreement and order, and as authorized by the act, the committee should be authorized to incur expenses for committee operations. These expenses, which should be reasonable, include, but should not be limited to, salaries for a manager, clerical, and field personnel, rent for office space, supplies, office equipment, furniture, and travel expenses. Expenses incurred by the committee in operating the Lower Valley tomato marketing agreement and order must, under the act, be borne by handlers. Expenses of the program may be distributed practically and equitably among handlers by requiring each handler who first sells or transports Lower Valley tomatoes, subject to regulation under the proposed program, to pay his pro rata share of such expenses on the basis of the ratio of his total tomato shipments subject to regulation under the proposed marketing agreement and order, as the first handler thereof, to the total of such tomato shipments by all such handlers during a particular fiscal period.

Lower Valley tomatoes moving to fresh market are customarily inspected. Inspection would be required on all shipments to fresh market, whenever grade and size or other similar regulations are in effect under this proposed marketing program. In most instances the person who is responsible for first sale or for causing tomatoes to be transported also applies for inspection. The applicant for inspection, whose name appears on the certificate of inspection, is readily identified as a first handler and, in the case of Lower Valley tomatoes, such person could be readily identified by the committee management as the handler responsible for paying assessments.

In any season when the late fall tomato crop in the Lower Valley is not regulated, it is obvious that producers and handlers of that crop would not share in the benefits of the proposed program. In such circumstances, marketings of tomatoes from such crop should not be required to bear any part of the program expenses. On the other hand, during any fiscal period when the late fall Lower Valley crop is regulated, the tomatoes from that crop should bear their proportionate part of the program expenses. Under such a method, the fall crop would be assessed only in the event it was regulated. Consequently, it is concluded that the basis for determination of the ratio of shipments by individual handlers subject to assessments should be based upon the total shipments of regulated tomatoes by first handlers thereof.

The committee should be required to prepare a budget at the beginning of each fiscal period, and as often as may be necessary thereafter, showing estimates of income and expenditures necessary for the administration of the marketing agreement and order for such a period. Each such budget should be presented to the Secretary with an analysis of its components and explanation thereof. It is desirable that the committee should recommend to the Secretary the rate of assessment designed to bring in sufficient income during each fiscal period or period of regulation to cover expenses incurred by the committee.

The funds to cover the expenses of the committee should be obtained by levying assessments on handlers. The act specifically authorizes the Secretary to approve the incurring of such expenses by administrative agencies such as The Texas Valley Tomato Committee and the statute also requires that each marketing agreement and order issued pursuant to the act should contain provisions requiring each handler to pay his pro rata share of the necessary expenses. Moreover, in order to assure continuance of the committee, the payment of assessments by handlers should be permitted to be required irrespective of whether particular provisions of the marketing agreement are suspended, or become inoperative.

Each handler should pay the committee upon demand his pro rata share of such reasonable expenses which the Secretary finds will be necessary by the committee in each fiscal period. As indicated above, such pro rata share of expenses in the present situation should be equal to the ratio between the total quantity of tomatoes under regulation handled by him as the first handler thereof during the period of regulation and the total quantity of tomatoes under regulation handled by all handlers during the same period. It is necessary that the responsibility for the payment of the assessment on each lot of tomatoes be fixed and it is logical, proper, and equitable to impose such liability on the first handler of such tomatoes. In most instances the first handler and the applicant for inspection are the same person. However, in the event the first handler fails to apply for and obtain inspection, this does not in any way cancel his obligation with respect to the payment of assessments.

Assessment rates should be recommended by the committee and applied by the Secretary to a specific unit of shipment. For example assessment rates may apply to carlot shipments or they may be applied to a crate, lug, or to any other unit of shipment commonly used in the marketing of tomatoes grown in the production area. However, such

assessments for a fiscal period should be applied on a uniform rate basis.

At any time during, or subsequent to, a given fiscal period the committee should be authorized to recommend the approval of an amended budget and the fixing of an increased rate of assessment to balance necessary committee expenses and revenues. Upon the basis of such recommendations, or other available information, the Secretary should be authorized to approve amended budgets, and if he finds that the then current rate of assessment is insufficient to cover committee administration of the marketing agreement and order, he should be authorized to increase the rate of assessment. The marketing agreement and order should authorize the application of such increased rate of assessment to all tomatoes previously handled by first handlers during the specified period so as to avoid inequities among handlers.

In most normal crop seasons assessments collected will probably be in excess of expenses incurred. All assessments collected and all expenditures for expenses should be accounted for in the manner prescribed by the proposed marketing agreement and order. Similarly the excess of assessments collected over expenses incurred should be accounted for in accordance with applicable provisions of the order. The amount of funds available to the committee will be limited by the assessment rate per unit, which rate is to be recommended by the committee and approved by the Secretary, and by the total number of units shipped in any given crop. Equities of handlers in such excess funds at the end of the fiscal period shall be in proportion to their contributions to the committee's total revenues which, in turn, are based upon each handler's shipments subject to regulation. The committee should be authorized to use such excess funds, within limits prescribed in the proposed marketing agreement and order, to establish reserves as an appropriate financial protection to insure continuity of marketing order operations and appropriate committee functions. This accords with generally approved business practices to provide for unforeseen contingencies. For example, severe freezes, continued cold weather, excessive rain, or other similar hazards might result in partial or total crop failure during any given season. The net effect of a partial or total crop failure would be to reduce shipments, thereby causing discontinuance of regulations, the curtailment of assessments, and reduction of committee income. In order to continue and maintain at least a nucleus of a committee organization and to assure the performance of minimum or basic services, the committee should be authorized to obtain necessary funds for such purposes from the unused funds of previous years which have been set aside as a reserve against this type of contingency.

Also, it is recognized that a committee may be forced to liquidate its affairs upon termination of a marketing agreement and order. It would be appropriate therefore that excess funds from years in which assessments collected exceed expenses incurred be set aside in a reserve to provide for the contingency of possible liquidation of the committee's affairs upon termination of the program.

Authority should also be included to allow the reserve to be used for financing operations at the beginning of each fiscal period prior to the time shipments of Lower Valley tomatoes begin. In the early part of the fiscal period prior to the beginning of shipments, expenses in the form of salaries and other overhead continue even though there is no current revenue in the form of assessments. It is customary and sensible budgetary practice and the committee should be authorized to borrow operating funds from the reserve until such time as assessment collections provide adequate revenue to meet current expenses.

The reserve of the type provided for in the proposed marketing agreement and order should authorize any one or more of uses named therein, namely (1) liquidation, (2) crop failure advance, and (3) fiscal year expense advance. In establishing such an authorization an appropriate limit to be placed upon the total amount that may be accumulated in such reserve is approximately one year's total expenses.

If and when reserves from excess assessments collected over expenses incurred reach the limitation established in the order then the excess should be refunded proportionately to the persons from whom it was collected. This shall be established by appropriate accounting procedure based on the committee's records.

Funds received by the committee pursuant to the levying of assessments should be used solely for the purpose of administration of the order, including appropriate research and development projects. The committee should be required to maintain books and records clearly reflecting its operations, in order that its books, records, and administration might be subject to inspection as appriate during regular hours of business.

Each member and each alternate, as well as employees, agents, and other persons working for or on behalf of the committee should be required to account for all receipts and disbursements, funds, property, or records for which they are responsible and the Secretary should have the authority, at any time, to ask for such accounting. The committee should bond its members or employees entrusted with the custody of funds or property.

Whenever any person ceases to be a member or alternate of the committee, he should be required to account for all receipts, disbursements, funds, property, books, records, and other committee assets for which he is responsible. Such persons should also be required to execute assignments or such other instruments as may be appropriate to vest in their successor or any agency or person designated by the Secretary, the right to all such property and all claims vested in such person.

If the committee should recommend that the operations of the marketing agreement and order should be suspended, or if no regulation should be in effect for a part or all of a marketing season, the committee should be authorized to recommend, as a practical measure, that one or more of its members, or any other person, should be designated by the Secretary to act as a trustee or trustees during such period. This provides a practical method whereby the committee's business affairs could be taken care of during periods of relative inactivity with a minimum of difficulty and expense.

(d) It is found that the Lower Valley tomato industry should avail itself of the authority granted by the act for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of tomatoes by including appropriate authorization in the proposed marketing agreement and order.

Through the medium of research investigation, the committee should be able to assemble and evaluate data on growing, harvesting, shipping, marketing and other factors with respect to tomatoes of value in determining regulations to be considered or established. As the committee becomes more aware of the value and need for marketing research and development, other projects undoubtedly may be initiated. The committee should be empowered to engage in such projects (except advertising projects which are not permitted by the act), to spend assessment funds for them, and to consult and cooperate with appropriate agencies with regard to their establishment. The committee may be limited by lack of facilities and trained technicians in carrying out any such projects. It should be authorized to enter into contracts for their development with qualified agencies, such as universities, and public and private research agencies. Prior to engaging in any such activities, the committee should submit, for the Secretary's approval, plans for each project. Such plans should set forth the details, including the cost and the objectives to be accomplished, so as to insure, among other things that the projects are within the purview of the act and the proposed marketing program. The cost of any such projects should be included in the budget for approval and such cost should be defrayed by the use of assessment funds as authorized by the act.

(e) Lower Valley Texas tomato prices are directly affected by the quantity and quality of tomatoes being sold or transported, and available for sale or transportation to market during any period. Official Market News reports for the past three seasons, which are representative of Lower Valley tomato prices and marketing conditions, show price fluctuations from week to week throughout each season reflecting changes in the supply of Lower Valley Texas tomatoes. These changes were reflected not only in receiving markets, but also at f.o.b. shipping points and in prices to growers. The same records show price differentials by grades and sizes for Lower Valley tomatoes with the No. 1 grade customarily selling at a higher price than the No. 2 grade, also sizes 6 x 6 selling for prices higher than sixe 7 x 7 with the differentials by sizes applying for each grade, both No. 1 and No. 2. There is a depressing effect on all levels of Lower

Valley tomato prices, but especially growers' prices, resulting from sales of low grade, small size tomatoes. Major portions of the low grades, according to the U.S. Standards for Fresh Tomatoes, would be termed "unclassified," but in common trade parlance are referred to as "culls." It is found from the record that the sale of cull tomatoes in receiving markets, also at f.o.b. shipping point, displaces sales of better quality No. 1 and No. 2 grade tomatoes.' In addition, the offer of culls for sale as part of the available supply in markets receiving Lower Valley tomatoes, as well as the sale of culls and other lower grades and smaller sizes of tomatoes, have a depressing effect, proportionately greater than the quantity available, upon the general price level of No. 1 and No. 2 grade tomatoes in those markets. Some handlers have purchased pickouts, primarily culls, from packing houses, and through regularly established routes have marketed these culls in West Texas, also in north central Texas and in markets outside the State. In addition, pickouts from packing houses have been sold f.o.b. shipping point to itinerant and resident truckers who transport them to markets outside of the production area, especially to such points as San Antonio and Dallas. During parts of the Lower Valley tomato season the supply of low grade tomatoes in these markets substitutes in part for supplies of No. 1 and No. 2 grade. Tomatoes purchased from Lower Valley packing houses as pickouts by both itinerant and resident truckers, as well as established handlers dealing in this class of merchandise, usually are sold f.o.b. shipping point by the packing houses at low prices, frequently ranging from $0.05 to $0.25 per 60-pound box. Sometimes packing house operators, to save costs of dumping, give them to truckers. Buyers of such low grade tomatoes usually have only a relatively small amount invested in them, as compared with current market prices of packed No. 1 and No. 2 grade. When the purchaser of such tomatoes places them in the visible, available supply in San Antonio, Dallas, or in markets outside the State, the cull tomatoes are not as readily acceptable except at discount prices as the better No. 1 and No. 2 grades. However, the relatively large supply of such poor grade tomatoes in San Antonio, Dallas and other receiving markets, both within Texas and outside the State substitute in part for the better quality No. 1 and No. 2 grades and in addition have the aforementioned depressing effect upon price levels for No. 1 and No. 2 grades which in turn is reflected in f. o. b. prices in the Lower Valley and reflected again in the prices paid to growers.

Both proponent and opponent witnesses testified that according to their records, that prices received for No. 1 and No. 2 grades, also for different sizes varied from day to day throughout the season, but customary differentials applied between grades, also customary differentials applied between or among different sizes. In turn, these differentials when calculated on a composite basis are used by handlers as a basis for determining the prices paid to growers. Additionally, both proponent and opponent witnesses offered extensive evidence that prices growers received for their tomatoes depends upon the quality and the size composition of tomatoes they delivered to the packing house. This applies whether growers were paid on the basis of the packout of each lot or whether growers sold on a so called field run basis for, as the record shows, in so called field run purchases, the packing house operator, through his agent, calculates the price to growers on the basis of the grade and size composition of the grower's tomatoes as they are dumped from his boxes or processed through the plant.

The bulk of the Lower Valley tomato crop is marketed as "mature green". These are tomatoes which are "mature" as graded in accordance with the U.S. Standards for Fresh Tomatoes but which have not yet reached the degree of maturity that can be classed, in accordance with such standards, as "turning" or greater degree of maturity. Although the great bulk of Lower Valley tomatoes are picked at the stage of ripeness when they will grade mature, but of no greater degree of maturity such as turning or higher, the tomatoes to the layman are green in color and hence they are commonly referred to as "mature green".

Additional classifications of Lower Valley tomatoes are also based on the degrees of maturity into which they fall. These are degrees of maturity as set forth in the U.S. Standards and which in common parlance in the production area, as well as in receiving markets, are usually referred to as pinks or ripes.

Each packing house dealing in mature green tomatoes also gets some so-called pinks. This is due to the customary practice of growers, or packing house operators, if they are directing the picking crews, waiting until some "pink" tomatoes appear on the vines as an indication that the tomatoes for that picking will be sufficiently mature to qualify as "mature" for market purposes. This rule of thumb serves a useful purpose as a practical gauge for farmers and bosses of picking crews to determine when the fruit is ready to be picked. But it also results in some "pink" tomatoes in the lots delivered to the packing house, so each packing house operator obtains some pink tomatoes. The record shows that the percentage of pinks packed out of representative daily runs ranged from 5 to 10 percent, usually running 6 to 7 percent of total pack-out for the day. Pinks thus obtained are usually packed in smaller containers, such as lugs, rather than the 60 or 40-pound boxes.

In addition to the so-called "packing house pinks," above referred to, other "pink" tomatoes also are marketed from the Lower Valley crop. These Lower Valley tomatoes are purposely held under controlled conditions, that is under controlled temperature and controlled humidity, while the ripening process continues until the proper amount of pink or red color, according to the operators preference, shows in the fruit. Pink tomatoes out of the ripening rooms or repacking plant are usually packed in smaller containers than those commonly used for mature greens. A common type of container used in the Lower Valley for these pinks is the two-layer lug with cardboard in the middle and with two strips across the top; the 20-pound pony crate, made of cardboard, with three layers of fruit, the 12-ounce tube, usually with 4 tomatoes to a tube, are also used. Such tubed tomatoes are then put in master containers, some with 10, others with 20, to the master container. This is commonly known as a repacking operation in that the tomatoes are usually held under controlled conditions as mature greens for several days, up to but not more than two weeks, during which they ripen. The tomatoes are graded from time to time as the proper amount of color shows on them and those which are ready for market are packed in the containers as indicated above and moved to receiving markets. The market channels for the repacked pinks usually is direct to wholesalers or to retail outlets, including the larger chain store buyers. Major outlets for Lower Valley mature green tomatoes are the repackers, who ripen them, repack them, and sell them in the tomato market. Lower Valley tomatoes from repacking plants, regardless of whether they are sold by the repacking plant in the Lower Valley or by repacking plants in receiving markets, are sold mostly to wholesalers, to chain stores and to other retail buyers.

Market competition involving Lower Valley tomatoes, whether between mature greens or pinks, and whether sold or transported by one handler as distinguished from another, is direct not only in receiving markets but also at shipping point. Factors affecting marketing conditions for one type of fruit, mature green, as compared with another, pinks, and the price for one type as compared with another have a direct effect on and compete directly with the marketing conditions and the market prices for all types of tomatoes. It is recognized that some common, although relatively minor distinctions exist between certain marketing features for Lower Valley mature green tomatoes and for pinks. For instance, mature greens are sold largely to repackers, which, in turn, later distribute them to wholesalers, chain store buyers, and other retailers. Lower Valley repacking plant pinks do not go to repackers, but instead compete with the other repacks of Lower Valley tomatoes at the wholesale, chain store, and other retail buyer levels. Mature greens use the 60-pound crate to a great extent. Pinks use smaller containers. The nature of the demand for pinks has some distinctions when compared with the market for mature greens, in that the market in the long run recognizes the additional time, condition, and cost factors in the pink fruit. But marketing problems with respect to all tomatoes, including both mature green and pink, are interdependent, related, and largely the same, especially in the effect of such marketing conditions on Lower Valley growers' prices for tomatoes.

Based on the facts as above found relating to marketing conditions for

Lower Valley tomatoes, and on the evidence in the record with respect to the provisions of the proposed marketing agreement and order relating to marketing policy, recommendations for regulations, and issuance of regulations, it is concluded that the provisions as set forth therein will tend to promote more orderly marketing conditions for Lower Valley tomatoes and improve growers' prices therefor.

It is hereby determined that the provisions authorizing different regulations for different grades and sizes of tomatoes, as well as for different maturities of tomatoes, should include as part of that authorization authority to distinguish between the so-called pink tomatoes and the mature green tomatoes. The nature of the supply of and demand for pink tomatoes is sufficiently different from that for mature green tomatoes that it is proper for the committee to be able to consider the marketable distinctions between pink tomatoes and mature greens and the differences in the nature of demand, with resultant differences in price schedules between pinks and mature greens, so that appropriate and proper consideration can be given to both mature green and pink tomatoes with a view of benefitting the handlers and producers of each. Also, new varieties are being tried, particularly in the production and marketing of pink or stemmed tomatoes, which may require differences in the application of regulations with respect thereto. Consequently, it is hereby determined that the differences should be recognized within the provisions of the order.

The tomato repacking operations within the Lower Valley should be recognized by the committee, as within its authority to recommend regulations, so that if, in the judgment of the committee and of the Secretary, different regulations should be issued for repacked tomatoes on the basis of maturity distinctions, or other appropriate marketing distinctions, as compared with mature greens or "packing house pinks," such may be done. This authority permits such repacked tomatoes to be free of regulations if that is determined to be in the best interests of carrying out the objectives of the act, for promoting more orderly marketing of Lower Valley tomatoes, and for increasing grower prices towards parity.

A marketing policy is essential each season to provide an over-all plan or policy for the committee and the industry with respect to the marketing of Lower Valley tomatoes during that marketing season. Marketing policy statements should indicate to producers and handlers the general outlook or plan the committee intends to follow in considering and recommending regulations with respect to Lower Valley tomatoes. Handlers would be benefitted by such a statement so that they could make adequate preparations with respect to the regulations the committee intended to recommend.

The committee should prepare and submit to the Department a report on each proposed marketing policy statement, or amendments thereto, relating to the marketing of tomatoes during each season so that the Secretary, or those officials acting in his name and pursuant to his delegation, may carry out effectively his responsibilities in connection with a proposed marketing agreement and order. Each season the committee should prepare and submit to the Department a statement of its marketing policy which submittal should be prior to or simultaneous with its initial recommendations for seasonal regulations. At the same time that the committees' marketing policy statement is submitted to the Department it should also be made available to growers and handlers in the Lower Valley through appropriate means of communication, such as the newspapers, radio, bulletins, and other media available to the committee.

The factors set forth in the marketing agreement and order for the committee to take into consideration in developing its marketing policy are those commonly and usually taken into account by industry members in their day-to-day evaluation of market outlook on Lower Valley tomatoes. They are adequate and proper for the intended purposes.

Lower Valley tomato growers and handlers, as well as local buyers and receivers in terminal markets, commonly speak of and conduct business on U.S. No. 1 and U.S. No. 2 grade tomatoes, also they commonly use in the same way size designations of 6 x 6, 6 x 7, 7 x 7, etc. These grades and sizes are those which have been built up in the industry over a number of years and are also referred to in the United States Standards for Fresh Tomatoes. The U.S. Standards for Fresh Tomatoes are widely used throughout the Lower Valley by both producers and shippers as well as buyers. They provide a set of standards for assisting in value determinations during market transactions.

The provisions of the proposed marketing agreement and order authorizing the Texas Valley Tomato Committee to recommend regulations, as authorized in the program, to the Secretary, whenever it finds that such regulations would tend to promote more orderly marketing conditions for Lower Valley tomatoes and would tend to increase growers' prices for such tomatoes towards parity, is an essential function of this agency. As active tomato producers or producer-handlers, committee members should have direct, first hand, and intimate knowledge of the quantity and quality of tomato supplies in the Lower Valley and of the nature of the demand for tomatoes as reflected by general market price levels, as well as price differentials for various grades and various sizes of such tomatoes.

The committee, with knowledge of the quantity and quality of supply as well as the nature of demand for different grades and sizes of Lower Valley tomatoes, and upon considering the various factors outlined in the marketing policy and relating these to their interest as growers and producer-handlers as well as to the interest of all Lower Valley tomato growers, should be in a position to arrive at sound marketing judgments on the types and extent of regulations, as authorized by the proposed marketing agreement and order, that should be recommended in the best interests of Lower Valley tomato growers.

Since the quantity and quality of Lower Valley tomatoes handled, i.e., sold or transported to markets during any period, have a direct effect upon the total quantity and composition of tomato supplies which, in turn, have a direct effect upon the prices received for tomatoes, the returns to Lower Valley producers are necessarily affected thereby. Limitation of the handling of poorer grades, off quantity, less desirable sizes, and maturities of Lower Valley tomatoes, as authorized by the marketing agreement and order, provides a method for adjusting the total quantity of tomatoes and the composition of such supplies, which may move to and be sold in Lower Valley tomato markets.

More orderly marketing of Lower Valley tomatoes will be promoted through the types of packs and the kinds and types of containers in which such tomatoes may be shipped. The adjustment of Lower Valley tomato supplies by withholding poor grades, qualities, and small sizes, when supplies are relatively heavy and prices are relatively low will help to improve orderly marketing conditions for Lower Valley tomatoes by limiting the total quantity available for market during such periods of regulation and by removing the portions of the supplies which tend to depress growers' prices. It is concluded, therefore, that the provisions in the proposed marketing agreement and order authorizing regulation in any or all portions of the production area of the handling of particular grades, sizes, qualities or packs of any or all varieties of tomatoes during any period are necessary and proper for promoting more orderly marketing conditions for Lower Valley tomatoes and for helping to improve growers' prices for such tomatoes.

As previously found, some types of tomatoes are more commonly packed in one type of container than in another. The record also shows that some varieties of Lower Valley tomatoes have slightly different marketing characteristics than other varieties. Likewise, it is found from the record that although the characteristics of Lower Valley tomatoes tend to be more uniform than disparate throughout the Valley, nevertheless some value attributes affecting marketability of Lower Valley tomatoes may vary from one portion of the Valley to another. Such conditions are normally occasioned by disaster, such as hailstorms, rain, or other weather conditions. However, some disparate conditions in the marketability of Lower Valley tomato supplies do occur throughout the production area, and both handlers within the Valley as well as buyers of Lower Valley tomatoes recognize such differences when they occur.

It is found that marketing conditions for Lower Valley tomatoes may change throughout the season as such conditions are affected both by differences in the supply of Lower Valley tomatoes as well

as differences in the nature of the demand for such tomatoes. It is also found on the record that the nature of the demand for Lower Valley tomatoes varies in export markets from that usually found in domestic markets. Also, special shipments of Lower Valley tomatoes such as for charity, or for processing, or for experimental projects, or for other specified purposes may require special consideration in order to meet demands of those outlets.

It is concluded, therefore, that the provisions of § 1021.52(b)(2) which provides that regulations authorized by the proposed marketing agreement and order may limit the handling of particular grades, sizes, qualities or packs of the tomatoes differently, for different varieties, for different stages of maturity, for different portions of the production area, for different containers, for special outlets specified in § 1021.54, or any combination of the foregoing, during any period are necessary and proper to promote more orderly marketing of Lower Valley tomatoes and for tending to improve the price of such tomatoes towards parity for Lower Valley tomato producers.

According to common marketing practice in the Lower Valley, sizes of tomatoes have varied within the same designation due to the use of different size grading belts which provide part of the mechanics for commercial sizing of Lower Valley tomatoes. The use of different size belts for the same size designations results, in some instances, in handlers being able to over pack, that is to give the buyer a greater weight of preferred sizes in a given size designation than would be allowed if all handlers used the same size diameter in their grading belts for specific size designations. Although this may help the handler to attract or hold customers in this type of competitive situation, the effect upon growers' prices, in such instances of over packing, tends to return less to the grower than would occur if the tomatoes are properly packed in accordance with standard size designations because growers' prices are calculated, among other marketing factors, on the proportion of particular sizes in a pack.

Both proponent and opponent witnesses testified that it is customary for many Lower Valley tomato handlers to put excess weight in particular containers or to pack the lower range of size 6 x 6 in size 6 x 7 pack. When handlers pack 6 x 6 size tomato and designate it to be 6 x 7 and sell it as a 6 x 7 size, the grower, when settlement is made on a packout basis, receives a lower price. This price may be as much as $0.75 per box below the price he should have received, if paid for the correct size of his tomatoes. In the same manner, if a handler puts excess weight of tomatoes in a crate and settlement is made on a packout basis growers suffer losses because of settlement on the number of boxes packed out. Although the total number of containers now used for marketing Lower Valley tomatoes is rather limited, there is a need for authority in the proposed marketing agreement and order to prevent the disruption of orderly marketing by the use of off size or deceptive containers. Although the standard pack, as specified in the U.S. Standards for Fresh Tomatoes, has been in common use in the Lower Valley tomato industry for years, developments in recent seasons have recorded the practice of dumping tomatoes loosely, especially in the larger containers, without attention to orderly arrangement, which is customarily referred to as a "jumble pack." The kind of pack used for the sale or transportation of Lower Valley tomatoes has a direct effect upon the market price returned for such tomatoes. It is determined on the basis of these findings that the proposed marketing agreement and order should provide authority for regulations which may fix the size, weight, capacity, dimensions, or pack of container to be used in the packaging, transportation, sale, shipment, or other handling of Lower Valley tomatoes. Specific packs of Lower Valley tomatoes may be defined and established in rules and regulations authorized by the proposed marketing agreement and order, which will provide a basis for more orderly marketing by arrangement of grades and ranges of sizes to be handled in conjunction with specified containers. Particular combinations of grade, size, weight, and containers (which factors constitute packs) should be kept out of specified market channels when it is found that such packs tend to disrupt orderly marketing and to depress grower prices for Lower Valley tomatoes. Accordingly, the committee should be empowered to recommend, and the Secretary to issue, regulations providing for maximum and minimum sizes and minimum grades with respect to the handling of certain packs. It it determined, therefore, that the proposed marketing agreement and order should authorize different regulations for different packs as a means of promoting more orderly marketing through assistance to the industry in furthering sound merchandising practices.

Additionally, the marketing agreement and order should permit different regulations for different types of containers. Principal types and sizes of containers in current use for handling of Lower Valley tomatoes are the 60-pound wire bound crate, the 40-pound crate, and the 30-pound lug. Other types of containers include a 20-pound fibre board box or pony and the small tube usually containing about 12 ounces of tomatoes which, in turn, may be put in master containers of 10 or 20 tubes each. Some additional containers are used for tomato marketing such as, in limited instances, field boxes or, in other instances, boxes furnished by the buyer. Authority should be provided in the proposed marketing agreement and order to promote more orderly marketing conditions by specifying the types of containers that may be used if and when it is found that the use of certain containers disrupts orderly marketing and results in depressing prices to growers. In summary, it is determined that the proposed marketing agreement and order should provide authority for regulating the handling of Lower Valley tomatoes by fixing the size, weight, capacity, dimensions, and pack of the container or containers which may be used in the packaging, transportation, sale, shipment or other handling of tomatoes.

(f) The committee should be authorized to recommend and the Secretary to establish such minimum standards of quality and maturity and such grading and inspection requirements during any and all periods when tomato prices are above parity as will be in the public interest. Some tomatoes are of such low quality that they do not give consumer satisfaction at any time because of the large amount of waste and time consumed in preparing them. Consumers do not receive proper value for their expenditures for such low quality tomatoes as culls, even when prices are above parity. It is not in the public interest either of the producers, handlers, or of consumers to permit shipments of such poor quality. The shipment of immature or over-ripe tomatoes also tends to disrupt general market conditions for the commodity and the discounted prices received for such immature or over-ripe tomatoes adversely affects grower prices. The marketing agreement and order should authorize the establishment of such minimum standards of quality and maturity as will be in the public interest. It is also necessary that such authority should include grading and inspection requirements so that such minimum standards of quality and maturity may be determined whenever such regulations are in effect.

The committee should have the authority to recommend to the Secretary the establishment of minimum quantities below which handling will be free from regulation. Most shipments of Lower Valley tomatoes are made in carlots or in trucklots. However, some small quantities are moved outside of the production area. Such small quantities constitute only a minor percentage of the total production. Some of these small shipments, such as gifts, are sold to accommodate friends. Problems of inspecting such small lots, or other problems in complying with inspection regulations on such small lots, may make it uneconomical, undesirable, and impracticable to require that such small shipments comply with all the regulations required of the larger commercial shipments. The administrative difficulties in checking upon such shipments to see that they are inspected, or that assessments are paid on them, may be such that it would be impractical for the committee to attempt to do so. However, such shipments should not be allowed to contain culls or other discounted grades and sizes to depress the market on the bulk of commercial sales. It might be necessary to permit the maintenance of one or more regulatory requirements on such minimum quantities while relaxing other regulations applicable to them. It is contemplated, of course, that any such relaxations of regulations would be applied uniformly.

(g) Tomatoes moving to, or sold in, certain outlets such as those specified in § 1021.54 of the marketing agreement and order are usually handled in a different manner. Such outlets usually accept different grades, sizes, qualities,

maturities, packs, containers, or different prices are returned, or combinations of such considerations may apply. The marketing agreement and order should provide authority for the committee to give appropriate consideration to the handling of tomatoes for such purpose so that full opportunity may be taken under the program to improve orderly marketing conditions for tomatoes, by relieving such shipments from regulations, or modifying regulations for shipments to such outlets, thereby tending to increase total returns to tomato growers in the production area.

Some export markets accept certain grades, and particularly some sizes, which normally are discounted in some domestic markets. For example, many small size tomatoes are exported to Canada.

The Canadian market customarily prefers smaller sizes than many metropolitan or other receiving markets in the United States. Also, acceptance of different quality tomatoes in the Mexican market, especially in the border cities, from those customarily sold in major United States' markets distinguishes demand in that outlet from Canadian and from domestic market requirements. Differences in levels of consumer income among these outlets and differences in trading customs influence the nature of demand for tomatoes in these export outlets, so that authority for recognizing such differences should be included in the proposed program. Provision should be made for the modification, suspension, or termination of regulations which may be applied to shipments for export so that this demand can be met when it is in the best interests of growers' returns to do so. Therefore, the proposed marketing agreement and order should provide authority for regulating exports to Canada differently from domestic shipments. Also authority should be included to allow different quality and sizes from the domestic market for exports to Mexico, or to any other export outlet. Authority to differentiate among export markets in considering grade, size or any other types of regulations should be authorized by the proposed marketing agreement and order.

The committee and the Secretary should have authority to give special consideration to tomatoes for relief or for charitable purposes. Such shipments are intended for special outlets and usually the shipments are by way of donation or due to some special consideration between the shippers and receivers. Occasional shipments are made from the production area to orphans' homes, hospitals, or similar facilities, and the committee should have the authority to waive some of the requirements in regard to such shipments.

The marketing agreement and order should provide that special consideration be given to the handling of tomatoes going to canning plants or other processing outlets. Shipments of tomatoes to be processed at canning plants are specifically exempted from regulation by the act. However, the committee should have the authority to require handlers making such shipments to give proper evidence that the shipments are going to the canning plant and the tomatoes are actually diverted into that outlet. No other regulation or restriction is implied on tomatoes for canning or processing. Such authority is necessary because occasional shipments of tomatoes from the production area are made to canning plants in Arkansas and other nearby States. The repacking of tomatoes should not be included under the term processing and such repacking should not be given the same consideration as shipments made to canneries.

Various studies are conducted from time to time with respect to the production and marketing of tomatoes, such as the acceptability of varieties, maturities, containers, and market preferences. Many of these studies are conducted with the cooperation of local shippers. Shipments are controlled since they are made under the direction of the station. However, shippers furnish the labor and packing facilities and oftentimes the tomatoes being shipped. The ultimate goal of such studies is to increase returns to the industry by reducing expenses and increasing consumer acceptance. The committee should have the authority to recommend the modification, suspension, or termination of regulations which might interfere with the successful completion of such studies.

The committee should be empowered to provide special treatment through modification, suspension, or termination of regulations applicable to other special purposes which may develop in the future, and for other purposes which later may be specified by the committee with the approval of the Secretary.

It is appropriate and necessary that the Secretary notify the committee of any regulations or any modifications, suspensions, or terminations of regulations so that the committee will be informed of such actions. It is also proper that the committee after having received from the Secretary notification of regulation should relay such information on to handlers and producers within the production area by all appropriate and timely means, such as newspapers, radio, and committee bulletins.

The authority for modifying, suspending, or terminating, grade, size quality, assessment, or inspection regulations, should be accompanied by the additional administrative authority for the committee to recommend and the Secretary to prescribe adequate safeguards to prevent shipments for such purposes from entering market channels contrary to the provisions of such special regulations. The authority for establishment of safeguards should include such limitations or appropriate qualifications on shipments which are necessary and incidental to the proper and efficient administration of the marketing agreement and order. Such safeguards may include, but should not necessarily be limited to, inspection, so that the committee may have an adequate record of the grades, sizes, and qualities of tomatoes shipped to special outlets; application to make such special shipments; requirements for the payment of assessments in connection with such shipments; reports by handlers with respect to the number of such shipments and the amounts of tomatoes shipped; and assurances by purchasers and handlers that the tomatoes are to be used for the purpose designated.

In order to maintain appropriate identification of shipments of tomatoes to special outlets, safeguards authorized in the marketing agreement and order may provide for the issuance of Certificates of Privilege to handlers of such tomatoes and, in addition, may require that such handlers obtain such certificates on all shipments made by them to such special outlets. Certificates of Privilege may be issued by the committee as an indication of the authority for the handler to make such shipments and as a means of identifying specific shipments. The certificates should be issued in accordance with rules and regulations established by the Secretary on the basis of committee recommendations or other available information so that the issuance thereof may be handled in an orderly and efficient manner which can be made known to all handlers. The committee should be authorized to deny or rescind Certificates of Privilege when necessary to prevent abuse of the privileges conferred by such certificates. The committee should have authority to rescind or deny certificates when it finds upon satisfactory evidence that handlers to whom Certificates of Privilege have been issued handled tomatoes contrary to the provisions of the certificates previously issued to them. If the committee rescinds or denies a Certificate of Privilege to any handler, such action should be in terms of a specified period of time. Any handler who might have a Certificate of Privilege rescinded should have the right of appeal to the committee for reconsideration.

The committee should maintain records with respect to safeguards and to Certificates of Privilege, and should submit reports thereon to the Secretary when requested, in order to supply pertinent information requisite for him to discharge his duties under the act and the marketing agreement and order. Such reports should include the number of applications received, the number granted and denied, the quantity of tomatoes handled under such certificates, the purposes for which issued, and any other information that might be requested.

(h) Inspection and certification of tomatoes grown in the production area is a common and usual practice for the purpose of determining officially the grade, size, quality and maturity of such tomatoes. Inspection, through the Federal Inspection Service, is available throughout the entire production area and its inspectors are well qualified to certify upon the basis of the United States Standards for Fresh Tomatoes or the United States Consumer Standards for Fresh Tomatoes. Tomato growers and handlers throughout the production area are acquainted with such service and with the inspection offered on tomatoes.

Provision should be made in the marketing agreement and order for inspection by the Federal Inspection Service, or such other inspection service as the Secretary may approve, of tomatoes grown in the production area and handled during any period in which such handling

of tomatoes is regulated under the program. The requirement that no handler shall handle tomatoes unless each lot of tomatoes is inspected by an authorized inspection service approved under the marketing agreement and order is reasonable and necessary for the proper administration of the program. Such inspection requirements should apply to all tomatoes handled under regulations issued under the marketing agreement and order, except when any such handling is relieved from inspection requirements pursuant to § 1021.53 or § 1021.54 of the marketing agreement and order.

Inspection establishes a means whereby the handler, the buyer, the committee, the Secretary, and other interested parties may determine whether such tomatoes handled subject to regulations comply with the requirements of any particular grade, size, quality and maturity regulation in effect under the marketing agreement and order. Effective regulation of the handling of tomatoes grown in the production area requires that the grade, size, quality and maturity of each sale or shipment of such tomatoes should be authoritatively established. The provisions for inspection and the certificates which are issued pursuant to inspection offer an appropriate and practical means of establishing and identifying the grade, size, quality and maturity of tomatoes handled pursuant to the terms and conditions of the marketing agreement and order.

Provision should be made in the marketing agreement and order for authority to inspect tomatoes not only by personnel of the Federal Inspection Service, but also by personnel of such other inspection service as the Secretary may designate so that sufficient flexibility for successful operation can be provided through appropriate inspection if Federal inspection is not available. In order to assure that production area tomatoes will not be shipped without inspection in the event the Federal Inspection Service is not available to furnish the service, the Secretary should be authorized to designate an appropriate inspection service to perform the inspection. Thus, there should always be an authoritative means of establishing the grade, size, quality and maturity of tomato shipments.

The marking of tomato containers with a number or other appropriate symbol to indicate they are part of a lot which has been inspected is a current practice among many Lower Valley tomato handlers. This marking or identification assists handlers in determining if such tomatoes have been inspected. Authority for making such marking a regulatory requirement, if the committee recommends and the Secretary approves, should be included in the proposed marketing agreement and order as a reasonable and necessary provision incidental to administration of the program.

Responsibilty for obtaining inspection falls primarily on the handler who first handles such tomatoes after they have been prepared for market since such person usually is responsible for the particular grade, size, quality and maturity to be shipped. Identification and certification of such tomatoes through inspection are essential to proper administration of the marketing agreement and order to determine whether such shipment accords with the grade, size, quality and maturity requirements issued under such order.

Any person who handles Lower Valley tomatoes, i.e., sells or transports such tomatoes in the current of the commerce between the production area and any point outside thereof, is a handler and the person who first handles them when they are subject to grade, size, or any other regulation under the program is responsible for having the tomatoes in each lot inspected. This responsibility applies whether the first handler is the grower who sells or transports them, or whether it is some other person, such as an established handler, an itinerant or resident trucker, or any other person selling or transporting Lower Valley tomatoes. On the basis of the previous findings in the definition of handle, a producer who sells either field run or packed tomatoes is responsible for inspection of such fruit whenever grade, size or other regulations are in effect, unless such sales or deliveries are to a person who is registered as a handler with the committee. In effect, the first sale or transportation of Lower Valley tomatoes is subject to inspection when regulations are in effect, unless the tomatoes are sold or delivered to a person, such as an established packing house operator, who customarily grades and packs the fruit, then has it inspected as part of the marketing process. Another exception also is provided which allows a grower to sell his fruit to a trucker or any other person without a packing house, if such trucker or other person is registered as a handler with the committee thereby signifying the registered handler's responsibility for inspection and other regulatory requirements of the proposed marketing agreement and order.

Each handler must bear responsibility for determining that each of his shipments is inspected. Such requirement is necessary so that the committee can obtain evidence in the form of inspection certificates which it needs to carry on its appropriate functions in determining if specific shipments have been inspected and if they otherwise meet requirements of regulations issued pursuant to the marketing agreement and order.

Whenever any shipment of tomatoes subject to the terms and provisions of the marketing agreement and order have been prepared for market and inspected but are later dumped from the containers in which they were inspected, such tomatoes lose their identity insofar as the original inspection certificate is concerned and such inspection certificate no longer applies. If any such lot of tomatoes is thereafter repacked, such tomatoes, even though they may have been previously inspected in other containers, must meet regulations issued under the marketing agreement and order. Since the original certificate is no longer valid such tomatoes must be reinspected before they are shipped because it is not possible to determine whether the tomatoes which are being shipped meet the grade, size, or other regulatory requirements of the marketing agreement and order unless they are so inspected and certified. In this way handlers and the committee will be assured that such shipments comply with such regulations. The committee with the approval of the Secretary may provide for relief from such inspection requirements on regraded, resorted, or repacked tomatoes in circumstances where it appears reasonably certain that such tomatoes meet the applicable regulations after regrading, resorting and repacking. The provision allowing the committee to consider and recommend, and regulatory authority of the proposed marketing agreement and order to provide, different inspection requirements for regraded, resorted, or repacked tomatoes recognizes possible differences in both commodity and market requirements for repacked fruit, especially when such tomatoes may be of greater maturity than the bulk of marketings, or when they may be in special, distinctive containers commonly associated with one type of marketable fruit as distinguished from another. Both proponents and opponents testified as to ascertainable, commonly accepted, marketing distinctions both in the type of fruit and in the nature of demand for "pink" or more mature fruits as compared with "mature green" Lower Valley tomatoes. The provisions of the proposed marketing agreement and order relating to inspection, as well as to authority for issuing other regulations relating to grade, size, quality, maturity, pack, or containers in which they are marketed, establish authority for giving appropriate marketing consideration, both by the committee and in the issuance of regulations, to the commonly accepted distinctions and differences between so-called "pinks" and other degrees of maturity in Lower Valley tomatoes.

The committee with the approval of the Secretary should be authorized to determine the length of time inspection certificates are valid insofar as requirements of the marketing agreement and order are concerned. Such requirement is appropriate and necessary especially with respect to lot inspections which may be administratively desirable to accommodate handlers and truckers because tomatoes are an extremely perishable commodity. It is not feasible and practical for the committee to recognize inspection certificates which may have been issued several days previously, since the tomatoes so inspected could have since deteriorated and no longer comply with requirements in effect at the time the final shipment is made.

Copies of inspection certificates issued pursuant to the requirements of the marketing agreement and order should be supplied to the committee promptly by the appropriate inspection service so that the committee may properly discharge its administrative responsibilities under the program.

The committee should have the authority to recommend, and the Secretary to require, that any tomatoes transported

by motor vehicle be accompanied by a copy of the inspection certificate issued thereon, which certificate shall be surrendered to such authority as may be designated. A large quantity of the tomatoes grown in the production area are trucked from the production area to market. By requiring the operators of such vehicles to surrender copies of inspection certificates applicable to their shipments upon demand to such authority as may be designated, evidence will be readily available that such shipments meet or comply with the requirements of the marketing agreement and order. The evidence indicates that such a requirement is not necessary with respect to other types of shipments, such as by railroad.

(i) Certain hazards are encountered in the production of Lower Valley tomatoes which are beyond the control or reasonable expectation of the producer of such tomatoes. Because of these circumstances, and to provide equity among producers and handlers insofar as any regulations under the marketing agreement and order are concerned, the committee should be given authority to issue exemption certificates to producer applicants to permit such applicants to sell their equitable proportion of all shipments from the production area. It is contemplated, however, that such an exemption will require the approved applicant to sell his best quality tomatoes.

The committee, by reason of its knowledge of the conditions and problems applicable to the production of tomatoes in the production area and the information which it will have available in each case, should be well qualified to judge each applicant's case in a fair and equitable manner and to fix the quantity of exempted tomatoes which each such applicant may sell.

The provisions contained in the notice of hearing relevant to the procedure to be followed in issuing exemption certificates, in investigating exemption claims, in appealing exemption claim determinations, and in recording and reporting exemption claim determinations to the Secretary are necessary to the orderly and equitable operation of the marketing agreement and order and they should, therefore, be incorporated in the agreement and order.

(j) The committee should have authority, with the approval of the Secretary, to require that handlers submit to it such reports and information as are needed to perform its functions. It is difficult to anticipate every type of report, or kind of information, which the committee may need in administering the program, but it should have the authority, subject to the approval of the Secretary, to request reports and information if needed, of the type set forth in the marketing agreement and order. The standards to be followed by the committee in requesting handlers to furnish reports should be along the lines set forth in § 1021.80 of the agreement and order and such reports should be those necessary for operation of the committee in carrying out the terms and conditions of the marketing agreement and order. Reports furnished to the committee should be submitted in such manner and at such times as may be designated by it. Such reporting procedures should accord with the need and requirements of the committee which are essential to administration of the marketing order, because changing conditions may warrant changes in the forms and methods of reporting. The right to approve, and also to modify, change, or rescind, any requests by the committee for information in order to protect handlers from unreasonable requests for reports is retained by the Secretary.

Since it is possible that a question may arise with respect to compliance with the marketing agreement and order, each handler should maintain complete records of his handling and disposition of tomatoes for a period of not less than two years subsequent to the termination of each crop year.

Any and all reports and records submitted for committee use by handlers shall remain under appropriate protective classifications and be disclosed to none other than persons authorized by the Secretary.

(k) Except as provided in the marketing agreement and order, no handler should be permitted to handle tomatoes, the handling of which is prohibited pursuant to regulations issued under the marketing agreement and order, and no handler should be permitted to handle tomatoes except in conformity with the marketing agreement and order and regulations issued thereunder. If the program is to be effective, no handler should be permitted to evade its provisions since such action on the part of one handler, although possibly of small impact on the industry measured by the proportion of tomatoes handled by him, such action would, in any appreciable aggregate, tend to impair operation of the program and otherwise render it ineffective.

(1) The provisions of §§ 1021.82 through 1021.92, as published in the FEDERAL REGISTER of October 15, 1958 (23 F.R. 7944), and as hereinafter set forth, are common to marketing agreements and orders now operating. The provisions of §§ 1021.93 through 1021.95, as hereinafter set forth, are also included in other marketing agreements now operating. Each of such sections sets forth certain rights, obligations, privileges, or procedures which are necessary and appropriate for the effective operation of the marketing agreement and order. These provisions are incidental to, and not inconsistent with, section 8c (6) and (7) of the act, and are necessary to effectuate the other provisions of the marketing agreement and order and to effectuate the declared policy of the act. The substance of such provisions, therefore, should be included in the marketing agreement and order.

General findings. Upon the basis of evidence introduced in the hearing and the record thereof it is found that:

(1) The marketing agreement and order as hereinafter set forth, and all of the terms and provisions thereof, will tend to effectuate the declared policy of the act with respect to tomatoes produced in the production area, by establishing and maintaining such orderly marketing conditions therefor as will tend to establish, as prices to the producers thereof, parity prices and by protecting the interest of the consumer (i) by approaching the level of prices which it is declared in the act to be the policy of Congress to establish by a gradual correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (ii) by authorizing no action which has for its purpose the maintenance of prices to producers of such tomatoes above the parity level, and (iii) by authorizing the establishment and maintenance of such minimum standards of quality and maturity, and such grading and inspection requirements as may be incidental thereto, as will tend to effectuate such orderly marketing of such tomatoes as will be in the public interest;

(2) The said marketing agreement and order authorizes regulation of the handling of tomatoes grown in the production area in the same manner as, and is applicable only to, persons in the respective classes of industrial and commercial activity specified in a proposed marketing agreement and order upon which the hearing has been held;

(3) The said marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act; and the issuance of several marketing agreements and orders applicable to any subdivision of the production area would not effectively carry out the declared policy of the act;

(4) The said marketing agreement and order prescribe, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to the differences in the production and marketing of tomatoes grown in the production area; and

(5) All handling of tomatoes, as defined in the said marketing agreement and order, is in the current of interstate or foreign commerce, or directly burdens, obstructs or affects such commerce.

The marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled respectively "Marketing Agreement Regulating the Handling of Tomatoes Grown in the Lower Rio Grande Valley in Texas" and "Order Regulating the Handling of Tomatoes Grown in the Lower Rio Grande Valley in Texas" which have been decided upon as the appropriate and detailed means of affecting the foregoing conclusions. The aforesaid marketing agreement and the aforesaid order shall not become effective unless and until the requirements of § 900.14 of the aforesaid 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 agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the said marketing agreement are identical with

those contained in the annexed order which will be published with this decision.

Dated: January 30, 1959.

[SEAL] CLARENCE L. MILLER, *Assistant Secretary.*

Order[1] *Regulating the Handling of Tomatoes Grown in the Lower Rio Grande Valley in Texas*

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AUTHORITY: §§ 1021.0 to 1021.92, issued pursuant to sec. 5, 48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047.

§ 1021.0 Findings and determinations.

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31 as amended; 7 U.S.C. 601 set seq.; 68 Stat. 906, 1047), and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (Part 900 of this chapter), a public hearing was held at Edinburg, Texas, November 5–7, 1958, upon a proposed marketing agreement and a proposed marketing order regulating the handling of tomatoes grown in the Lower Rio Grande Valley in Texas (Cameron, Hidalgo, Starr, and Willacy Counties). Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) This order, and all of the terms and conditions hereof, will tend to effectuate the declared policy of the act with respect to tomatoes produced in the production area by establishing and maintaining such orderly marketing conditions therefor as will tend to establish, as the prices to the producers thereof, parity prices, and by protecting the interests of the consumer (i) by approaching the level of prices which is declared in the act to be the policy of Congress to establish by a gradual correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (ii) by authorizing no action which has for its purpose the maintenance of prices to producers of such tomatoes above the parity level, and (iii) by authorizing the establishment and maintenance of such minimum standards of quality and maturity, and such grading and inspection requirements as may be incidental thereto, as will tend to effectuate such orderly marketing of such tomatoes as will be in the public interest;

(2) This order authorizes regulation of the handling of tomatoes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activities as specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) This order is limited in its application to the smallest regional production area which is practicable consistently with carrying out the declared policy of the act; and the issuance of several orders applicable to different subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) This order prescribes, so far as practicable, such different terms applicable to the different parts of the production area, as are necessary to give due recognition to the differences in the production and marketing of tomatoes grown in the production area; and

(5) All handling of tomatoes, as defined in this order, is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

Order relative to handling. It is, therefore, ordered that on and after the effective time hereof the handling of tomatoes grown in the Lower Rio Grande Valley in Texas shall be in conformity to and in compliance with the terms and conditions of this order; and such terms and conditions are as follows:

DEFINITIONS

§ 1021.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 1021.2 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 (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047).

§ 1021.3 Person.

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

§ 1021.4 Production area.

"Production area" means all territory in the counties of Cameron, Hidalgo, Starr, and Willacy in the State of Texas.

§ 1021.5 Tomatoes.

"Tomatoes" means all varieties of the edible fruit (lycopersicon esculentum) commonly known as tomatoes and grown within the production area.

§ 1021.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of tomatoes owned by another person) who handles tomatoes or causes tomatoes to be handled.

§ 1021.7 Handle.

"Handle" or "ship" means to transport, sell, or in any way to place tomatoes in the current of the commerce between the production area and any point outside thereof: *Provided,* That such terms will not include the transportation, sale, or delivery within the production area of tomatoes to a handler who is registered as such with the committee.

§ 1021.8 Producer.

"Producer" means any person engaged in a proprietary capacity in the production of tomatoes for market.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

§ 1021.9 Producer-handler.

"Producer-handler" means a person who buys and sells tomatoes grown in the production area, owns, or operates a packing shed which packs such tomatoes, and is also a producer of tomatoes in the production area.

§ 1021.10 Grade and size.

"Grade" means any one of the established grades of tomatoes and "size" means any one of the established sizes of tomatoes as defined and set forth in U.S. Standards for Fresh Tomatoes (§§ 51.1855 to 51.1876 of this title) or U.S. Consumer Standards for Fresh Tomatoes (§§ 51.1900 to 51.1913 of this title), both issued by the United States Department of Agriculture, or amendments thereto, or modifications thereof, or variations based thereon, recommended by the committee and approved by the Secretary.

§ 1021.11 Pack.

"Pack" means any of the packs of tomatoes as defined and set forth in the United States Standards for Fresh Tomatoes issued by the United States Department of Agriculture (§§ 51.1855 to 51.1876 of this title), or any pack of tomatoes recommended by the committee and approved by the Secretary.

§ 1021.12 Maturity.

"Maturity" means specific degrees of ripeness for tomatoes as established by the committee with approval of the Secretary.

§ 1021.13 Container.

"Container" means a box, bag, crate, hamper, basket, package, tube, or any other type of unit used in the packaging, transportation, sale, shipment, or handling of tomatoes.

§ 1021.14 Varieties.

"Varieties" means and includes all classifications, subdivisions, or types of tomatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture or recommended by the committee, and approved by the Secretary.

§ 1021.15 Committee.

"Committee" means the Texas Valley Tomato Committee, established pursuant to § 1021.22.

§ 1021.16 Fiscal period.

"Fiscal period" means the annual period beginning March 1, and ending on the last day of February of the following year, or such annual beginning and ending dates as may be approved by the Secretary pursuant to recommendations of the committee.

§ 1021.17 District.

"District" means each of the geographic divisions of the production area initally established pursuant to § 1021.24 or as reestablished pursuant to § 1021.25.

§ 1021.18 Export.

"Export" means shipment of tomatoes beyond the boundaries of continental United States.

COMMITTEE

§ 1021.22 Establishment and membership.

(a) The Texas Valley Tomato Committee, consisting of nine producer members, of whom three shall be producer-handlers, is hereby established. For each member of the committee there shall be an alternate. Three of the alternate members shall also be producer-handlers.

(b) Each person selected as a committee member or alternate shall be an individual who is a producer or a producer-handler, or an officer or an employee of a producer or a producer-handler, in the district for which selected and a resident of the production area. An officer or employee of a cooperative association of tomato producers which markets the tomato production of its members shall be eligible to serve on the committee as a producer-handler member or alternate.

§ 1021.23 Term of office.

(a) The term of office of committee members and their respective alternates shall be for one year and shall begin as of August 1 and end as of July 31.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified.

§ 1021.24 Districts.

For the purpose of determining the basis for selecting committee members the following districts of the production area are hereby initially established:

District No. 1. The County of Cameron in the State of Texas;

District No. 2. The County of Hidalgo in the State of Texas;

District No. 3. The County of Starr in the State of Texas; and

District No. 4. The County of Willacy in the State of Texas.

§ 1021.25 Redistricting.

The committee may recommend, and pursuant thereto, the Secretary may approve, the reapportionment of members among districts, and the reestablishment of districts within the production area. In recommending any such changes, the committee shall give consideration to: (a) Shifts in tomato acreage within districts and within the production area during recent years; (b) the importance of new production in its relation to existing districts; (c) the equitable relationship of committee membership and districts; (d) economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and (e) other relevant factors. No change in districting or in apportionment of members within districts may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting or reapportionment may be made less than six months prior to such date.

§ 1021.26 Selection.

The Secretary shall select initially three members and their respective alternates from District 1; four members and their respective alternates from District 2; one member and his alternate from District 3; and one member and his alternate from District 4. No more than 2 producer handlers shall be selected from any one district.

§ 1021.27 Nomination.

The Secretary may select the members of the committee and alternates from nominations which may be made in the following manner:

(a) A meeting or meetings of producers and producer-handlers shall be held in each district to nominate members and alternates for the committee. For nominations to the initial committee, the meetings may be sponsored by the United States Department of Agriculture or by any agency or group requested to do so by such department. For nominations for succeeding members and alternates on the committee, the committee shall hold such meetings or cause them to be held prior to June 15 of each year, after the effective date of this subpart;

(b) At each such meeting at least one nominee shall be designated for each position as member and for each position as alternate member on the committee.

(c) Nominations for committee members and alternates, shall be supplied to the Secretary in such manner and form as he may prescribe, not later than July 15, of each year;

(d) Only producers and producer-handlers may participate in designating nominees for members and alternates on the committee. In the event a person is engaged in producing tomatoes in more than one district, such person shall elect the district within which he may participate as aforesaid in designating nominees; and

(e) Regardless of the number of districts in which a person produces tomatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote as aforesaid shall be construed to permit a voter to cast one vote for each position to be filled in the respective district in which he elects to vote.

§ 1021.28 Failure to nominate.

If nominations are not made within the time and in the manner specified in § 1021.27, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in §§ 1021.24 to 1021.26, inclusive.

§ 1021.29 Acceptances.

Any person selected as a committee member or alternate shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 1021.30 Vacancies.

To fill committee vacancies, the Secretary may select such members or alternates from unselected nominees on the current nominee list from the district involved, or from nominations made in the manner specified in § 1021.27. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, such vacancy may be filled without regard to nominations, which selection shall be made on the basis of the representation provided for in §§ 1021.24 to 1021.26, inclusive.

§ 1021.31 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence, or when designated to do so by the member for whom he is an alternate. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified.

§ 1021.32 Procedure.

(a) Six members of the committee shall be necessary to constitute a quorum and six concurring votes shall be required to pass any motion or approve any committee action. At assembled meetings all votes shall be cast in person.

(b) The committee may meet by telephone, telegraph, or other means of communication and any vote cast at such a meeting shall be promptly confirmed in writing: *Provided*, That at any unassembled meeting unanimous vote of all committee members will be required to approve any action.

§ 1021.33 Expenses and compensation.

Committee members and alternates may be reimbursed for expenses necessarily incurred by them in the performance of duties and in the exercise of powers under this part.

§ 1021.34 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 1021.35 Duties.

It shall be, among other things, the duty of the committee:

(a) As soon as practicable after the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary, to determine the salaries and define the duties of each such person, and to protect the handling of committees funds through fidelity bonds for employees;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to tomatoes;

(f) To prepare a marketing policy;

(g) To recommend marketing regulations to the Secretary;

(h) To recommend rules and procedures for, and to make determinations in connection with, issuance of certificates of privilege or exemptions, or both;

(i) To investigate an applicant's claim for exemptions;

(j) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books and records shall be subject to examination at any time by the Secretary or by his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(k) At the beginning of each fiscal period, to prepare a budget of its expenses for such fiscal period, together with a report thereon;

(l) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. A copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(m) To consult, cooperate, and exchange information with other marketing agreement committees and other individuals or agencies in connection with all proper committee activities and objectives under this part.

EXPENSES AND ASSESSMENTS

§ 1021.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Handlers shall share expenses upon the basis of a fiscal period. Each handler's share of such expense shall be proportionate to the ratio between the total quantity of tomatoes under regulation handled by him as the first handler thereof during a fiscal period and the total quantity of tomatoes under regulation handled by all handlers as first handlers thereof during such fiscal period.

§ 1021.41 Budget.

As soon as practicable after the beginning of each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 1021.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who first handles tomatoes, which are regulated under this part, shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information. Such rates may be applied to specified containers used in the production area.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all tomatoes which were regulated under this part and which were handled by the first handler thereof during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

§ 1021.43 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in subparagraph (2) of this paragraph, it shall be refunded proportionately to the persons from whom it was collected.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided*, That funds already in the reserve do not equal approximately one fiscal period's expenses. Such reserve funds may be used (i) to defray expenses, during any fiscal period, prior to the time assessment income is sufficient to cover such expenses, (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses, (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to

defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

(d) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

RESEARCH AND DEVELOPMENT

§ 1021.48 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of tomatoes. The expenses of such projects shall be paid from funds collected pursuant to § 1021.42.

REGULATION

§ 1021.50 Marketing policy.

Prior to or at the same time as initial recommendations are made pursuant to § 1021.51, the committee shall submit to the Secretary a report setting forth the marketing policy it deems desirable for the industry to follow in shipping tomatoes from the production area during the ensuing season. Additional reports shall be submitted from time to time if it is deemed advisable by the committee to adopt a new marketing policy because of changes in the demand and supply situation with respect to tomatoes. The committee shall publicly announce the submission of each such marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or any handler. In determining each such marketing policy the committee shall give due consideration to the following:

(a) Market prices of tomatoes, including prices by grades, sizes, and quality in different packs, and such prices by foreign competing areas;

(b) Supply of tomatoes, by grade, size, and quality in the production area, and in other production areas, including foreign competing production areas;

(c) Trend and level of consumer income;

(d) Marketing conditions affecting tomato prices; and

(e) Other relevant factors.

§ 1021.51 Recommendations for regulations.

The committee, upon complying with the requirements of § 1021.50, may recommend regulations to the Secretary whenever it finds that such regulations as are provided for in this subpart will tend to effectuate the declared policy of the act.

§ 1021.52 Issuance of regulations.

(a) The Secretary shall limit by regulation the handling of tomatoes whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the act.

(b) Such regulation may:

(1) Limit, in any or all portions of the production area, the handling of particular grades, sizes, qualities, or packs of any or all varieties of tomatoes during any period; or

(2) Limit the handling of particular grades, sizes, qualities, or packs of tomatoes differently, for different varieties, for different stages of maturity, for different portions of the production area, for different containers, for different purposes specified in § 1021.54, or any combination of the foregoing, during any period; or

(3) Limit the shipment of tomatoes by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity; or

(4) Fix the size, weight, capacity, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of tomatoes.

§ 1021.53 Minimum quantities.

The committee, with the approval of the Secretary, may establish, for any or all portions of the production area, minimum quantities below which handling will be free from regulations issued or effective pursuant to § 1021.42, § 1021.52, § 1021.54, or § 1021.60, or any combination thereof.

§ 1021.54 Handling for special purposes.

Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary, whenever he finds that it will tend to effectuate the declared policy of the act, shall modify, suspend, or terminate regulations issued pursuant to § 1021.42, § 1021.52, § 1021.53, or § 1021.60, or any combination thereof, in order to facilitate shipments of tomatoes for the following purposes:

(a) For export;

(b) For relief or for charity;

(c) For processing;

(d) For experimental projects; or

(e) For other purposes which may be specified.

§ 1021.55 Notification of regulation.

The Secretary shall notify the committee of any regulations issued or of any modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 1021.56 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent tomatoes handled pursuant to § 1021.53 or § 1021.54 from entering channels of trade for other than the specific purpose authorized therefor, and rules governing the issuance and the contents of Certificates of Privilege, if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall file applications with the committee to handle tomatoes pursuant to §§ 1021.53 and 1021.54; or

(2) Handlers shall obtain inspection provided by § 1021.60, or pay the assessment levied pursuant to § 1021.42, or both, in connection with shipments made under § 1021.54.

(3) Handlers shall obtain Certificates of Privilege from the committee for handling of tomatoes affected or to be affected under the provisions of §§ 1021.53 and 1021.54.

(b) The committee may rescind or deny Certificates of Privilege to any handler if proof is obtained that tomatoes handled by him for the purposes stated in §§ 1021.53 and 1021.54 were handled contrary to the provisions of this part.

(c) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of tomatoes covered by such applications, the number of such applications denied and certificates granted, the quantity of tomatoes handled under duly issued certificates, and such other information as may be requested.

INSPECTION

§ 1021.60 Inspection and certification.

(a) During any period in which handling of tomatoes is regulated pursuant to this subpart no handler shall handle tomatoes unless such tomatoes have been inspected by an authorized representative of the Federal Inspection Service, or such other inspection service as the Secretary shall designate, and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to § 1021.53, or § 1021.54, or both. Handlers may be required, upon recommendation of the committee and approval of the Secretary, to mark or indicate on the containers that the tomatoes therein have been inspected.

(b) Regrading, resorting, or repacking any lot of tomatoes shall invalidate any prior inspection certificates insofar as the requirements of this section are concerned. No handler shall handle tomatoes after they have been regraded, resorted, repacked, or in any other way further prepared for market, unless each lot of such tomatoes is inspected by an

authorized representative of the Federal Inspection Service, or such other inspection service as the Secretary shall designate: *Provided,* That the committee, with approval of the Secretary, may provide for waiving inspection requirements on any tomatoes in circumstances where it appears reasonably certain that, after regrading, resorting, or repacking, such tomatoes meet the applicable quality and other standards then in effect.

(c) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(d) When tomatoes are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(e) The committee may recommend and the Secretary may require that any tomatoes transported by motor vehicle shall be accompanied by a copy of the inspection certificate issued thereon, which certificate shall be surrendered to such authority as may be designated.

EXEMPTIONS

§ 1021.70 Procedure.

The committee may adopt, with approval of the Secretary, the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

§ 1021.71 Granting exemptions.

The committee shall issue certificates of exemption to any producer who applies for such exemption and furnishes adequate evidence to the committee, that by reason of a regulation issued pursuant to § 1021.52 he will be prevented from handling as large a proportion of his production as the average proportion of production handled during the entire season, or such portion thereof as may be determined by the committee, by all producers in said applicant's immediate production area and that the grade, size, or quality of the applicant's tomatoes have been adversely affected by acts beyond the applicant's control and beyond reasonable expectation. Each certificate shall permit the producer to handle the amount of tomatoes specified thereon. Such certificate shall be transferred with such tomatoes at time of transportation or sale.

§ 1021.72 Investigation.

The committee shall be permitted at any time to make a thorough investigation of any producer's claim pertaining to exemptions.

§ 1021.73 Appeal.

If any applicant for exemption certificates is dissatisfied with the determination by the committee with respect to his application, said applicant may file an appeal with the committee. Such an appeal must be taken promptly after the determination by the committee from which the appeal is taken. Any applicant filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all available evidence, and make a final determination concerning the application. The committee shall notify the appellant of the final determination, and shall furnish the Secretary with a copy of the appeal and a statement of considerations involved in making the final determination.

§ 1021.74 Records.

(a) The committee shall maintain a record of all applications submitted for exemption certificates, a record of all exemption certificates issued and denied, the quantity of tomatoes covered by such exemption certificates, a record of appeals for reconsideration of applications, and such other information as may be requested by the Secretary. Periodic reports on such records shall be compiled and issued by the committee upon request of the Secretary.

(b) The Secretary shall have the right to modify, change, alter, or rescind any procedure and any exemptions granted pursuant to § 1021.70, § 1021.71, § 1021.72, or § 1021.73, or any combination thereof.

REPORTS

§ 1021.80 Reports.

Upon the request of the committee, made with approval of the Secretary, each handler shall furnish to the committee in such manner and at such time as it may prescribe, reports and other information as may be necessary for the committee to perform its duties under this part. In this connection:

(a) Such reports may include, but are not necessarily limited to, the following: (1) The quantities of tomatoes received by a handler; (2) the quantities disposed of by him, segregated as to the respective quantities subject to regulation, and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such tomatoes; and (4) identification of the inspection certificates and the exemption certificates, if any, pursuant to which the tomatoes were handled, together with the destination of each exempted disposition and of all tomatoes handled pursuant to §§ 1021.53 and 1021.54.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to prohibition of disclosure of individual handlers' identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the tomatoes received and disposed of by such handler as may be necessary to verify the reports he submits to the committee pursuant to this section.

COMPLIANCE

§ 1021.81 Compliance.

Except as provided in this part, no handler shall handle tomatoes, the handling of which has been prohibited by the Secretary in accordance with provisions of this part, or the rules and regulations thereunder, and no handler shall handle tomatoes except in conformity to the provisions of this part.

MISCELLANEOUS PROVISIONS

§ 1021.82 Right of the Secretary.

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 1021.83 Effective time.

The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 1021.84 Termination.

(a) 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.

(b) The Secretary may 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.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers, who during a representative period, have been engaged in the production of tomatoes for market: *Provided,* That such majority has, during such representative period, produced for market more than fifty percent of the volume of such tomatoes produced for market.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 1021.85 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart the then functioning members of the committee shall continue as joint trustees for the purpose of liquidating the affairs of the committee of all the funds and property then in the possession of or under control of the committee, 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.

(b) The 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 committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 1021.86 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 amendments 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 regulations issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 1021.87 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.

§ 1021.88 Agents.

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

§ 1021.89 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.

§ 1021.90 Personal liability.

No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 1021.91 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.

§ 1021.92 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Order Directing That a Referendum Be Conducted Among Producers; Designating Agents To Conduct Such Referendum; and Determination of a Representative Period.

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), it is hereby directed that a referendum be conducted among producers who, during the period January 1 through December 31, 1958 (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged in the Lower Rio Grande Valley in Texas (Cameron, Hidalgo, Starr, and Willacy Counties) in the production of tomatoes for market to determine whether such producers approve or favor the issuance of an order regulating the handling of tomatoes grown therein; and said order is annexed to the decision of the Secretary of Agriculture filed simultaneously herewith.

The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda Among Producers in Connection with Marketing Orders (Except Those Applicable to Milk and Its Products) to Become Effective Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (15 F.R. 5176).

W. J. Cremins, J. W. Gannaway and K. W. Schaible, Fruit and Vegetable Division, United States Department of Agriculture, are hereby designated as agents of the Secretary of Agriculture to conduct said referendum jointly or severally. Said agents may appoint any person or persons to assist them in performing their functions hereunder.

Copies of the text of the aforesaid annexed order may be examined in the office of the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington, D.C., and at those places in the production area (Counties of Cameron, Hidalgo, Starr and Willacy in the State of Texas) announced by the referendum agents.

Ballots to be cast in the referendum and copies of the text of said order may be obtained from any referendum agent and any appointee hereunder.

(48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047)

Dated: January 30, 1959.

[SEAL] CLARENCE L. MILLER, *Assistant Secretary.*

[F.R. Doc. 59-959; Filed, Feb. 3, 1959; 8:52 a.m.]

Commodity Stabilization Service

[7 CFR Part 718]

DETERMINATION OF ACREAGE AND PERFORMANCE

Notice of Proposed Rule Making

Pursuant to the authority contained in sections 374 and 375 of the Agricultural Adjustment Act of 1938, section 401 of the Agricultural Act of 1949, section 403 of the Sugar Act of 1948, and section 124 of the Soil Bank Act, the Secretary of Agriculture is preparing to reissue regulations governing the determination of acreage and compliance with the provisions of the programs carried out under the above-mentioned acts.

It is proposed that the regulations be substantially the same as the prior regulations, as amended (22 F.R. 3747, 5675, 7418; 23 F.R. 3313, 5321), with the following exceptions:

1. Current regulations afford protection to the farm operator for the current year when he has relied on an official acreage previously determined which is later found to be incorrect provided he has not been notified that the acreage was incorrect. The proposed regulations will retain this provision and in addition will provide authority for the county office manager to notify all farmers that acreages previously determined will no longer be regarded as official at the time new photography is put into use in the county.

2. The general provisions governing the deductions allowable on the initial determination of the acreage planted to a crop imposed a minimum width of one normal row for eligible areas. The proposed provisions would modify this requirement by imposing a minimum width of (a) the smaller of 4 links (32 inches) or one row in case of deductions around the perimeter of the field or (b) one row in case of deductions within the planted area (not less than 80 inches from plant to plant in case of 40 inch rows).

3. Current regulations impose a minimum of three-hundreds (0.03) acre for the area which may be disposed of to adjust to the allotment unless the total excess for the farm is less than this minimum, in which case the minimum is the amount of the excess. Proposed regulations increase this minimum to one-tenths (0.1) acre for all crops except tobacco.

4. Current regulations provide for an administrative variance for tobacco if the acreage determined for the farm does not exceed the tobacco allotment by more than the smaller of (a) 2 percent of such allotment or (b) nine-hundredths (0.09) acre. Proposed regulations would provide for administrative variances as follows: For tobacco, the larger of (a) one-hundredth (0.01) acre or (b) 2 percent not to exceed nine-hundreds (0.09) acre; and for all other allotment crops and the permitted acreage of allotment crops under the Soil Bank program, the larger of (a) one-tenth (0.1) acre or (b) 2 percent not to exceed nine-tenths (0.9) acre.

5. Current regulations contain no provision for the remeasurement of an

acreage subsequent to the disposition of excess acreage. The proposed regulations would permit remeasurement after disposition of excess, provided the producer files a request for remeasurement, establishes to the satisfaction of the county committee, or county office manager, that an error was made in determining the adjusted acreage, and deposits the cost of the remeasurement.

6. Current regulations provide the farm operator a 7-day period in which to dispose of excess cotton acreage remaining after remeasurement or initial disposition. Proposed regulations would retain this provision and extend it to include wheat, rice, and soil bank base crops.

7. Current regulations permit no adjustment by disposition in the planted acreage of a crop after any of the crop has been harvested on the farm. Proposed regulations modify this provision to prohibit adjustment of the planted acreage by disposition after any of the crop has been harvested from such acreage.

8. The table of sections affected by determinations of State committees pursuant to options granted under § 718.15 will be completely revised to reflect options exercised for 1959 and subsequent years.

Prior to issuing these regulations, consideration will be given to data, views, and recommendations pertaining thereto which are submitted in writing to the Director, Performance Division, Commodity Stabilization Service, United States Department of Agriculture, Washington 25, D.C. All written submissions must be postmarked not later than 30 days after the date of publication of this notice in the FEDERAL REGISTER in order to be considered.

Issued at Washington, D.C., this 30th day of January 1959.

[SEAL] TRUE D. MORSE, *Acting Secretary.*

[F.R. Doc. 59-961; Filed, Feb. 3, 1959; 8:52 a.m.]

POST OFFICE DEPARTMENT

[39 CFR Parts 33, 45]

RECORDS RETENTION PERIODS, POSTAGE METER MANUFACTURERS AND APARTMENT HOUSE MANAGERS

Notice of Proposed Rule Making

At the present time manufacturers of postage meters are required by § 33.8 of Title 39, Code of Federal Regulations, to maintain a complete record, by serial number, of all meters manufactured and their movements from production to scrapping and of all meter keys issued to postmasters. However, the regulations do not specify any time period for the retention of these records. Likewise, apartment house managers are required by § 45.6 of Title 39, Code of Federal Regulations, to maintain certain records with respect to mail receptacles. No retention period is specified.

The Department proposes to amend these regulations to provide a specific period for the retention of records under the respective regulations.

The proposed amendments are exempt from the rule making requirements of 5 U.S.C. 1003, as they relate to a proprietary function of government. Following usual procedure, however, and in accordance with the statement in § 33.8(g) of Title 39, Code of Federal Regulations, that notice would be given of any changes in the regulations contained in § 33.8, the Postmaster General desires to give postal patrons an opportunity to present written views concerning the proposed changes in the regulations. Consideration will be given to the proposed amendments in the light of such views as may be submitted. Comments may be submitted to Mr. Edwin A. Riley, Director, Postal Services Division, Bureau of Operations, Washington 25, D.C., at any time prior to the expiration of thirty days from the date of publication of this document.

The proposed changes are as follows:

In § 33.8 *Manufacture and distribution of postage meters* make the following changes in subparagraph (2) of paragraph (e):

1. Add the following sentence to subdivision (viii): "These records may be destroyed three years after the meter is scrapped." The subdivision will then read as follows:

(viii) Maintain at his headquarters a complete record by serial number of all meters manufactured, showing all movements of each from the time it is produced until it is scrapped, and the reading of the ascending register each time it is checked into or out of service through a post office. These records must be subject to inspection at any time during business hours by officials of the Post Office Department. These records may be destroyed three years after the meter is scrapped.

2. Add the following sentence to subdivision (x): "These records may be destroyed three years after the meter is scrapped." The subdivision will then read as follows:

(x) Maintain a record by serial number of all meter keys issued to postmasters as well as those sections of the manufacturer's establishment in which their use is essential, preferably in the form of signed receipt cards. These records may be destroyed three years after the meter is scrapped.

NOTE: The corresponding Postal Manual sections are 143.852h and 143.852j.

(R.S. 161, as amended, 396, as amended; sec. 5, 41 Stat. 583, as amended; 5 U.S.C. 22, 369; 39 U.S.C. 273)

In § 45.6 *Apartment house receptacles* add the following sentences to subdivision (ii) of paragraph (b)(3): "The record of key numbers must be kept until the lock has been changed when it may be destroyed. The record of combinations to the keyless locks must be maintained until the combination is changed, when it may be destroyed." The subdivision will then read as follows:

(ii) Apartment house managers must maintain a record of the number of keys supplied by manufacturers and jobbers, relating the key number to the receptacle number, so that, when necessary, new keys may be ordered. Key numbers shall not be placed on the barrels of the locks, as this would make it possible for unauthorized persons to secure keys and gain access to the boxes. Apartment house managers must keep a record of the combinations of keyless locks so that new tenants may be given the combination. These records of key numbers and combinations must be kept in the custody of the manager or a trusted employee. The record of key numbers must be kept until the lock has been changed when it may be destroyed. The record of combinations to the keyless locks must be maintained until the combination is changed, when it may be destroyed.

NOTE: The corresponding Postal Manual section is 155.623b.

(R.S. 161, as amended, 396, as amended; 3868; sec. 1, 24 Stat. 355, sec. 1, 24 Stat. 569, as amended; 5 U.S.C. 22, 369; 39 U.S.C. 151, 155, 156.)

[SEAL] HERBERT B. WARBURTON, *General Counsel.*

[F.R. Doc. 59-943; Filed Feb. 3, 1959; 8:49 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 10]

[Docket No. 12747; FCC 59-69]

PUBLIC SAFETY RADIO SERVICES

Removal of Certain Restrictions Relating to Authorization of Mobile Relay Stations and Related Matters

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

2. Part 10 of the Commission's rules which governs the Public Safety Radio Services provides that mobile relay stations will be authorized only on frequencies above 150 Mc and only where the system cannot function satisfactorily without communication between mobile units over a distance in excess of that which can be obtained by direct car-to-car communication; or where an integrated system of radio communication is desirable between two or more licensees and where by the use of mobile relay stations the integrated system provides an actual reduction in the number of frequencies needed in the area as compared to the number of frequencies which would be required if the same number of licensees operate separate systems.

3. The Commission's experience in administration of the aforementioned restrictions has convinced it that the purpose served by such restrictions, other than that requiring mobile relay stations be authorized only on frequencies above 150 Mc, does not warrant the administrative burden entailed. Accordingly, the Commission proposes to delete these restrictions wherever they

appear in Part 10 of its rules. In addition, the Commission proposes to amend Part 10 of its rules so as to provide that mobile relay stations in the Public Safety Radio Service will be authorized only for the utilization of frequencies which are normally available for base stations.

4. Part 10 of the Commission's rules also provides, in each of the radio services governed thereby, that control and repeater stations may be authorized only for the use of frequencies above 150 Mc subject to certain conditions. Part 11 of the Commission's rules, however, provides that control stations "associated with one or more mobile relay stations may be assigned any frequency available for assignment to operational fixed stations or, at the option of the applicant, the mobile service frequency assigned to the associated mobile station. Use of the mobile service frequency by such operational fixed (control) stations is subject to the condition that harmful interference will not be caused to stations of other licensees operating in the mobile service in accordance with the table of frequency allocations as set forth in Part 2 of this chapter."

5. The Commission therefore proposes to amend Part 10 so as to provide that stations controlling mobile relay stations may be authorized to operate on the "mobile service" frequency assigned to the associated mobile stations in the same manner as presently provided in Part 11 of its rules.

6. Authority for promulgation of the proposed rules set forth below is contained in sections 4(i) and 303 of Communications Act of 1934, as amended.

7. Any interested person who is of the opinion that the proposed amendment should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before March 6, 1959, written data, views, or arguments setting forth his comments. Comments in support of the proposed amendments may be filed also on or before the same date. Comments in reply to original comments may be filed on or before the tenth day following the last day for the filing of original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for filing such additional comments is established. The Commission will consider all such comments prior to taking final action in this matter, and if comments are submitted warranting oral argument, notice of the time and place of such oral argument will be given.

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

Adopted: January 28, 1959.

Released: January 30, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

It is proposed to amend Part 10 of the Commission's rules, the Public Safety Radio Services as follows:

1. Amend § 10.254 by:

a. Amending paragraph (a) to read as follows:

§ 10.254 Station limitations.

(a) Mobile relay stations in the Police Radio Service will be authorized only on frequencies above 150 Mc which are, pursuant to the provisions of § 10.255(g), available for base stations.

(1) Each mobile relay station authorized pursuant to the provisions of this section shall be so designed and installed that normally it will be activated only by means of the coded signal or signals or such other means as will effectively prevent its activation by undesired signals.

(2) Each mobile relay station authorized pursuant to this section shall be so designed and installed that it will be deactivated automatically when its associated receivers are not receiving the signal on the frequency or frequencies which normally activate it.

(3) Each mobile relay station authorized pursuant to this section shall be so designed and installed that it will be deactivated upon receipt or secession of a coded signal or signals, and, in addition, shall be provided with an automatic time delay or clock device which will deactivate the station not more than three minutes after its activation.

b. Adding a new paragraph (d), to read as follows:

(d) A control station associated with one or more mobile relay stations, authorized pursuant to this section, may be assigned the mobile service frequency assigned to the associated mobile station. Use of the mobile service frequency by such control station is subject to the condition that harmful interference not be caused to stations of other licensees operating in the mobile service in accordance with the table of frequency allocations as set forth in Part 2 of this chapter.

§ 10.255 [Amendment]

2. Amend § 10.255(f) by inserting after words "repeater stations" in the first sentence thereof a comma and the following phrase: "except as provided for by § 10.254(d),".

3. Amend § 10.304 by:

a. Amending paragraph (a) to read as follows:

§ 10.304 Station limitations.

(a) Mobile relay stations in the Fire Radio Service will be authorized only on frequencies above 150 Mc which are, pursuant to the provisions of § 10.305(f), available for base stations.

(1) Each mobile relay station authorized pursuant to the provisions of this section shall be so designed and installed that normally it will be activated only by means of the coded signal or signals or such other means as will effectively prevent its activation by undesired signals.

(2) Each mobile relay station authorized pursuant to this section shall be so designed and installed that it will be deactivated automatically when its associated receivers are not receiving the signal on the frequency or frequencies which normally activate it.

(3) Each mobile relay station authorized pursuant to this section shall so be designed and installed that it will be deactivated upon receipt or secession of a coded signal or signals, and, in addition, shall be provided with an automatic time delay or clock device which will deactivate the station not more than three minutes after its activation.

b. Adding a new paragraph (c) to read as follows:

(c) A control station associated with one or more mobile relay stations, authorized pursuant to this section, may be assigned the mobile service frequency assigned to the associated mobile station. Use of the mobile service frequency by such control station is subject to the condition that harmful interference not be caused to stations of other licensees operating in the mobile service in accordance with the table of frequency allocations as set forth in Part 2 of this chapter.

§ 10.305 [Amendment]

4. Amend § 10.305(e) by inserting after words "repeater stations" in the first sentence thereof a comma and the following phrase: "except as provided for by § 10.304(c),".

5. Amend § 10.354 by:

a. Amending paragraph (a) to read as follows:

§ 10.354 Station limitations.

(a) Mobile relay stations in the Forestry-Conservation Radio Service will be authorized only on frequencies above 150 Mc which are, pursuant to the provisions of § 10.355(d), available for base stations.

(1) Each mobile relay station authorized pursuant to the provisions of this section shall be so designed and installed that normally it will be activated only by means of the coded signal or signals or such other means as will effectively prevent its activation by undesired signals.

(2) Each mobile relay station authorized pursuant to this section shall be so designed and installed that it will be deactivated automatically when its associated receivers are not receiving the signal on the frequency or frequencies which normally activate it.

(3) Each mobile relay station authorized pursuant to this section shall so be designed and installed that it will be deactivated upon receipt or secession of a coded signal or signals, and, in addition, shall be provided with an automatic time delay or clock device which will deactivate the station not more than three minutes after its activation.

b. Adding a new paragraph (c) to read as follows:

(c) A control station associated with one or more mobile relay stations, authorized pursuant to this section, may be assigned the mobile service frequency assigned to the associated mobile station. Use of the mobile service frequency by such control station is subject to the condition that harmful interference not

be caused to stations of other licensees operating in the mobile service in accordance with the table of frequency allocations as set forth in Part 2 of this chapter.

§ 10.355 [Amendment]

6. Amend § 10.355(c) by inserting after words "repeater stations" in the first sentence thereof a comma and the following phrase: "except as provided for by § 10.354(c),".

7. Amend § 10.404 by:

a. Amending paragraph (a) to read as follows:

§ 10.404 Station limitations.

(a) Mobile relay stations in the Highway Maintenance Radio Service will be authorized only on frequencies above 150 Mc which are, pursuant to the provisions of § 10.405(e), available for base stations.

(1) Each mobile relay station authorized pursuant to the provisions of this section shall be so designed and installed that normally it will be activated only by means of the coded signal or signals or such other means as will effectively prevent its activation by undesired signals.

(2) Each mobile relay station authorized pursuant to this section shall be so designed and installed that it will be deactivated automatically when its associated receivers are not receiving the signal on the frequency or frequencies which normally activate it.

(3) Each mobile relay station authorized pursuant to this section shall so be designed and installed that it will be deactivated upon receipt or secession of a coded signal or signals, and, in addition, shall be provided with an automatic time delay or clock device which will deactivate the station not more than three minutes after its activation.

b. Adding a new paragraph (d) to read as follows:

(d) A control station associated with one or more mobile relay stations, authorized pursuant to this section, may be assigned the mobile service frequency assigned to the associated mobile station. Use of the mobile service frequency by such control station is subject to the condition that harmful interference not be caused to stations of other licensees operating in the mobile service in accordance with the table of frequency allocations as set forth in Part 2 of this chapter.

§ 10.405 [Amendment]

8. Amend § 10.405(d) by inserting after words "repeater stations" in the first sentence thereof a comma and the following phrase: "except as provided for by § 10.404(d),".

9. Amend § 10.554 by:

a. Amending paragraph (a) to read as follows:

§ 10.554 Station limitations.

(a) Mobile relay stations in the Local Government Radio Service will be authorized only on frequencies above 150 Mc which are, pursuant to the provisions of § 10.555(f), available for base stations.

(1) Each mobile relay station authorized pursuant to the provisions of this section shall be so designed and installed that normally it will be activated only by means of the coded signal or signals or such other means as will effectively prevent its activation by undesired signals.

(2) Each mobile relay station authorized pursuant to this section shall be so designed and installed that it will be deactivated automatically when its associated receivers are not receiving the signal on the frequency or frequencies which normally activate it.

(3) Each mobile relay station authorized pursuant to this section shall so be designed and installed that it will be deactivated upon receipt or secession of a coded signal or signals, and, in addition, shall be provided with an automatic time delay or clock device which will deactivate the station not more than three minutes after its activation.

b. Adding a new paragraph (c) to read as follows:

(c) A control station associated with one or more mobile relay stations, authorized pursuant to this section, may be assigned the mobile service frequency assigned to the associated mobile station. Use of the mobile service frequency by such control station is subject to the condition that harmful interference not be caused to stations of other licensees operating in the mobile service in accordance with the table of frequency allocations as set forth in Part 2 of this chapter.

§ 10.555 [Amendment]

10. Amend § 10.555(e) by inserting after words "repeater stations" in the first sentence thereof a comma and the following phrase: "except as provided for by § 10.554(c),".

[F.R. Doc. 59-947; Filed, Feb. 3, 1959; 8:49 a.m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA

Notice of Proposed Withdrawal and Reservation of Lands

JANUARY 26, 1959.

The Bureau of Reclamation, United States Department of the Interior, has filed an application, Serial Number Sacramento 054809 for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the general mining laws. The applicant desires the land for reservoirs, canals, penstocks, power plants, roads and construction materials in connection with that portion of its Washoe Project in California.

For the period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, California Fruit Building, Room 1000, 4th and J Streets, Sacramento 14, California.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 18 N., R. 16 E.,
Sec. 36: NE¼.
T. 19 N., R. 16 E.,
Sec. 26: S½SW¼NW¼.
T. 10 N., R. 20 E.,
Sec. 1: Lots 1, 2, N½W½ of Lot 3, W½ W½ of Lot 5, W½ of Lot 10, and Lots 11 to 16, inclusive;
Sec 2: Lot 7.
T. 11 N., R. 20 E.,
Sec. 25: Lot 5;
Sec. 26: That portion of Tract 51 in the State of California, Lots 15, 16, and 19, NE¼SW¼, NW¼SE¼, S½SE¼;
Sec. 34: SE¼NE¼, NE¼SW¼, SW¼SW¼, SE¼;
Sec. 35: Lots 1, 2, 4, 5, and 6, NE¼NE¼, W½W½, SE¼NW¼, NE¼SW¼;
Sec. 36: Lots 8, 15, and 16.
T. 10 N., R. 21 E.,
Sec. 6: Lots 3 and 4.

Total acreage: Approximately 1,920 acres.

The following lands described above have been offered by the State of California to the United States as a basis for a forest exchange under the Act of March 20, 1922 (42 Stat. 465; 16 U.S.C. 485) as amended by the Act of February 28, 1925 (43 Stat. 1090; 16 U.S.C. 486), pursuant to Forest Exchange Sacramento 052314, but the exchange has not yet been consummated:

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 11 N., R. 20 E.,
Sec. 36: Lot 8.
T. 18 N., R. 16 E.,
Sec. 36: NE¼.

Total acreage: 199.74 acres.

WALTER E. BECK,
Manager.

[F.R. Doc. 59-919; Filed, Feb. 3, 1959; 8:45 a.m.]

Office of the Secretary

MENOMINEE INDIAN RESERVATION

Application of Federal Indian Liquor Laws

Pursuant to the act of August 15, 1953 (Pub. Law 277, 83d Cong., 1st Sess.), I certify that the following resolution relating to the application of the Federal Indian liquor laws on the Menominee Indian Reservation was duly adopted on November 12, 1958, by the Menominee Advisory Council which has jurisdiction over the area of Indian country included in the resolution:

Whereas, the Menominee Indian Tribal Election held on November 4, 1958, did approve the introduction, sale and possession of intoxicating beverages on the Menominee Indian Reservation under the requirements of Public Law 277, 83rd Congress, by a vote of 321 for and 187 against,

Now, therefore, be it resolved, by the Menominee Tribe of Indians, acting by and through the Menominee Indian Advisory Council at a regular convened meeting at Keshena, Wisconsin, this 12th day of November 1958, a quorum being present, that the introduction, sale or possession of intoxicating beverages shall be lawful within the Indian country of the Menominee Tribe of Indians of Wisconsin; provided that such introduction, sale or possession is in conformity with the laws of Wisconsin and the rules and regulations of the Menominee Tribe of Indians as promulgated by said tribe of Indians in General Council or by the Menominee Indian Advisory Council.

Be it further resolved that any tribal laws, resolutions or ordinances heretofore enacted which prohibit the sale, introduction or possession of intoxicating beverages are hereby repealed.

FRED A. SEATON,
Secretary of the Interior.

JANUARY 28, 1959.

[F.R. Doc. 59-920; Filed, Feb. 3, 1959; 8:45 a.m.]

JOHN F. EMERY

Report of Appointment and Statement of Financial Interests

JANUARY 12, 1959.

Pursuant to section 302(a) of Executive Order 10647, the following information on a WOC appointee in the Department of the Interior is furnished for publication in the FEDERAL REGISTER:

Name of appointee: John F. Emery.

Name of employing agency: Department of the Interior, Office of Assistant Secretary for Water and Power Development.

The title of the appointee's position: Director, Defense Electric Power Area 14.

The name of the appointee's private employer or employers: Idaho Power Company, Boise, Idaho.

The statement of "financial interests" for the above appointee is set forth below.

ELMER F. BENNETT,
Acting Secretary of the Interior.

APPOINTEE'S STATEMENT OF FINANCIAL INTERESTS

In accordance with the requirements of section 302(b) of Executive Order 10647, I am filing the following statement for publication in the FEDERAL REGISTER:

(1) Names of any corporations of which I am, or had been within 60 days preceding my appointment, on January 12, 1959, as Director, Defense Electric Power, Area 14, Office of the Assistant Secretary for Water and Power Development, an officer or director:

None.

(2) Names of any corporations in which I own, or did own within 60 days preceding my appointment, any stocks, bonds, or other financial interests:

Idaho Power Company—Common and preferred stock.

(3) Names of any partnerships in which I am associated, or had been associated within 60 days preceding my appointment:

None.

(4) Names of any other businesses which I own, or owned within 60 days preceding my appointment:

None.

J. F. EMERY.

JANUARY 23, 1959.

[F.R. Doc. 59-932; Filed, Feb. 3, 1959; 8:47 a.m.]

HUBERT O. SPRINKLE

Report of Appointment and Statement of Financial Interests

JANUARY 12, 1959.

Pursuant to section 302(a) of Executive Order 10647, the following information on a WOC appointee in the Department of the Interior is furnished for publication in the FEDERAL REGISTER.

Name of appointee: Hubert O. Sprinkle.

Name of employing agency: Department of the Interior, Office of Assistant Secretary for Water and Power Development.

The title of the appointee's position: Director, Defense Electric Power Area 7.

The name of the appointee's private employer or employers: Monongahela Power Company, Fairmont, West Virginia.

The statement of "financial interests" for the above appointee is set forth below.

ELMER F. BENNETT,
Acting Secretary of the Interior.

APPOINTEE'S STATEMENT OF FINANCIAL INTERESTS

In accordance with the requirements of section 302(b) of Executive Order 10647, I am filing the following statement for publication in the FEDERAL REGISTER.

(1) Names of any corporations of which I am, or had been within 60 days preceding my appointment, on January 12, 1959, as Director, Defense Electric Power Area 7, Office of the Assistant Secretary for Water and Power Development, an officer or director:

None.

(2) Names of any corporations in which I own, or did own within 60 days preceding my appointment, any stocks, bonds, or other financial interests:

West Penn Electric Company.
Thompson-Ramo-Woolridge Corp.
Consolidation Coal Company.
First National Bank in Fairmont.
Phillips Petroleum.
Pacific Gas & Electric Company.
May Department Stores.

(3) Names of any partnerships in which I am associated, or had been associated within 60 days preceding my appointment:

None.

(4) Names of any other businesses which I own, or owned within 60 days preceding my appointment.

None.

H. O. SPRINKLE.

JANUARY 15, 1959.

[F.R. Doc. 59-933; Filed, Feb. 3, 1959; 8:47 a.m.]

ALEXANDER H. WADE, JR.

Report of Appointment and Statement of Financial Interests

JANUARY 12, 1959.

Pursuant to section 302(a) of Executive Order 10647, the following information on a WOC appointee in the Department of the Interior is furnished for publication in the FEDERAL REGISTER:

Name of appointee: Alexander H. Wade, Jr.

Name of employing agency: Department of the Interior, Office of Assistant Secretary for Water and Power Development.

The title of the appointee's position: Deputy Director, Defense Electric Power Area 4.

The name of the appointee's private employer or employers: Georgia Power Company, Atlanta, Georgia.

The statement of "financial interests" for the above appointee is set forth below.

ELMER F. BENNETT,
Acting Secretary of the Interior.

APPOINTEE'S STATEMENT OF FINANCIAL INTERESTS

In accordance with the requirements of section 302(b) of Executive Order 10647, I am filing the following statement for publication in the FEDERAL REGISTER:

(1) Names of any corporations of which I am, or had been within 60 days preceding my appointment, on January 12, 1959, as Deputy Director, Defense Electric Power Area 4, Office of the Asst. Secretary for Water and Power Development, an officer or director:

None.

(2) Names of any corporations in which I own, or did own within 60 days preceding my appointment, any stocks, bonds, or other financial interests:

None.

(3) Names of any partnerships in which I am associated, or had been associated within 60 days preceding my appointment:

None.

(4) Names of any other businesses which I own, or owned within 60 days preceding my appointment:

None.

A. H. WADE, JR.

JANUARY 16, 1959.

[F.R. Doc. 59-934; Filed, Feb. 3, 1959; 8:47 a.m.]

WILLIAM W. WILLIAMS

Report of Appointment and Statement of Financial Interests

JANUARY 12, 1959.

Pursuant to section 302(a) of Executive Order 10647, the following information on a WOC appointee in the Department of the Interior is furnished for publication in the FEDERAL REGISTER.

Name of appointee: William W. Williams.

Name of employing agency: Department of the Interior, Office of Assistant Secretary for Water and Power Development.

The title of the appointee's position: Deputy Director, Defense Electric Power Area 6.

The name of the appointee's private employer or employers: The Detroit Edison Company, Detroit, Michigan.

The statement of "financial interests" for the above appointee is set forth below.

ELMER F. BENNETT,
Acting Secretary of the Interior.

APPOINTEE'S STATEMENT OF FINANCIAL INTERESTS

In accordance with the requirements of section 302(b) of Executive Order 10647, I am filing the following statement for publication in the FEDERAL REGISTER:

(1) Names of any corporations of which I am, or had been within 60 days preceding my appointment, on January 12, 1959, as Deputy Director, Defense Electric Power Area 6, Office of the Assistant Secretary for Water and Power Development, an officer or director:

None.

(2) Names of any corporations in which I own, or did own within 60 days preceding my appointment, any stocks, bonds, or other financial interests:

None.

(3) Names of any partnerships in which I am associated, or had been associated within 60 days preceding my appointment:

None.

(4) Names of any other businesses which I own, or owned within 60 days preceding my appointment:

None.

WILLIAM W. WILLIAMS.

JANUARY 16, 1959.

[F.R. Doc. 59-935; Filed, Feb. 3, 1959; 8:47 a.m.]

FRED H. WILEY

Report of Appointment and Statement of Financial Interests

JANUARY 12, 1959.

Pursuant to section 302(a) of Executive Order 10647, the following information on a WOC appointee in the Department of the Interior is furnished for publication in the FEDERAL REGISTER:

Name of appointee: Fred H. Wiley.

Name of employing agency: Department of the Interior, Office of Assistant Secretary for Water and Power Development.

The title of the appointee's position: Director, Defense Electric Power Area 13.

The name of the appointee's private employer or employers: Department of Public Utilities, Colorado Springs, Colorado.

The statement of "financial interests" for the above appointee is set forth below.

ELMER F. BENNETT,
Secretary of the Interior.

APPOINTEE'S STATEMENT OF FINANCIAL INTERESTS

In accordance with the requirements of section 302(b) of Executive Order 10647, I am filing the following statement for publication in the FEDERAL REGISTER:

(1) Names of any corporations of which I am, or had been within 60 days preceding my appointment, on January 12, 1959, as Director, Defense Electric Power Area 13, Office of Assistant Secretary, Water and Power, an officer or director:

None.

(2) Names of any corporations in which I own, or did own within 60 days

preceding my appointment, any stocks, bonds, or other financial interests:

None.

(3) Names of any partnerships in which I am associated, or had been associated within 60 days preceding my appointment:

None.

(4) Names of any other businesses which I own, or owned within 60 days preceding my appointment:

None.

FRED H. WILEY.

JANUARY 19, 1959.

[F.R. Doc. 59-936; Filed, Feb. 3, 1959; 8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

CHANDLER AUCTION CO. ET AL.

Proposed Posting of Stockyards

The Director of the Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the act.

Chandler Auction Co., Chandler, Okla.
Hereford Heaven Livestock Sale, Sulphur, Okla.
Jay Sale Barn, Jay, Okla.
Locust Grove Sale, Locust Grove, Okla.
Marietta Auction Sale, Marietta, Okla.
Albemarle Livestock Market, Inc., Charlottesville, Va.
Bedford Livestock Market, Inc., Bedford, Va.
Christiansburg Livestock Market, Inc., Christiansburg, Va.
Covington Stockyards, Inc., Covington, Va.
Danville Livestock Auction Market, Inc., Danville, Va.
Farmer Livestock Exchange, Inc., Winchester, Va.
Farmers Livestock Market, Ewing, Va.
Fredericksburg Stock Yards, Fredericksburg, Va.
Front Royal Livestock Market, Front Royal, Va.
Galax Livestock Market, Inc., Galax, Va.
Giles County Stockyards, Inc., Narrows, Va.
Goochland Livestock Market, Goochland, Va.
Highland County Livestock Market, Inc., Monterey, Va.
Lee Farmers Livestock Market, Inc., Jonesville, Va.
Lunenburg Livestock Market, Victoria, Va.
Lynchburg Livestock Market, Lynchburg, Va.
Madison Livestock Market, Inc., Madison Mills, Va.
Norton Livestock Market, Norton, Va.
Orange Livestock Market, Inc., Orange, Va.
Phenix Livestock Market, Phenix, Va.
Piedmont Livestock Sales, Inc., Marshall, Va.
Pulaski Livestock Market, Dublin, Va.
Roanoke-Hollins Stock Yard, Hollins, Va.
Roanoke Livestock Market, Inc., Roanoke, Va.
Rockbridge Livestock Market, Inc., Buena Vista, Va.
Shenandoah Valley Livestock Sales, Inc., Harrisonburg, Va.
Smithfield Livestock Market, Inc., Smithfield, Va.
South Boston Livestock Market, South Boston, Va.
South Hill Stockyards, South Hill, Va.
Southside Stockyards, Inc., Blackstone, Va.
Southside Stockyards, Inc., Petersburg, Va.
Staunton Union Stock Yards, Inc., Staunton, Va.
Tappahannock Livestock Market, Inc., Tappahannock, Va.
Tazewell Livestock Market, Tazewell, Va.
Virginia Livestock Market, Winchester, Va.
Wytheville Livestock Market, Inc., Wytheville, Va.

Notice is hereby given, therefore, that the said Director, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the act, as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule may do so by filing them with the Director, Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., within 15 days after publication hereof in the FEDERAL REGISTER.

Done at Washington, D.C., this 29th day of January 1959.

[SEAL] DAVID M. PETTUS,
Director, Livestock Division, Agricultural Marketing Service.

[F.R. Doc. 59-930; Filed, Feb. 3, 1959; 8:46 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-83]

UNIVERSITY OF FLORIDA

Notice of Proposed Issuance of Facility License

Please take notice that the Atomic Energy Commission proposes to issue to University of Florida, Gainesville, Florida, a facility license, substantially as set forth below authorizing the possession and operation of an Argonaut type training reactor at power levels up to 10 kilowatts (thermal) unless within fifteen (15) days after the filing of this notice with the Federal Register Division a request for a formal hearing is filed with the Commission as provided by the Commission's rules of practice (10 CFR Part 2). For further details see (1) the application submitted by the University of Florida, and (2) a memorandum prepared by the Division of Licensing and Regulation which summarizes the principal factors considered in reviewing the application for license, both on file at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of item (2) above may be obtained at the Commission's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., this 30th day of January 1959.

For the Atomic Energy Commission.

H. L. PRICE,
Director, Division of Licensing and Regulation.

PROPOSED LICENSE

1. This license applies to the Argonaut type graphite moderated and reflected light water cooled, nuclear reactor (hereinafter referred to as "the reactor") which is owned by the applicant and located at Gainesville, in Alachua County, Florida, and described in the application dated August 20, 1957, the amendment thereto dated May 26, 1958, and two amendments thereto both dated November 12, 1958 (hereinafter collectively referred to as "the application").

2. Pursuant to the Atomic Energy Act of 1954, as amended (hereinafter referred to as "the Act"), and having considered the record in this matter, the Atomic Energy Commission (hereinafter referred to as "the Commission") finds that:

A. The reactor has been constructed in conformity with Construction Permit No. CPRR-21 issued to the University of Florida and will operate in conformity with the application and in conformity with the Act and with the rules and regulations of the Commission.

B. There is reasonable assurance that the reactor can be operated at the designated location without endangering the health and safety of the public.

C. The University of Florida is technically and financially qualified to operate the reactor and to assume financial responsibility for payment of Commission charges for special nuclear material and to undertake and carry out the proposed use of such material for a reasonable period of time.

D. The possession and operation of the reactor and the receipt, possession and use of the special nuclear material in the manner proposed in the application will not be inimical to the common defense and security or to the health and safety of the public.

E. The University of Florida is a nonprofit educational institution and will use the reactor for the conduct of educational activities. The University of Florida is therefore exempt from the financial protection requirement of subsection 170a of the Act.

3. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses the University of Florida:

A. Pursuant to section 104c of the Act and Title 10, CFR, Chapter I, Part 50, "Licensing of Production and Utilization Facilities", to possess and operate the reactor as a utilization facility at the designated location in Gainesville, Alachua County, Florida, in accordance with the procedures and limitations described in the application.

B. Pursuant to the Act and Title 10, CFR, Chapter I, Part 70, "Special Nuclear Material", to possess and use up to four (4.000) kilograms of contained uranium 235 in connection with operation of the reactor.

C. Pursuant to the Act and Title 10, CFR, Chapter I, Part 70, "Special Nuclear Material", to possess and use in connection with operation of the reactor up to 80 grams of plutonium encapsulated as eight plutonium-beryllium neutron sources.

D. Pursuant to the Act and Title 10, CFR, Chapter I, Part 30, "Licensing of Byproduct Material", to possess, but not to separate such byproduct material as may be produced from operation of the reactor.

4. This license shall be deemed to contain and be subject to the conditions specified in § 50.54 of Part 50 and § 70.32 of Part 70, Title 10, CFR, and to be subject to all applicable provisions of the Act, and to the rules, and regulations and orders of the Commission now or hereafter in effect, and to the additional conditions specified below:

A. The University of Florida shall not operate the reactor at power levels in excess of 10 kilowatts without previous authorization from the Commission.

B. The fuel loading in the reactor shall be such that the excess reactivity above cold, clean critical shall not exceed 0.6 percent.

C. In addition to those otherwise required under this license and applicable regulations the University of Florida shall keep the following records:

1. Reactor operating records, including power levels.

2. Records of in-pile irradiations.

3. Records showing radioactivity released or discharged into the air or water beyond the effective control of the University of Florida as measured at the point of such release or discharge.

4. Records of emergency reactor scrams, including reasons for emergency shutdowns.

D. The University of Florida shall immediately report to the Commission in writing any indication or occurrence of a possible unsafe condition relating to the operation of the reactor.

5. Pursuant to § 50.60 of the regulations in Title 10, Chapter I, CFR, Part 50, the Commission has allocated to the University for use in connection with the facility, four (4.000) kilograms of uranium 235 contained in uranium enriched to approximately 20% in the isotope uranium 235. Estimated schedules of special nuclear material transfers to the University and returns to the Commission are contained in Appendix "A" which is set forth below. Shipments by the Commission to the University in accordance with column 2 in Appendix "A" will be conditioned upon the University's return to the Commission of material substantially in accordance with column 3 of Appendix "A".

6. This license is effective as of the date of issuance and shall expire at midnight December 23, 1967.

Date of issuance:

For the Atomic Energy Commission.

APPENDIX "A" TO UNIVERSITY OF FLORIDA PROPOSED LICENSE

Estimated Schedule of Transfers of Special Nuclear Material from the Commission to the University and to the Commission from the University

(1) Date of transfer (fiscal year)	(2) Transfers from AEC to the University, kgs. U-235	(3) Returns by the University to AEC, kgs. U-235		(4) Net yearly distribution including cumulative losses, kgs. U-235	(5) Cumulative distribution including cumulative losses, kgs. U-235
		Recoverable cold-scrap	Spent hot fuel		
1958	4.400	0.400		4.000	4.000
1959		0.360		(0.360)	3.640
1960					3.640
1961					3.640
1962					3.640
1963	0.011	0.001	0.005	0.005	3.645
1964					3.645
1965					3.645
1966					3.645
1967					3.645
1968	0.011	0.001	0.005	0.005	3.650
Inventory to be returned			3.640	3.640	0.010
	4.422	0.762	3.650	0.010	

[F.R. Doc. 59-963; Filed, Feb. 2, 1959; 1:49 p.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 5645 et al.]

PACIFIC-SOUTHWEST LOCAL SERVICE CASE

Notice of Hearing

In the matter of applications for the establishment of additional air service and Board investigation of the need for improvements in the local air service pattern in the area bordered on the north by San Francisco, Sacramento, and Reno; on the east by Reno and Las Vegas; on the south by Las Vegas, Palm Springs, and San Diego; and on the west by the Pacific Ocean.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, that public hearing in the above-entitled proceeding is assigned to be held in two sessions: The first session will be convened on March 10, 1959, at 10:00 a.m. (Pacific standard time) in the Lafayette Hotel, 140 Linden Avenue, Long Beach, California, for the primary purpose of hearing civic presentations. Thereafter, a second session will be convened for the primary purpose of hearing air carrier presentations on April 14, 1959 (eastern standard time) in the Universal Building, Florida and Connecticut Avenues NW., Washington, D.C., before Examiner William F. Cusick.

Without limiting the scope of the issues presented by Docket No. 5645 et al., and the applications and inquiries consolidated for hearing therewith, particular attention will be directed to the following:

1. The need for additional air transportation services contemplated by the applications of Blatz Airlines, Inc., Bonanza Air Lines, Inc., Pacific Air Lines, Inc., West Coast Airlines, Inc., American Airlines, Inc., Trans World Airlines, Inc., United Air Lines, Inc., Western Air Lines, Inc., Continental Air Lines, Inc., Board of County Commissioners, Nye County, Nevada, Fresno County et al., city of Fresno, city of Long Beach, city of Paso Robles, city of San Luis Obispo, and city of Salinas.

2. Whether the public convenience and necessity and the public interest require that the Board take specific action with respect to the issues raised by the Board Investigation in Docket No. 9821.

For further details of this proceeding and the issues involved, interested persons are referred to the report of the prehearing conference served June 27, 1958; the applications consolidated herein; Board orders Nos. E-12903, E-13172, E-13234, E-13241, E-13360, and E-13363, and all other documents in the docket of this proceeding on file with the Docket Section of the Civil Aeronautics Board.

Notice is further given that any person not a party of record and who desires to be heard in support of or in opposition to the issues involved herein must file with the Board on or before March 10, 1959, a statement setting forth the matters of fact or law which he desires to advance. Any person filing such a statement may appear at the hearing and participate in the proceeding in accordance with the provisions of Rule 14 of the Board's rules of practice in economic proceedings.

Dated at Washington, D.C., January 29, 1959.

[SEAL] FRANCIS W. BROWN, *Chief Examiner.*

[F.R. Doc. 59-956; Filed, Feb. 3, 1959; 8:51 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 9401, etc.; FCC 59M-125]

CANNON SYSTEM, LTD. (KIEV) ET AL.

Memorandum Opinion and Order Continuing Hearing

In re applications of Cannon System, Ltd. (KIEV), Glendale, California, Docket No. 9401, File No. BP-7260; South Coast Broadcasting Co., Laguna Beach, California, Docket No. 12640, File No. BP-9912; Robert D. Lamb and Charles R. Dooley d/b as Southland Communications Co., Anaheim, California, Docket No. 12641, File No. BP-10725; J. J. Flanigan, Fontana, California, Docket No. 12642, File No. BP-10967; Gordon A. Rogers, Colton, California, Docket No. 12643, File No. BP-11209; Donald C. McBain, Howard G. Hoegsted, George W. Irwin and Arthur B. Balinger d/b as Upland Broadcasting Company, Upland, California, Docket No. 12645, File No. BP-11942; Robert Burdette & Associates, Inc., West Covina, California, Docket No. 12689, File No. BP-12471; for construction permits.

1. The Examiner has before him a Request for Continuance filed by Mildred Flanigan, surviving spouse and named executrix of John J. Flanigan. Also before the Examiner is a Petition to Set Aside Default filed by South Coast Broadcasting Company. The Flanigan petition was filed on December 17, 1958, but through inadvertent clerical error a copy was not furnished the Examiner until January 16, 1959. The South Coast petition was filed on January 9, 1959. On January 6, 1959, a pre-hearing conference was held in this proceeding at which Flanigan and South Coast, together with two other applicants, were held in default for failure to enter appearances.

2. The Flanigan petition states that John Flanigan died on November 19, 1958, and that his wife and executrix (the present petitioner) has little knowledge of his business affairs. A continuance is requested to permit Mrs. Flanigan to decide whether or not to prosecute the application. It is apparent that

this petitioner is entitled to some relief. South Coast's requested reinstatement, however, is not so easy of resolution. Petitioner here claims that its non-appearance at the conference should be excused "for the reason that the notice of said pre-hearing conference was not received in the office of counsel nor by petitioner or was lost or mislaid after receipt." It further asserts that its intention to appear has been expressed by the fact that it filed response to the Commission's McFarland letter and by the filing of a formal appearance. South Coast also challenges the Examiner's authority to hold a party in default at a prehearing conference on the ground that the Commission's rules do not specifically confer such authority. In connection with these claims, the Examiner merely notes the following: A check of the Commission's files shows that on December 17, 1958, a copy of his order calling the January 6, 1959, conference was sent to M. D. Buchen, President, South Coast Broadcasting Company, 3316 Sunset Boulevard, Los Angeles, California, the only individual who has entered an appearance for South Coast; casual reference to losing or mislaying Commission notices of proceedings hardly constitutes good cause for failure to appear at a Commission proceeding; justification for failure to appear at such a proceeding is not made out by pointing to a set of circumstances and urging that an inference may be drawn from those circumstances that a party has continued to have interest in its application; not all powers inuring to the office of Hearing Examiner are spelled out in Commission rules. Despite the foregoing considerations, the Examiner is, however, disposed to grant the South Coast petition for the following reasons: (1) Traditional reluctance of the Commission to foreclose consideration of the merits of an application on technical grounds; and (2) the difficulties inherent in a California applicant prosecuting an application in Washington.

3. In arriving at the foregoing conclusions the Examiner is not unmindful that the action taken here will undo much constructive work accomplished at the pre-hearing conference. He has given considerable thought to how the results of that work can be preserved and still effect the results directed below. He has found no solution. It appears the pre-hearing work thus far accomplished must be set aside and a new start made in that area.

4. The action taken below will, it is believed, afford both Mrs. Flanigan and South Coast ample time to perfect their plans vis-a-vis prosecution of their applications. At the earliest possible moment both parties should inform the Commission and the Examiner of their intentions.

5. In light of the foregoing, on this 29th day of January 1959: *The following is ordered:* The Petition to Set aside Default filed by South Coast Broadcasting Co. on January 9, 1959, is granted and that application is reinstated; on the Examiner's own motion the default of J. J. Flanigan is set aside and that application is reinstated; insofar as the Request for Continuance filed by Mildred Flanigan on December 17, 1958 seeks indefinite continuance of hearing it is denied, however, the timetable governing future steps in this proceeding set forth in the transcript of the pre-hearing conference of January 6, 1959, is here vacated: *And it is ordered,* On the Examiner's own motion, that hearing in the above-entitled proceeding is continued to a date to be determined at a prehearing conference to be held on March 9, 1959.

Released: January 29, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-948; Filed, Feb. 3, 1959; 8:49 a.m.]

[Docket No. 11645, etc.; FCC 59-66]

AMERICAN TELEPHONE AND TELEGRAPH CO. ET AL.

Memorandum Opinion and Order

In the matter of American Telephone and Telegraph Company, Docket No. 11645, Charges, classifications, regulations and practices for and in connection with private line services and channels; The Western Union Telegraph Company, Docket No. 11646, Charges, classifications, regulations and practices for and in connection with Domestic Leased Facility Service; American Telephone and Telegraph Company, et al., Docket No. 12194, Charges, classifications, regulations and practices for and in connection with Channels for Data Transmission.

1. The Commission has before it the record to date in the above-entitled proceedings, together with Petitions for Review and Clarification of the Rulings of the Hearing Examiner filed by Chesapeake and Ohio Railway Company, Trans-Lux Produce News Company, Trans-Lux Corporation, Trans-Lux Movie Ticker Corporation, The Teleregister Corporation, American Newspaper Publishers Association, Association of Stock Exchange Firms, New York Stock Exchange and Commodity News Services, Inc., intervenors herein, requesting the Commission to direct the Hearing Examiner to compile a separate record upon the lawfulness of the suspended interim rates and to promptly certify the record to the Commission for a decision thereupon as speedily as possible. Responses were filed by American Telephone and Telegraph Company (AT&T) and The Western Union Telegraph Company (Western Union) on October 22, 1958.

2. The proceedings herein had their origin in the Commission's order of October 19, 1955 (Docket No. 11518), which suspended the effectiveness of AT&T's Tariff FCC No. 227 containing new rates and regulations for multiple private line services and channels, and ordered an investigation into the lawfulness of such new rates and regulations. Thereafter, by order of March 7, 1956, the Commission instituted a general investigation (Docket No. 11645) of the rates and regulations contained in all tariff schedules of AT&T applicable to its furnishing of private line services and channels (except the tariffs relating to the various program transmission services). AT&T and the other Bell System Companies which participate with AT&T in furnishing private line service under such tariff schedules were made respondents in the proceedings. A similar investigation was also instituted by such order into the rates and regulations of Western Union for leased telegraph facilities and services (Docket No. 11646). On September 30, 1957, the Commission suspended new and revised tariff schedules of AT&T applicable to channels for Data Transmission and ordered an investigation into the lawfulness thereof (Docket No. 12194). Subsequently, on April 16, 1958, the Commission ordered the proceedings in Docket No. 12194 to be consolidated into Docket Nos. 11645 and 11646.

3. On August 15, 1958, the respondent carriers filed new tariff schedules containing new and increased charges for their private line telegraph services. These tariffs were suspended by the Commission on September 24, 1958. Thereafter, the respondents requested permission to withdraw the rates under suspension and to file new ones, which request was granted subject to certain conditions. Pursuant to this permission, new tariff schedules, which also represented increases, were filed by AT&T and Western Union on October 31, and November 13, 1958, respectively, to become effective December 1, 1958.[1] However, the Commission by order of November 25, 1958, pursuant to Section 204 of the Act, suspended the effective date of the tariffs for one day and ordered the respondents to keep account of all amounts received as a result of the increased charges.

4. Petitioners contend that by virtue of respondents' filing of increased charges which the Commission suspended pursuant to section 204 of the Act, a separate record must be compiled, on an expedited basis, upon the lawfulness of such "interim" rates and certified to the Commission as speedily as possible for an appropriate decision upon the lawfulness of such rates.

5. Respondent AT&T, while it did not specifically discuss the request to certify the record to the Commission for a decision prior to the conclusion of the proceedings herein, takes the position that the case should be expedited but only with due regard to the orderly development of an adequate record, and furthermore, that separation of the "interim" rates is not practical due to the extent to which the evidence relating to all the private line services in issue is so inextricably interrelated.

6. Respondent Western Union takes the position that the increased rates should be given preference over all other questions pending before the Commission and decided as speedily as possible in accordance with section 204 of the

[1] In filing these rates the respondents in their respective letters of transmittal referred to the filed rates as interim rates.

Act but makes no comment as to what procedure the Commission should adopt.

7. Section 204 of the Communications Act of 1934, as amended, provides in pertinent part as follows:

> * * * At any hearing involving a charge increased, or sought to be increased, after the organization of the Commission, the burden of proof to show that the increased charge, or proposed increased charge, is just and reasonable shall be upon the carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

As we construe section 204 of the Act, it merely requires that the questions pertaining to increased rates shall be decided as speedily as possible. It does not mean that we must sacrifice an adequate record in the interest of expediting a determination as to the lawfulness of any rate or that we may ignore other pertinent considerations which may be involved. The issues which were framed by our orders of March 7, September 11, and October 9, 1956, in Dockets Nos. 11645 and 11646 apply to the rates and regulations of respondents for all private line services, with the exception of program transmission services, and contemplate a determination of reasonable rates and regulations that should be made effective for the future.

8. The rates under suspension, which have been filed as "interim" rates by respondents, are subject to the same test of justness and reasonableness in these proceedings as are any other private line telephone or telegraph rates which are under consideration in Dockets Nos. 11645 and 11646. In support of the suspended private line teletypewriter rates, respondents are relying largely upon the same evidentiary showing they have thus far made pursuant to the aforementioned issues. Any determination made by the Commission with respect to the lawfulness of private line teletypewriter rates as contemplated by the aforementioned issues of the general investigation, as well as with respect to the "interim" rates under suspension, obviously involve the consideration of cost data and other evidence going to questions of rate levels and rate structure common to both determinations. This is also true with respect to the determination of just and reasonable rates applicable to AT & T's private line telephone services which involve cost and rate structure considerations which, in large measure, are inseparable from considerations pertinent to the determination of teletypewriter rates. We do not see how it would be realistic or conducive to an expeditious determination of the issues herein to attempt to fragmentize the proceeding in these respects even if it were possible to do so. In our opinion, the best interests of the private line users and the respondent carriers will be served by developing a full and complete record on costs and rate structure applicable to all private line services in issue in Dockets Nos. 11645 and 11646, thereby enabling the Commission to dispose of any questions regarding the lawfulness of the rates under suspension and to determine, as contemplated by the issues in Dockets Nos. 11645 and 11646, rates that should be made effective for the future. Moreover, in order to protect the users of the services, we have required the respondent carriers to keep account of all amounts received as a result of the "interim" increases, thereby providing a method by which refunds may be ordered in the event such refunds are found to be warranted at the conclusion of the proceedings.

9. Accordingly, we will expect respondent carriers and intervenors to present, without delay, any additional evidence which they regard as necessary to a full determination of the issues in Dockets Nos. 11645 and 11646. In order to insure the prompt disposition of the issues in Dockets Nos. 11645 and 11646, we shall require the Hearing Examiner, after completion of the record therein, to certify the record to the Commission for decision, and to thereupon proceed to receive additional evidence necessary to conclude the proceedings in Docket No. 12194.[2]

10. In view of the foregoing, the aforementioned petitions, in so far as they request that the Hearing Examiner be directed to compile a separate record upon the lawfulness of the suspended "interim" rates and to certify this record to the Commission prior to the conclusion of the proceedings in Dockets Nos. 11645 and 11646, are denied: *And it is ordered,* That, the Hearing Examiner, after completion of the record in Dockets Nos. 11645 and 11646, shall certify the record to the Commission for decision and shall thereupon proceed to receive additional evidence necessary to conclude the proceedings in Docket No. 12194.

Adopted: January 28, 1959.

Released: January 29, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-949; Filed, Feb. 3, 1959; 8:49 a.m.]

[2] This direction will be without prejudice to the future disposition of the pending petition of General Services Administration requesting severance of Docket No. 12194.

[Docket Nos. 12318, 12319; FCC 59M-130]

TELEMUSIC CO. AND SOUTHWEST BROADCASTING CO., INC.

Order Scheduling Prehearing Conference

In re applications of Richard C. Simonton, d/b as Telemusic Co., San Bernardino, California, Docket No. 12318, File No. BPH-2188; Southwest Broadcasting Company, Inc., Redlands, California, Docket No. 12319, File No. BPH-2215; for construction permits.

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

It is ordered, This 29th day of January 1959, that all parties, or their attorneys, who desire to participate in the proceeding, are directed to appear for a prehearing conference, pursuant to the provisions of § 1.111 of the Commission's rules, at the Commission's offices in Washington, D.C., at 10:00 a.m., March 4, 1959.

Released: January 30, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-950; Filed, Feb. 3, 1959; 8:50 a.m.]

[Docket No. 12687; FCC 59M-132]

CAROLINIAN, INC.

Order Continuing Hearing

In the matter of Carolinian, Inc., 1216 North Charles Street, Baltimore, Maryland, Docket No. 12687, order to show cause why there should not be revoked the license for radio station WD-2875 aboard the vessel "Carolinian."

The Hearing Examiner having under consideration a motion by the Commission's Safety and Special Radio Services Bureau, filed January 29, 1959, that hearing in the above-entitled proceeding, which is presently scheduled to commence February 2, 1959, be continued to March 2, 1959;

It appearing that the grounds stated in support of the motion are sufficient to warrant a continuance of the hearing in this proceeding for a period of approximately 30 days, and that public interest requires a waiver of § 1.43 of the rules to permit immediate consideration of the matter;

It is ordered, This 30th day of January 1959, that the motion is granted and that hearing in the above-entitled proceeding is continued from February 2, 1959, to March 3, 1959, and will be held in the Offices of the Commission, Washington, D.C.

Released: January 30, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-951; Filed, Feb. 3, 1959; 8:50 a.m.]

[Docket No. 12741; FCC 59-58]

CONSOLIDATED AMUSEMENT CO., LTD., AND HIALAND DEVELOPMENT CORP.

Memorandum Opinion and Order Designating Application for Hearing on Stated Issues

In re application of Consolidated Amusement Company, Ltd., (transferor) and Hialand Development Corporation, (transferee), Docket No. 12741, File No. BTC-2958; for Commission consent to the transfer of control of Hawaiian Broadcasting Corporation, licensee of Stations KGMB and KGMB-TV, Honolulu, KHBC and KHBC-TV, Hilo, and KMAU-TV, Wauluku, Territory of Hawaii.

1. The Commission has before it for consideration (1) the "Protest and Petition For Reconsideration," filed on January 2, 1959, pursuant to sections 309(c) and 405 of the Communications Act of 1934, as amended, by Harry Weinberg and the 800 Corporation, directed against the Commission's action of December 3, 1958, granting without hearing the above-entitled application; (2) the "Opposition to 'Protest and Petition For Reconsideration'" filed on January 14, 1959 by the parties to the above-entitled application; and (3) the "Reply" to said "Opposition" filed on January 21, 1959 by the above protestants.[1]

2. The protestant, Harry Weinberg, is the owner of 3,360 shares (1.6 percent) of Consolidated Amusement Company, Ltd., some of which is held by him in a "street name." The protestant, 800 Corporation, in which Weinberg is a stockholder and president, owns 350 shares (.17 percent) of Consolidated's stock. The above application requests Commission consent to the voluntary transfer of control of Hawaiian Broadcasting System, Limited (Hawaiian) to Hialand Development Corporation through the sale of 90,541 shares (75.45 percent) of the licensee's stock. (The remaining 24.55 percent is held by the Honolulu Star-Bulletin, Limited.) Commission's records indicate that the stock of the transferor corporation is widely held, with only 6 stockholders owning in excess of 1 percent. The 75.45 percent of the stock in Hawaiian was sold by its transferor to the transferee pursuant to a contract which also provided for the sale of theatre properties and real estate in Hawaii for $8,088,249. A 1956 appraisal of the 75.45 percent of Hawaiian's stock put a value thereon of $1,479,092.

3. In their joint protest, the protestants allege, in substance, that on September 26, 1958, Consolidated's President and Treasurer, acting pursuant to a resolution of that corporation's directors, signed an agreement with the transferee to sell all of the transferor's assets including the broadcasting stock for a gross price of $8,088,249 plus the assumption of certain of the transferor's liabilities; that it was a condition of the agreement that this sale had to be approved by the vote of not less than three-quarters of the transferor's issued and outstanding stock; that since the sale was part of a plan for the sale of all the corporate assets and the dissolution of the corporation, the affirmative vote of at least three-fourths of the issued and outstanding shares of the transferor's stock was required as a matter of Hawaiian law and by the transferor's by-laws; that, accordingly, on October 10, 1958, the President of the transferor addressed a letter to the stockholders, informing them of the director's action authorizing the sale, enclosing a "Notice of Special Meeting" of stockholders for October 31, 1958, a "Plan of Complete Liquidation" for the corporation, a copy of the agreement with the transferee and a proxy to be used at the special meeting for voting with respect to the proposed sale and liquidation; that, by October 24, 1958, the management had not obtained affirmative proxies from the necessary three-quarters of its stockholders, so on that date the transferor's secretary, acting by order of its Board of Directors, directed a second letter to the stockholders containing information and representations designed to solicit stockholder support for the plan; that relying on representations made by the transferor's directors as to the actual value of the corporation's stock, protestants voted their proxies in favor of the proposed sale and liquidation; and that the necessary number of proxies having been obtained, the instant application was filed and granted by the Commission on December 3, 1958.

4. It is further alleged, in substance, that the price that they were induced to accept for the transferor's assets was so inadequate as to constitute fraud on the stockholders; that some of the significant representations made to the stockholders were false and misleading and thus constituted a fraud upon the stockholders; that J. Howard Worrall, vice-president, director and 3.5 percent stockholder of the transferor had an "arrangement" with the transferee that was not reported or revealed to the Commission; that this failure to disclose constituted a further fraud upon them; that based on present real estate values as conservatively estimated by petitioner Weinberg on the basis of 25 years of real estate experience, the transferor's assets should not have been sold for less than $3,000,000 more than the Hialand contract, which would have yielded the protestants approximately $50,000 more on their investment; that the protestants are preparing to institute suit to enjoin consummation of the contract of sale because of fraud and concealment; and that they are parties aggrieved and whose interests are adversely affected by the transfer of control and are entitled to protest such action by virtue of their interest in the transferor corporation, the fraud against their interest and the inadequate consideration which they received for their stock under the contract.

5. It is further claimed, in substance, that the appraisals for land and improvements understate the value of the transferor's real estate; that, for example, since the ratio which the total appraisal bore to the book value of the Waipahu Theatre and parking lot almost 3.3 to 1, it can be assumed that the actual value of the Waipahu property would have approximated $430,000 or $300,000 more than ascribed to it; that the book value for long-term leases and improvements was shown to be $121,007; that if the same ratio of 3.3 to 1 between the actual value and book value obtained equally for leasehold properties, these properties should have been worth $400,000; that the appraised value of the transferor's stock in Hawaiian was shown to be $1,479,092, although this appraisal was two years old; that there is every reason to believe that the value of the licensee's facilities has appreciated substantially in the interim; that, only several months prior to the October 24th letter, the Directors made an offer to the Honolulu Star-Bulletin to buy its minority holding of 24.55 percent of the licensee's stock for $650,000; that if this interest was worth $650,000, the 75.45 percent interest was worth at least $1,950,000 or $470,000 more than the directors represented to the stockholders; that based on the above, the "total net worth of (the company) on September 30, 1958, of $9,481,470" contained a fraudulent understatement of as much as $1,170,000 or 12.5 percent; that this does not take into consideration the increase in land values in Hawaii since 1955 and 1956 which, petitioners allege, on information and belief, would be more than sufficient to overcome any decrease in the value of the theatre buildings which the directors suggest might lower the actual net worth of the corporation; and that on the basis of these representations, the required three-fourths of the transferor's stockholders were induced to approve the instant agreement, which obtained a grossly inadequate price for the transferor's properties.

6. It is further alleged that an "arrangement" which one of the transferor's officers and directors had made with the transferee to continue in an important executive position after the transfer was not reported to the transferor's stockholders; that J. Howard Worrall, President of Hawaiian, is Vice-President and Director and largest single stockholder of the transferor; that the original application showed that Mr. Worrall would continue as manager but did not disclose the nature of the agreement the transferee had made with Mr. Worrall; that petitioners allege, on information and belief, that Mr. Worrall's arrangement had been made at least prior to the Director's letter of October 24; that it was a breach of Mr. Worrall's fiduciary duty as a director to make any "arrangement" with the transferee without revealing such arrangement to the stockholders and to allow the directors to solicit stockholder approval of the contract from which he would benefit without revealing the nature and extent of the benefit he would reap; that this breach of fiduciary duty to petitioners and the other stockholders constitutes another fraud upon them; and that the details of this "arrangement" should have been revealed fully to the Commission; that in view of Mr. Worrall's strategic position in the transferor, any consideration received by him represented part of the consideration paid and should have been reported as such in the transfer application.

7. It is further alleged, in substance, that Question 22(d), Section II, Part III, of the transfer application requires the transferee to reveal all "documents, instruments or contracts and . . . the substance of oral contracts or understandings" relating to the management of the station involved; that the transferee's cryptic and tardy reference to its "arrangement" with Mr. Worrall does not satisfy this requirement but represents a breach of its own obligation to

[1] On January 23, 1959, the above-entitled applicants filed a "Motion To Strike" urging that references in the "Reply" to a certain option agreement entered into after the Commission's grant of December 3, 1958, may not be considered as part of the protest herein. An Opposition thereto was filed on January 26, 1959.

the Commission to make a full disclosure of all relevant matters; that the foregoing facts evidence a scheme and design on the part of the transferor's management and directors to fraudulently induce the stockholders to approve a contract for sale of all its assets at a price well below their actual value, in a transaction from which one of the directors and largest stockholders would receive a benefit; that this benefit was concealed from the other stockholders and its details were improperly withheld from the Commission by the transferee, thereby raising a question as to whether the transferee was conspiring with Worrall to prevent public disclosure of the agreement and whether it had any knowledge of the other breaches of fiduciary obligations committed by the officers and directors of the transferor; and that because of this fraud in the inception and implementation of the agreement, the transfer is not in the public interest and the application should be set for hearing.

8. In their prayer for relief, the protestants request that the above-entitled application be designated for hearing on issues specified by them; and that the Commission's grant of consent to the above-captioned transfer be vacated and its effective date postponed to the effective date of the Commission's decision after hearing.

9. In their joint opposition, the proposed transferor, Consolidated Amusement Company, Ltd., and the proposed transferee, Hialand Development Corporation allege, in substance, that the protest should be denied because the petitioners have not stated sufficient facts to show that they are "parties in interest" and have not stated sufficient facts which, if proven, would show that the grant made by the Commission would not serve the public interest; that a claim of fraud without allegations of injury or damage would not be sufficient to establish standing as "parties in interest" within the meaning of section 309(c) of the Communications Act of 1934; that the sole claim of damage or injury is that petitioners are receiving "inadequate" consideration for their stock, in that "based on present real estate values as conservatively estimated by petitioner Weinberg on the basis of 25 years of experience in real estate investment," the assets should not have been sold for less than $3,000,000 more than the actual sale price, which would have yielded petitioners about $50,000 more on their investment; that this constitutes the sole claim of injury to the petitioners; that it is submitted that this totally unsupported, self-serving statement of injury is inadequate to form the basis for a valid finding that petitioners are "parties in interest;" that the statement is not factual but is a mere opinion unsupported by facts either as to his qualifications to express an opinion or as to the correctness of the valuation; that the Commission can take official notice that mere valuation of assets, no matter how accurately determined, is meaningless unless the assets could in fact be sold for a higher price; that the Commission can also take official notice that valuation of individual assets involves at best a very difficult matter of opinion, not susceptible to any precise determination; that there is no showing that the properties could be sold at a higher price; and that, as a matter of law, the protest must be denied for failure to set forth with particularity facts showing the petitioners to be "parties in interest."

10. It is further alleged, in substance, that even if a proper showing of greater valuation can alone form a basis for standing, the petitioners still fail because they have not alleged facts which properly support a finding that the properties are worth $3,000,000 more than the sale price; that the protest contains no facts to support Weinberg's opinion as to value; that there are a number of other undisputed facts which the Commission can rely upon to show lack of standing; that the best evidence of value is the sale price itself; that the negotiations between the buyer and the seller were conducted at complete arms-length; that all members of the Board of Directors voted unanimously to accept the Hialand offer; that the directors and members of their families also own substantial amounts of stock; that if fraud had been committed, or if the stockholders had been injured, then damage has been done to the directors themselves for neither they nor their families and the trusts they represent, are getting proportionately a penny more for their interests than are the protestants; that each stockholder is getting approximately $39 per share of the stock owned; that thus, the petitioner asks that the directors and officers be protected against the "fruits of their own folly or fraud"; that an affidavit from the Executive Secretary of the Honolulu Stock Exchange shows that the stock of Consolidated has not sold for as much as $39 per share for the past ten years; that immediately prior to the negotiations the stock was selling for about $22 per share and when word leaked out about the sale, the price rose to about $27 per share; that the amount the petitioners could receive on the market at the time the sale was approved was approximately $100,000, yet they are in fact receiving nearly $150,000 on liquidation; that the greatly enhanced price they received suggests that they suffered no substantial injury by the sale; and since there is no purchaser willing to pay an increase price for the stock, any allegations of injury become merely speculative.

11. It is further alleged, in substance, that even if the Commission finds that the petitioners have standing, the protest should be denied because even if the facts alleged could be proved, no grounds for setting aside the grant are presented; that the gravamen of the petitioners' complaint is the charge of fraud by the Directors of Consolidated in deceiving the minority stockholders as to the proper value of the properties; that if the directors merely used bad business judgment or if they were negligent, the Commission would have no legitimate interest in the transfer; that it is essential that factual allegations be set forth, which if proved, would show fraud; that the allegations made, even if true, would not show that the directors had fraudulently undervalued or fraudulently misrepresented the value of the properties sold; that the stockholders were fully aware that the appraisals were made in 1955 and 1956 and that some of these properties may have increased in value since that time; that it may well be that the appraised value of the properties was understated by as much as $1,170,000 and that the land is worth at least $3,000,000 more today, but the directors never attempted to place a precise value on the properties, conceding that the properties may have been worth more; that, therefore, there is totally absent here any factual allegations which show an actual misstatement or omission; that there is no allegation in the proxy material which is false or misleading; that the technique (utilizing a ratio of 3.3 to 1) employed by the petitioners in arriving at the value (of the properties) is so fallacious and irresponsible as to be patently false; that there are no facts alleged which show an intentional or willful misstatement by the Board, intended to damage the minority stockholders or to benefit the Directors or the Buyer; and that, accordingly, two essential elements of fraud namely, material misrepresentation and scienter, are not alleged, nor supported by facts.

12. It is further alleged, in substance, that, with respect to the "Worrall arrangement", there is no allegation that the "arrangement" was intended to induce Mr. Worrall to accept the sale price nor that in fact it did influence his judgment as an officer and director of the transferor; that there is no showing or charge that any improper benefit will be received by Worrall or that the stockholders will be in any way injured or damaged by the "arrangement" or that there was any intentional or willful deception designed to injure the stockholders; that, absent such allegations, the petitioners' facts, even if true, would not show fraud; and that based on the foregoing, as a matter of law, the petitioners have failed to set out sufficient facts which, if proved, would show that the transferor's officers and directors are guilty of fraud.

13. In their reply to the opposition, protestants, urge, in substance, that as a matter of fact they are parties aggrieved because their assets are being taken from them at an inadequate price; that since the price is inadequate, they have been injured and are aggrieved regardless of whether this injury arises from fraud, negligence or merely from the bad business judgment of the transferor's directors; that the respondent's opposition does not disprove the charges of fraud; that with respect to the valuation of the assets of the transferor, the method of adjustment and the appraisal on which they were based were not included with the director's letter of October 24, 1958; that the total net worth of the company set by the transferor at $9,481,470 was an actionable misrepresentation by the directors; that the lowest possible "barebones" valuations were used in arriving at this figure; that the failure to disclose that some of the transferor's properties had been sold at a profit, taken in context with the representation that some of the properties had been sold at a loss, shows a disregard for the obligation for

full disclosure that cannot be reconciled with the transferor's repeated representations that the directors were acting in good faith; that no evidence is shown that the management ever attempted to find other buyers, that they ever sought another offer to compare with the transferee's or that they sought to obtain a current appraisal before seeking to commit the corporation to the instant sale; that at the time the October 24, 1958 letter went out, Worrall was the recipient of a special benefit (assurance of employment) from the buyer; that this was not revealed to the stockholders; that a further reason why the instant transfer is wholly inconsistent with the public interest is found in the recent announcement of an agreement between Hialand and the Honolulu Star-Bulletin, Limited, under which Hialand, far from operating the stations in the public interest, would turn control of them over to the Star-Bulletin whenever this protest is disposed of; that this agreement raises an obvious question of trafficking; that it confirms the doubt as to Hialand's character qualifications; and that it raises the question of why the Commission should give further consideration at all to the instant transfer when Hialand is only to be used as a "conduit of title" over to the Star-Bulletin.

14. The reply further sets forth, in substance, that it is obviously impossible for the Commission to determine whether the public interest could sanction the instant transfer of control until it has determined under what circumstances, for what consideration and for what reasons the transferee has agreed to surrender control of the licensee to Star-Bulletin; that the "thirty day rule" is obviously inapplicable since the protestants did not know of this agreement until after the 30 day period had expired; that there is no conceivable public interest requirement why the protested grant should remain in effect pending the protest hearing; and that since there is an unresolved question of fraud and because the transferee no longer has any intention or desire to operate the requested facilities in the public interest, the Commission cannot deny petitioners a hearing on their protest.[2]

15. In view of the fact that the protestants are stockholders of the proposed transferor herein and have alleged facts designed to show that they will suffer economic injury as a result of the Commission's action, we find that the protestants are "parties in interest" and "persons aggrieved or whose interests are adversely affected" by the Commission's grant of the above-entitled application within the meaning of sections 309(c) and 405 of the Communications Act of 1934, as amended. FCC v. Sanders Brothers, 309 U.S. 470; Granik et al. v. FCC, 98 U.S. App. D.C. 247, 13 Pike & Fischer RR 2185; In the Matter of The Good Music Stations, Inc., 14 Pike & Fischer RR 512. We further find that the protestants have specified with particularity the facts upon which they rely to show that the Commission's grant was improperly made or otherwise would not be in the public interest. Accordingly, the above-entitled application will be designated for an evidentiary hearing on the issues specified by the protestants. However, we are not adopting any of said issues, and the burden of proof thereon, both in proving the facts alleged and in demonstrating their materiality and relevancy will be on the protestants.

16. There remains for our consideration the question whether the protested grant should remain in effect. Section 309(c) provides that pending hearing and decision, the effective date of the Commission's action shall be postponed "unless the authorization involved is necessary to the maintenance or conduct of an existing service, or unless the Commission affirmatively finds for reasons set forth in the decision that the public interest requires that the grant remain in effect, in which event the Commission shall authorize the applicant to utilize the facilities or authorization in question pending the Commission's decision after hearing." It is clear that it is the intent of this section that a protested grant be stayed unless there is an exceptional situation which concerns the public interest. However, the Commission has been most concerned with those cases wherein minority stockholders use the provisions of section 309(c) and the Commission's processes to resolve purely intracorporate struggles. The Commission believes that where, in a protest, the allegations against the parties to a transfer of control application relate to charges and counter-charges with respect to exclusively corporate affairs; where no patent questions are raised with respect to the qualifications of the parties and no questions are raised regarding the operation of the broadcast stations involved by either the transferor or the transferee, it would be contrary to the public interest to permit a minority stockholder (in this case 2 stockholders out of approximately 1,300, having a total stock ownership of 1.77 percent) to stay a grant which the Commission had previously found to be in the public interest. In view of the nature of the matters to which the allegations in the protest are directed, i.e. good faith and fair dealing between the directors and the stockholders of the transferor corporation, matters which can be resolved in the appropriate local courts and over which the Commission, generally, does not exercise jurisdiction, public interest considerations require that the said grant remain in effect pending the Commission's decision after hearing. Accordingly, a stay of the Commission's grant will not be issued in this case.

17. In light of the above: *It is ordered,* That the protest and petition for reconsideration filed herein are granted to the extent provided for below and are denied in all other respects; and that pursuant to section 309(c) of the Communications Act, the above-entitled application is designated for evidentiary hearing at the offices of the Federal Communications Commission in Washington, D.C., on the following issues:

(1) To determine whether the agreement of September 26, 1958, between the transferor and transferee, for the sale of all of Consolidated's assets, was a fraud upon the transferor corporation and on petitioners, and whether such agreement was a breach of the fiduciary obligations of its officers and directors.

(2) To determine whether Consolidated's directors understated to its stockholders the value of Consolidated's holdings, whether such understatement was deliberate and whether it was fraudulently designed to induce said stockholders to approve said agreement of September 26, 1958.

(3) To determine all the facts and circumstances leading up to the signing of said agreement of September 26, 1958, with particular reference to the activities and participation, if any, of J. Howard Worrall with respect to such negotiations.

(4) To determine whether all the agreements, arrangements and understandings, written or oral, between the officers and directors of Consolidated, especially J. Howard Worrall, and Hialand, and whether such agreements, arrangements and understandings were fully and fairly disclosed to Consolidated's stockholders.

(5) To determine whether Hialand made the full disclosure of such matters required of broadcast licensees and whether Hialand conspired with Consolidated, or any of its officers and directors, to withhold relevant information or to defraud Consolidated's stockholders.

(6) To determine, on the basis of all of the foregoing, whether Hialand has the requisite character qualifications to become a broadcast licensee and whether a grant of the Application BTC-2958, for transfer of control of Broadcasting from Consolidated to Hialand will serve the public interest, convenience and necessity.

The burden of proceeding with the introduction of evidence and the burden of proof as to each of the above issues shall be on the protestants.

18. *It is further ordered,* That the protestants and the Chief, Broadcast Bureau, are hereby made parties to the above-entitled proceedings and that;

(a) The hearing on the above issues shall commence at a time and place and before an Examiner to be specified in a subsequent order:

[2] Prior to the filing of the "Reply" herein, the transferee filed an affidavit, executed by its Vice President and Secretary, together with five exhibits. These documents indicate that attorneys for the Honolulu Star-Bulletin, Limited submitted a letter dated December 18, 1958, notifying the Commission of its intention to file a protest against its action of December 3, 1958; that by telegram dated December 30, 1958, the Star-Bulletin advised Hialand, the transferee, that it would file no protest if Hialand gave the Star-Bulletin an option to purchase control of Hawaiian or its assets; that by telegram dated December 31, 1958, Hialand made a counteroffer which would obtain the results sought by the Star-Bulletin; and that by telegram dated January 2, 1959, the Star-Bulletin accepted Hialand's proposal. The questions which this transaction raises, if any, will be considered by the Commission in connection with such application as may be filed to effectuate said option.

(b) The parties to the proceedings herein shall have fifteen (15) days after the issuance of the Examiner's decision to file exceptions thereto and seven (7) days thereafter to file replies to any such exceptions; and

(c) The appearance by the parties intending to participate in the above hearing shall be filed not later than February 13, 1959.

Adopted: January 23, 1959.

Released: January 30, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-952; Filed, Feb. 3, 1959; 8:50 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 3]

APPLICATIONS FOR MOTOR CARRIER "GRANDFATHER" CERTIFICATE OR PERMIT

JANUARY 30, 1959.

The following applications and certain other procedural matters relating thereto are filed under the "grandfather" clause of section 7(c) of the Transportation Act of 1958. These matters are governed by Special Rule § 1.243 published in the FEDERAL REGISTER issue of January 8, 1959, page 205, which provide, among other things, that this publication constitutes the only notice to interested persons of filing that will be given; that appropriate protests to an application (consisting of an original and six copies each) must be filed with the Commission at Washington, D.C., within 30 days from the date of this publication in the FEDERAL REGISTER; that failure to so file seasonably will be construed as a waiver of opposition and participation in such proceeding, regardless of whether or not an oral hearing is held in the matter; and that a copy of the protest also shall be served upon applicant's representative (or applicant, if no practitioner representing him is named in the notice of filing).

No. MC 13123 (Sub No. 21), filed December 10, 1958. Applicant: WILSON FREIGHT FORWARDING CO., 3636 Follett Avenue, Cincinnati, Ohio. Applicant's attorney: Wilmer B. Hill, Transportation Building, Washington, D.C. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen fruits, frozen berries, and frozen vegetables,* between points in Delaware, Maryland, Minnesota, Tennessee, Virginia, and Washington, D.C., and points in its Commercial Zone, on the one hand, and, on the other, points in Ohio, Kentucky, Indiana, North Carolina, Pennsylvania, West Virginia, New York, Alabama, Louisiana, Massachusetts, New Jersey, Maryland, Connecticut, Tennessee, Georgia, and Washington, D.C. and points in its Commercial Zone.

No. MC 29934 (Sub No. 8), filed December 10, 1958. Applicant: LOBIONDO BROTHERS MOTOR EXPRESS, INC., R.D. No. 6, Bridgeton, N.J. Applicant's attorney: Natthew Aaron, 70 North Lauren Street, Bridgeton, N.J. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen berries,* from points in Massachusetts to points in Cumberland, Cape May, and Atlantic Counties, N.J.

No. MC 30164 (Sub No. 30), filed November 12, 1958. Applicant: HIGHWAY TRANSPORTATION COMPANY, INC., 205 Lincoln Street, South Portland, Maine. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen berries,* from Portland, Corinna, Boothbay Harbor, West Rockport and Washington Junction, Maine, and Lawrence and Worcester, Mass., to Boston, Quincy, Gloucester, Worcester, Roxbury, and Malden, Mass., New York (including Brooklyn and Bronx), and Buffalo, N.Y., Wethersfield, Hartford, and East Hartford, Conn.

No. MC 31389 (Sub No. 46), filed December 10, 1958. Applicant: McLEAN TRUCKING COMPANY, a corporation, 617 Waughtown Street, P.O. Box 213, Winston-Salem, N.C. Applicant's attorney: David G. Macdonald, Commonwealth Building, 1625 K Street NW., Washington 6, D.C. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier,* by motor vehicle, over regular routes, transporting: *Wool stock (imported wool, wool tops, wool noils,* and *wool waste,* carded, spun, woven or knitted), from Boston, Mass., to Rutherfordton, N.C., from Boston over U.S. Highway 1 to New York (also over U.S. Highway 1 to Providence, R.I., thence over Rhode Island Highway 3 to Hopkinton, R.I., thence over Rhode Island Highway 84 to the Rhode Island-Connecticut State line, thence over Connecticut Highway 84 to junction U.S. Highway 1; also from Boston over Massachusetts Highway 9 to junction U.S. Highway 20, thence over U.S. Highway 20 to junction Massachusetts Highway 15, thence over Massachusetts Highway 15 to the Massachusetts-Connecticut State line, thence over Connecticut Highway 15 to junction U.S. Highway 5, thence over U.S. Highway 5 to junction U.S. Highway 1, thence as above) thence over regular routes specified in Certificate No. MC 31389 and Sub numbers to Charlotte, N.C., thence over U.S. Highway 74 to junction North Carolina Highway 108, thence over North Carolina Highway 108 to Rutherfordton, serving all intermediate points.

No. MC 33953 (Sub No. 2), filed December 9, 1958. Applicant: PHILIP S. ZANGHI, doing business as RED LINE TRANSFER CO., 2320 Monumental Road, Baltimore 27, Md. Applicant's attorney: William J. Little, Fidelity Building, Baltimore 1, Md. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Bananas,* from Baltimore, Md., Philadelphia, Pa., New York, N.Y., Weehawken, N.J., Norfolk, Va., and Charleston S.C., to points in Virginia, Pennsylvania, Connecticut, Massachusetts, West Virginia, New Jersey, New York, Maryland, Delaware, New Hampshire, Rhode Island, Michigan, District of Columbia, Maine, and Ohio.

No. MC 52917 (Sub No. 14), filed December 1, 1958. Applicant: CHESAPEAKE MOTOR LINES INC., 340 West North Avenue, Baltimore 17, Md. Applicant's attorney: Dale C. Dillon, 1825 Jefferson Place NW., Washington 6, D.C. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen fruits, frozen berries,* and *frozen vegetables,* from Baltimore, Md., Washington, D.C., and points in Nassau and Westchester Counties, N.Y., Hudson and Union Counties, N.J., and New York City, N.Y., to points in New York, New Jersey, Pennsylvania, Delaware, Virginia, Maryland, and the District of Columbia. Between points in Nassau and Westchester Counties, N.Y., and Hudson and Union Counties, N.J., on the one hand, and, on the other, Baltimore, Md., and Washington, D.C. Between New York, N.Y., points in Nassau and Westchester Counties, N.Y., and points in Hudson and Union Counties, N.J., on the one hand, and, on the other, Richmond and Cheatham Annex (Williamsburg) Va. Between Baltimore, Md., and Washington, D.C., on the one hand, and, on the other, points in Pennsylvania on and south of U.S. Highway 22 from the New Jersey line to Harrisburg, and on and east of U.S. Highway 111 from Harrisburg to the Maryland line, including Harrisburg, and Sunbury, Scranton, and Wilkes-Barre, Pa. Between Whiteford, Md., on the one hand, and, on the other, New York, N.Y., and Jersey City, N.J. Between points in Atlantic and Middlesex Counties, N.J., on the one hand, and, on the other, Baltimore, Md., and Washington, D.C. Between New York, N.Y., and Houston, Del. Between Scranton, Pa., and Philadelphia, Pa., via Baltimore, Md. Between New York, N.Y., and Sunbury, Pa.

No. MC 55878 (Sub No. 7), filed December 10, 1958. Applicant: NATIONAL FREIGHT, INC., 122 Wood Street, Vineland, N.J. Applicant's representative: Irving Abrams, 1776 Broadway, New York 19, N.Y. Grandfather authority sought under setcion 7 of the Transportation Act of 1958 to continue to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen fruits, frozen berries, frozen vegetables* and *bananas,* from Cumberland and Philadelphia, Pa., Fort Dix, Camden, Jersey City, and Fort Monmouth, N.J., Dover, Del., and Niagara Falls, N.Y., to points in New York, New Jersey, Pennsylvania, and Delaware.

No. MC 57778, Sub No. 5), filed December 8, 1958. Applicant: MICHIGAN REFRIGERATED TRUCKING SERVICE, INC., 713 North Junction, Detroit 9, Mich. Grandfather authority sought under section 7 of the Transportation

Act of 1958 to continue to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits, frozen berries* and *frozen vegetables*, from Cleveland and Canton, Ohio, and Bear Lake, Benton Harbor, Detroit, Fremont, Lawrence, and Sodus, Mich., to Indianapolis, Ind., Chicago, Ill., Louisville, Ky., Hopkins and Minneapolis, Minn., St. Louis, Mo., Rochester, N.Y., and Huntington, W. Va.

NOTE: Applicant seeks the privilege of moving fish and fish products and agricultural commodities when in mixed loads.

No. MC 60767 (Sub No. 6), filed December 8, 1958. Applicant: PYRAMID MOTOR FREIGHT CORPORATION, 550 Secaucus Road, Secaucus, N.J. Applicant's attorney: Harris J. Klein, 280 Broadway, New York 7, N.Y. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits, frozen berries* and *frozen vegetables*, between New York, N.Y., and Hoboken, Englewood, Jersey City, Bayonne, Atlantic City, Union City, Grantwood and Camden, N.J., Baltimore and Landover, Md., Philadelphia and Norristown, Pa., and Washington, D.C.

NOTE: Applicant states that fresh vegetables, salads, horseradish and poultry were transported in mixed shipments with the above commodities.

No. MC 61825 (Sub No. 18), filed October 27, 1958. Applicant: ROY STONE TRANSFER CORPORATION, Roanoke Highway, P.O. Box 385, Collinsville, Va. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wool* imported from any foreign country, from Norfolk, Va., to Philadelphia, Pa. Applicant is authorized to conduct operations in Pennsylvania, Virginia, Ohio, West Virginia, New York, North Carolina, Maryland, District of Columbia, New Jersey, Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, South Carolina, Tennessee, Louisiana, and Mississippi.

No. MC 65115 (Sub No. 6), filed November 28, 1958. Applicant: RAY SCHNEYER TRANSPORTATION COMPANY, a corporation, 4344 Sheila Street, Los Angeles, Calif. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tea* and *bananas*, from points in the Los Angeles and Long Beach Harbors, Calif., to Colton, San Diego, Long Beach, and Los Angeles, Calif.

No. MC 69052 (Sub No. 30), filed December 5, 1958. Applicant: REED TRUCKING COMPANY, a corporation, Chestnut Street, Milton, Del. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier*, by motor vehicle of irregular routes, transporting: *Frozen vegetables*, from points in Kent and Sussex Counties, Del., to points in Wicomico County, Md.

No. MC 75185 (Sub No. 220), filed December 9, 1958. Applicant: SERVICE TRUCKING COMPANY, INC., P.O. Box 276, Federalsburg, Md. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits, frozen berries* and *frozen vegetables*, (a) between points in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, and Virginia, on the one hand, and, on the other, points in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina; (b) between points in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, and Virginia, on the one hand, and, on the other, points in Illinois, Indiana, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Ohio, Tennessee, and West Virginia; and (3) between points in Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and Virginia.

No. MC 106401 (Sub No. 11), filed November 24, 1958. Applicant: JOHNSON MOTOR LINES, INC., 2426 Hutchinson Avenue, Charlotte, N.C. Applicant's attorney: Gordon Allison Phillips, Munsey Building, Washington 4, D.C. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wool* imported from any foreign country, from Charleston, S.C., to points in South Carolina and Augusta, Ga.

No. MC 107818 (Sub No. 22), filed November 21, 1958. Applicant: ELLA GREENSTEIN, doing business as GREENSTEIN TRUCKING COMPANY, Pompano Beach, Fla. Applicant's attorney: Martin Sack, Atlantic National Bank Building, Jacksonville 2, Fla. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from West Palm Beach and Miami, Fla., to points in Alabama, Georgia, North Carolina, South Carolina, Kentucky, Tennessee, Virginia, West Virginia, Maryland, New Jersey, New York, Massachusetts, Connecticut, Rhode Island, Arkansas, Missouri, Illinois, Michigan, Indiana, Ohio, Pennsylvania, Wisconsin, and Minnesota.

NOTE: Applicant states that fresh fruits and vegetables will be transported in mixed shipments with non-exempt commodities.

No. MC 109533 (Sub No. 11), filed October 23, 1958. Applicant: OVERNITE TRANSPORTATION COMPANY, a Virginia corporation, 501 South Fourteenth Street, Richmond, Va. Applicant's attorney: Reuben G. Crimm, Eight-O-Five Peachtree Street Building, Atlanta 8, Ga. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wool* imported from any foreign country, from Charleston and North Charleston, S.C., to points in South Carolina. Applicant is authorized to conduct operations in Virginia, North Carolina, Tennessee, Georgia, and South Carolina.

No. MC 109875 (Sub No. 3), filed October 24, 1958. Applicant: ELMER H. ROCK, Clay, Lancaster County, Pa. Applicant's attorney: Christian V. Graf, 11 North Front Street, Harrisburg, Pa. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen vegetables*, from Lancaster and Lebanon, Pa., to New York City and Buffalo, N.Y., Youngstown, Ohio, Kearney, Jersey City, and Hackettstown, N.J., Williamsburg, Va., and Trappe, Landover, and Cambridge, Md.

No. MC 111812 (Sub No. 60), filed December 1, 1958. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 747, Wilson Terminal Building, Sioux Falls, S. Dak. Applicant's attorney: Donald Stern, 924 City National Bank Building, Omaha, Nebr. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Frozen fruits, frozen berries*, and *frozen vegetables*, from points in Washington, Oregon, Idaho, Utah, California, and Minnesota, to points in South Dakota, Minnesota, Nebraska, North Dakota, Montana, Iowa, Indiana, Illinois, Missouri, Wisconsin, Michigan, Kansas, Washington, Oregon, Idaho, and California.

NOTE: Applicant indicates that mixed shipments of *exempt commodities* were also transported.

No. MC 112148 (Sub No. 11), filed November 10, 1958. Applicant: JAMES H. POWERS, Melbourne, Iowa. Applicant's representative: William A. Landau, 1307 East Walnut Street, Des Moines 16, Iowa. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits, frozen berries*, and *frozen vegetables*, from points in Minnesota, Nebraska, New York, Pennsylvania, and Wisconsin, to points in Arkansas, Iowa, Kansas, Michigan, Minnesota, Nebraska, and New York.

No. MC 112582 (Sub No. 8), filed October 31, 1958. Applicant: T. M. ZIMMERMAN COMPANY, a corporation, 227 West Commerce Street, Chambersburg, Pa. Applicant's attorney: John M. Musselman, State Street Building, Harrisburg, Pa. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits, frozen berries*, and *frozen vegetables*, from Chambersburg, Pa., and points within 25 miles thereof, and points in Massachusetts, New York, and West Virginia, to Chambersburg, Pa., and points within 25 miles thereof, and points

in New Jersey, New York, Ohio, and Pennsylvania.

No. MC 113388 (Sub. No. 26), filed December 8, 1958. Applicant: LESTER C. NEWTON TRUCKING CO., a corporation, Box 265, Bridgeville, Del. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits, frozen berries,* and *frozen vegetables,* (a) between points in Delaware, Maryland, Virginia, New Jersey, Pennsylvania, New York, and the District of Columbia, on the one hand, and, on the other, points in Delaware, Maryland, Pennyslvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, Maine, Virginia, and the District of Columbia; and (b) between points in Maine, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia, on the one hand, and, on the other, points in Pennsylvania, Maryland, Delaware, Virginia, North Carolina, South Carolina, Georgia, Florida, and the District of Columbia; and *rejected* and *damaged shipments and empty pallets and containers,* from the above-described destination points to the above-specified origin points.

No. MC–113434 (Sub-No. 5), filed December 3, 1958. Applicant: GRA-BELL TRUCK LINE, INC., 679 Lincoln, Holland, Mich. Applicant's attorney: Wilhelmina Boersma, 2850 Penobscot Building, Detroit 26, Mich. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen fruits, frozen berries,* and *frozen vegetables,* from points in Michigan, to points in Ohio, West Virginia and Pennsylvania.

No. MC 117119 (Sub-No. 2), filed December 5, 1958. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., Elm Springs, Ark. Applicant's attorney: A. Alvin Layne, Jr., Pennsylvania Building, Washington 4, D.C. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen fruits, frozen berries* and *frozen vegetables,* from points in Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Oregon, Ohio, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin to points in Alabama, Arkansas, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Oregon, Ohio, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

No. MC 117425 (Sub No. 2), filed December 9, 1958. Applicant: FEDERAL TRUCKING COMPANY, Denton Road, Federalsburg, Md. Applicant's attorney: William J. Augello, Jr., 99 Hudson Street, New York 13, N.Y. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Tea* and *frozen fruits, berries and vegetables,* (1) between points on and east of a line consisting of the western boundaries of Minnesota, Iowa, Missouri, Arkansas, and Louisiana, including points in Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin; (2) between points in the above specified states, on the one hand, and, on the other, points in California, Kansas, Nebraska, Oklahoma, Oregon, Texas, and Washington; (3) from points in the states specified in (1) above to points in Arizona, Colorado, and New Mexico, and ports of entry on the International Boundary between the United States and Canada; (4) from points in Oklahoma to points in Kansas; and (5) from points in Washington to points in Nebraska.

NOTE: Applicant states that it has been transporting exempt commodities in mixed shipments with the above-specified commodities.

No. MC 117725, filed October 20, 1958. Applicant: RUDOLPH METTS, 4520 French Street, Jacksonville, Fla. Applicant's attorney: Martin Sack, Atlantic National Bank Building, Jacksonville 2, Fla. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Bananas,* from Tampa, Miami, and Port Everglades, Fla., and Charleston, S.C. to Jacksonville, Fla.

No. MC 117818, filed November 10, 1958. Applicant: OSCAR TAYLOR, doing business as TAYLOR TRUCK LINE, 10845 Sunnymeade Place, Oklahoma City, Okla. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Bananas,* between New Orleans, La., and Oklahoma City, Okla.

No. MC 117833, filed November 14, 1958. Applicant: FLOWERS TRUCKING CO., INC., 1000 Jefferson Street, Lynchburg, Va. Applicant's attorney: W. G. Burnette, 302 Seventh Street, corner Church and Seventh, Lynchburg, Va. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Bananas,* from Baltimore, Md., Miami, Fla., and Norfolk, Va., to Charlottesville, and Lynchburg, Va.

NOTE: Applicant states it occasionally completes loads with other fruits and/or vegetables from points in Florida, Georgia, South Carolina, North Carolina, or Maryland.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 59-925; Filed, Feb. 3, 1959; 8:46 a.m.]

[Notice 254]

MOTOR CARRIERS APPLICATIONS

JANUARY 30, 1959.

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers and by brokers under sections 206, 209, and 211 of the Interstate Commerce Act and certain other procedural matters with respect thereto.

All hearings will be called at 9:30 o'clock a.m., United States standard time, unless otherwise specified.

APPLICATIONS ASSIGNED FOR ORAL HEARING OR PRE-HEARING CONFERENCE

MOTOR CARRIERS OF PROPERTY

No. MC 1103 (Sub No. 13), filed November 5, 1958. Applicant: EDWARD KOFMEN, MAX H. KOFMAN, FREDA KOFMAN GAINES, JOSEPH KOFMAN AND BENJAMIN F. KOFMAN, a partnership, doing business as KOFMAN'S, 130 Dunlap Street, Bellefonte, Pa. Applicant's attorney: Edward L. Willard, Leitzell Building, State College, Pa. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Loose brass, copper and aluminum borings and turnings,* and *brass, copper and aluminum scrap,* from Reedsville and Morgantown, W.Va., to Bellefonte, Pa., and *brass bars and rods* drawn, extruded and rolled, and *rough brass and aluminum castings,* on return. Applicant is authorized to conduct operations in Pennsylvania, Connecticut, Delaware, New Jersey, New York, Ohio, Maryland, Massachusetts, Rhode Island, the District of Columbia, Michigan, Indiana, Illinois, West Virginia, Tennessee, New Hampshire, North Carolina, Wisconsin, Kentucky, and Virginia.

NOTE: Applicant states the proposed service is to be integrated with its certificated service in the transportation of the commodities in question as an inbound shipment; the outbound shipment being largely brass bars and rods drawn, extruded and rolled, and rough brass and aluminum castings.

HEARING: March 25, 1959, at the Pennsylvania Public Utility Commission, Harrisburg, Pa., before Examiner Leo A. Riegel.

No. MC 7181 (Sub No. 1), filed January 19, 1959. Applicant: ARTHUR F. KAUFFMAN AND ANN C. KAUFFMAN, a partnership doing business as EUGENE McKENZIE FREIGHT, Blue River, Oreg. Authority sought to operate as a *common carrier,* by motor vehicle, over a regular route, transporting: *Class A and B explosives,* between Eugene, Oreg., and Belknap Springs, Oreg.: from Eugene over U.S.

Highway 99 to junction U.S. Highway 126 (formerly U.S. Highway 28), thence over U.S. Highway 126 to junction unnumbered highway near Belknap Springs, thence over unnumbered highway to Belknap Springs, and return over the same route, serving the intermediate and off-route points of Walterville, Leaburg, Vida, Nimrod, Blue River, Rainbow, and McKenzie Bridge, Oreg. Applicant is authorized to transport general commodities, with the usual exceptions, over the above-described regular route.

HEARING: March 25, 1959, at the Eugene Hotel, Eugene, Oreg., before Joint Board No. 172. or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

No. MC 8681 (Sub No. 71), filed December 31, 1958. Applicant: WESTERN AUTO TRANSPORTS, INC., 430 South Navajo Street, Denver, Colo. Applicant's attorney: Louis E. Smith, Suite 503, 1800 North Meridian Street, Indianapolis 2, Ind. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Automobiles, trucks,* and *buses* (imported from foreign countries), (as defined in descriptions in Motor Carrier Certificates, Ex Parte MC-45), in secondary movements by the truckaway method, from points in California to South Bend, Ind., and *rejected* and *damaged shipments* of the above specified commodities on return. Applicant is authorized to conduct operations throughout the United States.

HEARING: March 9, 1959, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Examiner Alfred B. Hurley.

No. MC 10761 (Sub No. 79), filed December 15, 1958. Applicant: TRANS-AMERICAN FREIGHT LINES, INC., 1700 North Waterman Avenue, Detroit 9, Mich. Applicant's attorney: Howell Ellis, 520 Illinois Building, Indianapolis, Ind. Authority sought to operate as a *common carrier,* by motor vehicle, transporting: *General commodities,* except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, serving the site of the Forest Products Division plant of the Olin Mathieson Chemical Corporation, located four miles east of junction U.S. Highways 6 and 66 near Joliet, Ill., said plant site located approximately one-half mile south of U.S. Highway 6, as an off-route point in connection with applicant's authorized regular route operations between Chicago, Ill., and Kansas City, Mo., over U.S. Highways 66, 36, 54, and 40. Applicant is authorized to conduct operations in Arkansas, Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Texas, and Wisconsin.

HEARING: March 18, 1959, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Joint Board No. 149, or, if the Joint Board waives its right to participate, before Examiner Alfred B. Hurley.

No. MC 15754 (Sub No. 5), filed December 29, 1958. Applicant: ROBERT ANGLEMIER, Box 12, R.D. No. 2, Clarks Summit, Pa. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Carbonated beverages,* from points in Lackawanna County, Pa., to points in Broome County, N.Y.; and *empty containers or other such incidental facilities* (not specified) used in transporting the commodities specified, on return. Applicant is authorized to operate in New Jersey, New York, and Pennsylvania.

HEARING: March 24, 1959, at the Penn Sherwood Hotel, 3900 Chestnut Street, Philadelphia, Pa., before Examiner Leo A. Riegel.

No. MC 16346 (Sub No. 7), filed December 2, 1958. Applicant: STORY'S EXPRESS COMPANY, INC., East Fourth Street and Melrose Avenue, Chester, Pa. Applicant's attorney: Ralph C. Busser, Jr., 1609 Morris Building, 1421 Chestnut Street, Philadelphia 2, Pa. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *General commodities,* except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment between Chester, Delaware County, Pa., and points in Pennsylvania within ten (10) miles of Chester, and Philadelphia, Pa. Applicant is authorized to conduct operations in Delaware, Maryland, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, and the District of Columbia.

HEARING: March 18, 1959, at the Penn Sherwood Hotel, 3900 Chestnut Street, Philadelphia, Pa., before Examiner Leo A. Riegel.

No. MC 23000 (Sub No. 5), filed December 10, 1958. Applicant: HIGHWAY TRANSPORTATION COMPANY, a corporation, West 23d Street, Box 168, Fremont, Nebr. Applicant's attorney: Arthur C. Sidner, First National Bank Building, Fremont, Nebr. Authority sought to operate as a *common or contract carrier,* by motor vehicle, over irregular routes, transporting: *Dehydrated alfalfa meal,* in pellets or in sacks, from points in that part of Nebraska east of the western boundaries of Boyd, Holt, Garfield, Valley, Sherman, Buffalo, Kearney, and Franklin Counties, to points in Iowa, Minnesota, Wisconsin, Illinois, and Missouri. Applicant is authorized to conduct regular route operations in Colorado, Iowa, and Nebraska, and irregular route operations in Illinois and Nebraska.

NOTE: A proceeding has been instituted under section 212(c) in No. MC 23000 (Sub No. 4) to determine whether applicant's status is that of a common or contract carrier.

HEARING: March 18, 1959, at the Rome Hotel, Omaha, Nebr., before Examiner William E. Messer.

No. MC 30224 (Sub No. 16), filed September 2, 1958. Applicant: TRANSPORT SERVICE, INC., 2d Capitol Street, Yankton, S. Dak. Applicant's attorney: James T. Goetz, 115½ West Third Street, Yankton, S. Dak. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Beer* and *empty beer containers* from St. Paul, Minn., New Ulm, Minn., and St. Louis, Mo., to Yankton, S. Dak., and *empty containers or other such incidental facilities* (not specified) used in transporting the above specified commodities on return. Applicant is authorized to conduct operations in Iowa, Kansas, Nebraska, North Dakota, and South Dakota.

HEARING: March 23, 1959, at the Warrior Hotel, Sioux City, Iowa, before Examiner William E. Messer.

No. MC 30244 (Sub No. 12), filed October 30, 1958. Applicant: SHOEMAKER BROTHERS, INC., 1006 West College Avenue, State College, Pa. Applicant's attorney: Edward L. Willard, Leitzell Building, State College, Pa. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Loose brass, copper, and aluminum borings and turnings,* and *brass, copper and aluminum scrap,* from Reedsville and Morgantown, W. Va., to Bellefonte, Pa., and *brass bars and rods, drawn, extruded and rolled,* and *rough brass and aluminum castings,* on return movements. Applicant is authorized to conduct operations in Connecticut, Delaware, Indiana, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, West Virginia, and the District of Columbia.

NOTE: Applicant states that the above service is to be integrated with its other authorized service in the transportation of the commodities in question as an inbound shipment; the outbound shipment being largely brass bars and rods drawn, extruded and rolled and rough brass and aluminum castings.

HEARING: March 25, 1959, at the Pennsylvania Public Utility Commission, Harrisburg, Pa., before Examiner Leo A. Riegel.

No. MC 42487 (Sub No. 386), filed January 1, 1959. Applicant: CONSOLIDATED FREIGHTWAYS, INC., 2116 Northwest Savier Street, Portland, Oreg. Applicant's attorney: William B. Adams, Pacific Building, Portland 4, Oreg. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Petroleum* and *petroleum products,* in bulk, in tank vehicles, between The Dalles and Umatilla, Oreg., on the one hand, and, on the other, points in Oregon in and east of Wasco, Jefferson, Deschutes, and Klamath Counties. Applicant is authorized to conduct operations in Arizona, California, Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

NOTE: Applicant states the proposed traffic shall be limited to that having a prior or subsequent movement by barge on the Columbia River.

HEARING: March 30, 1959, on Ground Floor, Pittock Block, 410 Southwest 10th Street, Portland, Oreg., before No. 172, or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

No. MC 43709 (Sub No. 14), filed November 26, 1958. Applicant: ATKINSON, INC., 4157 Cresson Street, Philadelphia 27, Pa. Applicant's representative: G. Donald Bullock, P.O. Box 2517, Grand Central Station, New York 17, N.Y. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Carpets, rugs* and *mats* for use in passenger automobiles, from Carlisle, Pa., to Newark, Del. Applicant is authorized to conduct operations in Delaware, New Jersey, New York, Pennsylvania, and Virginia.

HEARING: March 17, 1959, at the Penn Sherwood Hotel, 3900 Chestnut Street, Philadelphia, Pa., before Joint Board No. 199, or, if the Joint Board waives its right to participate, before Examiner Leo A. Riegel.

No. MC 50201 (Sub No. 16), filed January 2, 1959. Applicant: DOUGLAS TRUCKING LINES, INC., 1011 East Main Street, Owosso, Mich. Applicant's attorney: David Axelrod, 39 South La Salle Street, Chicago 3, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, commodities in bulk, Class A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment, between Chicago Heights, Ill., on the one hand, and, on the other, junction U.S. Highways 12 and 421 at or near Michigan City, Ind.: from Chicago Heights over U.S. Highway 30 to junction U.S. Highway 421, thence over U.S. Highway 421 to junction U.S. Highway 12 at or near Michigan City, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only in connection with applicant's authorized regular route operations. Applicant is authorized to conduct operations in Michigan and Illinois.

NOTE: Applicant states it holds authority between Chicago, Ill., on the one hand, and, on the other, Chicago Heights, Ill.; also, between Chicago, Ill., on the one hand, and, on the other, specified Michigan points. Applicant states it operates between Chicago and various Michigan points over U.S. Highway 12, and that the purpose of the proposed alternate route is to eliminate the necessity of operating through the Chicago, Ill., gateway on traffic originating at or destined to points in Michigan.

HEARING: March 19, 1959, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Joint Board No. 21, or, if the Joint Board waives its right to participate, before Examiner Alfred B. Hurley.

No. MC 50493 (Sub No. 9), filed November 3, 1958. Applicant: PAUL J. MILLER, R.D. No. 1, Orefield, Pa. Applicant's representative: A. E. Enoch, 556 Main Street, Bethlehem, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Oyster shells*, crushed or ground, in bulk and in bags, from Crisfield and Baltimore, Md., to Spring Glen, Ellenville, Kerhonkson, Accord, High Falls, Cottekill, Monticello, Woodridge, Liberty, Walton, and Delhi, N.Y.; *fish meal*, and *fish meal by-products*, in bulk and in packages, (1) from Amagansett, Long Island, N.Y., to points in Connecticut, New Jersey, and Pennsylvania, and Delmar, Laurel, and Wilmington, Del., (2) from Lewes, Del., to Orefield, Pa., (3) from Atlantic City, Port Monmouth, Tucker Island, and Wildwood, N.J., to points in New York and Pennsylvania, and Baltimore, Frederick, and Hagerstown, Md., and (4) from Reedville, Va., to points in Pennsylvania; *alfalfa meal*, in bulk and in packages, from points in Lehigh and Northampton Counties, Pa., to points in Maine; and *animal feed mixture materials*, in bulk and in packages, from Orefield and Philadelphia, Pa., to Madison, Conneaut, Wooster, Dalton, Baltic, Malvern, and Cortland, Ohio; and *empty containers or other such incidental facilities* used in transporting the above-described commodities, on return. Applicant is authorized to conduct operations in Pennsylvania, New Jersey, New York, Maryland, Massachusetts, the District of Columbia, Connecticut, Delaware, Virginia, and West Virginia.

HEARING: March 16, 1959, at the Penn Sherwood Hotel, 3900 Chestnut Street, Philadelphia, Pa., before Examiner Leo A. Riegel.

No. MC 56082 (Sub No. 27), filed December 8, 1958. Applicant: DAVIS & RANDALL, INC., Chautauqua Road, Fredonia, N.Y. Applicant's attorney: Kenneth T. Johnson, Bank of Jamestown Building, Jamestown, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages* and *advertising material*, from Newark, N.J. to points in New York except Olean, Hornell, and Jamestown, and that portion of New York (except Albany, Syracuse, Utica, Saratoga Springs, and Saranac Lake), on and north of U.S. Highway 20 from the Massachusetts-New York State line to junction Alternate U.S. Highway 20 at or near East Bloomfield, N.Y., thence along alternate U.S. Highway 20 to junction U.S. Highway 62 at or near Big Tree, N.Y., and thence along unnumbered New York Highway to Lake Erie, and *empty malt beverage containers* on return; (2) *malt beverages* and *advertising material* from New York, N.Y. to Gloversville, N.Y., and points in Niagara, Erie, Orleans, Genessee, Wyoming, Allegany, Monroe, Livingston, Steuben, Chemung, Schuyler, Yates, and Onondaga Counties, N.Y., and *empty malt beverage containers* on return. Applicant is authorized to conduct operations in New York, Pennsylvania, Ohio, New Jersey, Kentucky, and Michigan.

NOTE: Applicant states that it does not seek duplicating authority.

HEARING: March 11, 1959, at the Hotel Buffalo, Washington and Swan Streets, Buffalo, N.Y., before Examiner Leo A. Riegel.

No. MC 59310 (Sub No. 51), filed November 28, 1958. Applicant: SPROUT & DAVIS, INC., 2500 Indianapolis Boulevard, Whiting, Ind. Applicant's attorney: Howell Ellis, 520 Illinois Building, Indianapolis, Ind. Authority sought to operate as a *contract or common carrier*, by motor vehicle, over irregular routes, transporting: *Glacial acetic acid*, in bulk, in MC 310 or 311 tank vehicles, from Elkhart and South Bend, Ind., to Newport, Tenn., and *damaged or rejected shipments* of the above-specified commodities on return. Applicant is authorized to conduct contract carrier operations in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Ohio, Oklahoma, and Wisconsin.

NOTE: A proceeding has been instituted under section 212(c) of the Interstate Commerce Act to determine whether applicant's status is that of a contract or common carrier, assigned Docket No. MC 59310 (Sub No. 46).

HEARING: March 17, 1959, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Examiner Alfred B. Hurley.

No. MC 89693 (Sub No. 29), filed December 23, 1958. Applicant: J. D. HARMS, J. D. HARMS, JR., AND GRETCHEN HARMS, a partnership, dba HARMS PACIFIC TRANSPORT, 14410 State Highway 2, Bellevue, Wash. Applicant's attorney: Fred H. Dore, 905 American Building, Seattle 4, Wash. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid products*, in bulk, excluding gasolines, between Spokane, Wash., and points within ten (10) miles thereof, on the one hand, and, on the other, points in Idaho in and north of Idaho County, and points in Montana on and west of U.S. Highway 91. Applicant is authorized to conduct operations in Washington, Oregon, Idaho, and Montana.

HEARING: April 9, 1959, at the Federal Office Building, First and Marion Streets, Seattle, Wash., before Joint Board No. 79, or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

No. MC 93313 (Sub No. 6), filed November 14, 1958. Applicant: LOUIS MARIANNI, doing business as LOMAR TRANSPORTATION CO., 3381 Tulip Street, Philadelphia, Pa. Applicant's attorney: Clarence M. Freedman, Commonwealth Building, 12th & Chestnut Streets, Philadelphia 7, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Green hides*, salted and pickled, from Philadelphia, Pa., to Harrison, Kearney, Newark, South Kearney, South Amboy, Patterson, Belleville, Hoboken, Jersey City, and North Bergen, N.J., and from South Amboy, Patterson, Belleville, Hoboken, Jersey City, and North Bergen, N.J., to Philadelphia, Pa. *Sheepskins*, from Philadelphia, Pa., to Newark, Harrison, Kearney, South Kearney, South Amboy, Patterson, Belleville, Hoboken, Jersey City, and North Bergen, N.J., and from the above-described destination points to Philadelphia, Pa. Applicant is authorized to conduct operations in Pennsylvania, Delaware, Maryland, New York, New Jersey, Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin.

HEARING: March 16, 1959, at the Penn Sherwood Hotel, 3900 Chestnut Street, Philadelphia, Pa., before Examiner Leo A. Riegel.

No. MC 93505 (Sub No. 3), filed December 5, 1958. Applicant: JOHN DAY VALLEY FREIGHT LINES, INC., Box 176, John Day, Oreg. Applicant's attorney: Millen F. Kneeland, Kneeland Building, 2234 Southwest Fourth Avenue, Portland 1, Oreg. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular and regular routes, transporting: IRREGULAR ROUTES: (1) *Ores* and *ore concentrates*, from Prairie City, Oreg., to Tacoma, Wash., and *empty containers or other such incidental facilities* (not specified) used in transporting the above-specified commodities on return. REGULAR ROUTES: (2) *General commodities*, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, serving Kinzua, Oreg., as an off-route point in connection with applicant's authorized regular route operations between Portland and Prairie City, Oreg., over Oregon Highway 19. Applicant is authorized to conduct irregular route operations in Oregon and regular route operations in Idaho, Oregon, and Washington.

HEARING: March 20, 1959, on Ground Floor, Pittock Block, 410 Southwest 10th Street, Portland, Oreg., before Joint Board No. 45, or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

No. MC 104523 (Sub No. 15), filed January 13, 1959. Applicant: WILLIAM HAROLD HUSTON, doing business as HUSTON TRUCK LINE, Friend, Nebr. Applicant's representative: C. A. Ross, 1004–1005 Trust Building, Lincoln 8, Nebr. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt* and *salt compounds*, from Grand Saline, Tex., and points within two miles thereof, to points in Iowa, and *empty containers or other such incidental facilities* (not specified) used in transporting the commodities specified in this application on return. Applicant is authorized to conduct operations in Iowa, Kansas, Nebraska, Wisconsin, and Wyoming.

HEARING: March 16, 1959, at the Rome Hotel, Omaha, Nebr., before Examiner William E. Messer.

No. MC 105461 (Sub No. 14), filed December 30, 1958. Applicant: BENJAMIN H. HERR, doing business as HERR'S MOTOR EXPRESS, Quarryville, Pa. Applicant's representative: Bernard N. Gingerich, Quarryville, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dowels*, wood, from points in Oxford County, Maine, to Whitesville, N.Y., (2) *Furniture*, wooden; *Furniture Juvenile*, wooden; *Toys and toy furniture*, wooden; *folding porch gates; ironing tables, clothes dryers* and *articles made of wood used by homemakers*, from Whitesville, N.Y., to New York, N.Y.; points on Long Island, N.Y.; and points in Pennsylvania, New Jersey, Maryland, Delaware, and the District of Columbia, and (3) *rejected and damaged shipments of the above-specified commodities*, on return. Applicant is authorized to conduct common carrier operations in Delaware, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Vermont, Virginia, and the District of Columbia. Applicant holds contract carrier authority in Permit No. MC 68807 and sub numbers thereunder. Dual operations under section 210 may be involved.

HEARING: March 11, 1959, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner James O'D. Moran.

No. MC 105937 (Sub No. 11), filed October 6, 1958. Applicant: NORTHWEST MOTOR FREIGHT COMPANY, 435 Rock Island Road, East Wenatchee, Wash. Applicant's attorney: George R. LaBissoniere, 654 Central Building, Seattle 4, Wash. Authority sought to operate as a *common carrier*, by motor vehicle, over a regular route, transporting: *General commodities*, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between Oroville, Wash., and the Port of Entry on the international boundary line between the United States and Canada at or near Oroville, Wash., over U.S. Highway 97, serving no intermediate points. Applicant is authorized to conduct operations in Washington.

HEARING: April 1, 1959, at the Federal Office Building, First and Marion Streets, Seattle, Wash., before Joint Board No. 237, or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

No. MC 106965 (Sub No. 124) (REPUBLICATION), filed January 2, 1959, published issue of January 28, 1959. Applicant: M. I. O'BOYLE & SON, INC., doing business as O'BOYLE TANK LINES, 1825 Jefferson Place NW., Washington, D.C. Applicant's attorney: Dale C. Dillon, 1825 Jefferson Place NW., Washington 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, (1) from points in Berkeley County, W. Va., to points in Delaware, Maryland, Pennsylvania, North Carolina, West Virginia, Virginia, and the District of Columbia; (2) from points in Carroll, Frederick, and Washington Counties, Md., to points in Delaware, Virginia, West Virginia, Pennsylvania, and the District of Columbia; (3) from points in York County, Pa., to points in Delaware, Maryland, Virginia, West Virginia, and the District of Columbia; and (4) from points in Montgomery County, Md., to Washington, D.C. Applicant is authorized to conduct operations in Delaware, Illinois, Indiana, Maryland, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Louisiana, Virginia, West Virginia, Wisconsin, Rhode Island, Tennessee, the District of Columbia, Alabama, Arkansas, Connecticut, Florida, Georgia, Iowa, Kentucky, Massachusetts, Maine, Mississippi, New Hampshire, South Carolina, and Vermont.

HEARING: Remains as assigned March 10, 1959, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Mack Myers.

No. MC 107227 (Sub No. 71), filed January 19, 1959. Applicant: INSURED TRANSPORTERS, INC., 251 Park Street, San Leandro, Calif. Applicant's attorney: John G. Lyons, Mills Tower, San Francisco 4, Calif. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Front end shovel loaders*, assembled, and *industrial lift trucks*, assembled, which, because of size or weight require special equipment, and which are being returned to the manufacturer for rebuilding, repair or testing, or which are for demonstration or show purposes, or which have been traded in for machines, or which have been repossessed, from points in the United States, except points in Arizona, Arkansas, Colorado, Kansas, Louisiana, New Mexico, Oklahoma, Texas, and Utah, to San Leandro, Calif. Applicant is authorized to conduct operations throughout the United States.

NOTE: Applicant states the proposed authority is intended to supplement the authority contained in its Certificate No. MC 107227 Sub No. 46.

HEARING: March 2, 1959, in Room 226, Old Mint Building, Fifth and Mission Streets, San Francisco, Calif., before Examiner F. Roy Linn.

No. MC 107541 (Sub No. 5), filed November 12, 1958. Applicant: MAGEE TRUCK SERVICE, INC., Riverside Drive, P.O. Box 36, Klickitat, Wash. Applicant's attorney: John M. Hickson, Failing Building, Portland, Oreg. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Feed and cotton seed meal*, from points in California to points in Multnomah County, Oreg., and those in Yakima, Spokane and Walla Walla Counties, Wash., and *box shooks, lumber* and *fruit* on return. Applicant is authorized to conduct operations in Oregon and Washington.

HEARING: March 19, 1959, on Ground Floor, Pittock Block, 410 Southwest 10th Street, Portland, Oreg., before Joint Board No. 5, or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

No. MC 107698 (Sub No. 23) (Republication), filed October 23, 1958, published issue January 21, 1959 at page 492. Applicant: BONANZA, INC., South East 28th Street and Sooner Road, P.O. Box 5526, Midwest City, Okla. Applicant's attorney: W. T. Brunson, 508 Leonhardt Building, Oklahoma City 2, Okla. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Oleomargarine*, (1) from Oklahoma City, Okla., to Las Vegas and Reno, Nev., and points in Washington and Oregon, and (2) from Enid and Oklahoma City, Okla., to points in Arizona, California, New Mexico, Montana, and Utah. Applicant is authorized to conduct operations in Arizona, Arkansas, California, Colorado, Idaho, Kansas, Missouri, Nevada, New Mexico, Oklahoma, Oregon, Texas, and Washington.

HEARING: Remains as assigned March 2, 1959, at the Federal Building,

Oklahoma City, Okla., before Examiner Donald E. Sutherland.

No. MC 109397 (Sub No. 32), filed December 29, 1958. Applicant: TRI-STATE WAREHOUSING & DISTRIBUTING CO., a corporation, P.O. Box 113, Joplin, Mo. Applicant's attorney: Max G. Morgan, 443-54 American National Building, Oklahoma City 2, Okla. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Radioactive fuel elements*, and *containers therefor*, between the United States Atomic Energy Commission National Reactor Testing Station, near Arco (Scoville), Idaho, on the one hand, and, on the other, Santa Susana Site, near Chatsworth, Calif. Applicant is authorized to conduct operations in Illinois, Kansas, Missouri, Oklahoma, Arkansas, Nebraska, New Mexico, and Texas.

HEARING: March 18, 1959, at the Idaho Public Utilities Commission, State House, Boise, Idaho, before Joint Board No. 175, or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

No. MC 109425 (Sub No. 11), (Clarification) filed September 29, 1958, published at page 9371 issue of FEDERAL REGISTER December 3, 1958. Applicant: LEVITAN INTERSTATE TRANSPORT, INC., 670 Sayre Avenue, Perth Amboy, N.J. Applicant's representative: Bert Collins, 140 Cedar Street, New York 6, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel*, on hangers, (1) between Hartford, Conn., on the one hand, and, on the other, Scarsdale, Carle Place, West Islip, New York, N.Y., North Brunswick, N.J., and Springfield, Pa. (Delaware County), (2) between Springfield, Pa. (Delaware County) on the one hand, and, on the other, North Brunswick, N.J., New York, N.Y., Carle Place, West Islip and Scarsdale, N.Y., (3) between North Brunswick, N.J., on the one hand, and, on the other, Carle Place and West Islip, N.Y., (4) between Philadelphia, Pa., on the one hand, and, on the other, West Islip and Hartford, Conn., (5) from Scarsdale, N.Y., to North Brunswick, N.J., and (6) from Carle Place, Searsdale, N.Y., to Philadelphia, Pa.; and *empty containers or other such incidental facilities* (not specified) used in transporting the above-described commodity between the points as listed, and *returned, damaged or rejected shipments thereof*. Applicant is authorized to conduct operations in New York, Pennsylvania, and New Jersey.

HEARING: February 16, 1959, at 346 Broadway, New York, N.Y., before Examiner David Waters.

No. MC 109478 (Sub No. 29), filed December 23, 1958. Applicant: WORSTER MOTOR LINES, INC., East Main Road, R.D. No. 1, North East, Pa. Applicant's attorney: William W. Knox, 23 West 10th Street, Erie, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food products*, from points in Erie County, Pa., and points in New York on and south of New York Highway 13 from Lake Ontario to its intersection with U.S. Highway 11, near Pulaski, and those on and west of U.S. Highway 11 from its intersection with New York Highway 13 to the Pennsylvania-New York State line, to points in the lower peninsula of Michigan, and *empty containers or other such incidental facilities* (not specified) used in transporting the above commodities on return. Applicant is authorized to conduct operations in Pennsylvania, New York, Massachusetts, Connecticut, Rhode Island, New Jersey, Delaware, Maryland, West Virginia, District of Columbia, Indiana, Illinois, and Michigan.

NOTE: Duplication should be eliminated.

HEARING: March 9, 1959, at the Hotel Buffalo, Washington and Swan Streets, Buffalo, N.Y., before Examiner Leo A. Riegel.

No. MC 109689 (Sub No. 81), filed November 25, 1958. Applicant: W. S. HATCH CO., a corporation, 643 South 800 West, Woods Cross, Utah. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizers*, including *phosporic acid*, in bulk, in tank vehicles, from Don, Idaho, and points within ten (10) miles thereof, to points in Treasure, Yellowstone, Big Horn, and Carbon Counties, Mont., and *rejected or contaminated shipments* of the above-specified commodities, on return. Applicant is authorized to conduct operations in Arizona, Colorado, Idaho, Montana, Nevada, Oregon, Utah, and Wyoming.

HEARING: March 16, 1959, at the Idaho Public Utilities Commission State House, Boise, Idaho, before Joint Board No. 83, or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

No. MC 110053 (Sub No. 4), filed December 16, 1958. Applicant: ILLINOIS STATE MOTOR SERVICE, INC., 4241 West Division Street, Chicago, Ill. Applicant's attorney: Eugene L. Cohn, One North La Salle Street, Chicago 2, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick, tile, and structural clay products*, from East Galesburg, Ill., to points in Indiana within the Chicago, Ill., Commercial Zone, as defined by the Commission, 1 M.C.C. 673, and *returned and rejected shipments* of the above-specified commodities on return. Applicant is authorized to conduct operations in Illinois and Indiana.

HEARING: March 19, 1959, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Joint Board No. 21, or, if the Joint Board waives its right to participate, before Examiner Alfred B. Hurley.

No. MC 110420 (Sub No. 209), filed December 15, 1958. Applicant: QUALITY CARRIERS, INC., Calumet Street, Burlington, Wis. Applicant's attorney: Paul F. Sullivan, 1821 Jefferson Place NW., Washington 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *animal fats, vegetable oils and blends thereof*, in bulk, in tank vehicles, (a) between points in Indiana, Illinois, Kentucky, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin; (b) from Chicago, Ill., to Dorchester, Mass.; (c) from Jacksonville, Ill., to Ellicott City, Md.; (d) from Waterloo, Iowa, to points in Oklahoma and Texas; and (e) from Clinton, Iowa, to Buffalo, N.Y.; and (2) *liquid wax*, in bulk, in tank vehicles, from Milwaukee, Wis., to points in Minnesota, Iowa, and Illinois. Applicant is authorized to conduct operations in Illinois, Wisconsin, Iowa, Minnesota, Missouri, Indiana, Nebraska, Michigan, Ohio, Alabama, Florida, Kansas, Louisiana, Mississippi, Massachusetts, New York, Oklahoma, Pennsylvania, Tennessee, Texas, South Dakota, Virginia, and West Virginia.

HEARING: March 10, 1959, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Examiner Alfred B. Hurley.

No. MC 111435 (Sub No. 19), filed December 30, 1958. Applicant: C. & E. TRUCKING CORP., R.D. No. 3, Box 4A3, Saugerties, N.Y. Applicant's representative: Bert Collins, 140 Cedar Street, New York 6, N.Y. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wine*, in bulk, in stainless steel tank vehicles, from points in Chautauqua County, N.Y., to points in Minnesota, Illinois, Indiana, Kentucky, and Missouri, and *returned shipments* of wine on return. Applicant is authorized to conduct operations in New York, Vermont, Maryland, Pennsylvania, Virginia, Ohio, and Michigan.

NOTE: Applicant states that the proposed operations will be limited to a transportation service under a continuing contract with Fredonia Products Co., Inc.

HEARING: March 11, 1959, at Hotel Buffalo, Washington and Swan Streets, Buffalo, N.Y., before Examiner Leo A. Riegel.

No. MC 111545 (Sub No. 31), filed December 30, 1958. Applicant: HOME TRANSPORTATION COMPANY, INC., 334 South Four Lane Highway, Marietta, Ga. Applicant's attorney: Allan Watkins, 214-216 Grant Building, Atlanta 3, Ga. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Road construction machinery and equipment* as described in Appendix VIII to the report in Description in Motor Carrier Certificates, 61 M.C.C. 209, (2) *heavy machinery*, except knitting machines, and machine tools, the transportation of which because of size or weight require the use of special equipment or special handling, from points in Ohio, Michigan, Indiana, Wisconsin, Iowa, and Illinois to points in North Carolina and South Carolina. Applicant is authorized to conduct operations in Illinois, Georgia, Alabama, Tennessee, North Carolina, South Carolina, West Virginia, Michigan, Delaware, Missouri, Oklahoma, Minnesota, Indiana, Iowa, Kansas, New Jersey, New York, Ohio, Pennsylvania, Wisconsin, Kentucky, Louisiana, Mississippi, Arkansas, Texas, Virginia, and the District of Columbia.

HEARING: March 24, 1959, in Room 852, U.S. Custom House, 610 South Canal

Street, Chicago, Ill., before Examiner Alfred B. Hurley.

No. MC 112497 (Sub No. 135), filed January 19, 1959. Applicant: HEARIN TANK LINES, INC., 6440 Rawlins Street, Baton Rouge, La. Applicant's attorney: Wilmer B. Hill, Transportation Building, Washington 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tall oil* and *tall oil products*, in bulk, in tank vehicles, from Panama City, Fla., to all points in Louisiana. Applicant is authorized to conduct operations in Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia.

HEARING: March 12, 1959, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner James O'D. Moran.

No. MC 112563 (Sub No. 1), (REPUBLICATION) filed January 2, 1959, published issue of January 28, 1959. Applicant: M. I. O'BOYLE & SON, INC., doing business as O'BOYLE TANK LINES, 1825 Jefferson Place NW., Washington, D.C. Applicant's attorney: Dale C. Dillon, 1825 Jefferson Place NW., Washington 6, D.C. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, (1) from points in Berkeley County, W. Va., to points in Maryland, Delaware, North Carolina, Pennsylvania, Virginia, West Virginia, and the District of Columbia; (2) from points in Carroll, Frederick and Washington Counties, Md., to points in Virginia, Delaware, West Virginia, Pennsylvania, and the District of Columbia; (3) from points in York County, Pa., to points in Maryland, Delaware, Virginia, West Virginia, and the District of Columbia; and (4) from points in Montgomery County, Md., to Washington, D.C. Applicant is authorized to conduct operations as a common carrier in No. MC 106965 and sub-numbers thereunder; dual operations under section 210 may be involved.

HEARING: Remains as assigned March 10, 1959, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Mack Myers.

No. MC 113255 (Sub No. 7), filed December 8, 1958. Applicant: MILK TRANSPORT, INC., P.O. Box 398, New Brighton, Minn. Applicant's attorney: Donald A. Morken, 1100 First National-Soo Line Building, Minneapolis 2, Minn. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Edible oils*, in bulk, in tank vehicles, from Memphis and Chattanooga, Tenn., Macon, Ga., and points in Illinois and Minnesota to points in Florida and Georgia. Applicant is authorized to conduct operations in Arkansas, Colorado, Florida, Illinois, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, and Texas.

HEARING: March 17, 1959, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Examiner Alfred B. Hurley.

No. MC 113533 (Sub No. 16), filed December 24, 1958. Applicant: WARREN P. KURTZ, doing business as LAKE REFRIGERATED SERVICE, 8901 Tonnelle Avenue, North Bergen, N.J. Applicant's attorney: Wilhelmina Boersma, 2850 Penobscot Building, Detroit 26, Mich. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, packing-house commodities*, and *commodities* used or distributed by packing houses, from Fargo and West Fargo, N. Dak., Huron and Watertown, S. Dak., Omaha, South Omaha, Gering, North Platt, and Scottsbluff, Nebr., Winona and St. Paul, Minn., Milwaukee, Wis., and Sioux City and Des Moines, Iowa, to points in Connecticut, Delaware, Indiana, Kentucky, Maine, New Hampshire, New Jersey, New York, Maryland, Massachusetts, Michigan, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia. Applicant is authorized to conduct operations in New York, Ohio, Michigan, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Jersey, New Hampshire, Illinois, and Indiana.

HEARING: March 25, 1959, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Examiner Alfred B. Hurley.

No. MC 114211 (Sub No. 13), filed December 10, 1958. Applicant: DONALDSON TRANSFER COMPANY, a corporation, 213 Witry Street, Waterloo, Iowa. Applicant's attorney: Charles W. Singer, 1825 Jefferson Place NW., Washington 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, including poles, from points in Arizona, Colorado, Kansas, New Mexico, Oklahoma, South Dakota, and Texas to points in Missouri, Iowa, Minnesota, Wisconsin, Illinois, Indiana, Ohio, Michigan, Kentucky, and Tennessee, and *exempt commodities* on return movements. Applicant is authorized to conduct operations in Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the District of Columbia.

HEARINGS: March 12, 1959, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Examiner Alfred B. Hurley.

No. MC 115523 (Sub No. 31), filed December 9, 1958. Applicant: CLARK TANK LINES COMPANY, a corporation, 1450 Beck Street, Salt Lake City 16, Utah. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Road oil, asphalt*, and *heavy fuels*, in bulk, in tank vehicles, from Boise, Idaho, and points within ten (10) miles thereof, to points in Malheur, Harney, Baker, and Grant Counties, Oreg., and *rejected or contaminated shipments* of the above-specified commodities on return. Applicant is authorized to conduct operations in Idaho, Oregon, and Utah.

HEARING: March 17, 1959, at the Idaho Public Utilities Commission, State House, Boise, Idaho, before Joint Board No. 6, or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

No. MC 115577 (Sub No. 1), filed December 8, 1958. Applicant: SCHWERMAN TRUCKING CO. OF ILL., INC., 620 South 29th Street, Milwaukee 46, Wis. Applicant's representative: Adolph E. Solie, 715 First National Bank Building, Madison 3, Wis. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bulk, in tank vehicles, from the site of the Marquette Cement Manufacturing Co. plant, Oglesby, Ill., and the site of the Alpha Portland Cement Co. plant, La Salle, Ill., to points in Indiana, located west of La Grange, Noble, Whitley, Huntington, Grant, Madison, Hancock, Shelby, Johnson, Monroe, and Greene Counties; points in Iowa located east of Mitchell, Floyd, Butler, Grundy, Story, Polk, Warren, Lucas, and Wayne Counties; and points in Wisconsin located south of Pepin, Eau Claire, Clark, Marathon, Shawano, Brown, and Kewaunee Counties. Applicant is authorized to conduct operations in Illinois and Wisconsin.

HEARING: March 20, 1959, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Examiner Alfred B. Hurley.

No. MC 116889 (Sub No. 3), filed December 29, 1958. Applicant: SAMUEL L. GASCHO & SON LIMITED, a corporation, 2354 New Street, Burlington, Ontario, Canada. Applicant's attorney: Thomas J. Runfola, 631 Niagara Street, Buffalo 1, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hydrated lime*, from Gibsonburg, Ohio, to Ports of Entry on the boundary between the United States and Canada at or near Buffalo and Niagara Falls, N.Y., and Detroit and Port Huron, Mich. Applicant is authorized to conduct operations in Michigan and New York.

HEARING: March 9, 1959, at Hotel Buffalo, Washington and Swan Streets, Buffalo, N.Y., before Examiner Leo A. Riegel.

No. MC 117136 (Sub No. 8), filed November 6, 1958. Applicant: CAVEMAN TRANSPORT, INC., 2000 Southwest G Street (P.O. Box 247), Grants Pass, Oreg. Applicant's representative: I. R. Perry, P.O. Box 594, Grants Pass, Oreg. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber* and *lumber products*, from points in Lane and Linn Counties, Oreg., to points in California; and *refused or unclaimed shipments* of lumber and lumber products and *pallets* used in moving said commodities, on return. Applicant is authorized to con-

duct operations in California, Oregon, Nevada, and Arizona.

HEARING: March 24, 1959, at the Eugene Hotel, Eugene, Oreg., before Joint Board No. 11, or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

No. MC 117401, (Republication) filed May 19, 1958. Applicant: HANSEN BROS. ELEVATOR CO., a corporation, 104 East Railroad Street, Storm Lake, Iowa. Applicant's attorney: E. A. Hutchison, 420 Security Bank Building, Sioux City 1, Iowa. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Pebble lime,* in bulk, from the site of The Cutler-Magner Company's lime manufacturing plants at Duluth, Minn., and/or Superior, Wis., to points in Iowa, Nebraska, and South Dakota, and *empty containers or other such incidental facilities* (not specified) used in transporting the above-specified commodities on return.

HEARING: March 23, 1959, at the Warrior Hotel, Sioux City, Iowa, before Examiner William E. Messer.

No. MC 117507 (Sub No. 1), filed January 19, 1959. Applicant: CHEMICAL TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, Pa. Applicant's attorney: Leonard A. Jaskiewicz, Munsey Building, Washington 4, D.C. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Cement,* in bulk, and in bags, from the plant site of the North American Cement Corporation at Security, Washington County, Md., to points in Delaware, Maryland, North Carolina, New Jersey, Pennsylvania, Virginia, West Virginia, and the District of Columbia. Applicant is authorized to conduct operations as a common carrier in Maryland, New Jersey, New York, Kentucky, Pennsylvania, Ohio, Delaware, West Virginia, Indiana, Michigan, North Carolina, Virginia, District of Columbia, Connecticut, Massachusetts, Rhode Island, Illinois, Minnesota, Missouri, Tennessee, and Georgia.

NOTE: Applicant states that this application also seeks authority to engage in dual operations under section 210 of the Interstate Commerce Act.

HEARING: March 17, 1959, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Laurence A. Van Dyke.

No. MC 117544 (Sub No. 1), filed November 3, 1958. Applicant: LUMBER HAULERS, INC., 316 Southwest K Street (P.O. Box 394), Grants Pass, Oreg. Applicant's attorney: I. R. Perry, P.O. Box 594, Grants Pass, Oreg. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Lumber* and *lumber products,* from points in Douglas, Jackson, Josephine, and Lane Counties, Oreg., to points in California and Nevada.

HEARING: March 26, 1959, at the Federal Building, Medford, Oreg., before Joint Board No. 151, or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

No. MC 117574 (Sub No. 40), filed December 19, 1958. Applicant: DAILY EXPRESS, INC., 65 West North Street, Carlisle, Pa. Applicant's attorney: James E. Wilson, 1111 E Street NW., Washington 4, D.C. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Tractors,* other than truck tractors, and *incidental machinery and attachments, agricultural implements, agricultural machinery* and *parts* for the above-specified commodities when moving in connection with said commodities, between Racine, Wis., Rockford and Rock Island, Ill., Churubusco, Ind., and Bettendorf and Burlington, Iowa, and points in Ohio and West Virginia. Applicant is authorized to conduct operations throughout the United States.

HEARING: March 16, 1959, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Examiner Alfred B. Hurley.

No. MC 117637 (Sub No. 2), filed January 19, 1959. Applicant: E. BROOKE MATLACK, INC., 33d and Arch Streets, Philadelphia 4, Pa. Applicant's attorney: Paul F. Barnes, 225 South 15th Street, 811–819 Lewis Tower Building, Philadelphia 2, Pa. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Bulk cement,* in tank type, or hopper type vehicles, cement in bags, packages, or other containers, palletized and/or unpalletized, from the plant site of the Alpha Portland Cement Co., located at Limekiln (Frederick County), Md., to points in Delaware, District of Columbia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, Virginia, and West Virginia, and *empty containers, pallets or other such incidental facilities* used in transporting cement on return. Applicant is authorized to conduct operations in Delaware, Pennsylvania, District of Columbia, New Jersey, New York, Maryland, Ohio, Delaware, North Carolina, Virginia, South Carolina, Georgia, West Virginia, Indiana, Illinois, Wisconsin, Kentucky, Tennessee, Michigan, and Missouri.

HEARING: March 10, 1959, at the offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Mack Myers.

No. MC 117637 (Sub No. 3), filed January 26, 1959. Applicant: E. BROOKE MATLACK, INC., 33d and Arch Streets, Philadelphia 2, Pa. Applicant's attorney: Paul F. Barnes, 811–819 Lewis Tower Building, 225 South 15th Street, Philadelphia 2, Pa. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Cement,* in bulk, in tank or hopper type vehicles, *cement,* in bags, packages, or other containers, palletized and/or unpalletized, from the plant site of the Alpha Portland Cement Co., located at Martins Creek (Northampton County), Pa., to points in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, and *empty containers, pallets or other such incidental facilities* used in transporting cement, on return. Applicant is authorized to conduct operations as a common carrier in Maryland, New Jersey, New York, Kentucky, Pennsylvania, Ohio, Delaware, West Virginia, Indiana, Michigan, North Carolina, Virginia, District of Columbia, Connecticut, Massachusetts, Rhode Island, Illinois, Minnesota, Missouri, Tennessee, and Georgia.

NOTE: Dual operations, Section 210, may be involved.

HEARING: March 10, 1959, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Mack Myers.

No. MC 117694 (Sub No. 1), filed October 20, 1958. Applicant: ALVA E. MAUK, doing business as MAUK TRANSFER, West Second Street Road, Atlantic, Iowa. Applicant's attorney: Robert E. Dreher, 312 Equitable Building, Des Moines 9, Iowa. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Animal feed* and *poultry feed,* (1) from Atlantic, Iowa, to Chillicothe, Mo., Aurora, Elkhorn, Beemer, and Plainview, Nebr., and Fairmont, Minn.; (2) from Independence, Iowa, to Fairmont, Minn., Fond du Lac, Seymour, Mineral Point, and Deerfield, Wis.; (3) from West Liberty, Iowa, to Ashton, Lyndon, and Bushnell, Ill., and Chillicothe, Mo.; and (4) (a) from Cherokee, Iowa, to Fairmont, Minn., Plainview, Beemer, and Aurora, Nebr., and points in South Dakota, and (b) between Atlantic, Iowa, and Elkhorn, Nebr.; and *Animal feed ingredients, and poultry feed ingredients,* from points in Nebraska, Minnesota, Wisconsin, Illinois, Missouri, and South Dakota to Atlantic, West Liberty, Cherokee, and Independence, Iowa; and *Damaged and defective shipments* and *empty containers or other such incidental facilities* (not specified) used in transporting the above-described commodities from the above-specified destination points to the above-specified origin points.

HEARING: March 16, 1959, at the Rome Hotel, Omaha, Nebr., before Examiner William E. Messer.

No. MC 117714, filed October 13, 1958. Applicant: THEODORE V. HALLADAY, 3413 West 57th Street, Seattle 7, Wash. Applicant's representative: Joseph O. Earp, 1912 Smith Tower, Seattle 4, Wash. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *House trailers,* new, in truckaway service, from El Monte, Calif., to points in Washington; (2) *boats,* not exceeding 22 feet in length, from points in Washington to Eugene, Salem, Albany, Medford, Portland, Klamath Falls, Coos Bay, Tillamook, Astoria, North Bend, Bend, Prineville, The Dalles, Roseburg, and Grants Pass, Oreg., to points in California; (3) *mattresses,* from Los Angeles, Calif., to Seattle, Wash.; (4) *trailers,* not exceeding 10 feet in length, used exclusively for rental purposes, between points in California and Washington.

HEARING: April 6, 1959, at the Federal Office Building, First and Marion Streets, Seattle, Wash., before Joint Board No. 5, or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

No. MC 117739, filed October 20, 1958. Applicant: McCAHILL FREIGHT AND

WAREHOUSING CO., INC., 501 Fireweed Lane, Anchorage, Alaska. Applicant's attorney: George R. LaBissoniere, 654 Central Building, Seattle 4, Wash. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities, including commodities of unusual value, commodities in bulk, and those requiring special equipment*, but excluding Class A and B explosives and household goods as defined by the Commission, between points in Washington on the one hand, and, on the other, ports of entry on the international boundary line between the United States and Canada located at or near Blaine, Sumas, and Lynden, Wash.

NOTE: Applicant states that the proposed operations will be restricted to traffic moving to or from points in Alaska.

HEARING: April 2, 1959, at the Federal Office Building, First and Marion Streets, Seattle, Wash., before Joint Board No. 237, or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

No. MC 117769, filed October 27, 1958. Applicant: C. J. HAMILTON, 870 Ellen Avenue, Medford, Oreg. Applicant's attorney: Robert C. Dickey, Medical Center Building, Medford, Oreg. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber mill products, including box shook, veneer plywood* and *rough, green and dry and finished lumber*, from points in Oregon to points in California, and *empty containers or other such incidental facilities* used in transporting the above-specified commodities, on return.

NOTE: Applicant states its hauls originate in Glendale, Grants Pass, Medford, and Klamath Falls, Oreg., and terminate in Crescent City, Sacramento, Fresno, Bakersfield, Los Angeles, San Diego, and San Francisco, Calif.

HEARING: March 30, 1959, at the Federal Building, Medford, Oreg., before Joint Board No. 11, or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

No. MC 117783 filed November 3, 1958. Applicant: O. G. BEAL, Linn Grove, Iowa. Applicant's attorney: Arthur C. Sidner, First National Bank Building, Fremont, Nebr. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alfalfa meal*, in sacks, in pellets, and in bulk, from Fremont and Nebraska City, Nebr., to points in Iowa, Illinois, Minnesota, Wisconsin, and Missouri.

HEARING: March 18, 1959, at the Rome Hotel, Omaha, Nebr., before Examiner William E. Messer.

No. MC 117842, filed November 14, 1958. Applicant: INTERSTATE DISTRIBUTING COMPANY, INC., 2215 Puyallup Avenue, Tacoma, Wash. Applicant's attorney: George R. La Bissoniere, 654 Central Building, Seattle, 4, Wash. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise as is dealt in by wholesale and retail grocery establishments*, from points in California to Aberdeen, Chehalis, and Tacoma, Wash.

NOTE: Applicant indicates the transportation service is for the account of West Coast Grocery Co. only. Applicant hold common carrier authority in Certificate No. MC 117201. Dual operations under section 210 may be involved.

HEARING: April 7, 1959, at the Federal Office Building, First and Marion Streets, Seattle, Wash., before Joint Board No. 5, or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

No. MC 117885, filed November 24, 1958. Applicant: CHARLES J. HASHEM AND JOSEPH HASHEM, doing business as HASHEM BROTHERS, 348 North Rebecca Avenue, Scranton, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Unfinished steel casket shells*, from Scranton, Pa., to Long Island City, New York, N.Y., and *damaged or rejected shipments* of the above-specified commodity, on return.

HEARING: March 17, 1959, at the Penn Sherwood Hotel, 3900 Chestnut Street, Philadelphia, Pa., before Examiner Leo A. Riegel.

No. MC 117960 (Sub No. 1), filed December 4, 1958. Applicant: FRED L. CLARK AND WALTER F. CLARK, doing business as CLARK BROTHERS TRANSFER, Norfolk, Nebr. Applicant's attorney: J. Max Harding, I B M Building, 605 South 12th Street, Lincoln 8, Nebr. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products* and *articles distributed by meat packing houses*, as described in Appendix 1 of 61 M.C.C. 209, from Norfolk, Nebr., to Chicago, Joliet, and Danville, Ill., St. Louis and Kansas City, Mo., Waterloo, Iowa, Milwaukee, and Madison, Wis., Sioux Falls, S. Dak., Detroit, Mich., Minneapolis, Minn., and Memphis, Tenn., and from Waterloo, Iowa, to Norfolk, Nebr.

NOTE: Applicant holds common carrier authority in Certificate No. MC 106195 (Sub No. 2). Dual operations under section 210 may be involved.

HEARING: March 17, 1959, at the Rome Hotel, Omaha, Nebr., before Examiner William E. Messer.

No. MC 117970, filed December 4, 1958. Applicant: A. D. STUCKER, R.D. No. 1, Jackson Township, Susquehanna, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, from Swoyersville, Pa., to Constableville, N.Y.; *Lime*, from points in New Jersey to points in Pennsylvania and New York; *Fertilizer*, from points in New Jersey and Maryland to points in Pennsylvania and New York; *Lumber*, (a) from points in Pennsylvania to points in New York and New Jersey, and (b) from points in New York to points in Pennsylvania; *Flagstones*, from points in Pennsylvania to points in Massachusetts, Connecticut, New York, New Jersey, and Maryland; and *Empty containers or other such incidental facilities* (not specified) used in transporting the commodities specified in this application, from the above-specified destination points to the above-specified origin points.

NOTE: Applicant states that in no case does he propose to pick up and deliver any of the above commodities within a State.

HEARING: March 23, 1959, at the Penn Sherwood Hotel, 3900 Chestnut Street, Philadelphia, Pa., before Examiner Leo A. Riegel.

No. MC 118457, filed December 15, 1958. Applicant: THOMAS W. ROBBINS AND RAYMOND S. PULDA, doing business as ROBBINS DISTRIBUTING COMPANY, 1113 Grand Avenue, Racine, Wis. Applicant's attorney: William C. Dineen, 341 Empire Building, 710 North Plankinton Avenue, Milwaukee 3, Wis. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, (1) from Milwaukee, Wis., to Chicago, Ill., (2) from Chicago, Ill., to Kenosha, Racine, and Milwaukee, Wis., and *damaged or rejected shipments* of frozen foods and *empty containers or other such incidental facilities* (not specified) used in transporting the above-specified commodities on return.

HEARING: March 18, 1959, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Joint Board No. 17, or if the Joint Board waives its right to participate, before Examiner Alfred B. Hurley.

No. MC 118461, filed December 16, 1958. Applicant: WILLIAM A. RAVEN AND LAVONNE G. RAVEN, doing business as RAVEN TRANSFER & STORAGE COMPANY, 222 A Street NW., Auburn, Wash. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Airplane parts*, (1) between Auburn, Wash., and Seattle, Wash., from Auburn over Washington Highway 5 to Kent, thence over Washington Highway 5M to Seattle, and return over the same route, serving no intermediate points; (2) between Auburn, Wash., and the Seattle-Tacoma Airport, from Auburn over Washington Highway 5 to the junction of U.S. Highway 99, thence over U.S. Highway 99 to the Seattle-Tacoma Airport, and return over the same route, serving no intermediate points.

HEARING: April 8, 1959, at the Federal Office Building, First and Marion Streets, Seattle, Wash., before Joint Board No. 80, or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

No. MC 118467, filed December 19, 1958. Applicant: OGLESBY TRANSPORT, INC., 11700 Shaker Boulevard, Cleveland 20, Ohio. Applicant's attorney: Ewald E. Kundtz, 1104 Terminal Tower, Cleveland 13, Ohio. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bulk, in tank vehicles, and in bags and/or packages, from the site of the Lehigh Portland Cement Company in Oglesby, Ill., to points in Iowa on and east of a line formed by the westerly boundaries of Howard, Chickasaw, Bremer, Black Hawk, Tama, Marshall, Jasper, Marion, Monroe, and Appanoose Counties, Iowa, including all points in said counties; those in Wisconsin on and south of a line formed by the northerly boundaries of Trempealau, Jackson, Wood Portage, Waupaca, Outagamie, Calumet, and Manitowoc Coun-

ties, Wis., including all points in said counties; those in Indiana on and west of a line formed by the easterly boundaries of Elkhart, Kosiusko, Fulton, Cass, Carroll, Tippecanoe, Fountain, and Vermillion Counties, Ind., including all points in said counties, and those in Illinois, and *rejected* and *returned shipments* of cement on return.

NOTE: Applicant states that the above transportation will be conducted under a continuing contract with Lehigh Portland Cement Company of Allentown, Pa.

HEARING: March 23, 1959, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Examiner Alfred B. Hurley.

No. MC 118501, filed December 29, 1958. Applicant: RAY D. BURKHOLDER AND KENNETH E. GRAYBILL, Dba, BURKHOLDER AND GRAYBILL, R. No. 2, Lititz (Lancaster County), Pa. Applicant's representative: Paul F. Diehm, Lititz, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Corn, hay, straw, fertilizer, livestock*, and *poultry*, between points in Lancaster County, Pa., and New York, N.Y., and Baltimore, Md.

HEARING: March 18, 1959, at the Penn Sherwood Hotel, 3900 Chestnut Street, Philadelphia, Pa., before Examiner Leo A. Riegel.

No. MC 118509, filed December 29, 1958. Applicant: JAMES J. GILLIGAN, JR., doing business as GILLIGAN CARTAGE CO., 6338 South La Crosse Avenue, Chicago, Ill. Applicant's attorney: Joseph M. Scanlan, 111 West Washington Street, Chicago 2, Ill. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such goods, wares, merchandise and equipment* as is sold and distributed in retail stores, between Des Plaines, Ill., and points in Indiana.

NOTE: Applicant states the proposed operations are to be performed for Butler Brothers, Des Plaines, Ill.

HEARING: March 19, 1959, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Joint Board No. 21, or, if the Joint Board waives its right to participate, before Examiner Alfred B. Hurley.

No. MC 118542 (Sub No. 1), filed January 12, 1959. Applicant: UNITED WHOLESALE, INC., 1106 East Cumings Street, Fremont, Nebr. Applicant's attorney: A. C. Sidner, First National Bank Building, Fremont, Nebr. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dehydrated alfalfa meal* in pellets or sacked, and *processed and packaged pop corn*, between points in Dodge and Washington Counties, Nebr., and points in Iowa and Minnesota.

HEARING: March 19, 1959, at the Rome Hotel, Omaha, Nebr., before Joint Board No. 182, or, if the Joint Board waives its right to participate, before Examiner William E. Messer.

MOTOR CARRIERS OF PASSENGERS

No. MC 3647 (Sub No. 245), filed December 9, 1958. Applicant: PUBLIC SERVICE COORDINATED TRANSPORT, a corporation, 180 Boyden Avenue, Maplewood Avenue, N.J. Applicant's attorney: Richard Fryling, General Counsel, Law Department, Public Service Coordinated Transport (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicle with passengers, in round-trip special operations, during racing seasons, beginning and ending at Philadelphia, Pa., and Camden, N.J., and extending to the Charles Town Race Track, Charles Town, W. Va. Applicant is authorized to conduct operations in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia.

HEARING: March 19, 1959, at the Penn Sherwood Hotel, 3900 Chestnut Street, Philadelphia, Pa., before Examiner Leo A. Riegel.

No. MC 68167 (Sub No. 33), filed January 15, 1959. Applicant: WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, INC., doing business as W.V. & M. COACH CO., 707 North Randolph Street, Arlington, Va. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage*, and *newspapers, express* and *mail* in the same vehicle with passengers, (1) between junction U.S. Highway 50 and George Washington Memorial Parkway, and Central Intelligence Agency site, Langley, Fairfax County, Va.: from junction U.S. Highway 50 and George Washington Memorial Parkway, over the George Washington Memorial Parkway to junction Central Intelligence Agency access roads, and thence over access roads to the Central Intelligence Agency site, Langley, Fairfax County, Va., and return over the same route, serving all intermediate points; and (2) between junction George Washington Memorial Parkway and Spout Run Parkway, and U.S. Highways 29 and 211: from junction George Washington Memorial Parkway and Spout Run Parkway, over Spout Run Parkway to its junction with U.S. Highways 29 and 211, and return over the same route, serving all intermediate points. Applicant is authorized to conduct operations in Maryland, Virginia, and the District of Columbia.

HEARING: March 17, 1959, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Joint Board No. 12.

No. MC 75289 (Sub No. 14), filed January 13, 1959. Applicant: D.C. TRANSIT SYSTEM, INC., 3600 M Street NW., Washington 7, D.C. Applicant's attorneys: Howard M. Spear and John R. Sims, Jr., same address as applicant. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage*, and *express* and *newspapers*, in the same vehicle with passengers, between Washington, D.C., and Ashton, Md., from Washington, D.C. over city streets to the Maryland-District of Columbia boundary line at Georgia Avenue, thence over U.S. Highway 29 to the junction of Maryland Highway 97, thence over Maryland Highway 97 to the junction of Maryland Highway 108, thence over Maryland Highway 108 to Ashton, and return over the same route, serving all intermediate points. Applicant is authorized to conduct operations in Virginia, Maryland, and the District of Columbia.

HEARING: March 11, 1959, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Joint Board No. 120.

No. MC 75289 (Sub No. 15), filed January 13, 1959. Applicant: D.C. TRANSIT SYSTEM, INC., 3600 M Street NW., Washington 7, D.C. Applicant's attorneys: Harvey M. Spear and John R. Sims, Jr., same address as applicant. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage*, and *express* and *newspapers*, in the same vehicle with passengers, between Washington, D.C., and Ashton, Md., from Washington over city streets to the Maryland-District of Columbia boundary line at Georgia Avenue, thence over U.S. Highway 29 to Ashton, and return over the same route, serving all intermediate points. Applicant is authorized to conduct operations in Virginia, Maryland, and the District of Columbia.

HEARING: March 11, 1959, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Joint Board No. 120.

No. MC 75289 (Sub No. 17), filed January 13, 1959. Applicant: D.C. TRANSIT SYSTEM, INC., 3600 M Street NW., Washington 7, D.C. Applicant's attorneys: Harvey M. Spear and John R. Sims, Jr., same address as applicant. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage*, and *express* and *newspapers*, between Washington, D.C., and Rockville, Md., from Washington, D.C., over city streets to the Maryland-District of Columbia boundary line at Georgia Avenue, thence over U.S. Highway 29 to the junction of Maryland Highway 97, thence over Maryland Highway 97 to the junction of Maryland Highway 586, thence over Maryland Highway 586 to the junction of Maryland Highway 28, thence over Maryland Highway 28 to Rockville, and return over the same route, serving all intermediate points. Applicant is authorized to conduct operations in Virginia, Maryland, and the District of Columbia.

HEARING: March 18, 1959, at the Offices of the Interstate Commerce Commission, Washingon, D.C., before Joint Board No. 120.

No. MC 75289 (Sub No. 18), filed January 13, 1959. Applicant: D.C. TRANSIT SYSTEM, INC., 3600 M Street NW., Washington 7, D.C. Applicant's attorneys: Harvey M. Spear and John R. Sims, Jr., same address as applicant. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage*, and *express* and *newspapers*, in the same vehicle with passengers, between Washington, D.C.,

and Rockville, Md., from Washington, D.C., over city streets to the Maryland-District of Columbia boundary line at River Road, thence over Maryland Highway 190 to the junction of Maryland Highway 189, thence over Maryland Highway 189 to the junction of Maryland Highway 28, thence over Maryland Highway 28 to Rockville, and return over the same route, serving all intermediate points. Applicant is authorized to conduct operations in Virginia, Maryland, and the District of Columbia.

HEARING: March 18, 1959, at the offices of the Interstate Commerce Commission, Washington, D.C., before Joint Board No. 120.

No. MC 116584 (Sub No. 2), filed December 4, 1958. Applicant: LOUIS LARATTA, 432 10th Street, Niagara Falls, N.Y. Applicant's attorney: Clarence E. Rhoney, 94 Oakwood Avenue, North Tonawanda, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in special operations, in round-trip sightseeing or pleasure tours, limited to the transportation of not more than seven passengers in any one vehicle, but not including the driver thereof, and not including children under ten years of age who do not occupy a seat or seats, in seasonal operations between April 1 and October 31 of each year, beginning and ending at Niagara Falls, N.Y., and points in Niagara County, N.Y., within six miles thereof, and extending to ports of entry on the International Boundary Line between the United States and Canada at Niagara Falls, and Lewiston, N.Y. In Certificate No. MC 116584 applicant is authorized to conduct the above operations on a yearly basis and by this application applicant desires authority to authorize operations on a seasonal basis.

HEARING: March 12, 1959, at Hotel Buffalo, Washington and Swan Streets, Buffalo, N.Y., before Examiner Leo A. Riegel.

No. MC 118486, filed December 24, 1958. Applicant: THE GRAY LINE OF OMAHA, INC., 2012 Burt Street, Omaha, Nebr. Authority sought to operate as a *common carrier*, by motor vehicle, over a regular route, transporting: *Passengers and their baggage*, and *express, mail*, and *newspapers*, in the same vehicle with passengers, between Omaha, Nebr., and Clarinda, Iowa, from the Greyhound Depot (18th and Farnam) in Omaha, over city streets to the Greyhound Depot in Council Bluffs, Iowa, thence over Iowa Highway 375 to junction U.S. Highway 275, thence over U.S. Highway 275 to junction U.S Highway 34, thence over U.S. Highway 34 to junction Iowa Highway 41, thence over Iowa Highway 41 to Malvern, Iowa, thence return over Iowa Highway 41 to junction U.S. Highway 34, thence continue over U.S. Highway 34 to junction Iowa Highway 166, thence over Iowa Highway 166 to Hastings, Iowa, thence return over Iowa Highway 166 to junction U.S. Highway 34, thence continue over U.S. Highway 34 to junction Iowa Highway 120, thence over Iowa Highway 120 to Stanton, Iowa, thence return over Iowa Highway 120 to junction U.S. Highway 34, thence continue over U.S. Highway 34 to junction U.S Highway 71, thence over U.S. Highway 71 to junction Iowa Highway 2, thence over Iowa Highway 2 to Clarinda, and return over the same route, serving the intermediate points of the Iowa School for the Deaf, Glenwood, Iowa, and Malvern, Hastings, Emerson, Red Oak, Stanton, Tenville Junction, and Villisca, Iowa.

HEARING: March 19, 1959, at the Rome Hotel, Omaha, Nebr., before Joint Board No. 138, or, if the Joint Board waives its right to participate, before Examiner William E. Messer.

APPLICATION FOR BROKERAGE LICENSE

MOTOR CARRIERS OF PROPERTY

No. MC 12690, filed December 31, 1958. Applicant: WILLIAM C. QUICK AND JOHN W. QUICK, a partnership, doing business as WILLIAM C. QUICK, 205 Fruit Exchange Building, 15 West Yakima Avenue, Yakima, Wash. For a license as a *broker* (BMC 4) in arranging for the transportation of *frozen fruits, berries and vegetables*, between points in the United States.

NOTE: Applicants state they have been acting as broker for carriers hauling exempt commodities throughout the United States and now propose to give the same type of service to regulated carriers with permits to haul frozen foods.

HEARING: April 8, 1959, at the Federal Office Building, First and Marion Streets, Seattle, Wash., before Joint Board No. 80, or, if the Joint Board waives its right to participate, before Examiner Mack Myers.

APPLICATIONS IN WHICH HANDLING WITHOUT ORAL HEARING IS REQUESTED

MOTOR CARRIERS OF PROPERTY

No. MC 11315 (Sub No. 9) (AMENDMENT) filed January 6, 1959, WILLIAM A. GIVENS (W. A. GIVENS, JR., EXECUTOR), 250 West Thornton Street, Akron, Ohio, published at Page 493, issue of January 21, 1959. Applicant's representative: John R. Meeks, 607 Copley Road, Akron 20, Ohio. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes. Applicant requests the following additional commodities and territories: *Aluminum siding, roofing and accessories, metal doors and windows, aluminum and parts, including metal stampings and extrusions*, from Akron, Cleveland, Columbiana, and Gnadenhutten, Ohio, to points in Illinois, Indiana, Michigan, Missouri, Kentucky, and Tennessee; and *aluminum bar, coil, ingot, paint, oil, calking compound, glass, wire and plate, iron or steel*, from Alton, Ill., Ravenswood, W. Va., and points in the St. Louis, Mo.-East St. Louis, Ill., Commercial Zone, to points in Ohio east of U.S. Highway 23.

No. MC 19201 (Sub No. 106), filed January 22, 1959. Applicant: PENNSYLVANIA TRUCK LINES, INC., 110 South Main Street, Pittsburgh, Pa. Applicant's attorney: Robert H. Griswold, Commerce Building, Harrisburg, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over alternate routes, transporting: *General commodities, including commodities in bulk, and commodities requiring special equipment*, but excluding Class A and B explosives, and household goods as defined by the Commission, in service auxiliary to, or supplemental of, rail service of The Pennsylvania Railroad Company, (1) between Williamsport, Pa., and South Williamsport, Pa., from Williamsport over U.S. Highway 15 to South Williamsport, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only, (2) between junction Pennsylvania Highways 405 and 54 and junction Pennsylvania Highways 54 and 44 near Turbotville, Pa., from junction Pennsylvania Highways 405 and 54 over Pennsylvania Highway 54 to junction Pennsylvania Highway 44, and return over the same route, serving no intermediate points, but serving said junction for purposes of joinder only, as an alternate route for operating convenience only, (3) between junction Pennsylvania Highways 54 and 44 east of Turbotville, Pa., and Washingtonville, Pa., from junction Pennsylvania Highways 54 and 44 over Pennsylvania Highway 54 to Washingtonville, and return over the same route, serving no intermediate points, but serving said junction and Washingtonville for purposes of joinder only, as an alternate route, for operating convenience only, (4) from Danville, Pa., and junction Pennsylvania Highway 54 and U.S. Highway 122 near Atlas, Pa., from Danville over Pennsylvania Highway 54 to junction U.S. Highway 122 near Atlas, and return over the same route, serving no intermediate points, but serving Danville, Pa., and said junction for purposes of joinder only, as an alternate route, for operating convenience only, and (5) between Elysburg, Pa., and Paxinos, Pa., from Elysburg over Pennsylvania Highway 742 to Paxinos, and return over the same route, serving no intermediate points, but serving Elysburg and Paxinos for purposes of joinder only, as an alternate route, for operating convenience only. Applicant is authorized to conduct operations in Pennsylvania, Ohio, Indiana, and West Virginia.

NOTE: Dual operations or common control may be involved.

No. MC 42487 (Sub No. 388), filed January 16, 1959. Applicant: CONSOLIDATED FREIGHTWAYS, INC., 2116 Northwest Savier Street, Portland, Oreg. Applicant's attorney: Donald A. Schafer, 1026 Public Service Building, Portland 4, Oreg. Representative: R. E. Poelman, 431 Burgess Drive, Menlo Park, Calif. Authority sought to operate as a common carrier, by motor vehicle, transporting: OVER ALTERNATE ROUTES FOR OPERATING CONVENIENCE ONLY, IN CONNECTION WITH APPLICANT'S AUTHORIZED REGULAR ROUTE OPERATIONS. *General commodities*, except those of unusual value, livestock, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, (1) between a point on U.S. Highway 1 near San Mateo, Calif., and a point on California Highway 17 at Mount Eden, Calif., over San Mateo Bridge,

serving no intermediate points, and (2) between a point on U.S. Highway 101 about one mile northeast of Menlo Park, Calif., and California Highway 17 at Newark, Calif., over Dumbarton Bridge, serving no intermediate points.

No. MC 113784 (Sub No. 14), filed January 12, 1959. Applicant: CANAL CARTAGE LIMITED, 865 Woodward Avenue, Hamilton, Ontario, Canada. Applicant's representative: Floyd B. Piper, Crosby Building, Franklin Street, at Mohawk, Buffalo 2, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metal*, in dump vehicles, from Rochester, N.Y., to ports of entry on the International boundary line between the United States and Canada at or near Buffalo and Niagara Falls, N.Y. Applicant is authorized to conduct operations in New York.

PETITION

No. MC 117032 (PETITION FOR INTERPRETATION OF CERTIFICATE) filed January 16, 1959. Petitioner: NELSON TRANSPORT, INC., 3917 East 14th Street, Des Moines, Iowa. Petitioner's attorney: Charles W. Singer, 1825 Jefferson Place NW., Washington 6, D.C. By Certificate dated February 18, 1958, petitioner was authorized to transport: "*Mill feed, building materials, farm hardware, farm machinery,* and *farm supplies,* from Galesburg, Ill., to Yarmouth, Iowa, serving intermediate and off-route points within 15 miles of Yarmouth: from Galesburg over U.S. Highway 34 to Burlington, Iowa, thence over U.S. Highway 61 to junction unnumbered highway (near Sperry, Iowa) thence over unnumbered highways to Yarmouth, and return over the same route with no transportation for compensation except as otherwise authorized. From Peoria, Ill., to Yarmouth, Iowa, serving intermediate and off-route points within 15 miles of Yarmouth, and the off-route point of Bartonville, Ill.: from Peoria over Illinois Highway 116 to junction U.S. Highway 34, thence over the above-specified route to Yarmouth, and return over the same route with no transportation for compensation except as otherwise authorized. *Farm commodities* and *farm machinery,* between Nebraska City, Nebr., and points in Nebraska within 50 miles of Nebraska City, on the one hand, and, on the other, points in Iowa." By petition dated January 15, 1959, petitioner requests an interpretation of the term *farm supplies* as used in its Certificate, and requests the Commission to find that petitioner may properly transport prefrabricated buildings as farm supplies when such buildings are moving to farms or are to be used for farm purposes.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carrier of property or passengers under section 5(a) and 210a(b) of the Interstate Commerce Act and certain other procedural matters with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F 7013 (UNITED TRUCK LINES, INC.—PURCHASE (PORTION) —WESTERN EXPRESS), published in the October 8, 1958, issue of the FEDERAL REGISTER on page 7794. Application filed January 26, 1959, for temporary authority under section 210a(b).

No. MC-F 7088. Authority sought for purchase by TRANSAMERICAN FREIGHT LINES, INC., 1700 North Waterman Avenue, Detroit 9, Mich., of a portion of the operating rights of THE REEVES TRANSPORTATION CO., INC. (M. J. FEIN, TRUSTEE), 141 Broadway, New York, N.Y., and for acquisition of control of such rights by R. B. GOTFREDSON and C. B. GOTFREDSON, both of Detroit, of control of such rights through the purchase. Applicants' attorney: Howell Ellis, 520 Illinois Building, Indianapolis, Ind. Operating rights sought to be transferred: *General commodities,* with certain exceptions including household goods and commodities in bulk, as a *common carrier* over a regular route between Danbury, Conn., and New York, N.Y., serving all intermediate and certain off-route points. Vendee is authorized to operate as a *common carrier* in Michigan, Illinois, Indiana, Ohio, Pennsylvania, Missouri, Kentucky, Wisconsin, New Jersey, Kansas, New York, West Virginia, Connecticut, Iowa, Nebraska, Minnesota, Maryland, Massachusetts, and Rhode Island. Application has been filed for temporary authority under section 210a(b).

No. MC-F 7089. Authority sought for purchase by ROCKET TRANSPORT CO., P.O. Box 3347, Knoxville, Tenn., of the operating rights and certain property of BUSH TRANSFER, INCORPORATED, West Avenue, Lenoir, N.C., and for acquisition by JACK C. ROBINSON, also of Knoxville, of control of such rights and property through the purchase. Applicants' attorney: James W. Wrape, Sterick Building, Memphis, Tenn. Operating rights sought to be transferred: *General commodities,* with certain exceptions excluding household goods and including commodities in bulk, as a *common carrier* over regular routes, between Boone, N.C., and Conover, N.C., between Conover, N.C., and Charlotte, N.C., and between Lenoir, N.C., and Morganton, N.C., serving certain intermediate and off-route points; *general commodities,* with certain exceptions including household goods and commodities in bulk, over irregular routes, between Boone, N.C., on the one hand, and, on the other, points in Virginia (except from Richmond, Roanoke, and Norfolk, Va.), Maryland (except from Baltimore), Pennsylvania (except from Philadelphia), Delaware, New Jersey, the District of Columbia, and points in New York within the New York commercial zone as defined by the Commission (except from New York City), and from New York, N.Y., Philadelphia, Pa., Baltimore, Md., and Richmond, Roanoke, and Norfolk, Va., to Lenoir, N.C., and points in North Carolina within 45 miles of Lenoir; *glass, paper, roofing, nursery stock, new furniture, petroleum products,* in containers, *tobacco pipes, burls, stumps, stummels, dimension wood blocks,* and materials including machinery and equipment used in the manufacture and shipping of tobacco pipes, such machinery and equipment limited to individual pieces weighing 1,000 pounds or less and not requiring special equipment to transport, *nursery materials, supplies and equipment,* and *petroleum oils and greases,* in containers, from, to or between points and areas, varying with the commodity transported, in Pennsylvania, North Carolina, Virginia, New York, Maryland, Delaware, New Jersey, South Carolina, West Virginia, Tennessee, and the District of Columbia. Vendee holds no authority from this Commission; however, it is wholly controlled by JACK C. ROBINSON, doing business as ROBINSON FREIGHT LINES, 309 Humes Street, Knoxville, Tenn., which operates under the Second Proviso of section 206(a)(1) as a *common carrier* in the State of Tennessee. Application has not been filed for temporary authority under section 210a(b).

NOTE: Application will be filed at a later date as a matter directly related.

No. MC-F 7091. Authority sought for purchase by KING VAN LINES, INC., 6800 East Kellogg, Wichita, Kans., of the operating rights of LEO R. McGEHEE, doing business as LEO VAN LINES, 410 South Gallatin Street, Jackson, Miss., and for acquisition by W. C. KING, also of Wichita, of control of such rights through the purchase. Applicants' attorneys: W. T. Brunson, 508 Leonhardt Building, Oklahoma City, Okla., and Phineas Stevens, Milner Building, Jackson, Miss. Operating rights sought to be transferred: *Household goods* as defined by the Commission, as a *common carrier* over irregular routes, between points in Arkansas, Louisiana, Mississippi and Texas, between points in Mississippi, on the one hand, and, on the other, points in Alabama and Tennessee, between certain points in Mississippi on the one hand, and, on the other, points in Alabama, Florida, Georgia, Kentucky, Missouri, North Carolina, South Carolina, and Tennessee, between Jackson, Miss., on the one hand, and, on the other, points in Florida, Georgia, North Carolina, and South Carolina, between certain points in Kentucky on the one hand, and, on the other, points in Tennessee, Missouri, Illinois, and Indiana, and between Paris, Tenn., and points within 40 miles thereof, on the one hand, and, on the other, points in Alabama, Georgia, South Carolina, North Carolina, Virginia, Kentucky, Missouri, Arkansas, Mississippi, Florida, Illinois, Indiana, Iowa, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, West Virginia, and the District of Columbia. Vendee is authorized to operate as a *common carrier* in Pennsylvania, New York, New Jersey, Maryland, Delaware, Michigan, Kentucky, Connecticut, Rhode Island, Ohio, Vermont, New Hampshire, Massachusetts Virginia, West Virginia, Illinois, Indiana, Missouri, Nebraska, North Dakota, Oklahoma, Minnesota, Wisconsin, Kansas, Iowa, Colorado, Arizona, New Mexico, Texas, Oklahoma, Arkansas, California, Washington, Ore-

gon, Idaho, Montana, Utah, Wyoming, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

MOTOR CARRIERS OF PASSENGERS

No. MC-F 7090. Authority sought for purchase by PERKIOMEN VALLEY BUS COMPANY, Ninth and Main Streets, Pennsburg, Pa., of a portion of the operating rights and certain property of CLARENCE H. ZERN, doing business as C. H. ZERN TRANSPORTATION, Gilbertsville, Pa. Applicants' attorney: William J. Wilcox, 624 Commonwealth Building, Allentown, Pa. Operating rights sought to be transferred: *Passengers and their baggage,* in round trip charter operations, as a *common carrier* over irregular routes beginning and ending at Gilbertsville, Pa., and at points within ten miles thereof, and extending to points in New Jersey, Delaware, and Maryland. Vendee is authorized to operate as a *common carrier* in Pennsylvania, Delaware, Maryland, New York, New Jersey, Ohio, Virginia, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 59-926; Filed, Feb. 3, 1959; 8:46 a.m.]

[Notice 71]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICE

JANUARY 30, 1959.

The following letter-notices of proposals to operate over deviation routes for operating convenience only with no service at intermediate points have been filed with the Interstate Commerce Commission, under the Commission's Special Rules Revised, 1957 (49 CFR 211.1(c)(8)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 211.1(d)(4)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 211.1(e)) at any time but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Deviation Rules Revised, 1957, will be numbered consecutively for convenience in identification and protests if any should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 29938 (Deviation No. 3), WRIGHT TRUCKING, INC., 16 Main St., Lowell, Mass., filed January 26, 1959. Attorney for said carrier, Francis E. Barrett, Jr., 7 Water Street, Boston 9, Mass. Carrier proposes to operate as a *common carrier* by motor vehicle of *general commodities,* with certain exceptions, over a deviation route, between the Western Terminus of the New England Section of the New York State Thruway at the intersection of Bruckner Boulevard and Westchester Avenue in the Bronx, New York City, N.Y., and the junction of the Bryam River Bridge at the New York-Connecticut State line with the Western Terminus of the Connecticut Turnpike near Port Chester, N.Y., as follows: from the Western Terminus of the New England Section of the New York State Thruway over the New England Section of the New York State Thruway and access routes to junction of the Bryam River Bridge with the Western Terminus of the Connecticut Turnpike and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities between Lowell, Mass., and Newark, N.J., over the following pertinent route: from Lowell over Massachusetts Highway 3A (formerly U.S. Highway 3) to junction U.S. Highway 3, thence over U.S. Highway 3 to Boston, Mass., thence over U.S. Highway 1 via Dedham and North Attleboro, Mass., and Wakefield and Westerly, R.I., to junction Alternate U.S. Highway 1 (formerly U.S. Highway 1) near Stonington, Conn., thence over Alternate U.S. Highway 1 via Stonington to junction U.S. Highway 1, thence over U.S. Highway 1 to junction unnumbered highway (formerly U.S. Highway 1) near Poquonoc Bridge, Conn., thence over unnumbered highway via Groton, Conn., to junction U.S. Highway 1, thence over U.S. Highway 1 to junction Alternate U.S. Highway 1 (formerly U.S. Highway 1), thence over Alternate U.S. Highway 1 via New London, Conn., to junction U.S. Highway 1 near East Lyme, Conn., thence over unnumbered highway (formerly U.S. Highway 1) via Laysville, Conn., to junction U.S. Highway 1 near Old Lyme, Conn., thence over U.S. Highway 1 to junction unnumbered highway (formerly U.S. Highway 1) near Old Saybrook, Conn., thence over unnumbered highway via Old Saybrook to junction U.S. Highway 1, thence over U.S. Highway 1 to junction Alternate U.S. Highway 1 (formerly U.S. Highway 1) near Branford, Conn., thence over Alternate U.S. Highway 1 via Branford to junction U.S. Highway 1, thence over U.S. Highway 1 to junction unnumbered highway (formerly U.S. Highway 1) thence over unnumbered highway via East Haven, Conn., to junction U.S. Highway 1, thence over U.S. Highway 1 via New Haven, Conn., to junction Alternate U.S. Highway 1 (formerly U.S. Highway 1) near Milford, Conn., thence over Alternate U.S. Highway 1 via Milford to junction U.S. Highway 1, thence over U.S. Highway 1 via Fairfield, Conn., to junction unnumbered highway (formerly U.S. Highway 1) near Darien, Conn., thence over unnumbered highway via Darien, to junction U.S. Highway 1, thence over U.S. Highway 1 to Newark.

No. MC 29938 (Deviation No. 4), WRIGHT TRUCKING, INC., 16 Main Street, Lowell, Mass., filed January 26, 1959. Attorney for said carrier, Francis E. Barrett, Jr., 7 Water Street, Boston 9, Mass. Carrier proposes to operate as a *common carrier* by motor vehicle of *general commodities,* with certain exceptions, over a deviation route, between the Eastern Terminus of the Trenton Freeway in Trenton, N.J., and the Western Terminus of the said Freeway in Morrisville, Pa., as follows: from the Eastern Terminus of the Trenton Freeway over the Trenton Freeway and access routes to the Western Terminus of the said Freeway and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities between Lowell, Mass., and Philadelphia, Pa., over the following pertinent route: from Lowell over Massachusetts Highway 110 via Clinton, Mass., to Worcester, Mass. (also from Clinton, Mass., over Massachusetts Highway 70 to Worcester), thence over Massachusetts Highway 9 to West Brookfield, Mass., thence over Massachusetts Highway 67 to junction U.S. Highway 20, thence over U.S. Highway 20 to Springfield, Mass. (also from Worcester over Massachusetts Highway 12 to junction U.S. Highway 20, thence over U.S. Highway 20 to Springfield), thence over U.S. Highway 5 to New Haven, Conn., thence over U.S. Highway 1 via New York, N.Y., and Trenton, N.J., to Philadelphia, Pa.

MOTOR CARRIERS OF PASSENGERS

No. MC 1130 (Deviation No. 1), INTERSTATE BUSSES CORPORATION, P.O. Box 1513, Providence, R.I., filed January 23, 1959. Carrier proposes to operate as a *common carrier* by motor vehicle of *passengers,* over a deviation route, between junction Massachusetts Highways 131 and 15, and junction U.S. Highways 9 and 20, as follows: from junction Massachusetts Highways 131 and 15 over Massachusetts Highway 15 to junction Massachusetts Turnpike at Interchange No. 9, thence over the Massachusetts Turnpike and access routes to the Western Terminus of the said Turnpike at its intersection with the Eastern Terminus of the Berkshire Section of the New York State Thruway at the Massachusetts-New York State line, thence over the Berkshire Section of the New York State Thruway and access routes to Interchange B-1, thence over access road to U.S. Highway 9, thence over U.S. Highway 9 to junction U.S. Highway 20 and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport passengers over the following pertinent routes: from Providence, R.I., over U.S. Highway 44 to Putnam, Conn., thence over Connecticut Highway 91 to South Woodstock, Conn., thence over Connecticut Highway 93 to North Woodstock, Conn., thence over Connecticut Highway 197 to Quinebaug, Conn., thence over Connecticut Highway 131 to the Massachusetts-Connecticut State line, thence over Massachusetts Highway 131 to Sturbridge, Mass., thence over U.S. Highway 20 to North Wilbraham, Mass., thence over Wilbraham Road to Springfield, Mass., thence over U.S. Highway 20 to Albany, N.Y.; and from Pittsfield, Mass., over Massachu-

setts Highway 9 to Northampton, Mass., thence over U.S. Highway 5 to West Springfield, Mass., and thence over city streets to Springfield, Mass., and return over the same routes.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 59-924; Filed, Feb. 3, 1959; 8:46 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 30, 1959.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 35213: *Phosphate rock from Florida to Liberty, Mo.* Filed by O. W. South, Jr., Agent (SFA No. A3766), for interested rail carriers. Rates on phosphate rock as described in the application, carloads, from Florida mines to Liberty, Mo.

Grounds for relief: Rail carrier competition.

Tariff: Supplement 120 to Southern Freight Association tariff I.C.C. 1514.

FSA No. 35214: *Phosphate rock from Florida to Massachusetts.* Filed by O. W. South, Jr., Agent (SFA No. A3767), for interested rail carriers. Rates on phosphate rock as described in the application, carloads from Florida mines to Lowell and South Wilmington, Mass.

Grounds for relief: Rail and water competition.

Tariff: Supplement 121 to Southern Freight Association tariff I.C.C. 1514.

FSA No. 35215: *Substituted service, rail for motor, Chicago, Rock Island and Pacific R.R. Co.* Filed by Middlewest Motor Freight Bureau, Agent (No. 137), for the Chicago, Rock Island and Pacific Railroad Company, and interested motor carriers. Rates on various commodities loaded in highway trailers and transported on railroad flat cars between Kansas City (Armourdale), Kans., on the one hand, and Chicago (Burr Oak), Ill., or Denver, Colo., on the other.

Grounds for relief: Motor truck competition.

Tariff: Supplement 91 to Middlewest Motor Freight Bureau tariff MF-I.C.C. 223.

FSA No. 35216: *Trailer-on-flat-car service in the southwest.* Filed by Southwestern Freight Bureau, Agent (No. B-7478), for interested rail carriers. Rates on various commodities loaded in or on highway trailers and transported on railroad flat cars between Enid and Lawton, Okla., on the one hand, and points in Arkansas, Louisiana, and Texas; also Memphis, Tenn., on the other.

Grounds for relief: Truck and rail competition.

Tariff: Supplement 44 to Southwestern Lines tariff I.C.C. 4285.

FSA No. 35217: *Trailer-on-flat-car service from, to, and within the southwest.* Filed by Southwestern Freight Bureau, Agent (No. B-7473), for interested rail carriers. Rates on various commodities loaded in or on highway trailers and transported on railroad flat cars from, to, and between points in southwestern territory.

Grounds for relief: Motor truck competition.

Tariffs: Supplement 39 to Southwestern Lines tariff I.C.C. 4280 and two other schedules.

FSA No. 35218: *Trailer-on-flat-car service between southwest and Ohio River crossings.* Filed by Southwestern Freight Bureau, Agent (No. B-7475), for interested rail carriers. Rates on various commodities loaded in or on highway trailers and transported on railroad flat cars between points in the Southwest, on the one hand, and Cincinnati, Ohio, Louisville, Ky., and Evansville, Ind., on the other.

Grounds for relief: Motor truck competition.

Tariff: Supplement 39 to Southwestern Lines tariff I.C.C. 4280.

FSA No. 35219: *Substituted service, rail for motor, the Chesapeake and Ohio Ry. Co.* Filed by Motor Carriers Tariff Bureau, Inc., Agent (No. 5), for The Chesapeake and Ohio Railway Company, and interested motor carriers. Rates on various commodities loaded in highway trailers and transported on railroad flat cars between Chicago, Ill., and Detroit, Mich.

Grounds for relief: Motor truck competition.

FSA No. 35220: *Substituted service—rail for motor—N.Y., N.H. & H. and Pennsylvania Railroads.* Filed by The Eastern Central Motor Carriers Association, Inc. (No. 104), for interested rail and motor carriers. Rates on various commodities loaded in trailers and transported on railroad flat cars between Boston, Springfield, and Worcester, Mass., on the one hand, and specified points in central territory, on the other, on traffic destined to or originating at points on motor carriers beyond the rail substitution points described in the application.

Grounds for relief: Motor truck competition.

Tariff: The Eastern Central Motor Carriers Association, Inc., Agent, MF-I.C.C. No. A-158.

FSA No. 35221: *Substituted service, rail for motor—Pennsylvania R.R.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 102), for the Pennsylvania Railroad Company and interested motor carriers. Rates on various commodities loaded in trailers and transported on railroad flat cars between Kearny, N.J., and Philadelphia, Pa., to Cincinnati, and between Philadelphia, Pa., and Cleveland, Ohio, on traffic originating at or destined to points on motor carriers beyond the named substitution points.

Grounds for relief: Motor truck competition.

Tariff: The Eastern Central Motor Carriers Association, Inc., Agent, tariff MF-I.C.C. No. A-158.

FSA No. 35222: *Substituted service, rail for motor—Pennsylvania Railroad.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 103), for The Pennsylvania Railroad Company and interested motor carriers. Rates on various commodities loaded in trailers and transported on railroad flat cars between Fort Wayne, Ind., on the one hand, and Kearny, N.J., Harrisburg and Philadelphia, Pa., on the other, on traffic originating at or destined to points on motor carriers beyond the named rail substitution points.

Grounds for relief: Motor truck competition.

Tariff: The Eastern Central Motor Carriers Association, Inc., Agent, tariff MF-I.C.C. No. A-158.

By the Commission.

HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 59-923; Filed, Feb. 3, 1959; 8:46 a.m.]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Area 210]

OHIO

Declaration of Disaster Area

Whereas, it has been reported that during the month of January 1959, because of the effects of certain disasters, damage resulted to residences and business property located in certain areas in the State of Ohio;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) of the Small Business Act may be received and considered by the Office below indicated from persons or firms whose property situated in the following Counties (including any areas adjacent to said Counties) suffered damage or other destruction as a result of the catastrophe hereinafter referred to:

Counties: Licking, Knox and Muskingum (heavy rains and floods occurring on or about January 20 and 21, 1959).

Office: Small Business Administration Regional Office Standard Building, Fourth Floor, 1370 Ontario Street, Cleveland 13, Ohio.

2. No special field offices will be established at this time.

3. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to July 31, 1959.

Dated: January 22, 1959.

WENDELL B. BARNES, *Administrator.*

[F.R. Doc. 59-921; Filed, Feb. 3, 1959; 8:45 a.m.]

CUMULATIVE CODIFICATION GUIDE—FEBRUARY

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