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PART I

FEDERAL REGISTER

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Washington, Wednesday, February 11, 1959

Title 7—AGRICULTURE

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

SUBCHAPTER H—DETERMINATION OF WAGE RATES

[Sugar Determination 868.11]

PART 868—SUGARCANE; VIRGIN ISLANDS

Calendar Year 1959

Pursuant to the provisions of section 301(c)(1) of the Sugar Act of 1948, as amended (herein referred to as "act"), after investigation, and consideration of the evidence obtained at the public hearing held in Christiansted, St. Croix, Virgin Islands, on October 21, 1958, the following determination is hereby issued.

§ 868.11 Fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugarcane in the Virgin Islands during the calendar year 1959.

(a) *Requirements.* A producer of sugarcane in the Virgin Islands shall be deemed to have complied with the wage provisions of the act during the calendar year 1959 if all persons employed on the farm in the production, cultivation, or harvesting of sugarcane shall have been paid in accordance with the following:

(1) *Wage rates.* All such persons shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates as agreed upon between the producer and the worker, but after the date of publication of this section in the FEDERAL REGISTER not less than the following:

(i) *Basic time rates.* The basic rate per hour for the first 8 hours of work performed in any 24-hour period shall be as follows:

Class of worker	*Basic rates per hour*
A—Operators of mechanical loaders	$0.65
B—Operators of tractors and trucks	.50
C—Chemical sprayers	.43
D—All others	.40

(ii) *Apprentice operators of mechanical loaders and tractors.* For a learner or apprentice the hourly wage rate for Class A work in subdivision (i) of this subparagraph may be reduced by not more than 15 cents per hour, and the hourly rate for Class B work in subdivision (i) of this subparagraph may be reduced by not more than 10 cents per hour: *Provided,* That the training period for such workers shall not exceed six workweeks: *And provided further,* That the producer shall file with the Caribbean Area Agricultural Stabilization and Conservation Office, Santurce, Puerto Rico (herein referred to as Area Office), a certified statement containing the names of all such workers, the hourly wage rate paid to each, and the period each was employed as a learner or as an apprentice.

(iii) *Handicapped workers.* For an individual whose productive capacity is impaired by age or physical or mental deficiency the hourly wage rates provided under subdivision (i) of this subparagraph may be decreased by not more than one-third: *Provided,* That the employer shall file with the Area Office, a certified statement containing the names of all such workers, the hourly wage rate paid to each, and the nature of the handicap of each such worker.

(iv) *Overtime.* Persons employed in excess of 8 hours in any 24-hour period or in excess of 44 hours in any one week shall be paid for the overtime work at a rate not less than one and one-half times the applicable hourly rate provided in subdivisions (i), (ii), and (iii) of this subparagraph: *Provided,* That this provision shall be inapplicable to workers who are employed under extraordinary emergencies as defined in applicable Municipal or Territorial laws or regulations.

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FEDERAL REGISTER

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CFR SUPPLEMENTS

(As of January 1, 1959)

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(v) *Piecework rates.* If work is performed on a piecework basis, the rate shall be as agreed upon between the producer and the worker: *Provided,* That the hourly rate of earnings for each worker employed on piecework during each pay period (such pay period not to be in excess of two weeks) shall average for the time involved not less than the applicable hourly rate provided under subdivisions (i), (ii), (iii), and (iv) of this subparagraph.

(2) *Compensable working time.* For work performed under subparagraph (1) of this paragraph, compensable working time includes all time which the worker spends in the performance of his duties except time taken out for meals during the work day. Compensable working time commences at the time the worker is required to start work in the field and ends upon completion of work in the field. However, if the producer requires the operator of mechanical equipment, driver of animals, or any other class of worker to report to a place other than the field, such as an assembly point, stable, tractor shed, etc., located on the

farm, the time spent in transit from such place to the field and from the field to such place is compensable working time. Any time spent in performing work directly related to the principal work performed by the worker such as servicing equipment, is compensable working time. Time of the worker while being transported from a central recruiting point or labor camp to the farm is not compensable working time.

(b) *Proof of compliance.* The producer shall, upon request, furnish the Area Office acceptable and adequate proof which satisfies such office that all workers have been paid in accordance with the requirements of this section.

(c) *Subterfuge.* The producer shall not reduce the wage rates to workers below those determined in accordance with the requirements of this section through any subterfuge or device whatsoever.

(d) *Claim for unpaid wages.* Any person who believes he has not been paid in accordance with this section may file a wage claim with the Area Office against the producer on whose farm the work was performed. Detailed instructions and wage claim forms are available at that office. Such claim must be filed within two years from the date the work with respect to which the claim is made was performed. Upon receipt of a wage claim the Area Office shall thereupon notify the producer against whom the claim is made concerning the representation made by the worker. The Area Office shall make such investigation as it deems necessary and shall notify the producer and worker in writing of its recommendation for settlement of the claim. If the recommendation of the Area Office is not acceptable, either party may file an appeal with the Director of the Sugar Division, Commodity Stabilization Service, U.S. Department of Agriculture, Washington 25, D.C. All such appeals shall be filed within 15 days after receipt of the recommended settlement from the Area Office, otherwise such recommended settlement will be applied in making payments under the act. If a claim is appealed to the Director of the Sugar Division, his decision shall be binding on all parties insofar as payment under the act is concerned.

STATEMENT OF BASES AND CONSIDERATIONS

(a) *General.* The foregoing determination establishes fair and reasonable wage rates to be paid for work performed by persons employed on the farm in the production, cultivation, or harvesting of sugarcane during the calendar year 1959, as one of the conditions with which producers must comply to be eligible for payments under the act.

(b) *Requirements of the act and standards employed.* Section 301(c)(1) of the act requires that all persons employed on the farm in the production, cultivation, or harvesting of sugarcane with respect to which an application for payment is made shall have been paid in full for all such work, and shall have been paid wages therefor at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing; and in making such determinations the Secretary shall take into consideration the standards therefor formerly established by him under the Agricultural Adjustment Act, as amended (i.e., cost of living, prices of sugar and by-products, income from sugarcane, and cost of production), and the differences in conditions among the various producing areas.

(c) *1959 wage determination.* This determination continues the provisions of the 1958 wage determination, except that producers are required to furnish to the Area Office on request proof of compliance with the wage provisions of the determination.

A public hearing was held in Christiansted, St. Croix, Virgin Islands, on October 21, 1958, at which interested persons were afforded the opportunity to testify with respect to fair and reasonable wage rates for the calendar year 1959.

A representative of the Virgin Islands Corporation, which is owned by the Federal Government and is the largest producer of sugarcane in the Virgin Islands, recommended that the minimum wage rates be increased 5 cents an hour for all classes of work. The witness stated that the determination wage rates have not been increased since 1952 and that the recruitment of sugarcane field workers is the most serious problem confronting the industry. He testified that the Corporation has imported large numbers of workers from the British West Indies during recent years; that the sugarcane field work of the Corporation is carried on largely on a piecework basis at rates agreed upon with the workers; that disastrous drought during the calendar year 1957 resulted in a marked decrease in the production of 1958 crop sugarcane; and that because of poor stands it was necessary to make substantial upward adjustments in piecework rates for harvesting and greater than usual adjustments with respect to piecework earnings for those laborers who failed to earn the minimum hourly wage. The recommendation for a 5-cent-per-hour increase in wage rates was concurred in by representatives of independent producers.

A representative of a local labor union recommended an increase of 10 cents per hour in the minimum wage rates of the determination and pointed out that testimony presented at the hearing indicated that many of the producers in the Virgin Islands are already paying workers more than the determination rates.

Consideration has been given to the recommendations made at the hearing, to the economic position of the Virgin Islands Corporation and to other pertinent factors.

The recommendation by the representative of the Virgin Islands Corporation and the representatives of small producers for an increase in minimum wage rates of 5 cents per hour (slightly more than 10 percent) has not been adopted.

The Virgin Islands Corporation produces about 60 percent and processes all of the sugarcane grown on the Island. Independent producers grow about 40 percent of the sugarcane. Two of these producers grow 200 to 300 acres of sugarcane, about 20 grow 15 to 100 acres of cane, and the remaining 300 or more producers grow 15 acres or less mostly in the one-tenth of an acre to 5-acre range.

For a number of years producers in the Virgin Islands have experienced a shortage of local labor. The Corporation and some of the independent producers have imported large numbers of workers from the British West Indies. Most of the work performed by these workers has been on a piecework basis. Earnings during the cultivation and harvesting seasons of such workers employed by the Corporation have averaged about 55 cents per hour in recent years compared with minimum determination rates which averaged about 44 cents per hour. Most producers have paid time basis workers rates well above the minimum requirements of the determination when necessary to obtain labor.

Labor productivity at the Virgin Islands Corporation generally has been improving since 1954, except for the crop failure of 1958. Despite this improved trend in labor productivity, the Corporation has sustained substantial losses on its sugarcane and sugar operations in all but one of the last 10 years. In 1957 a small profit was realized but a very substantial loss was sustained on the 1958 crop which was severely affected by drought. In view of this it is not considered equitable to require, as one of the conditions for a Sugar Act payment, that producers pay minimum wages at rates generally higher than the industry has demonstrated its ability to pay. This action in no way precludes payment by producers of higher wage rates where necessary to obtain labor or to recognize improvements in labor productivity.

This determination provides that producers shall furnish the Area Office upon request, adequate proof of compliance with the wage requirements. Such proof may be in the form of payroll records, receipts or other evidence which clearly demonstrates that workers have been properly paid. These records should show with respect to each worker employed, depending upon the method of payment (i.e., time basis or piecework basis), (1) hours worked; (2) acres worked or tons handled; (3) rate per hour or piecework rates; (4) total amount paid; and (5) average hourly earnings. A receipt form signed by a worker may be accepted as prima facie evidence of compliance, but in such instances, the Area Office may also require the producer to furnish payroll records.

On the basis of an analysis and consideration of all pertinent factors, the wage rates and other provisions of this determination are deemed to be fair and reasonable.

Accordingly, I hereby find and conclude that the foregoing wage determination will effectuate the wage provisions of the Sugar Act of 1948, as amended.

(Sec. 403, 61 Stat. 932; 7 U.S.C. Sup. 1153. Interprets or applies sec. 301, 61 Stat. 929, as amended; 7 U.S.C. Sup. 1131)

Issued this 6th day of February 1959.

[SEAL] E. L. PETERSON,
Acting Secretary of Agriculture.

[F.R. Doc. 59-1241; Filed, Feb. 10, 1959; 8:50 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 4—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST SERVICES

1. The Commission has under consideration the desirability of making certain editorial changes in Part 4 of its rules and regulations. In general, these editorial changes consist of the restatement of titles and sub-titles for simplification; the changing of footnotes to notes, parenthetical expressions, or additions to text of rules to avoid confusion; and of other editorial changes to delete obsolete notes and provisions covered by Subpart D of Part 1 of the rules.

2. The amendments adopted herein are editorial in nature, and, therefore, prior publication of notice of proposed rule making pursuant to the provisions of section 4 of the Administrative Procedure Act is unnecessary, and the amendments may become effective immediately.

3. The amendments adopted herein are issued pursuant to authority contained in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and section 0.341(a) of the Commission's Statement of Organization, Delegations of Authority, and Other Information.

4. In view of the foregoing: *It is ordered,* This 4th day of February 1959, that, effective February 11, 1959, Part 4 "Experimental, Auxiliary, and Special Broadcast Services" of the Commission's rules and regulations is revised to read as set forth below.

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

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GENERAL

§ 4.1 Broadcast services covered by this part.

(a) *Experimental and developmental broadcast.* (1) Experimental television broadcast (Subpart A).

(2) Experimental facsimile broadcast (Subpart B).

(3) Developmental broadcast (Subpart C).

(b) *Auxiliary broadcast.* (1) Remote pickup broadcast (Subpart D).

(2) Standard and FM broadcast STL and FM intercity relay (Subpart E).

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(4) Television STL (Subpart F).

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(c) *Special broadcast.* Television broadcast translator (Subpart G).

ADMINISTRATIVE PROCEDURE

§ 4.11 Cross reference.

See §§ 1.300 to 1.337, Subpart D of Part 1 of this chapter, for general requirements as to applications, filing of applications, and description of application forms.

§ 4.12 Notification of filing of applications.

In order to minimize harmful interference at the National Radio Astronomy Observatory site located at Green Bank, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory at Sugar Grove, Pendleton County, West Virginia, an applicant for authority to construct any class of station covered in § 4.1 except remote pickup broadcast mobile and TV pickup stations, or for authority to make changes in the frequency, power, antenna height, or antenna directivity of an existing station within the area bounded by 39°15′ N on the north, 78°30′ W on the east, 37°30′ N on the south and 80°30′ W on the west shall, at the time of filing such application with the Commission, simultaneously notify the Director, National Radio Astronomy Observatory, P.O. Box #2, Green Bank, West Virginia, in writing, of the technical particulars of the proposed station. Such notification shall include the geographical coordinates of the antenna, antenna height, antenna directivity if any, proposed frequency, type of emission, and power. In addition, the applicant shall indicate in his application to the Commission the date notification was made to the Observatory. After receipt of such applications, the Commission will allow a period of twenty (20) days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the twenty day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

§ 4.13 Equipment tests.

(a) During the process of construction of any class of radio station listed in this part, the permittee, after notifying the Commission and Engineer in Charge of the district in which the station is located, may, without further authority of the Commission, conduct equipment tests for the purpose of such adjustments and measurements as may be necessary to assure compliance with the terms of the construction permit, the technical provisions of the application therefor, the rules and regulations, and the applicable engineering standards.

(b) The Commission may notify the permittee to conduct no tests or may cancel, suspend, or change the date for the beginning of equipment tests as and when such action may appear to be in the public interest, convenience, and necessity.

(c) Equipment tests may be continued so long as the construction permit shall remain valid.

(d) The authorization for tests embodied in this section shall not be construed as constituting a license to operate but as a necessary part of construction.

§ 4.14 Service or program tests.

(a) Upon completion of construction of a radio station in accordance with the terms of the construction permit, the technical provisions of the application therefor, and the rules and regulations and applicable engineering standards, and when an application for station license has been filed showing the station to be in satisfactory operating condition, the permittee of any class of station listed in this part may, without further authority of the Commission, conduct service or program tests: *Provided*, That the Engineer in Charge of the district in which the station is located and the Commission are notified at least two (2) days (not including Sundays and Saturdays and legal holidays when the offices of the Commission are not open) in advance of the beginning of such operation.

(b) The Commission may notify the permittee to conduct no tests or may cancel, suspend, or change the date for the beginning of such tests as and when such action may appear to be in the public interest, convenience, and necessity.

(c) Unless sooner suspended or revoked, program test authority will continue valid during Commission consideration of the application for license and during this period further extension of the construction permit is not required. Program test authority shall be automatically terminated by final determination upon the application for station license.

(d) The authorization for tests embodied in this section shall not be construed as approval by the Commission of the application for station license.

§ 4.15 License period.

(a) Licenses for the following classes of broadcast stations normally will be issued for a period of one year expiring as follows:

(1) Experimental television broadcast station: April 1.

(2) Experimental facsimile broadcast station: March 1.

(3) Developmental broadcast station: May 1.

(4) Television broadcast translator station: June 1.

(b) Licenses for stations in the Auxiliary Broadcast Services will be issued for a period running concurrently with the licenses of the broadcast station with which such auxiliary stations are used. A remote pickup broadcast station licensed for use with more than one broadcast station will be licensed for a period running concurrently with the license of the broadcast station having the longer license period.

§ 4.16 Temporary extension of station licenses.

Where there is pending before the Commission any application, investigation or proceeding which, after hearing, might lead to or make necessary the modification of, revocation of, or the refusal to renew an existing auxiliary or experimental broadcast station license or a television broadcast translator station license, the Commission may, in its discretion, grant a temporary extension of such license: *Provided, however,* That no such temporary extension shall be construed as a finding by the Commission that the operation of any radio station thereunder will serve public interest, convenience, and necessity beyond the express terms of such temporary extension of license: *And provided further,* That such temporary extension of license will in no wise affect or limit the action of the Commission with respect to any pending application or proceeding.

CONELRAD

AUTHORITY: §§ 4.51 to 4.57 interpret or apply sec. 606, 48 Stat. 1104, as amended; 47 U.S.C. 606, E.O. 10312, 16 F.R. 12452; 3 CFR, 1951 Supp.

§ 4.51 Scope and objective.

(a) Sections 4.51 to 4.57 apply to all radio stations in the Experimental, Auxiliary and Special Broadcast Services located within the Continental United States and are for the purpose of providing for the alerting and operation of radio stations in these services during periods of enemy air attack or imminent threat thereof.

(b) The objective of these CONELRAD rules is to minimize the navigational aid that an enemy might obtain from the electromagnetic radiations from radio stations in the Experimental, Auxiliary and Special Broadcast Services, while simultaneously providing for a continued radio service under controlled conditions when such operation is essential to the public welfare.

§ 4.52 Alerting.

(a) Licensees of all radio stations in the Experimental, Auxiliary and Special Broadcast Services are responsible for making provisions to receive the CONELRAD Radio Alert and the CONELRAD Radio All Clear, which will be initiated only by the Commanding Officer of the Air Division (Defense) or higher military authority.

(b) The CONELRAD Radio Alert for the Experimental, Auxiliary and Special Broadcast Services shall be received by one or more of the following methods:

(1) By monitoring any standard, FM or TV broadcast station to receive the CONELRAD Radio Alert message.

(2) By reception of the CONELRAD Radio Alert from a point that received the Radio Alert directly from a standard, FM or TV broadcast station.

(3) Radio stations in the services affected by this plan may be specifically authorized by the FCC to receive the CONELRAD Radio Alert by other means.

(c) When the radio station is not in operation it is not necessary to make provisions to receive the CONELRAD Radio Alert, however, before starting a radio transmission, caution must be used to insure that a CONELRAD Radio Alert is not in progress.

§ 4.53 Operation during a CONELRAD Radio Alert.

Stations in the Experimental, Auxiliary and Special Broadcast Services on receipt of a CONELRAD Radio Alert, will interrupt any communications in progress, may make a brief announcement, must then leave the air and maintain radio silence for the duration of the CONELRAD Radio Alert.

§ 4.54 Special conditions.

Certain stations in the Experimental, Auxiliary and Special Broadcast Services may be specifically authorized by the Federal Communications Commission to operate in a manner not provided in §§ 4.51 to 4.57, if such operation is essential to the public welfare.

§ 4.55 Radio All Clear.

The Radio All Clear will be initiated only by the Air Division (Defense) Commander or higher military authority and will be disseminated over the same channels as the CONELRAD Radio Alert. Radio stations and systems licensed in the Experimental, Auxiliary and Special Broadcast Services may resume normal operation when the CONELRAD Radio All Clear message is received, unless otherwise restricted by order of the Federal Communications Commission.

§ 4.56 Tests.

Tests of the CONELRAD alerting and operating systems for the Experimental, Auxiliary and Special Broadcast Services may be conducted at appropriate intervals. Reports of the results of such tests may be required in a form to be prescribed by the Commission.

§ 4.57 Station records.

Appropriate entries of all CONELRAD tests, drills, and operations shall be made in the station records.

Subpart A—Experimental Television Broadcast Stations

DEFINITIONS AND ALLOCATION OF FREQUENCIES

§ 4.101 Experimental television broadcast station.

The term "experimental television broadcast station" means a station licensed for experimental transmission of transient visual images of moving or fixed objects for simultaneous reception and reproduction by the general public.

NOTE: The transmission of synchronized sound (aural broadcast) is considered an essential phase of television broadcast and one license will authorize both visual and aural broadcast.

§ 4.102 Purpose.

A license for an experimental television broadcast station will be issued for the purpose of carrying on research and experimentation for the advancement of television broadcasting which may include tests of equipment, training of personnel, and experimental programs as are necessary for the experimentation.

§ 4.103 Frequency assignment.

(a) Frequencies allocated to television broadcasting and the various categories of television auxiliary stations, in the Commission's Table of Frequency Allocations (Part 2 of this chapter), may be assigned respectively to experimental television broadcast and experimental television auxiliary stations.

(b) More than one frequency may be assigned upon a satisfactory showing of the need therefor.

(c) Frequencies best suited to the purpose of the experimentation and on which there appears to be the least likelihood of interference to established stations shall be selected.

(d) In a case of important experimentation which cannot be feasibly conducted on frequencies allocated to television broadcasting or the various categories of television auxiliary stations, the Commission may authorize an experimental television station of any class to operate on other frequencies upon a satisfactory showing of the need therefor and a showing that the proposed operation can be conducted without causing harmful interference to established services: *Provided, however,* That experimental operation which looks toward the development of radio transmitting apparatus or the rendition of any type of regular service using such frequencies will not be authorized prior to a determination by the Commission that the development of such apparatus or the rendition of such service would serve the public interest.

ADMINISTRATIVE PROCEDURE

§ 4.111 Cross reference.

See §§ 4.11 to 4.16.

§ 4.112 Supplementary statement with application for construction permit.

A supplementary statement shall be filed with and made a part of each application for construction permit for any experimental television broadcast sta-

tion confirming the applicant's understanding:

(a) That all operation upon the frequency requested is for experimental purposes only.

(b) That the frequency requested may not be the best suited to the particular experimental work to be carried on.

(c) That the frequency requested need not be allocated for any service that may be developed as a result of the experimental operation.

(d) That any frequency which may be assigned is subject to change without advance notice or hearing.

(e) That any authorization issued pursuant to the application may be cancelled at any time without notice or hearing.

§ 4.113 Supplementary reports with application for renewal of license.

(a) A report shall be filed with each application for renewal of experimental television broadcast station license which shall include a statement of each of the following:

(1) Number of hours operated.

(2) Full data on research and experimentation conducted including the type of transmitting and studio equipment used and their mode of operation.

(3) Data on expense of research and operation during the period covered.

(4) Power employed, field intensity measurements and visual and aural observations and the types of instruments and receivers utilized to determine the station service area and the efficiency of the respective types of transmissions.

(5) Estimated degree of public participation in reception and the results of observations as to the effectiveness of types of transmission.

(6) Conclusions, tentative and final.

(7) Program for further developments in television broadcasting.

(8) All developments and major changes in equipment.

(9) Any other pertinent developments.

(b) Special or progress reports shall be submitted from time to time as the Commission shall direct.

LICENSING POLICIES

§ 4.131 Licensing requirements, necessary showing.

(a) An applicant for a new experimental television broadcast station, change in facilities of any existing station, or modification of license is required to make a satisfactory showing of compliance with the general requirements of the Communications Act of 1934, as amended, as well as the following:

(1) That the applicant has a definite program of research and experimentation in the technical phases of television broadcasting which indicates reasonable promise of substantial contribution to the developments of the television art.

(2) That upon the authorization of the proposed station the applicant can and will proceed immediately with its program of research and experimentation.

(3) That the transmission of signals by radio is essential to the proposed program of research and experimentation.

(4) That the program of research and experimentation will be conducted by qualified personnel.

(b) A license for an experimental television broadcast station will not authorize exclusive use of any frequency. In case interference would be caused by simultaneous operation of stations licensed experimentally, such licensees shall endeavor to arrange satisfactory time division. If such agreement cannot be reached, the Commission will determine and specify the time division.

(c) A license for an experimental television broadcast station will be issued only on the condition that no objectionable interference will result from the transmissions of the station to the regular program transmissions of television broadcast stations. It shall at all times be the duty of the licensee of an experimental television broadcast station to ascertain that no interference will result from the transmissions of its station. With regard to interference with the transmissions of an experimental television broadcast station or the experimental or test transmissions of a television broadcast station, the licensees shall make arrangements for operations to avoid interference.

§ 4.132 Power limitations.

Experimental television broadcast stations will be licensed with a power output not in excess of that necessary to render satisfactory service. The license for these stations will specify the maximum authorized power. The operating power shall not be greater than necessary to carry on the service and in no event more than 5 percent above the maximum power specified. Engineering standards have not been established for these stations. The efficiency factor for the last radio stage of transmitters employed will be subject to individual determination but shall be in general agreement with values normally employed for similar equipment operated within the frequency range authorized.

§ 4.133 Emission authorized.

In case emission of a different type than that specified in the license is necessary or desirable in carrying on any phases of experimentation, application setting out fully the needs shall be made by informal application.

§ 4.134 Multiple ownership.

No persons (including all persons under common control) shall control, directly or indirectly, two or more experimental television broadcast stations (other than television relay broadcast stations) unless a showing is made that the character of the programs of research requires a licensing of two or more separate stations.

EQUIPMENT

§ 4.151 Equipment changes.

The licensee of an experimental television broadcast station may make any changes in the equipment that are deemed desirable or necessary provided:

(a) That the operating frequency is not permitted to deviate more than the allowed tolerance;

(b) That the emissions are not permitted outside the authorized band;

(c) That the power output complies with the license and the regulations governing the same; and

(d) That the transmitter as a whole or output power rating of the transmitter is not changed.

TECHNICAL OPERATION

§ 4.161 Frequency tolerance.

The licensee of an experimental television broadcast station operating below 450 megacycles shall maintain the operating frequency of its station within plus or minus 0.01 percent of the assigned frequency. The licensee of an experimental television broadcast station operating above 450 megacycles shall maintain the operating frequency of its station within plus or minus 0.05 percent of the assigned frequency. However, where a lesser tolerance is necessary in order to prevent interference, the Commission will specify the tolerance.

§ 4.162 Frequency monitors and measurements.

The licensee of an experimental television broadcast station shall provide the necessary means for determining that the frequency of the station is within the allowed tolerance. The date and time of each frequency check, the frequency as measured, and a description or identification of the method employed shall be entered in the station log. Sufficient observations shall be made to insure that the assigned carrier frequency is maintained within the prescribed tolerance.

§ 4.163 Time of operation.

(a) A licensee of an experimental television broadcast station is not required to adhere to a regular schedule of operation but shall actively conduct a program of research and experimentation.

(b) The program of research and experimentation as offered by an applicant in compliance with the requirements for obtaining a license for an experimental television broadcast station shall be adhered to in the main, unless the licensee is authorized to do otherwise by the Commission.

(c) The Commission may from time to time require that a station licensed experimentally conduct such experiments as are deemed desirable and reasonable for the development of the service.

§ 4.164 Station inspection.

The licensee of each experimental television broadcast station shall make the station available for inspection by representatives of the Commission at any reasonable hour.

§ 4.165 Station and operator licenses; posting of.

(a) The station license and any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation of the station shall be posted so that all terms thereof are visible in a conspicuous place in the room in which the transmitter is located. However, if the station is licensed for portable-mobile operation, the station license or a photo copy thereof shall be affixed to the equipment or kept in the possession of

the operator on duty at the transmitter. If a photo copy is used, the original license shall be available for inspection by an authorized Government representative.

(b) The orignal license of each station operator shall be posted at the place where he is on duty: *Provided, however,* If the original license of a station operator is posted at another radio transmitting station in accordance with the rules governing that class of station and is there available for inspection by an authorized Commission representative, or if the station operated is licensed for portable-mobile operation, a verification card (Form 758-F) is acceptable in lieu of the posting of such license.

NOTE: The term portable-mobile as here used is intended to include any type of portable or mobile operation.

§ 4.166 Operator requirements.

One or more radio operators holding radiotelephone first-class or radiotelephone second-class operator licenses shall be on duty at the place where the transmitting apparatus of any experimental television broadcast station is located and in actual charge of its operation. The licensed operator on duty and in charge of a broadcast transmitter may, at the discretion of the licensee, be employed for other duties or for the operation of another station or stations in accordance with the class of operator's license which he holds and the rules and regulations governing such stations. However, such duties shall in no wise interfere with the operation of the broadcast transmitter.

§ 4.167 Antenna structure, marking and lighting.

Where an antenna structure(s) is required to be painted or lighted, see § 17.37, *Inspection of tower lights and associated control equipment;* § 17.39, *Cleaning and repainting;* § 17.40, *Time when lights shall be exhibited;* § 17.41, *Spare lamps;* and §17.42, *Lighting equipment;* of Part 17 of this chapter (Construction, Marking and Lighting of Antenna Structures).

§ 4.168 Additional orders.

In case the rules contained in this part do not cover all phases of operation or experimentation with respect to external effects, the Commission may make supplemental or additional orders in each case as may be deemed necessary.

OTHER OPERATING REQUIREMENTS

§ 4.181 Station records.

(a) The licensee of each experimental television broadcast station shall maintain adequate records of the operation, including:

(1) Hours of operation.

(2) Program transmitted.

(3) Frequency check.

(4) Pertinent remarks concerning transmission.

(5) In case of relay or pickup station, an entry giving points of program origination and receiver location shall be included.

(6) Research and experimentation conducted.

(b) Where an antenna structure(s) is required to be illuminated, see § 17.38, *Recording of tower light inspections in the station record,* of Part 17 of this chapter (Construction, Marking and Lighting of Antenna Structures).

(c) Station records shall be retained for a period of two years.

§ 4.182 Charges.

No charges, either direct or indirect, shall be made by the licensee of an experimental television broadcast station for the production or transmission of either aural or visual programs transmitted by such station except that this section shall not apply to the transmission of commercial programs by an experimental television relay or pickup broadcast station for retransmission by a television broadcast station.

§ 4.183 Station identification.

Each experimental television broadcast station shall make aural and visual announcements of its call letters and location at the beginning and end of each period of operation, and during operation, at least once every hour.

§ 4.184 Rebroadcasts.

(a) The term "rebroadcast" means reception by radio of the program of a radio station, and the simultaneous or subsequent retransmission of such program by a broadcast station.

NOTE 1: As used in this section, the word "program" includes any complete program or part thereof.

NOTE 2: In case a program is transmitted from its point of origin to a broadcast station primarily by telephone facilities in which a section of such transmission is by radio, the broadcasting of this program is not considered a rebroadcast. The broadcasting of a program relayed by a remote pickup broadcast station is not considered a rebroadcast.

(b) No licensee of any experimental television broadcast station shall rebroadcast the program of any radio station without written authority having first been obtained from the Commission upon application. Informal application may be employed.

(c) An application for authority to rebroadcast the program of any radio station shall be accompanied by written consent or certification of consent of the licensee of the station originating the program.

Subpart B—Experimental Facsimile Broadcast Stations

DEFINITIONS AND ALLOCATION OF FREQUENCIES

§ 4.201 Facsimile broadcast station.

The term "facsimile broadcast station" means a station licensed to transmit images of still objects for record reception by the general public.

§ 4.202 Frequency assignment.

(a) Frequencies allocated to broadcasting and the various categories of broadcast auxiliary stations, in the Commission's Table of Frequency Allocations (Part 2 of this chapter), may be assigned respectively to experimental facsimile broadcast or experimental facsimile broadcast auxiliary stations.

(b) More than one frequency may be assigned upon a satisfactory showing of the need therefor.

(c) Frequencies best suited to the purpose of the experimentation and on which there appears to be the least likelihood of interference to established stations shall be selected.

(d) In a case of important experimentation which cannot be feasibly conducted on frequencies allocated to broadcasting or the various categories of broadcast auxiliary stations, the Commission may authorize an experimental facsimile broadcast station of any class to operate on other frequencies upon a satisfactory showing of the need therefor and a showing that the proposed operation can be conducted without causing harmful interference to established services: *Provided, however,* That experimental operation which looks toward the development of radio transmitting apparatus or the rendition of any type of regular service using such frequencies will not be authorized prior to a determination by the Commission that the development of such apparatus or the rendition of such service would serve the public interest.

ADMINISTRATIVE PROCEDURE

§ 4.211 Cross reference.

See §§ 4.11 to 4.16.

§ 4.212 Supplementary statement with application for construction permit.

A supplementary statement shall be filed with and made a part of each application for construction permit for any experimental fascimile broadcast station confirming the applicant's understanding:

(a) That all operation upon the frequency requested is for experimental purposes only.

(b) That the frequency requested may not be the best suited to the particular experimental work to be carried on.

(c) That the frequency requested need not be allocated for any service that may be developed as a result of the experimental operation.

(d) That any frequency which may be assigned is subject to change without advance notice or hearing.

(e) That any authorization issued pursuant to the application may be cancelled at any time without notice or hearing.

§ 4.213 Supplemental report with renewal application.

A supplemental report shall be filed with and made a part of each application for renewal of license and shall include statements of the following:

(a) Number of hours operated for transmission of facsimile programs.

(b) Comprehensive report of research and experimentation conducted.

(c) Conclusions and program for further developments of the facsimile broadcast service.

(d) All developments and major changes in equipment.

(e) Any other pertinent developments.

LICENSING POLICIES

§ 4.231 Licensing requirements, necessary showing.

(a) An applicant for a construction permit for a new experimental facsimile broadcast station, change in facilities of any existing station, or modification of license is required to make a satisfactory showing of compliance with the general requirements of the Communications Act of 1934, as amended, as well as with regard to the following:

(1) That the applicant has a program of research and experimentation which indicates reasonable promise of substantial contribution to the development of the facsimile broadcast service.

(2) That sufficient facsimile recorders will be distributed to accomplish the experimental program proposed.

(3) That the program of research and experimentation will be conducted by qualified personnel.

(b) A license for an experimental facsimile broadcast station will not authorize exclusive use of any frequency. In case interference would be caused by simultaneous operation of stations licensed experimentally, such licensees shall endeavor to arrange satisfactory time division. If such agreement cannot be reached, the Commission will determine and specify the time division.

§ 4.232 Power limitations.

Experimental facsimile broadcast stations will be licensed with a power output not in excess of that necessary to render satisfactory service. The license for these stations will specify the maximum authorized power. The operating power shall not be greater than necessary to carry on the service and in no event more than 5 percent above the maximum power specified. Engineering standards have not been established for these stations. The efficiency factor for the last radio stage of transmitters employed will be subject to individual determination but shall be in general agreement with values normally employed for similar equipment operated within the frequency range authorized.

§ 4.233 Emission authorized.

In case emission of a different type than that specified in the license is necessary or desirable in carrying on any phases of experimentation, application setting out fully the needs shall be made by informal application.

§ 4.234 Multiple ownership.

No persons (including all persons under common control) shall control, directly or indirectly, two or more experimental facsimile broadcast stations unless a showing is made that the character of the programs of research requires a licensing of two or more separate stations.

EQUIPMENT

§ 4.251 Equipment changes.

The licensee of an experimental facsimile broadcast station may make any changes in the equipment that are deemed desirable or necessary provided:

(a) That the operating frequency is not permited to deviate more than the allowed tolerance;

(b) That the emissions are not permitted outside the authorized band;

(c) That the power output complies with the license and the regulations governing the same; and

(d) That the transmitter as a whole or output power rating of the transmitter is not changed.

TECHNICAL OPERATION

§ 4.261 Frequency tolerance.

The licensee of an experimental facsimile broadcast station shall maintain the operating frequency of its station within plus or minus 0.01 percent of the assigned frequency. However, where a lesser tolerance is necessary in order to prevent interference, the Commission will specify the tolerance.

§ 4.262 Frequency monitors and measurements.

The licensee of an experimental facsimile broadcast station shall provide the necessary means for determining that the frequency of the station is within the allowed tolerance. The date and time of each frequency check, the frequency as measured, and a description or identification of the method employed shall be entered in the station log. Sufficient observations shall be made to insure that the assigned carrier frequency is maintained within the prescribed tolerance.

§ 4.263 Time of operation.

(a) A licensee of an experimental facsimile broadcast station is not required to adhere to a regular schedule of operation but shall actively conduct a program of research and experimentation.

(b) The program of research and experimentation as offered by an applicant in compliance with the requirements for obtaining a license for an experimental facsimile broadcast station shall be adhered to in the main, unless the licensee is authorized to do otherwise by the Commission.

(c) The Commission may from time to time require that a station licensed experimentally conduct such experiments as are deemed desirable and reasonable for the development of the service.

§ 4.264 Station inspection.

The licensee of each experimental facsimile broadcast station shall make the station available for inspection by representatives of the Commission at any reasonable hour.

§ 4.265 Station and operator licenses; posting of.

(a) The station license and any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation of the station shall be posted so that all terms thereof are visible in a conspicuous place in the room in which the transmitter is located.

(b) The original license of each station operator shall be posted at the place where he is on duty: *Provided, however,* If the original license of a station operator is posted at another radio transmitting station in accordance with the rules governing that class of station and is there available for inspection by an authorized Commission representative, a verification card (Form 758-F) is acceptable in lieu of the posting of such license.

§ 4.266 Operator requirements.

One or more radio operators holding radiotelephone first-class or radiotelephone second-class operator licenses shall be on duty at the place where the transmitting apparatus of any experimental facsimile broadcast station is located and in actual charge of its operation. The licensed operator on duty and in charge of a broadcast transmitter may, at the discretion of the licensee, be employed for other duties or for the operation of another station or stations in accordance with the class of operator's license which he holds and the rules and regulations governing such stations. However, such duties shall in no wise interfere with the operation of the broadcast transmitter.

§ 4.267 Antenna structure, marking and lighting.

Where an antenna structure(s) is required to be painted or lighted, see § 17.37, *Inspection of tower lights and associated control equipment;* § 17.39, *Cleaning and repainting;* § 17.40, *Time when lights shall be exhibited;* § 17.41, *Spare lamps;* and § 17.42, *Lighting equipment;* of Part 17 of this chapter (Construction, Marking and Lighting of Antenna Structures).

§ 4.268 Additional orders.

In case the rules contained in this part do not cover all phases of operation or experimentation with respect to external effects, the Commission may make supplemental or additional orders in each case as may be deemed necessary.

OTHER OPERATING REQUIREMENTS

§ 4.281 Station records.

(a) The licensee of each experimental facsimile broadcast station shall maintain adequate records of the operation, including:

(1) Hours of operation.

(2) Program transmitted.

(3) Frequency check.

(4) Pertinent remarks concerning transmission.

(5) Research and experimentation conducted.

(b) When an antenna structure(s) is required to be illuminated, see § 17.38, *Recording of tower light inspections in the station record,* of Part 17 of this chapter (Construction, Marking and Lighting of Antenna Structures).

(c) Station records shall be retained for a period of two years.

§ 4.282 Charges.

(a) A licensee of an experimental facsimile broadcast station shall not make any charge, directly or indirectly, for the transmission of programs.

(b) No licensee of any standard or FM broadcast station shall make any additional charge, directly or indirectly, for the transmission of some phase of its programs by an associated experimental facsimile broadcast station.

§ 4.283 Station identification.

Each experimental facsimile broadcast station shall transmit visual information

which will permit it to be identified at the beginning and end of each period of operation, and during operation, at least once every hour.

§ 4.284 Rebroadcasts.

(a) The term "rebroadcast" means reception by radio of the program of a radio station, and the simultaneous or subsequent retransmission of such program by a broadcast station.

NOTE 1: As used in this section, the word "program" includes any complete program or part thereof.

NOTE 2: In case a program is transmitted from its point of origin to a broadcast station primarily by telephone facilities in which a section of such transmission is by radio, the broadcasting of this program is not considered a rebroadcast. The broadcasting of a program relayed by a remote pickup broadcast station is not considered a rebroadcast.

(b) No licensee of any experimental facsimile broadcast station shall rebroadcast the program of any radio station without written authority having first been obtained from the Commission upon application. Informal application may be employed.

(c) An application for authority to rebroadcast the program of any radio station shall be accompanied by written consent or certification of consent of the licensee of the station originating the program.

Subpart C—Developmental Broadcast Stations

DEFINITIONS AND ALLOCATION OF FREQUENCIES

§ 4.301 Developmental broadcast station.

The term "developmental broadcast station" means a station licensed experimentally to carry on development and research primarily in radiotelephony for the advancement of the broadcast services.

§ 4.302 Frequency assignment.

(a) Frequencies allocated to the various classes of aural broadcasting stations and broadcast auxiliary stations, in the Commission's Table of Frequency Allocations (Part 2 of this chapter), may be assigned to developmental broadcast stations.

(b) More than one frequency may be assigned upon a satisfactory showing of the need therefor.

(c) Frequencies best suited to the purpose of the experimentation and on which there appears to be the least likelihood of interference to established stations shall be selected.

(d) In a case of important experimentation which cannot be feasibly conducted on frequencies allocated to the various classes of aural broadcasting stations and broadcast auxiliary stations, the Commission may authorize a developmental broadcast station to operate on other frequencies upon a satisfactory showing of the need therefor and a showing that the proposed operation can be conducted without causing harmful interference to established services: *Provided, however,* That experimental operation which looks toward the development of radio transmitting apparatus or the rendition of any type of regular service using such frequencies will not be authorized prior to a determination by the Commission that the development of such apparatus or the rendition of such service would serve the public interest.

ADMINISTRATIVE PROCEDURE

§ 4.311 Cross reference.

See §§ 4.11 to 4.16.

§ 4.312 Supplementary statement with application for construction permit.

A supplementary statement shall be filed with and made a part of each application for construction permit for any developmental broadcast station confirming the applicant's understanding:

(a) That all operation upon the frequency requested is for experimental purposes only.

(b) That the frequency requested may not be the best suited to the particular experimental work to be carried on.

(c) That the frequency requested need not be allocated for any service that may be developed as a result of the experimental operation.

(d) That any frequency which may be assigned is subject to change without advance notice or hearing.

(e) That any authorization issued pursuant to the application may be cancelled at any time without notice or hearing.

§ 4.313 Supplemental report with renewal application.

A supplemental report shall be filed with and made a part of each application for renewal of license and shall include statements of the following, among others:

(a) The number of hours operated.

(b) Comprehensive report on research and experiments conducted.

(c) Conclusions and program for further development of the broadcast service.

(d) All developments and major changes in equipment.

(e) Any other pertinent developments.

LICENSING POLICIES

§ 4.331 Licensing requirements; necessary showing.

(a) An applicant for a construction permit for a new developmental broadcast station, change of facilities or modification of an existing license is required to make a satisfactory showing of compliance with the general requirements of the Communications Act of 1934, as amended, as well as with regard to the following:

(1) That the applicant has a program of research and experimentation which can best be carried on under the license requested.

(2) That the program of research has reasonable promise of substantial contribution to the development of broadcasting.

(3) That the program of research and experimentation will be conducted by qualified personnel.

(b) A license for a developmental broadcast station will not authorize exclusive use of any frequency. In case interference would be caused by simultaneous operation of stations licensed experimentally, such licensees shall endeavor to arrange satisfactory time division. If such agreement cannot be reached, the Commission will determine and specify the time division.

§ 4.332 Power limitations.

Developmental broadcast stations will be licensed with a power output not in excess of that necessary to render satisfactory service. The license for these stations will specify the maximum authorized power. The operating power shall not be greater than necessary to carry on the service and in no event more than 5 percent above the maximum power specified. Engineering standards have not been established for these stations. The efficiency factor for the last radio stage of transmitters employed will be subject to individual determination but shall be in general agreement with values normally employed for similar equipment operated within the frequency range authorized.

§ 4.333 Emission authorized.

In case emission of a different type than that specified in the license is necessary or desirable in carrying on any phases of experimentation, application setting out fully the needs shall be made by informal application.

EQUIPMENT

§ 4.351 Equipment changes.

The licensee of a developmental broadcast station may make any changes in the equipment that are deemed desirable or necessary provided:

(a) That the operating frequency is not permitted to deviate more than the allowed tolerance;

(b) That the emissions are not permitted outside the authorized band;

(c) That the power output complies with the license and the regulations governing the same; and

(d) That the transmitter as a whole or output power rating of the transmitter is not changed. This limitation shall not apply to developmental broadcast stations licensed to operate in connection with the development and testing of commercial broadcast equipment.

TECHNICAL OPERATION

§ 4.361 Frequency tolerance.

The licensee of a developmental broadcast station operating below 450 megacycles shall maintain the operating frequency of its station within plus or minus 0.01 percent of the assigned frequency. The licensee of a developmental broadcast station operating above 450 megacycles shall maintain the operating frequency of its station within plus or minus 0.05 percent of the assigned frequency. However, where a lesser tolerance is necessary in order to prevent interference, the Commission will specify the tolerance.

§ 4.362 Frequency monitors and measurements.

The licensee of a developmental broadcast station shall provide the necessary

means for determining that the frequency of the station is within the allowed tolerance. The date and time of each frequency check, the frequency as measured, and a description or identification of the method employed shall be entered in the station log. Sufficient observations shall be made to insure that the assigned carrier frequency is maintained within the prescribed tolerance.

§ 4.363 Time of operation.

(a) A licensee of a developmental broadcast station is not required to adhere to a regular schedule of operation but shall actively conduct a program of research and experimentation. However, licensees of developmental broadcast stations which are licensed to conduct special intermittent experiments, such as the development and testing of commercial broadcast equipment, are authorized to operate only when there is a need therefor.

(b) The program of research and experimentation as offered by an applicant in compliance with the requirements for obtaining a license for a developmental broadcast station shall be adhered to in the main, unless the licensee is authorized to do otherwise by the Commission.

(c) The Commission may from time to time require that a station licensed experimentally conduct such experiments as are deemed desirable and reasonable for the development of the service.

§ 4.364 Station inspection.

The licensee of each developmental broadcast station shall make the station available for inspection by representatives of the Commission at any reasonable hour.

§ 4.365 Station and operator licenses; posting of.

(a) The station license and any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation of the station shall be posted so that all terms thereof are visible in a conspicuous place in the room in which the transmitter is located. However, if the station is licensed for portable-mobile operation, the station license or a photo copy thereof shall be affixed to the equipment or kept in the possession of the operator on duty at the transmitter. If a photo copy is used, the original license shall be available for inspection by an authorized Government representative.

(b) The original license of each station operator shall be posted at the place where he is on duty: *Provided, however,* If the original license of a station operator is posted at another radio transmitting station in accordance with the rules governing that class of station and is there available for inspection by an authorized Commission representative, or if the station operated is licensed for portable-mobile operation, a verification card (Form 758-F) is acceptable in lieu of the posting of such license.

NOTE: The term portable-mobile as here used is intended to include any type of portable or mobile operation.

§ 4.366 Operator requirements.

One or more radio operators holding radiotelephone first-class or radiotelephone second-class operator licenses shall be on duty at the place where the transmitting apparatus of any developmental broadcast station is located and in actual charge of its operation. The licensed operator on duty and in charge of a broadcast transmitter may, at the discretion of the licensee, be employed for other duties or for the operation of another station or stations in accordance with the class of operator's license which he holds and the rules and regulations governing such stations. However, such duties shall in no wise interfere with the operation of the broadcast transmitter.

§ 4.367 Antenna structure, marking and lighting.

Where an antenna structure(s) is required to be painted or lighted, see § 17.37, *Inspection of tower lights and associated control equipment;* § 17.39, *Cleaning and repainting;* § 17.40, *Time when lights shall be exhibited;* § 17.41, *Spare lamps;* and § 17.42, *Lighting equipment;* of Part 17 of this chapter (Construction, Marking and Lighting of Antenna Structures).

§ 4.368 Additional orders.

In case the rules contained in this part do not cover all phases of operation or experimentation with respect to external effects, the Commission may make supplemental or additional orders in each case as may be deemed necessary.

OTHER OPERATING REQUIREMENTS

§ 4.381 Station records.

(a) The licensee of each developmental broadcast station shall maintain adequate records of the operation, including:

(1) Hours of operation.
(2) Program transmitted.
(3) Frequency check.
(4) Pertinent remarks concerning transmission.
(5) In case of relay or remote pickup station, an entry giving points of program origination and receiver location shall be included.
(6) Research and experimentation conducted.

(b) Where an antenna structure(s) is required to be illuminated, see § 17.38, *Recording of tower light inspections in the station record,* of Part 17 of this chapter (Construction, Marking and Lighting of Antenna Structures).

(c) Station records shall be retained for a period of two years.

§ 4.382 Program service; charges prohibited; announcements.

(a) A licensee of a developmental broadcast station shall broadcast programs only when they are necessary to the experiments being conducted. No regular program service shall be broadcast unless specifically authorized. If the license authorizes the carrying of programs, the developmental broadcast station may transmit the programs of a standard or FM broadcast station or networks provided that during the broadcast a statement is made identifying the station or network originating the program (by giving the call letters of the station or name of the network) and announcing that the program is being broadcast in connection with the experimental operation of a developmental broadcast station.

(b) No licensee of any standard or FM broadcast station shall make any additional charge, directly or indirectly, for the transmission of programs by a developmental broadcast station.

(c) The provisions of paragraphs (a) and (b) of this section shall be applicable to rebroadcasts of the programs of a standard or FM broadcast station or network by a developmental broadcast station.

§ 4.383 Station identification.

Each developmental broadcast station shall announce its call letters at the beginning and end of each period of operation, and during operation, at least once every hour.

§ 4.384 Rebroadcasts.

(a) The term "rebroadcast" means reception by radio of the program of a radio station, and the simultaneous or subsequent retransmission of such program by a broadcast station.

NOTE 1: As used in this section, the word "program" includes any complete program or part thereof.

NOTE 2: In case a program is transmitted from its point of origin to a broadcast station primarily by telephone facilities in which a section of such transmission is by radio, the broadcasting of this program is not considered a rebroadcast. The broadcasting of a program relayed by a remote pickup broadcast station is not considered a rebroadcast.

(b) No licensee of any developmental broadcast station shall rebroadcast the program of any radio station without written authority having first been obtained from the Commission upon application. Informal application may be employed.

(c) An application for authority to rebroadcast the program of any radio station shall be accompanied by written consent or certification of consent of the licensee of the station originating the program.

Subpart D—Remote Pickup Broadcast Stations

DEFINITIONS AND ALLOCATION OF FREQUENCIES

§ 4.401 Classes of stations.

(a) *Remote pickup broadcast mobile station.* A land mobile station, licensed for the transmission of program material from remote points of origination to a broadcasting station for simultaneous or delayed broadcasting and for the transmission of orders pertaining to such programs.

(b) *Remote pickup broadcast base station.* A base station licensed for the transmission of program material from remote points of origination to a broadcasting station for simultaneous or delayed broadcasting and for the transmission of orders pertaining to such programs.

(c) *Remote pickup broadcast station.* The term "remote pickup broadcast station" as used in this subpart includes the definitions in paragraphs (a) and (b) of this section.

§ 4.402 **Frequency assignment.**

(a) The following frequencies are allocated for assignment to remote pickup broadcast base and mobile stations:

(1)

Group A (kc)
[1] 1606
1622
1646

(2)

Group D (Mc)	Group E (Mc)	Group F (Mc)	Group G (Mc)	Group H (Mc)
[2] 25.87	[2] 25.91	[2] 25.95	[2] 25.99	[2] 26.03
26.15	26.17	26.19	26.21	26.23
26.25	26.27	26.29	26.31	26.33
26.35	26.37	26.39	26.41	26.43

(3)

Group I (Mc)	Group J (Mc)
[2] 26.07	[2] 26.09
26.11	26.13
26.45	26.47

(4)

Group K [3] (Mc)		
152.87	153.05	153.23
152.93	153.11	153.29
152.99	153.17	153.35

(5)

Group L (Mc)	Group M (Mc)
[4] 166.25	[4] 170.15

(6)

Group N (Mc)			
450.05	450.55	455.05	455.55
450.15	450.65	455.15	455.65
450.25	450.75	455.25	455.75
450.35	450.85	455.35	455.85
450.45	450.95	455.45	455.95

(b) The following frequencies are allocated for assignment to remote pickup base and mobile stations in the Island of Puerto Rico only:

Mc	Mc	Mc
159.51	159.69	159.87
159.57	159.75	159.93
159.63	159.81	159.99

NOTE: Use of these frequencies by remote pickup stations is subject to the condition that no harmful interference is caused to stations in the Land Transportation Radio Services.

(c) A licensee is not limited with respect to the number of remote pickup broadcast stations which may be licensed for operation in a single area and each such station may be assigned one or more frequencies: *Provided, however,* That such frequency assignments shall be limited to those within a single frequency Group in any subparagraph of paragraph (a) of this section. This limitation does not preclude the assignment of frequencies listed in different subparagraphs to the same licensee. Applicants shall request the assignment of only those frequencies on which operation is contemplated and the transmitter shall be suitably equipped to operate on all assigned frequencies.

(d) Remote pickup broadcast stations will not be granted exclusive frequency assignments, and the same frequency or frequencies may be assigned to other licensees in the same area.

§ 4.403 **Frequency selection to avoid interference.**

(a) Where two or more remote pickup broadcast stations are licensed for the same frequency or group of frequencies in the same area and when simultaneous operation is contemplated, the licensees shall endeavor to select frequencies or schedule operation in such manner as to avoid mutual interference. If a mutual agreement to this effect cannot be reached the Commission shall be notified and it will specify the frequency or frequencies on which each station is to be operated.

(b) The following order of priority of transmissions shall be observed on all frequencies except those listed in § 4.402 (a)(3): (1) The transmission of program material for broadcast, (2) the transmission of orders immediately necessary thereto, and (3) other transmissions permitted under § 4.431(a). On frequencies listed in § 4.402(a)(3), transmissions permitted under § 4.431 shall have priority over transmissions permitted under § 4.432(e).

ADMINISTRATIVE PROCEDURE

§ 4.411 **Cross reference.**

See §§ 4.11 to 4.16.

LICENSING POLICIES

§ 4.431 **Purpose of remote pickup broadcast stations.**

(a) The license of a remote pickup broadcast station authorizes the transmission of program material, orders concerning such program material, and related communications necessary to the accomplishment of such transmissions, to an associated broadcast station (a broadcast station with which the remote pickup station is licensed as an auxiliary facility), to such other stations as are also broadcasting the same program material, or to the network with which the broadcast station is regularly affiliated. A license issued within the provisions of § 4.432(e) authorizes the additional communications therein provided. Remote pickup broadcast stations may be operated in conjunction with other broadcast stations not aforementioned in this paragraph: *Provided,* That the transmissions by the remote pickup broadcast station shall be under the control of the remote pickup broadcast station licensee, and that such operation shall not exceed a total of 10 days in any 30-day period.

(b) In the event of damage or impairment of the regular circuits of a broadcast station due to storms or other emergencies, remote pickup broadcast stations may be used to provide temporary emergency circuits for program transmission and cue purposes pending completion of repairs. However, remote pickup broadcast stations may not be used for such circuits on a regular basis.

(c) The license of a remote pickup broadcast station authorizes operation on only one of the assigned frequencies at any one time. A licensee may operate two or more remote pickup broadcast stations simultaneously. Remote pickup broadcast stations may be used to transmit orders and related communications from the program control point to the remote pickup point.

(d) Remote pickup broadcast stations licensed in Alaska, Hawaii, Puerto Rico, and the Virgin Islands may be used for any auxiliary broadcast purpose including intercity relay circuits which may be operated by the licensee for the purpose of maintaining studios at locations other than that of the main studio: *Provided, however,* That such stations shall not be used for transmissions intended to be received by the public directly.

§ 4.432 **Licensing requirements.**

(a) A license for a remote pickup broadcast station will be issued only to the licensee of a broadcast station. Remote pickup broadcast stations will be licensed to television broadcast stations upon an interim basis pending development of equipment capable of transmitting the aural and the visual portions of television programs within the bands of frequencies allocated for television pickup stations. A separate license is required for each remote pickup broadcast station. Each application for construction permit for a new remote pickup broadcast station or for a change in the facilities of an existing station shall be specific with regard to the frequency or frequencies requested.

(b) In case a licensee has two or more broadcast stations of different services (standard, FM, television, etc.) located in the same city, it shall, in applying for a new remote pickup broadcast station or for renewal of license of an existing station, designate each of the stations with which the remote pickup broadcast station is to be operated.

(c) In case a licensee has two or more broadcast stations located in different cities, it shall, in applying for a new remote pickup station or for renewal of license of an existing station, designate the broadcast station, or stations under the provisions of paragraph (b) of this section, in conjunction with which the remote pickup station is to be operated.

(d) A remote pickup broadcast station may be licensed for portable or mobile operation in accordance with § 4.401(a), or for operation at a fixed location in accordance with § 4.401(b). An application for a new remote pickup broadcast station or for modification of license of an existing station requesting portable or mobile operation shall specify the area in which the proposed station is intended to be employed.

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[1] Subject to the condition that no harmful interference is caused to the reception of standard broadcast stations.

[2] Subject to the condition that no harmful interference is caused to the reception of broadcasting stations.

[3] Subject to the condition that no harmful interference is caused to the Industrial Radio Services.

[4] Operation on the frequencies 166.25 Mc and 170.15 Mc is not authorized (i) within the area bounded on the west by the Mississippi River, on the north by the parallel of latitude 37°30′ N., and on the east and south by that arc of the circle with center at Springfield, Ill., and radius equal to the airline distance between Springfield, Ill., and Montgomery, Alabama, subtended between the foregoing west and north boundaries; (ii) within 150 miles of New York City; and (iii) in Alaska or outside the continental United States; and is subject to the condition that no harmful interference is caused to government radio stations in the band 162–174 Mc.

(e) Remote pickup broadcast base stations will be licensed for the purpose of providing communication between the studio and the transmitter of broadcast stations which utilize a broadcast STL station for program transmission, provided that such operation shall not be conducted on frequencies other than those listed in § 4.402(a)(3). The term "broadcast STL station" as used in this section includes "FM broadcast STL", "standard broadcast STL", and "television STL" stations.

§ 4.433 Temporary authorizations.

(a) Special temporary authority may be granted for operation, as a remote pickup broadcast station, of equipment already licensed to another class of station or equipment in use by a class of station which under the Communications Act of 1934 does not require a construction permit.

(b) An application for special temporary authority for the operation of a remote pickup broadcast station shall be filed with the Commission at least 10 days previous to the date of operation. Any application received within less than 10 days may be accepted upon due showing of sufficient reasons for the delay in submitting such request. The application shall set forth full particulars of the purpose for which the request is made and shall show the licensee, call letters, and type of equipment of the station proposed to be used and specify the frequency or frequencies, time and date, location, transmitter power, and type emission proposed and the purpose of the operation requested.

(c) An application for special temporary authority to operate another class of station as a remote pickup broadcast station shall specify a frequency or frequencies allocated in § 4.402: *Provided, however,* In case of events of national interest and importance which cannot be transmitted successfully on these frequencies, other frequencies under the jurisdiction of the Commission may be requested if it is shown that the operation thereon will not cause interference to established stations: *And provided further,* That no remote pickup operation will be authorized on frequencies employed in the emergency service or otherwise employed for the safety of life and property.

(d) An application for special temporary authority to operate equipment as a remote pickup broadcast station filed by a person other than the licensee of such equipment shall contain a statement to show that temporary control of the transmissions therefrom has been secured for the duration of the special operation proposed. An application for special temporary authority to operate another class of station as a remote pickup broadcast station filed by a person other than the licensee of a standard or FM broadcast station shall contain a statement to show which broadcast station or stations contemplate broadcast of the program proposed to be transmitted.

NOTE: Informal application may be employed under this section.

§ 4.434 Remote control operation.

Remote-control operation of remote pickup stations will be permitted subject to the following conditions.

(a) A percentage modulation indicator or calibrated program level meter shall be provided at the operating position.

(b) The operator shall have off-and-on control of the power to the last radio stage.

(c) The transmitter shall be so installed and protected that it is not accessible to other than duly authorized persons.

§ 4.435 Power limitations.

Remote pickup broadcast stations will be licensed with a power output not in excess of that necessary to render satisfactory service. The license for these stations will specify the maximum authorized power. The operating power shall not be greater than necessary to carry on the service and in no event more than 5 percent above the maximum power specified. Engineering standards have not been established for these stations. The efficiency factor for the last radio stage of transmitters employed will be subject to individual determination but shall be in general agreement with values normally employed for similar equipment operated within the frequency range authorized.

§ 4.436 Emission authorized.

(a) The license for a remote pickup broadcast station operating on frequencies below 25 Mc will normally authorize A3 emission and may in addition authorize A1 and A2 emission where a need therefor is shown. A license for a remote pickup broadcast station operating on frequencies above 25 Mc will authorize A3 or F3 emission, depending upon the equipment employed. Stations licensed to employ F3 emission shall limit the frequency swing so that the bandwidth of emission will conform to the requirements of the channel widths authorized as follows:

(1) For stations operating on the frequencies 26.11 to 26.47 Mc, 20 kilocycles.

(2) For stations operating on the frequencies 152.87 to 153.35, 159.51 to 159.99, 166.25, and 170.15 Mc, 60 kilocycles.

(3) For stations operating on the frequencies 450.05 to 451.95 Mc, 100 kilocycles.

NOTE: The term "frequency swing" means the instantaneous departure of the frequency of the emitted wave from the center frequency resulting from modulation.

(b) Any emissions outside the authorized channel shall be limited to such an extent as not to constitute a source of potential interference to other stations and in no event shall such emissions be in excess of minus 40 decibels as compared to the emissions within the authorized channel.

§ 4.437 Special rules relating to low power broadcast auxiliary stations.

(a) The devices which will be licensed under this section are those which are normally intended to be operated over distances not in excess of a few hundred feet and will fall into two general categories: studio cueing transmitters and wireless microphones. Paragraphs (b) to (j) of this section will govern the licensing of such devices.

(b) A license for a low power broadcast auxiliary station will be issued only to the licensee of a standard, FM, or television broadcast station and for use with a specific station or combination of such broadcast stations within the same city. Such stations may be operated at other locations from time-to-time in accordance with the provisions of paragraph (f) of this section.

(c) The license of a low power broadcast auxiliary station authorizes the transmission of cues and orders to production personnel and participants in broadcast programs and in the preparation thereof, and the transmission of program material by means of a wireless microphone worn by a performer or other participant in a broadcast program during rehearsal and the actual performance. Such transmissions shall be intended for reception at a receiving point within the same studio, building, stadium, or similarly limited indoor or outdoor area.

(d) An application for a new low power broadcast auxiliary station or for a change in an existing authorization shall specify the broadcast station or combination of stations in the same city, as set forth in paragraph (b) of this section, with which it is to be used principally. A single application, filed on FCC Form 313, in duplicate, may be used in applying for authority to construct and operate one or more low power broadcast auxiliary transmitting units provided that such transmitting units are designed for operation in a common frequency band and will be normally operated with the same broadcast station or combination of stations in a single city.

(e) The operation of low power broadcast auxiliary stations will be authorized only in the bands 26.10–26.48 Mc and 450–451 Mc. Transmitting units may be operated on any frequency within the band of frequencies for which the station is licensed, provided that the emissions are confined to the authorized band. Transmitting units are not required to maintain a constancy of frequency beyond that necessary to insure compliance with the requirement of this paragraph.

(f) A low power broadcast auxiliary station may be used in conjunction with broadcast stations of other licensees located in the same area as the broadcast station or stations with which it is licensed without further authority of the Commission, provided that such operation is conducted by the licensee of the low power broadcast auxiliary station. Low power broadcast auxiliary stations may also be operated in conjunction with broadcast stations of its licensee or other licensees in other locations provided that such operation is conducted by the licensee of the low power broadcast auxiliary station and provided further that, if such operation is to be conducted over a consecutive period of more than one

day, the Engineer in Charge of the radio district in which the low power broadcast auxiliary station is licensed and the Engineer in Charge of the radio district in which the operation is to be conducted shall be notified in writing at least two days in advance of such operation and of the expected duration of the proposed operation.

(g) Low power broadcast auxiliary stations will not be licensed for a power input to the plate of the final radio frequency amplifier in excess of 1 watt and all operation thereof is subject to the condition that no harmful interference is caused to remote pickup broadcast base and mobile stations. Unusual transmitting antennas or antenna elevations shall not be used to extend the range of these low power devices beyond the limited areas defined in paragraph (c) of this section.

(h) No operator's license is required of the person actually using a low power broadcast auxiliary transmitting unit, provided that an operator holding any commercial radio operator license or permit, except an aircraft radiotelephone operator authorization or a temporary radiotelegraph second-class operator license, is on duty at the place where the transmitting unit is being operated to take immediate steps to correct any condition of improper operation observed. Any adjustments or repairs that could affect the proper operation of transmitting units shall be made by or under the immediate supervision of an operator holding a valid first or second-class radiotelephone license.

(i) Call signs will not be assigned to low power broadcast auxiliary stations. In lieu thereof, an announcement shall be made at the beginning and end of each period of operation at a single location, over the transmitting unit being operated, identifying the type of transmitting unit, its location, and the call sign of the broadcast station with which it is being used. Transmitting units will normally fall into one of two types: a cueing transmitter or a wireless microphone. A period of operation may consist of a continuous transmission or intermittent transmissions in connection with a single program.

(j) The licensee of each low power broadcast auxiliary station shall maintain adequate records at the main studio or transmitter of the broadcast station with which the auxiliary is principally used, which will accurately show the current location of all transmitting units, the periods of operation at such locations and any other pertinent remarks concerning transmissions.

EQUIPMENT

§ 4.451 Equipment changes.

The licensee of a remote pickup broadcast station may make any changes in the equipment that are deemed desirable or necessary provided:

(a) That the operating frequency is not permitted to deviate more than the allowed tolerance;

(b) That the emissions are not permitted outside the authorized band;

(c) That the power output complies with the license and the regulations governing the same; and

(d) That the transmitter as a whole or output power rating of the transmitter is not changed.

TECHNICAL OPERATION

§ 4.461 Frequency tolerance.

The licensee of a remote pickup broadcast station shall maintain the operating frequency of its station in accordance with the following:

Frequency range	Tolerance (percent)	
	Base station	Mobile station
1606 to 2830 kc:		
200 watts or less	0.01	0.02
Over 200 watts [1]	.005	.02
26.11 to 26.47 Mc:		
5 watts or less	.005	.02
Over 5 watts	.005	.005
152.87 to 153.35, 159.51 to 159.99, 166.25, and 170.15 Mc:		
5 watts or less	.005	.01
Over 5 watts	.005	.005
450.05 to 451.95 Mc: All powers	.01	.01

[1] The listing of tolerance for power over 200 watts is in accordance with treaty values and shall not be construed as a finding that such power will be authorized.

§ 4.462 Frequency monitors and measurements.

(a) The licensee of a remote pickup broadcast station shall provide the necessary means for determining that the frequency of the station is within the allowed tolerance. The date and time of each frequency check, the frequency as measured, and a description or identification of the method employed shall be entered in the station log. Sufficient observations shall be made to insure that the assigned carrier frequency is maintained within the prescribed tolerance.

(b) Each frequency for which the remote pickup broadcast station is licensed shall be measured at least once during each calendar year.

§ 4.463 Station inspection.

The licensee of each remote pickup broadcast station shall make the station available for inspection by representatives of the Commission at any reasonable hour.

§ 4.464 Station and operator licenses; posting of.

(a) The station license and any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation of the station shall be posted so that all terms thereof are visible in a conspicuous place in the room in which the transmitter is located: *Provided:*

(1) If the transmitter operator is located at a distance from the transmitter pursuant to § 4.434 the station license shall be posted in the above-described manner at the operating position.

(2) If the station is licensed for portable-mobile operation, the station license or a photo copy thereof shall be affixed to the equipment or kept in the possession of the operator on duty at the transmitter. If a photo copy is used the original license shall be available for inspection by an authorized Government representative.

(b) The original license of each station operator shall be posted at the place where he is on duty: *Provided, however,* If the original license of a station operator is posted at another radio transmitting station in accordance with the rules governing that class of station and is there available for inspection by an authorized Commission representative, or if the station operated is licensed for portable-mobile operation, a verification card (Form 758-F) is acceptable in lieu of the posting of such license: *Provided further, however,* That if the operator on duty holds a restricted radiotelephone operator permit of the card form (as distinguished from the diploma form) he shall not post that permit but shall keep it in his personal possession.

NOTE: The term portable-mobile as here used is intended to include any type of portable or mobile operation.

§ 4.465 Operator requirements.

One or more radio operators holding any class of commercial radio operator license or permit shall be on duty at the place where the transmitting apparatus of any remote pickup broadcast station is located, except as provided in § 4.434, and in actual charge of its operation. Further provisions and restrictions concerning the operator's authority are contained in Part 13 of this chapter. The licensed operator on duty and in charge of a broadcast transmitter may, at the discretion of the licensee, be employed for other duties or for the operation of another station or stations in accordance with the class of operator's license which he holds and the rules and regulations governing such stations. However, such duties shall in no wise interfere with the operation of the broadcast transmitter.

§ 4.466 Antenna structure, marking and lighting.

Where an antenna structure(s) is required to be painted or lighted, see § 17.37, *Inspection of tower lights and associated control equipment;* § 17.39, *Cleaning and repainting;* § 17.40, *Time when lights shall be exhibited;* § 17.41, *Spare lamps;* and § 17.42, *Lighting equipment;* of Part 17 of this chapter (Construction, Marking and Lighting of Antenna Structures).

§ 4.467 Additional orders.

In case the rules contained in this part do not cover all phases of operation or experimentation with respect to external effects, the Commission may make supplemental or additional orders in each case as may be deemed necessary.

OTHER OPERATING REQUIREMENTS

§ 4.481 Station records.

(a) The licensee of each remote pickup broadcast station shall maintain adequate records of the operation, including:

(1) Hours of operation.

(2) Program transmitted.

(3) Frequency check.

(4) Pertinent remarks concerning transmission.

(5) An entry giving points of program origination and receiver location.

(b) Where an antenna structure(s) is required to be illuminated, see § 17.38 *Recording of tower light inspections in the station record* of Part 17 of this chapter (Construction, Marking and Lighting of Antenna Structures).

(c) Station records shall be retained for a period of two years.

§ 4.482 Station identification.

Each remote pickup broadcast station shall announce its call letters at the beginning and end of each period of operation, and during operation, at least once every hour it shall either announce its call letters or make an announcement which will permit it to be identified (such as announcement during program operation of the call letters of the broadcast station with which the remote pickup broadcast station is regularly affiliated).

Subpart E—Standard and FM Broadcast STL and FM Intercity Relay Stations

DEFINITIONS AND ALLOCATION OF FREQUENCIES

§ 4.501 Classes of stations.

(a) *FM broadcast STL station.* A fixed station utilizing telephony to transmit from a studio of an FM broadcasting station to the transmitter of that broadcasting station, programs to be broadcast by that station.

(b) *Standard broadcast STL station.* A fixed station utilizing telephony to transmit from a studio of a standard broadcasting station to the transmitter of that broadcasting station, programs to be broadcast by that station.

(c) *FM intercity relay station.* A fixed station used for the transmission of FM broadcasting programs from one FM broadcasting station to other FM broadcasting stations to provide simultaneous network FM broadcasting and operated only by FM broadcast licensees.

NOTE 1: The term "FM broadcasting station" as used in this part of the rules includes non-commercial educational FM broadcasting stations.

NOTE 2: The abbreviation "STL" is derived from "studio-transmitter link."

§ 4.502 Frequency assignment.

(a) An FM broadcast STL station may be licensed on one of the following frequencies:

942.5 Mc	946.0 Mc	949.5 Mc
943.0 Mc	946.5 Mc	950.0 Mc
943.5 Mc	947.0 Mc	950.5 Mc
944.0 Mc	947.5 Mc	951.0 Mc
944.5 Mc	948.0 Mc	951.5 Mc
945.0 Mc	948.5 Mc	
945.5 Mc	949.0 Mc	

(b) Any standard broadcast STL station or FM broadcast STL station for which there was outstanding a valid construction permit or license on April 16, 1958, specifying operation on any frequency between 890 Mc and 942 Mc, may continue to be operated on such frequencies for the remainder of the term specified in such authorization and may upon appropriate application therefor be granted a renewal of such license, subject to the condition that no harmful interference shall be caused to the radiopositioning service operating in the band 890–942 Mc and subject to the further condition that the licensee must accept any interference which may be caused by the operation of radiopositioning stations in the band 890–942 Mc and industrial, scientific, and medical (ISM) equipment in the band 890–940 Mc.

(c) FM inter-city relay stations may be licensed to operate on any of the frequencies listed in paragraph (a) of this section, subject to the condition that no harmful interference is caused to stations operating in the band 942–952 Mc in accordance with the Table of Frequency Allocations contained in § 2.104 (a) of this chapter.

§ 4.503 Frequency selection.

(a) Each application for a new station or change in an existing station shall be specific with regard to frequency. In general, the lowest suitable frequency will be assigned which, on an engineering basis, will not cause harmful interference to other stations operating in accordance with existing frequency allocations.

(b) Where it appears that interference may result from the operation of a new station or a change in the facilities of an existing station, the Commission may require a showing that harmful interference will not be caused to existing stations or that if interference will be caused the need for the proposed service outweighs the loss of service due to the interference.

ADMINISTRATIVE PROCEDURE

§ 4.511 Cross reference.

See §§ 4.11 to 4.16.

LICENSING POLICIES

§ 4.531 Licensing requirements.

(a) An FM broadcast STL station will be licensed only to the licensee of an FM broadcasting station as an auxiliary to a particular FM broadcasting station of that licensee.

(b) A standard broadcast STL station will be licensed only to the licensee of a standard broadcast station as an auxiliary to a particular standard broadcast station of that licensee.

(c) An FM intercity relay station will be licensed only to the licensee of an FM broadcast station and only upon a satisfactory showing that suitable common carrier facilities are not available. An application for construction permit for a new FM intercity relay station or for renewal of license of an existing station shall be accompanied by a verified statement containing the following:

(1) A full statement as to why the applicant requires the requested facilities including reasons why common carrier facilities cannot be utilized; and,

(2) A showing that the applicant has, at the earliest time reasonably practicable, requested the appropriate common carrier or common carriers serving the general area involved to furnish the intercity FM transmission service required by the applicant, including in such showing a copy of the request or requests and of the reply or replies received from such common carriers.

(d) More than one broadcast STL station or FM intercity relay stations will be licensed for use with single broadcast station only upon a showing that, (1) more than one transmitter is required for the effective operation of a single STL or intercity relay circuit due to distance of transmission, terrain anomalies, or similar circumstances; or, (2) more than one STL circuit is needed to connect additional studios or more than one FM intercity relay circuit is needed to connect additional FM broadcast stations in the network; and it is shown that the nature and extent of use of such additional circuits is such as to justify their authorization.

(e) Each station shall be licensed at a fixed location and the direction of radiation of the antenna shall be fixed.

§ 4.532 Service.

(a) The license of an FM broadcast STL station or a standard broadcast STL station authorizes the relaying of programs from a studio to the transmitter of the broadcast station with which it is licensed, for simultaneous or delayed broadcast: *Provided, however,* That where the licensee of an FM broadcast STL station or a standard broadcast STL station is the licensee of an FM broadcast station and a standard broadcast station in the same city or metropolitan district, the license of each such STL station authorizes the relaying to be made to either or both such broadcast stations.

(b) The license of an FM intercity relay station authorizes the relaying of FM broadcast programs and communications relating thereto between FM broadcasting stations located in different cities in order to provide network FM broadcasting. The operation of FM intercity relay stations is subject to the condition that no harmful interference is caused to other radio stations, present or future, operating in accordance with the Table of Frequency Allocations set forth in § 2.104(a) of this chapter.

(c) Each FM broadcast STL station, standard broadcast STL station, or FM intercity relay station will be licensed for unlimited time operation.

(d) During periods in which it is not a part of the broadcast circuit, the transmitting equipment may be used for the transmission of communications which pertain to the broadcast operations. If the transmitter and receiver are equipped with a multiplex circuit, communications during broadcast periods may be authorized upon application therefor. Such a circuit, if used, shall be designed and operated in a manner which will not cause spurious emissions or derogation of the program transmission. Studio to transmitter and transmitter to studio communication may also be provided by equipment operated under the remote pickup broadcast station rules. Superfluous transmissions are not permitted.

§ 4.533 Remote control and unattended operation.

(a) Broadcast STL or FM intercity relay stations may be operated by remote

control: *Provided,* That such operation is conducted in accordance with the conditions listed in this section: *And provided further,* That the Commission is notified at least 10 days prior to such operation and that such notification is accompanied by a detailed description of the proposed remote control installation showing the manner of compliance with the following conditions:

(1) The operating position shall be under the control and supervision of the licensee and shall be the place at which a licensed operator meeting the requirements of § 4.565 and responsible for the operation of the transmitter is stationed;

(2) A carrier operated device shall be provided at the operating position which shall give a continuous visual indication when the transmitter is radiating; or, in lieu thereof, a device shall be provided which will give a continuous visual indication when any transmitter control circuits have been placed in a condition to produce radiation;

(3) Facilities shall be provided at the operating position which will permit the operator to turn the transmitter carrier on and off at will; and

(4) The transmitter and all of its operating controls shall be so installed and protected that they are not accessible to other than authorized personnel.

(b) FM intercity relay stations, and broadcast STL stations where the circuit requires the use of more than one STL transmitter, may be operated unattended: *Provided,* That such operation is conducted in accordance with the conditions listed below: *And provided further,* That the Commission is notified at least 10 days prior to the beginning of such operation and that such notification is accompanied by a detailed description of the proposed installation showing the manner of compliance with the following conditions:

(1) The transmitter is capable of retransmitting by self-actuating means a radio signal received from another radio station or stations;

(2) The transmitter shall be provided with adequate safeguards to prevent improper operation of the equipment;

(3) The transmitter shall be so installed and protected that it is not accessible to other than duly authorized persons;

(4) Appropriate observations shall be made, at intervals not exceeding one hour during the period of its operations, at the receiving end of the circuit by a person holding a valid first or second class radiotelephone operator license who shall immediately institute measures sufficient to assure prompt correction of any condition of improper operation that is observed; and

(5) The station licensee shall remain responsible for the proper operation of the station, and all adjustments or tests during or coincident with the installation, servicing, or maintenance of the station which may affect its proper operation shall be performed by or under the immediate supervision and responsibility of a person holding a valid first or second class radiotelephone operator license.

(c) The Commission may notify the licensee not to commence remote control or unattended operation, or to cancel, suspend, or change the date of the beginning of such operation as and when such action may appear to be in the public interest, convenience, and necessity.

§ 4.534 Power limitations.

Broadcast STL and FM intercity relay stations will be licensed with a power output not in excess of that necessary to render satisfactory service. The license for these stations will specify the maximum authorized power. The operating power shall not be greater than necessary to carry on the service and in no event more than 5 percent above the maximum power specified. Engineering standards have not been established for these stations. The efficiency factor for the last radio stage of transmitters employed will be subject to individual determination but shall be in general agreement with values normally employed for similar equipment operated within the frequency range authorized.

§ 4.535 Emission authorized.

(a) Broadcast STL and FM intercity relay stations normally will be authorized to employ frequency modulation only.

(b) The maximum frequency swing employed shall not be in excess of 200 kilocycles.

NOTE: The term "frequency swing" means the instantaneous departure of the frequency of the emitted wave from the center frequency resulting from modulation.

§ 4.536 Directional antenna required.

Each broadcast STL or FM intercity relay station is required to employ a directional antenna. Considering one kilowatt of radiated power as a standard for comparative purposes, such antenna shall provide a free space field intensity at one mile of not less than 435 mv/m in the main lobe of radiation toward the receiver and not more than 20 percent of the maximum value in any azimuth 30 degrees or more off the line to the receiver. Where more than one antenna is authorized for use with a single station, the radiation pattern of each shall be in accordance with the foregoing requirement.

EQUIPMENT

§ 4.551 Equipment changes.

The licensee of a broadcast STL or FM intercity relay station may make any changes in the equipment that are deemed desirable or necessary provided:

(a) That the operating frequency is not permitted to deviate more than the allowed tolerance;

(b) That the emissions are not permitted outside the authorized band;

(c) That the power output complies with the license and the regulations governing the same; and

(d) That the transmitter as a whole or output power rating of the transmitter is not changed.

TECHNICAL OPERATION

§ 4.561 Frequency tolerance.

The licensee of each broadcast STL or FM intercity relay station shall maintain the operating frequency of the station within plus or minus 0.005 percent of the assigned frequency.

§ 4.562 Frequency monitors and measurements.

The licensee of a broadcast STL or FM intercity relay station shall provide the necessary means for determining that the frequency of the station is within the allowed tolerance. The date and time of each frequency check, the frequency as measured, and a description or identification of the method employed shall be entered in the station log. Sufficient observations shall be made to insure that the assigned carrier frequency is maintained within the prescribed tolerance.

§ 4.563 Station inspection.

The licensee of each broadcast STL or FM intercity relay station shall make the station available for inspection by representatives of the Commission at any reasonable hour.

§ 4.564 Station and operator licenses; posting of.

(a) The station license and any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation of the station shall be posted so that all terms thereof are visible, in a conspicuous place in the room in which the transmitter is located: *Provided,* That if the transmitter operator is located at a distance from the transmitter pursuant to § 4.533 the station license shall be posted in the above-described manner at the operating position.

(b) The original license of each station operator shall be posted at the place where he is on duty: *Provided, however,* If the original license of a station operator is posted at another radio transmitting station in accordance with the rules governing that class of station and is there available for inspection by an authorized Commission representative, a verification card (Form 758-F) is acceptable in lieu of the posting of such license: *Provided further, however,* That if the operator on duty holds a restricted radiotelephone operator permit of the card form (as distinguished from the diploma form) he shall not post that permit but shall keep it in his personal possession.

§ 4.565 Operator requirements.

One or more radio operators holding any class of commercial radio operator license or permit shall be on duty at the place where the transmitting apparatus is located, except as provided in § 4.533, and in actual charge of its operation. Further provisions and restrictions concerning the operator's authority are contained in Part 13 of this chapter. The licensed operator on duty and in charge of a broadcast transmitter may, at the discretion of the licensee, be employed for other duties or for the operation of another station or stations in accordance with the class of operator's license which he holds and the rules and regulations governing such stations. However, such duties shall in no wise interfere with the operation of the broadcast transmitter.

§ 4.566 Antenna structure, marking and lighting.

Where an antenna structure(s) is required to be painted or lighted, see § 17.37, *Inspection of tower lights and associated control equipment;* § 17.39, *Cleaning and repainting;* § 17.40, *Time when lights shall be exhibited;* § 17.41, *Spare lamps;* and § 17.42, *Lighting equipment;* of Part 17 of this chapter (Construction, Marking and Lighting of Antenna Structures).

§ 4.567 Additional orders.

In case the rules contained in this part do not cover all phases of operation or experimentation with respect to external effects, the Commission may make supplemental or additional orders in each case as may be deemed necessary.

OTHER OPERATING REQUIREMENTS

§ 4.581 Station records.

(a) The licensee of each broadcast STL or FM intercity relay station shall maintain adequate records of the operation, including:

(1) Hours of operation.

(2) Program transmitted.

(3) Frequency check.

(4) Pertinent remarks concerning transmission.

(b) Where an antenna structure(s) is required to be illuminated, see § 17.38 of this chapter.

(c) Station records shall be retained for a period of two years.

§ 4.582 Station identification.

Each broadcast STL or FM intercity relay station shall announce its call letters at the beginning and end of each period of operation, and during operation, at least once every hour, it shall either announce its call letters or make an announcement which will permit it to be identified (such as announcement during program operation of the call letters of the broadcast station with which the broadcast STL station is operated).

Subpart F—Television Auxiliary Broadcast Stations

DEFINITIONS AND ALLOCATION OF FREQUENCIES

§ 4.601 Classes of stations.

(a) *Television pickup station.* A land mobile station used for the transmission of television program material and related communications from the scenes of events occurring at points removed from television broadcast station studios to television broadcast stations.

(b) *Television STL station (studio-transmitter link).* A fixed station used for the transmission of television program material and related communications from the studio to the transmitter of a television broadcast station.

(c) *Television inter-city relay station.* A fixed station used for inter-city transmission of television program material and related communications for use by television broadcast stations.

NOTE: Wherever used in this subpart, the term "television broadcast station licensee" includes a television broadcast station permittee.

§ 4.602 Frequency assignment.

(a) The following frequencies are allocated for assignment to television pickup, television STL, and television inter-city relay stations:

Band A (Mc)	Band B (Mc)	Band C (Mc)	Band D (Mc)	
1990–2008	6875–6900	10550–10575	12700–12725	12975–13000
2008–2025	6900–6925	10575–10600	12725–12750	13000–13025
2025–2042	6925–6950	10600–10625	12750–12775	13025–13050
2042–2059	6950–6975	10625–10650	12775–12800	13050–13075
2059–2076	6975–7000	10650–10675	12800–12825	13075–13100
2076–2093	7000–7025	10675–10700	12825–12850	13100–13125
2093–2110	7025–7050	----------	12850–12875	13125–13150
2450–2467	[1] 7050–7075	----------	12875–12900	13150–13175
2467–2484	[1] 7075–7100	----------	12900–12925	13175–13200
2484–2500	[1] 7100–7125	----------	12925–12950	13200–13225
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[1] Pending further order by the Commission, frequencies between 7050 Mc and 7125 Mc will be reserved for use by communications common carriers to provide television pickup and television STL service to television broadcast stations.

Frequencies in the bands 16000–18000 Mc and 26000–30000 Mc are available for assignment on a case-by-case basis for television pickup, STL and intercity relay purposes. Channel widths and frequency tolerance will be specified in individual authorizations. Frequencies shown above between 2450 and 2500 Mc in Band A and between 17850 and 18000 Mc are allocated to accommodate the incidental radiations of industrial, scientific, and medical (ISM) equipment, and stations operating therein must accept any interference that may be caused by the operation of such equipment. ISM frequencies are also shared with other communication services and exclusive channel assignments will not be made, nor is the channeling shown above necessarily that which will be employed by such other services.

(b) Except as provided above each television broadcast station licensee in an area may request the assignment of one channel in Band A or Band B and one channel in Band D on an exclusive basis. In making such exclusive assignments, priority will be based on the filing date of an appropriate application (FCC Form 313) completed in accordance with the instructions thereon. Frequency assignments will normally be made as requested if the requested frequency is not assigned to another licensee on an exclusive basis. However, the Commission reserves the right to assign frequencies other than those requested if, in its opinion, such action is warranted.

(c) Where the relative locations of the studio and transmitter are such as to permit co-channel operation of television STL stations by two or more licensees in the same area, such licensees may, by mutual agreement, request the assignment of a common channel for STL use on an exclusive basis. In the event that such a shared assignment is made, each participating licensee may request the assignment of an individual exclusive channel in Band A, Band B, or Band D in addition to the shared STL channel.

(d) A television broadcast station licensee will normally be limited to the assignment of not more than three channels in Bands A and B combined, only one of which will be assigned on an exclusive basis: *Provided, however,* That additional channels in Bands A and B may be assigned on a non-exclusive basis upon a satisfactory showing that additional channels are necessary and that such additional channels, if assigned, will not be needed to provide an exclusive channel to some other licensee in the same area within the foreseeable future. The number of channels in Bands C and D that may be assigned to a licensee in a single area is not restricted.

(e) Non-exclusive channel assignments are subject to withdrawal without advance notice to provide an exclusive channel assignment to a licensee pursuant to the provisions of paragraph (b) of this section. The Commission reserves the right to select the non-exclusive channel assignment to be withdrawn; however, withdrawals will normally be made in the following order:

(1) The most recent channel assignment to the licensee having the greatest number of assignments in Band A, B, or D. Determination as to whether the withdrawal shall be made in Band A, Band B, or Band D will be based on the design of the equipment proposed to be used by the applicant for whom the exclusive channel is required.

(2) Where two or more licensees are assigned individually an equal number of non-exclusive channels in the same band and a greater number of channels in that band than any one of the other licensees, the assignment of most recent date.

(3) In all other cases the assignment of most recent date of a non-exclusive channel.

(f) The use of frequencies in the bands 1990–2110 Mc, 6875–7125 Mc, and 12,700–13,200 Mc by television inter-city relay stations shall be on a secondary basis and is subject to the condition that no harmful interference is caused to stations operating in accordance with the table of frequency allocations in § 2.104(a) of this chapter.

(g) In the event that a television broadcast station licensee engages a communications common carrier to provide television pickup or television STL service, the frequencies available to that licensee may be assigned to the communications common carrier for the purpose of providing such service to that licensee. For the purpose of applying the provisions with respect to exclusive channel assignments and the withdrawal of channels, channels assigned to communications common carriers to provide television pickup or television STL service to an individual television broadcast station licensee will be considered to be assigned to that television broadcast licensee.

§ 4.603 Sound channels.

(a) The frequencies listed in § 4.602(a) may be used for the simultaneous transmission of the picture and sound portions of television broadcast programs and for cue and order circuits, either by means of multiplexing or by the use of a separate transmitter within the same channel. When multiplexing of a television STL station is contemplated, consideration should be given to the require-

ments of § 3.687 of this chapter regarding the overall system performance requirements. Applications for new television pickup, television STL, and television inter-city relay stations shall clearly indicate the nature of any multiplexing proposed. Multiplexing equipment may be installed on licensed equipment without further authority of the Commission: *Provided,* That the Commission in Washington, D.C., and the Commission's engineer-in-charge of the radio district in which the station is located shall be promptly notified of the installation of such apparatus: *And provided further,* That the installation of such apparatus on a television STL station shall not result in degradation of the overall system performance of the television broadcast station below that permitted by § 3.687 of this chapter.

(b) Any television STL station or television inter-city relay station used for the transmission of the sound portion only of television program material and for which there was outstanding a valid construction permit or license on April 16, 1958, specifying operation on any frequency between 890 Mc and 940 Mc may continue to be operated on such frequencies for the remainder of the term specified in such authorization and may, upon appropriate application therefor, be granted a renewal of license subject to the condition that no harmful interference shall be caused to the radiopositioning service operating in the band 890–942 Mc and subject to the further condition that the licensee must accept any interference which may be caused by the operation of radiopositioning stations in the band 890–942 Mc and industrial, scientific, and medical (ISM) equipment operating in the band 890–940 Mc.

(c) Remote pickup broadcast stations may be used in conjunction with television pickup stations for the transmission of the aural portion of television programs or events that occur outside a television studio and for the transmission of cues, orders, and other related communications necessary thereto. The rules governing remote pickup broadcast stations are contained in Subpart D of this part.

§ 4.604 Frequency selection to avoid interference.

(a) Applicants for new television pickup, television STL, and television inter-city relay stations shall endeavor to select frequency assignments which will be least likely to result in mutual interference with other licensees in the same area. Consideration should be given to the relative locations of receiving points, normal transmission path, and nature of the contemplated operation.

(b) Because of the more or less continuous nature of the operation of television STL stations, frequency assignments to such stations will normally be designated as the exclusive channel of the licensee pursuant to § 4.602(b).

(c) Where two or more licensees are assigned a common channel for television pickup, television STL, or television inter-city relay purposes in the same area and simultaneous operation is contemplated, they shall take such steps as may be necessary to avoid mutual interference. If a mutual agreement to this effect cannot be reached, the Commission shall be notified and it will take such action as may be necessary, including time-sharing arrangements, to assure an equitable distribution of available facilities.

ADMINISTRATIVE PROCEDURE

§ 4.621 Cross reference.

See §§ 4.11 to 4.16.

§ 4.631 Purpose of television auxiliary stations.

(a) The license of a television pickup station authorizes the transmission of program material, orders concerning such program material, and related communications necessary to the accomplishment of such transmissions, from the scenes of events occurring in places other than a television studio, to its associated television broadcast station, to such other stations as are broadcasting the same program material, or to the network or networks with which the television broadcast station is affiliated. Television pickup stations may be operated in conjunction with other television broadcast stations not aforementioned in this paragraph: *Provided,* That the transmissions by the television pickup station are under the control of the licensee of the television pickup station and that such operation shall not exceed a total of 10 days in any 30-day period. Television pickup stations may be used to provide temporary studio-transmitter links or intercity relay circuits consistent with § 4.632 without further authority of the Commission: *Provided, however,* That prior Commission authority shall be obtained if the transmitting antenna to be installed will increase the height of any natural formation or man-made structure by more than 20 feet and will be in existence for a period of more than 2 consecutive days.

NOTE: As used in this subpart, "associated television broadcast station" means a television broadcast station licensed to the licensee of the television auxiliary broadcast station and with which the television auxiliary station is licensed as an auxiliary facility.

(b) The license of a television STL station authorizes the transmission of program material, orders concerning such program material, and related communications necessary to the accomplishment of such transmissions, from the studio or studios of the associated television broadcast station to the transmitter of that station. A television STL station may be authorized to operate in the direction from the transmitter to the studio upon a showing that such operation is necessary and that it may be effected without the assignment of frequencies in addition to those available for assignment to the applicant under the rules in this part.

(c) The license of a television intercity relay station authorizes the transmission of program material, orders concerning such program material and related communications necessary to the accomplishment of such transmissions between television broadcast stations for the purpose of simultaneous programming or network broadcasting.

§ 4.632 Licensing requirements.

(a) A license for a television pickup, television STL, or television intercity relay station will be issued only to the licensee of a television broadcast station. A separate application is required for each transmitter and the application shall be specific with regard to the frequency requested. Except as provided in § 4.604(b), the first channel assigned in Band A or Band B to a licensee will be considered to be the exclusive assignment provided in § 4.602(b). Exclusive channel assignments in Band D will be designated only upon request. A licensee may request a change in its exclusive channel assignment only where there are unassigned channels available. In making such changes, the priority set forth in § 4.602(b) will be observed.

(b) A license for a television intercity relay station may be issued in any case where the circuit will operate between television broadcast stations either by means of "off-the-air" pickup and relay or location of the initial relay station at the studio or transmitter of a television broadcast station.

(c) An application for construction permit for a new television pickup station or for renewal of license of an existing station shall designate the television broadcast station with which it is to be operated and specify the area in which the proposed operation is intended.

(d) In case a licensee has two or more television broadcast stations located in different cities, it shall, in applying for a new television pickup station or for renewal of license of an existing station, designate the television broadcasting station in conjunction with which it is to be operated principally, and it shall not thereafter operate the television pickup station in conjunction with another of its television broadcast stations located in a different city for a total of more than 10 days in any 30-day period.

§ 4.633 Temporary authorizations.

(a) Special temporary authority may be granted for the operation, as a television auxiliary broadcast station, of equipment licensed to another television broadcast station, or other class of station, or equipment of suitable design not heretofore licensed. Such authority will normally be granted only for special operation of a temporary nature.

(b) A request for special temporary authority for the operation of a television auxiliary broadcast station may be made by informal application, which shall be filed with the Commission at least 10 days prior to the date of the proposed operation: *Provided,* That an application filed within less than 10 days of the proposed operation may be accepted upon a satisfactory showing of the reasons for the delay in submitting the request.

(c) An application for special temporary authority shall set forth full particulars of the purpose for which the request is made, and shall show the type of equipment, power output, emission,

and frequency or frequencies proposed to be used, as well as the time, date and location of the proposed operation. In the event that the proposed antenna installation will increase the height of any natural formation, or existing man-made structure, by more than 20 feet, a vertical plan sketch showing the height of the structure proposed to be erected, the height above ground of any existing structure, the elevation of the site above mean sea level, and the geographic coordinates of the proposed site, shall be submitted with the application.

(d) A request for special temporary authority shall specify a channel or channels consistent with the provisions of § 4.602: *Provided,* That in the case of events of wide-spread interest and importance which cannot be transmitted successfully on these frequencies, frequencies assigned to other services may be requested upon a showing that operation thereon will not cause interference to established stations: *And provided further,* That in no case will a television auxiliary broadcast operation be authorized on frequencies employed for the safety of life and property.

§ 4.634 Remote control operation.

(a) A television auxiliary station may be operated by remote control provided that such operation is conducted in accordance with the conditions listed below, and provided further that the Commission is notified at least 10 days prior to such operation and that such notification is accompanied by a detailed description of the proposed remote control installation showing the manner of compliance with the following conditions:

(1) The operating position shall be under the control and supervision of the licensee and shall be the place at which a licensed operator meeting the requirements of § 4.665 and responsible for the operation of the transmitter is stationed;

(2) A carrier operated device shall be provided at the operating position which shall give a continuous visual indication when the transmitter is radiating; or, in lieu thereof, a device shall be provided which will give a continuous visual indication when any transmitter control circuits have been placed in a condition to produce radiation;

(3) Facilities shall be provided at the operating position which will permit the operator to turn the transmitter carrier on and off at will; and

(4) The transmitter and all of its operating controls shall be so installed and protected that they are not accessible to other than duly authorized personnel.

(b) The Commission may notify the licensee not to commence remote control operation, or to cancel, suspend, or change the date of beginning for such operation as and when such action may appear to be in the public interest, convenience, and necessity.

§ 4.635 Unattended operation.

(a) Television inter-city relay stations and television STL stations, where the circuit requires the use of more than one STL transmitter, may be operated unattended: *Provided,* That such operation is conducted in accordance with the conditions listed below: *And provided further,* That the Commission is notified at least 10 days prior to the beginning of such operation and that such notification is accompanied by a detailed decription of the proposed installation showing the manner of compliance with the following conditions:

(1) The transmitter is capable of retransmitting by self-actuating means a radio signal received from another radio station or stations;

(2) The transmitter shall be provided with adequate safeguards to prevent improper operation of the equipment;

(3) The transmitter shall be so installed and protected that it is not accessible to other than duly authorized persons;

(4) Appropriate observations shall be made, at intervals not exceeding one hour during the period of its operation, at the receiving end of the circuit by a person holding a valid first or second class radiotelephone operator license who shall immediately institute measures sufficient to assure prompt correction of any condition of improper operation that is observed; and

(5) The station licensee shall remain responsible for the proper operation of the station, and all adjustments or tests during or coincident with the installation, servicing, or maintenance of the station which may affect its proper operation shall be performed by or under the immediate supervision and responsibility of a licensed operator as provided in § 4.665.

(b) The Commission may notify the licensee not to commence unattended operation, or to cancel, suspend, or change the date of the beginning of such operation as and when such action may appear to be in the public interest, convenience, and necessity.

§ 4.636 Power limitations.

Television auxiliary broadcast stations will be licensed with a power output not in excess of that necessary to render satisfactory service. The license for these stations will specify the maximum authorized power. The operating power shall not be greater than necessary to carry on the service and in no event more than 10 percent above the maximum power specified. Engineering standards have not been established for these stations. The efficiency factor for the last radio stage of transmitters employed will be subject to individual determination but shall be in general agreement with values normally employed for similar equipment operated within the frequency range authorized.

§ 4.637 Emission and bandwidth.

(a) Television auxiliary broadcast stations operating on frequencies above 1500 Mc may be authorized to employ any type of emission suitable for the transmission of the visual and accompanying aural signals. The emission of such stations shall be confined to the assigned channel.

(b) Television auxiliary broadcast stations operating on frequencies below 1500 Mc may be authorized to employ either frequency modulation or amplitude modulation, or both, depending upon the equipment employed. The emissions of such stations shall be confined to the assigned channel.

EQUIPMENT

§ 4.651 Equipment changes.

(a) Commission authority, upon appropriate formal application (FCC Form 313) therefor, is required for any of the following equipment changes:

(1) A change of the transmitter as a whole (except replacement with an identical transmitter), or a change in the power output.

(2) A change of frequency assignment.

(3) A change in the location of a television STL or television intercity relay station (except relocation of the equipment within the same building) or a change in the area of operation of a television pickup station.

(4) Any change in the antenna system of a television STL or television intercity relay station which will result in a change of more than 20 feet in the height above ground of the antenna and supporting structure, or that will result in a change of the direction of the main radiation lobe.

(b) Other equipment changes not specifically referred to above may be made at the discretion of the licensee provided that the engineer-in-charge of the radio district in which the station is located, and the Commission at its Washington office, are notified in writing upon the completion of such changes, and provided that the changes are appropriately reflected in the next application for renewal of license of the television auxiliary broadcast station filed by the licensee.

TECHNICAL OPERATION

§ 4.661 Frequency tolerance.

(a) The licensee of a television auxiliary broadcast station shall maintain the operating frequency of its station so that the normal sideband energy shall fall within the assigned channel. If transmission is by asymmetrical sideband operation, suitable filters or other devices shall be employed to insure a minimum of radiated energy outside the assigned channel.

(b) Television STL stations operating on frequencies shown in § 4.603 (b) shall maintain their operating frequency within 0.005 percent of the assigned frequency.

§ 4.662 Frequency monitors and measurements.

The licensee of a television auxiliary broadcast station shall provide means for measuring the operating frequency in order to insure that the emissions are confined to the authorized channel. The date and time of each frequency check, the frequency as measured and a description or identification of the method employed shall be entered in the station log.

§ 4.663 Station inspection.

The licensee of each television auxiliary broadcast station shall make the station available for inspection by rep-

resentatives of the Commission at any reasonable hour.

§ 4.664 Station and operator licenses; posting of.

(a) The station license and any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation of the station shall be posted so that all terms thereof are visible in a conspicuous place in the room in which the transmitter is located: *Provided:*

(1) If the transmitter operator is located at a distance from the transmitter pursuant to § 4.634, the station license shall be posted in the above-described manner at the operating position.

(2) If the station is licensed for mobile operation, the station license or a photo copy thereof shall be affixed to the equipment or kept in the possession of the operators on duty at the transmitter. If a photo copy is used, the original license shall be available for inspection by an authorized government representative.

(b) The original license of each station operator shall be posted at the place where he is on duty: *Provided, however,* That if the original license of a station operator is posted at another radio transmitting station in accordance with the rules governing that class of station and is there available for inspection by an authorized Commission representative, a duly issued verified statement (Form 759) may be posted at the television auxiliary broadcast station in lieu of such original license: *And provided further,* That if the television auxiliary broadcast station is licensed for mobile operation, a duly issued verification card (Form 758-F) attesting to the existence of such original license may be carried on the person of the operator in lieu of the posting of such license or verified statement.

NOTE: The term mobile as here used is intended to include any type of mobile operation.

§ 4.665 Operator requirements.

(a) One or more radio operators holding valid radiotelephone first-class or radiotelephone second-class operator licenses shall be on duty at the place where the transmitting apparatus of any television auxiliary broadcast station is located and in actual charge of its operation: *Provided, however,* That if a station is operated by remote control as provided in § 4.634, such operator or operators must be on duty at the control point in lieu of the transmitting location: *And provided further,* That, in case a station is operated unattended as provided in § 4.635 such an operator shall be on duty at the receiving end of the circuit and shall be responsible for the required observations and the proper operation of the station within the terms of its license.

(b) The licensed operator on duty and in charge of a television auxiliary broadcast station may, at the discretion of the licensee, be employed for other duties or for the operation of another station or stations in accordance with the class of operator license which he holds and the regulations governing such stations; however, such duties shall in nowise interfere with the operation of the television auxiliary broadcast station.

§ 4.666 Antenna structure, marking and lighting.

Where an antenna structure(s) is required to be painted or lighted, see § 17.37, *Inspection of tower lights and associated control equipment;* § 17.39, *Cleaning and repainting;* § 17.40, *Time when lights shall be exhibited.* § 17.41, *Spare lamps;* and § 17.42, *Lighting equipment;* of Part 17 of this chapter (Construction, Marking and Lighting of Antenna Structures).

§ 4.667 Additional orders.

In case the rules contained in this part do not cover all phases of operation or experimentation with respect to external effects, the Commission may make supplemental or additional orders in each case as may be deemed necessary.

§ 4.681 Station logs.

(a) The licensee of each television auxiliary broadcast station shall maintain adequate records of the operation including:

(1) Hours of operation.

(2) Call letters of broadcast station to which program transmitted.

(3) Frequency check.

(4) Pertinent remarks concerning transmission.

(b) Where an antenna structure(s) is required to be illuminated, see § 17.38, *Recording of tower light inspections in the station record,* of Part 17 of this chapter (Construction, Marking and Lighting of Antenna Structures).

(c) Station records shall be retained for a period of two years.

§ 4.682 Station identification.

(a) Each television auxiliary broadcast station shall identify itself by transmitting its call sign at the beginning and end of each period of operation; and during operation, shall identify itself on the hour by transmitting its own call sign or the call sign of the television broadcast station with which it is associated.

(b) Identification transmissions during operation need not be made when to make such transmission would interrupt a single consecutive speech, play, religious service, symphony concert, or any type of production. In such cases, the identification transmission shall be made at the first interruption of the entertainment continuity and at the conclusion thereof.

(c) Where more than one television auxiliary broadcast station is employed in an integrated relay system, the station at the point of origination may originate the transmission of the call signs of all the stations in the relay system.

(d) The transmission of the call sign shall normally employ the type of emission for which the station is authorized, i.e., a visual transmitter shall employ visual identification and an aural transmitter shall employ aural identification: *Provided, however,* When the transmitter is used for visual transmission only, the identifying call sign may be transmitted in international Morse code by keying the radio frequency carrier or a modulating signal impressed on the carrier. The Commission may, at its discretion, specify other methods of identification.

Subpart G—Television Broadcast Translator Stations

DEFINITIONS AND ALLOCATION OF FREQUENCIES

§ 4.701 Television broadcast translator station and primary station.

(a) A television broadcast translator station is a station in the broadcasting service operated solely for the purpose of retransmitting the signals of a television broadcast station or another television broadcast translator station, by means of direct frequency conversion and amplification of the incoming signals and without significantly altering any characteristic of the incoming signal other than its frequency and amplitude, for the purpose of providing television reception to the general public.

(b) A primary station is the television broadcasting station radiating the signals which are retransmitted by a television broadcast translator station.

§ 4.702 Frequency assignment.

(a) An application for a television broadcast translator station shall be specific with regard to the channel requested. One of the following channels may be assigned:

Channel No.	Frequency band	Visual carrier frequency	Aural carrier frequency
	Mc.	*Mc.*	*Mc.*
70	806-812	807.25	811.75
71	812-818	813.25	817.75
72	818-824	819.25	823.75
73	824-830	825.25	829.75
74	830-836	831.25	835.75
75	836-842	837.25	841.75
76	842-848	843.25	847.75
77	848-854	849.25	853.75
78	854-860	855.25	859.75
79	860-866	861.25	865.75
80	866-872	867.25	871.75
81	872-878	873.25	877.75
82	878-884	879.25	883.75
83	884-890	885.25	889.75

(b) An applicant for a television broadcast translator station shall endeavor to select a channel on which its operation will not cause interference to other television broadcast translator stations.

(c) A channel listed in paragraph (a) of this section will not be assigned to a television broadcast translator station located:

(1) Within 20 miles of a television broadcast channel assignment on the second, third, fourth, fifth, or eighth channel below or above the requested channel;

(2) Within 55 miles of a television broadcast channel assignment on an adjacent channel;

(3) Within 60 miles of a television broadcast channel assignment on the seventh channel above or below or the fourteenth channel below the requested assignment;

(4) Within 75 miles of a television broadcast channel assignment on the

fifteenth channel below the requested assignment;

(5) Within 155 miles of a television broadcast channel assignment on the same channel as that requested for the television broadcast translator station.

The distances specified above in this paragraph are to be determined with respect to channels having the above relationship between the proposed site of the television broadcast translator station and the Post Office location in any city listed in § 3.606 of this chapter unless the channel shown therein has been assigned to a television broadcast station, in which case the distance shall be determined between the proposed site of the translator and the transmitter site of the television broadcast station. Changes in the Table of Assignments of § 3.606(b) of this chapter may be made without regard to existing or proposed television broadcast translator stations and where such changes result in minimum separations less than those specified above, the licensee of an affected television broadcast translator station shall file an application for a change in channel assignment to comply with the required separations.

(d) No minimum distance separation is specified between television broadcast translator stations operating on the same channel. However, the separation shall in all cases be adequate to prevent mutual interference. Adjacent channel assignments will not be made to television broadcast translator stations intended to serve all or a part of the same area.

§ 4.703 Interference.

(a) An application for a new television broadcast translator station or for changes in the facilities of an existing station will not be granted where it is apparent that mutual interference will result within the area or areas intended to be served by such stations. In general, the licensee of a new television broadcast translator station shall protect existing television broadcast translator stations from interference resulting from its operation.

(b) It shall be the responsibility of the licensee of a television broadcast translator station to correct any condition of interference which results from the radiation of radio frequency energy by its equipment on any frequency outside the assigned channel. Upon notice by the Commission to the station licensee or operator that such interference is being caused, the operation of the television broadcast translator station shall be suspended immediately and shall not be resumed until the interference has been eliminated, or it can be demonstrated that the interference is not due to spurious emissions by the television broadcast translator station: *Provided, however,* That short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

(c) In each instance where suspension of operation is required, the licensee shall submit a full report to the Commission after operation is resumed, containing details of the nature of the interference, the source of the interfering signals, and the remedial steps taken to eliminate the interference.

ADMINISTRATIVE PROCEDURE

§ 4.711 Cross reference.

See §§ 4.11 to 4.16.

LICENSING POLICIES

§ 4.731 Purpose and permissible service.

(a) Television broadcast translator stations provide a means whereby the signals of television broadcast stations may be retransmitted to areas in which direct reception of such television broadcast stations is unsatisfactory due to distance or intervening terrain barriers.

(b) A television broadcast translator station may be used only for the purpose of retransmitting to the general public, on one of the channels provided herein, the signals of a television broadcast station, or of another television broadcast translator station operating on a channel other than the one on which the retransmission is made. The retransmitted signals shall not be significantly altered as to content or technical characteristics other than in frequency and amplitude.

(c) A television broadcast translator station may retransmit the signals of different television broadcast stations or different television broadcast translator stations during different periods of its operation in order to provide programs best suited to the needs of a particular community.

(d) Retransmission of the signals of any station shall be made only in accordance with the provisions of § 4.784.

§ 4.732 Eligibility and licensing requirements.

(a) A license for a television broadcast translator station may be issued to any qualified individual, organized group of individuals, broadcast station licensee, or local civil governmental body upon an appropriate showing that plans for financing the installation and operation of the station are sufficiently sound to insure continuation of the operation for the period of the license.

(b) More than one television broadcast translator station may be licensed to the same applicant whether or not such stations serve substantially the same area upon an appropriate showing of need for such additional stations.

(c) Only one channel will be assigned to each television broadcast translator station. Additional television broadcast translator stations may be authorized to provide additional reception. A separate application is required for each television broadcast translator station and each application shall be complete in all respects.

§ 4.733 [Reserved]

§ 4.734 Remote control operation.

(a) A television broadcast translator station may be operated by remote control, provided that such operation is conducted in accordance with conditions set forth in subparagraphs (1) through (5) of this paragraph.

(1) The control point shall be located on premises under the control and supervision of the licensee or its agent. Facilities shall be provided at the control point to enable the operator to observe the transmissions of the television broadcast translator station at any time, and which will permit the operator to turn the transmitter on and off at will.

(2) An operator holding a commercial radio operator's license of any class issued by the Commission except a Temporary Limited Radiotelegraph Second Class License or an Aircraft Radiotelephone Operator Authorization shall be in charge of this control point and shall observe the transmissions of the television broadcast translator station at the control point within one hour after the start of any period of operation and during operation at intervals of no more than six hours. The operator in charge shall promptly correct any condition of improper operation observed and if unable or not qualified to do so under the provisions of § 4.750(d), shall immediately suspend operation until suitable repairs can be made.

(3) A carrier operated device shall be installed at the control point which shall give a continuous visual indication whenever the transmitter is radiating; or, in lieu thereof, a device shall be provided which will give a continuous visual indication when any transmitter control circuits have been placed in a condition to produce radiation.

(4) The control circuits shall be so designed and installed that failure of any part of the circuit which results in loss of control from the remote control point will place the transmitter in an inoperative condition.

(5) The transmitter and its associated controls shall be so installed and protected that they are not accessible to other than duly authorized persons.

(b) In the event that the control point is not continuously manned by a qualified operator, the transmitter shall be equipped with suitable automatic devices which will place it in an inoperative condition when no signal is available for retransmission. In addition to the automatic and manual controls, a television broadcast translator station may be turned on and off by a time switch.

(c) If remote control is proposed at a new television broadcast translator station, the application for construction permit shall be accompanied by a showing as to the manner of compliance with the above conditions. Any proposal to change a television broadcast translator station from direct control to remote control shall be submitted in the form of an application for modification of existing authorization accompanied by the above showing of compliance.

§ 4.735 Power limitations.

(a) A television broadcast translator station will not be authorized to operate with transmitter output power in excess of the rated power output of the transmitter and in no event shall the rated peak visual power output of the transmitter be in excess of 100 watts. No minimum power is specified for television broadcast translator stations.

(b) No limit is placed upon the effective radiated power which may be obtained by the use of horizontally

or vertically directive transmitting antennas.

§ 4.736 Emissions and bandwidth.

(a) The license of a television broadcast translator station authorizes the transmission of the visual signal by amplitude modulation (A5) and the accompanying aural signal by frequency modulation (F3).

(b) Standard width television channels will be assigned and the emissions of a television broadcast translator station shall be confined to the authorized channel in accordance with the Television Technical Standards contained in Part 3, Subpart E, of this chapter.

(c) Spurious emissions, including radio frequency harmonics, more than 3 Mc above or below the upper and lower edges, respectively, of the assigned channel shall be attenuated no less than 60 decibels below the visual transmitter power. Greater attenuation will be required if such spurious emissions cause interference to any radio service. These requirements shall not be applicable to transmitters installed prior to January 1, 1959: *Provided, however,* That in the event that interference is caused to other radio stations, the licensee shall take such steps as may be necessary to eliminate the interference.

§ 4.737 Antenna location.

(a) An applicant for a new television broadcast translator station or for a change in the facilities of an existing station shall endeavor to select a site which will provide a line-of-sight transmission path to the entire area intended to be served and at which there is available a suitable signal from the primary station or stations. The transmitting antenna should be placed above growing vegetation and trees lying in the direction of the area intended to be served to minimize the possibility of signal absorption by foliage.

(b) A site within 5 miles of the area intended to be served is to be prefered if the conditions in paragraph (a) of this section can be met.

(c) Consideration should be given to accessibility of the site at all seasons of the year and to the availability of facilities for the maintenance and operation of the television broadcast translator station.

(d) The transmitting antenna should be located as near as is practical to the transmitter to avoid the use of long transmission lines and the associated power losses.

(e) Consideration should be given to the existence of strong radio frequency fields from other transmitters at the translator site and the possibility that such fields may result in the retransmission of signals originating on frequencies other than that of the primary station.

EQUIPMENT

§ 4.750 Equipment and installation.

(a) An application for construction permit for a new television broadcast translator station or for changes in the facilities of an existing station shall specify equipment which has been type approved by the Commission.

(b) Type approval will be granted only after tests have been made at the Commission's Laboratory, Laurel, Maryland. Manufacturers may submit a production model for type approval and such approval, if granted, will be considered to apply to all identical models manufactured under that type number. No change, either mechanical or electrical, may be made in any type approved apparatus without prior approval of the Commission upon appropriate application therefor. Type approval may be withdrawn at any time if the apparatus fails to meet the requirements under which type approval was granted.

(c) Type approval will be granted only if the apparatus meets the following requirements:

(1) The frequency converter and associated amplifiers shall be so designed that the electrical characteristics of the incoming signal will not be altered significantly upon retransmission except as to frequency and amplitude.

(2) The overall characteristics of the apparatus shall be such that emissions on any discrete frequency more than 3 Mc above or below the upper and lower limits, respectively, of the assigned channel shall be attenuated no less than 60 decibels below the visual transmitted power, regardless of whether such emissions are generated within the translator or are produced as the result of an external signal introduced into the input circuits of the translator apparatus.

NOTE: These requirements shall not be applicable to transmitters installed prior to January 1, 1959: *Provided, however,* That in the event that interference is caused to other radio stations, the licensee shall take such steps as may be necessary to eliminate the interference. Type approvals granted prior to September 1, 1958, will be designated as Limited Type Approval. Such approval will be granted only if it is found that reasonable precautions have been taken in the design of equipment, to minimize interference resulting from spurious emissions.

(3) The local oscillator employed in the frequency converter shall be sufficiently stable that, subject to variations in ambient temperature between −15° and +55° Centigrade and power main voltage variations of 15 percent, its frequency will not vary more than 0.01 percent.

(4) The translator shall be so designed and adjusted that its overall characteristics will remain essentially linear under all conditions of operation. It shall be equipped with suitable automatic circuits to maintain a constant output under conditions where the intensity of the received signal varies 20 decibels. If a manual adjustment is provided to compensate for differing average signal intensities which may be encountered in various locations and installations, provision shall be made for determining the proper setting of the manual adjustment by means of a meter or meter jack to measure direct current or voltage of appropriate circuits in the translator. If improper adjustment of the manual control could result in improper operation of the translator, a label shall be affixed at the adjustment control bearing a suitable warning.

NOTE: These requirements shall not be applicable to transmitters installed prior to January 1, 1959: *Provided, however,* That in the event that interference is caused to other radio stations, the licensee shall take such steps as may be necessary to eliminate the interference. Type approvals granted prior to September 1, 1958, will be designated as Limited Type Approval. Such approval will be granted only if it is found that reasonable precautions have been taken in the design of equipment, to minimize interference resulting from spurious emissions.

(5) The tube or tubes employed in the final radio frequency amplifier shall be of the proper rating to supply the rated power output. The rated maximum peak visual output power of the translator shall not be greater than 100 watts. The translator shall be capable of delivering the rated power in continuous service when driven with an input signal modulated by a video waveform corresponding to a black picture and a sound signal power equal to 50 percent of the peak visual power. Translators rated at more than 10 watts maximum peak visual power output shall be equipped with a suitable device for indicating the peak visual power output. Where the composite visual and aural signal powers are measured together, the output indicating device shall be calibrated in terms of the peak visual power component of the combined visual and aural signals when the input television signal is modulated by a waveform corresponding to a black picture and when the sound signal power is equal to 50 percent of the peak visual power.

(6) The apparatus shall be equipped with suitable automatic devices which will place it in an inoperative condition in the absence of a visual and aural signal from the primary station. Such automatic devices may be provided with reasonable time constants to prevent momentary failures of the incoming signal from interrupting the operation.

(7) In general, the transmitter shall be mounted on racks and panels or in totally enclosed frames protected as required by Article 810 of the National Electrical Code.

(8) (i) Any manufacturer desiring to submit a translator for type approval shall supply the Commission with full specification details (two sworn copies) as well as the test data specified in this section. If this information appears to meet the requirements of the rules, shipping instructions will be issued to the manufacturer. The shipping charges to and from the Laboratory at Laurel, Maryland, shall be paid for by the manufacturer. Approval of a translator will only be given on the basis of the data obtained from a sample translator submitted to the Commission for test.

(ii) In approving a translator upon the basis of the tests conducted by the Laboratory, the Commission merely recognizes that the type of translator has the inherent capability of functioning in compliance with the rules, if properly constructed, maintained, and operated.

(iii) Additional rules with respect to withdrawal of type approval, modification of type approved equipment, and limitations on the findings upon which

type approval is based are set forth in Part 2, Subpart F, of this chapter.

(d) The installation of a television broadcast translator station shall be made only by, or under the direct supervision of, a qualified electronics engineer, and any repairs or adjustments made during or subsequent to the installation, which could result in improper operation, shall be made by or under the direct supervision of an operator holding a valid first or second class radiotelephone operator's license issued by the Commission.

(e) The choice of transmitting and receiving antennas is left to the discretion of the applicant. In general, the transmitting antenna should be designed to provide maximum signal over the area intended to be served and to minimize radiation over other areas, particularly those in which interference could be caused to the reception of other stations. The Commission reserves the right to require the use of suitable directive transmitting antennas in order to permit the assignment of the same channel to two or more television broadcast translator stations located in the same general area. An application for construction permit for a new television broadcast translator station or for changes in the facilities of an existing station, shall supply complete details of the proposed receiving and retransmitting antenna systems, including an accurate plot of the field pattern of the transmitting antenna, if directive.

§ 4.751 Equipment changes.

(a) No change, either mechanical or electrical, may be made in type approved apparatus except upon instructions of the manufacturer of the equipment, based upon Commission approval for the change granted to the manufacturer in accordance with § 4.750(b).

(b) Formal application (FCC Form 346) is required for any of the following changes:

(1) Replacement of the transmitter as a whole, except by one of an identical type.

(2) A change in the transmitting antenna system, including the direction of radiation, directive antenna pattern, or transmission line.

(3) An increase in the overall height of the antenna above ground of more than 20 feet or which will result in an overall height above ground of more than 170 feet.

(4) A change of the control point of a remotely controlled television broadcast translator station or any change in the control circuits.

(5) Any change in the location of the transmitter except a move within the same building or upon the same tower or pole, and any horizontal change in the location of the transmitting antenna in excess of 500 feet.

(6) A change of frequency assignment.

(7) A change of authorized operating power.

(8) A change of the primary TV station or stations being retransmitted.

(c) Other equipment changes not specifically referred to above may be made at the discretion of the licensee, provided that the Engineer in Charge of the radio district in which the television broadcast translator station is located and the Commission's Washington, D.C., office, are notified in writing upon completion of such changes, and provided, further, that the changes are appropriately reflected in the next application for renewal of license of the television broadcast translator station.

TECHNICAL OPERATION

§ 4.761 Frequency tolerance.

The licensee of a television broadcast translator station shall maintain the visual carrier frequency and the aural center frequency at the output of the translator within 0.01 percent of its assigned frequencies when the primary station is operating exactly on its assigned frequencies. This tolerance shall not be exceeded at times when the primary station is not on its assigned frequencies by more than the amount of the departure by the primary station.

§ 4.762 Frequency monitors and measurements.

(a) The licensee of a television broadcast translator station is not required to provide means for measuring the operating frequencies of the transmitter. However, only equipment having the required stability will be approved for use at a television broadcast translator station.

(b) In the event that a television broadcast translator station is found to be operating beyond the frequency tolerance prescribed in § 4.761, the licensee shall promptly suspend operation of the translator and shall not resume operation until the translator has been restored to its assigned frequencies. Adjustment of the frequency determining circuits of a television broadcast translator station shall be made only by a qualified person in accordance with § 4.750(d).

(c) The licensee of a television broadcast translator station may, at its discretion, provide means for comparing the frequency of the translator with an external frequency source of known accuracy as a preventive measure to avoid unnecessary interruptions to service.

§ 4.763 Time of operation.

(a) A television broadcast translator station is not required to adhere to any regular schedule of operation. However, the licensee of a television translator station is expected to provide a dependable service to the extent that such is within its control and to avoid unwarranted interruptions to the service provided.

(b) If causes beyond the control of the licensee require that a television broadcast translator station remain inoperative for a period in excess of 10 days, the Engineer in Charge of the radio district in which the station is located shall be notified promptly in writing, describing the cause of failure and the steps taken to place the station in operation again, and shall be notified promptly when the operation is resumed.

(c) Failure of a television broadcast translator station to operate for a period of 30 days or more, except for causes beyond the control of the licensee, shall be deemed evidence of discontinuance of operation and the license of the station will be cancelled.

(d) A television broadcast translator station shall not be permitted to radiate during extended periods when signals of the primary station are not being retransmitted.

§ 4.764 Station inspection.

The licensee of a television broadcast translator station shall make the station and the records required to be kept by the rules in this subpart available for inspection by representatives of the Commission.

§ 4.765 Posting of station and operator licenses.

(a) The station license and any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation shall be posted in a conspicuous place in the room in which the transmitter is located so that all terms thereof are visible; *Provided:*

(1) If the transmitter is operated by remote control pursuant to § 4.734, the station license shall be posted in the above described manner at the control point.

(2) If the transmitter is installed so as to be exposed to the elements and posting of the license would result in its being so exposed, the license or a photo copy thereof may be kept in the possession of the operator in charge of the transmitter. If a photo copy is used, the original license shall be conveniently available for inspection by a representative of the Commission.

(b) The original of each station operator license shall be posted at the place where he is on duty: *Provided, however,* That if the original license of a station operator is posted at another radio transmitting station in accordance with the rules governing that class of station and is there available for inspection by a representative of the Commission, a verification card (Form 758-F) is acceptable in lieu of the posting of such license: *Provided further, however,* That if the operator in charge holds a restricted radiotelephone operator permit of the card form (as distinguished from the diploma form), he shall not post that permit but shall keep it in his personal possession.

§ 4.766 Operator requirements.

(a) The actual operation of the transmitting apparatus at a television broadcast translator station shall be carried on only by a person holding a valid commercial radio operator's license or permit of any class issued by the Commission except a Temporary Limited Radiotelegraph Second-Class License or an Aircraft Radiotelephone Operator Authorization who shall provide supervision to no less extent than that required by § 4.734 and who shall be responsible for the proper operation of the apparatus with respect to those functions under his control. This responsibility, however, shall in no way relieve the licensee of its responsibility for the proper operation of the station.

(b) Any repairs or adjustments to a television broadcast translator station which might result in improper operation of the equipment shall be made only

by or under the direct supervision of a person holding a valid first or second class radiotelephone operator's license issued by the Commission.

(c) The licensed operator on duty and in charge of a television broadcast translator station may, at the discretion of the licensee, be employed for other duties or for the operation of another station or stations in accordance with the class of license which he holds and the rules and regulations governing such stations. However, such duties shall in nowise interfere with the operation of the television broadcast translator station.

§ 4.767 Marking and lighting of antenna structures.

The marking and lighting of antenna structures employed at a television broadcast translator station, where required, will be specified in the authorization issued by the Commission. Part 17 of this chapter sets forth the conditions under which such marking and lighting will be required and the responsibility of the licensee with regard thereto.

§ 4.768 Additional orders.

In case the rules contained in this part do not cover all phases of operation or experimentation with respect to external effects, the Commission may make supplemental or additional orders in each case as may be deemed necessary.

§ 4.769 Copies of rules.

The licensee of a television broadcast translator station shall have current copies of Part 3, Part 4, and Part 17 of this chapter available for use by the operator in charge, and is expected to be familiar with those rules relating to the operation of a television broadcast translator station. Copies of the Commission's rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington 25, D.C., at nominal cost.

OPERATION

§ 4.781 Station records.

(a) The licensee of a television broadcast translator station shall maintain an operating log showing the following:

(1) Hours of operation.

(2) Call letters, channel, and location of primary station or stations.

(3) Time of periodic observation required by § 4.734(a)(2), and operating conditions signed by the operator making the observation.

(4) A record of all repairs, adjustments, maintenance, tests, and equipment changes, showing the date of such events, the name and qualifications of the person performing the operation, and a brief description of the matter logged.

(b) Where an antenna structure is required to be illuminated, see § 17.38 of this chapter.

(c) The operating log shall be made available upon request to any authorized representative of the Commission.

(d) Station records shall be retained for a period of two years.

§ 4.782 [Reserved]

§ 4.783 Station identification.

(a) The call sign of a television broadcast translator station shall be transmitted in international Morse Code by means of an automatic keying device, at the beginning and end of each period of operation and during operation, within 5 minutes of the hour and half hour. This transmission may be accomplished either by turning the visual and aural carriers of the translator on and off in the proper sequence or by superimposing an audio frequency tone containing the telegraphic identification, on the visual and aural carriers radiated by the translator. The modulation level of the identifying signal shall not be less than 30 percent of the aural signal.

(b) The Commission may, in its discretion, specify other methods of identification.

(c) Call signs for television broadcast translator stations will be made up of the initial letter K or W followed by the channel number assigned to the translator and two letters. The use of the initial letter will generally follow the pattern used in the broadcast service, i.e., stations west of the Mississippi River will be assigned an initial letter K and those east of the Mississippi River the letter W. The two letter combinations following the channel number will be assigned in order and requests for the assignment of particular combinations of letters will not be considered.

§ 4.784 Rebroadcasts.

(a) The term "rebroadcast" means the reception by radio of the programs or other signals of a radio or television station and the simultaneous or subsequent retransmission of such programs or signals for direct reception by the general public.

(b) The licensee of a television broadcast translator station shall not rebroadcast the programs of any television broadcast station or other television broadcast translator station without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. The Commission shall be notified of the call letters of each station rebroadcast and the licensee of the television broadcast translator station shall certify that express authority has been received from the licensee of the station whose programs are retransmitted.

(c) A television broadcast translator station is not authorized to rebroadcast the transmissions of any class of station other than a television broadcast station or another television broadcast translator station.

[F.R. Doc. 59-1228; Filed, Feb. 10, 1959; 8:48 a.m.]

PART 9—AVIATION SERVICES

Miscellaneous Amendments

The Commission having under consideration the amendment of Part 9—Aviation Services, of its rules to effect editorial changes arising from the admission of Alaska to statehood; and the discontinuance, by the Commission, of issuing Aircraft Radiotelephone Operator Authorizations; and

It appearing, that for the abovementioned reasons, the public interest would be served by amending Part 9 of the Commission's rules in the manner herein ordered; and

It further appearing, that the amendments adopted herein are editorial in nature; therefore, prior publication of Notice of Proposed Rule Making under the provisions of section 4(a) of the Administrative Procedure Act is unnecessary; and

It further appearing, that since the amendments herein ordered involve no substantive change in the Commission's rules such amendments may be made effective less than 30 days after publication, as provided in section 4(c) of the Administrative Procedure Act; and

It further appearing, that the amendments herein ordered are issued pursuant to the authority contained in sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and section 0.341(a) of the Commission's Statement of Delegations of Authority;

It is ordered, This 30th day of January 1959, that effective February 20, 1959, Part 9—Aviation Services, be amended, as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 303, 48 Stat. 1082, as amended; sec. 5, 66 Stat. 713; 47 U.S.C. 303, 155)

Released: February 6, 1959.

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

Part 9 is amended as follows:

1. That portion of § 9.433 preceding paragraph (a) is amended to read:

§ 9.433 Continental U.S. (excluding Alaska).

Frequencies available for assignment to serve domestic routes in the continental U.S. (excluding Alaska), are as follows:

2. Paragraph (a) of § 9.434 is amended to read:

§ 9.434 Alaska.

(a) The following frequencies are available for assignment to aeronautical enroute stations in Alaska. The provisions of § 9.431(b) do not apply to stations operating on frequencies in accordance with this paragraph.

3411.5 kc 4668.5 kc

§ 9.443 [Amendment]

3. Paragraph (a) of § 9.443 is amended to read:

(a) United States (excluding Alaska). Only those frequencies which are in accordance with § 2.104(a) of this chapter may be authorized for use by aeronautical fixed stations. The applicant shall request specific frequencies within such bands when making an application for an aeronautical fixed station. The avail-

ability for assignment of such frequencies will be determined in the Commission by study of the probabilities of interference to and from existing services assigned on the same or adjacent frequencies, and, if necessary, by appropriate coordination with other agencies. All new assignments of frequencies will be subject to such conditions as may be required to minimize the possibility of harmful interference to existing services.

4. Subparagraph (2), paragraph (b) of § 9.443 is amended to read:

(2) The frequency 4645 kc is available for assignment to aeronautical fixed stations in Alaska. This frequency will only be authorized in conjunction with authorizations for use of the aeronautical enroute frequencies specified in § 9.434(a).

§ 9.447 [Amendment]

5. Subparagraph (1), paragraph (a) of § 9.447 is amended to read:

(1) In any area in the continental United States (excluding Alaska), a maximum of four of the frequencies listed in this paragraph may be assigned to aeronautical operational fixed stations.

§ 9.912 [Amendment]

6. Paragraphs (c) and (f) of § 9.912 are amended to read:

(c) 4507.5 kc, A-1, A-2, A-3 emission, 400 watts maximum power. This frequency is available for assignment to stations in all areas of the continental United States (excluding Alaska), except those listed in paragraph (b) of this section.

(f) 143.91 Mc, A-1, A-2, A-3 emission, 10 watts maximum power. Assignment of this frequency is limited to stations in the continental United States (excluding Alaska).

§ 9.914 [Amendment]

7. Paragraph (c) of § 9.914 is amended to read:

(c) Aircraft radio stations: Aircraft radio stations using radiotelephony shall be operated by persons holding any class of commercial radio operator license or permit.

§ 9.914 [Amendment]

8. Delete subparagraph (7), paragraph (d) of § 9.914.

9. Paragraphs (a) and (b) of § 9.1005 are amended to read:

§ 9.1005 Operator requirements.

(a) An aeronautical advisory station shall be operated, when transmitting during the normal rendition of service, by a person holding a commercial radio operator license or permit of any class.

(b) Aircraft radio stations using radiotelephony, when transmitting during the normal rendition of service, shall be operated by persons holding any class of commercial radio operator license or permit.

[F.R. Doc. 59-1229; Filed, Feb. 10, 1959; 8:49 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

[B.A.I. Order 309, Amdt. 18]

PART 73—SCABIES IN CATTLE

Areas Quarantined

Pursuant to sections 1 and 3 of the act of March 3, 1905, 33 Stat. 1264-1265, as amended, sections 4 and 5 of the act of May 29, 1884, 23 Stat. 32, as amended, and sections 1 and 2 of the act of February 2, 1903, 32 Stat. 791-792, as amended (21 U.S.C. 111-113, 120, 121, 123, 125), the provisions in Part 73, Title 9, Code of Federal Regulations, as amended, are hereby further amended by adding thereto a new § 73.0 to read as follows:

§ 73.0 Notice and quarantine.

Notice is hereby given that cattle in Kansas are affected with scabies, a contagious, infectious, and communicable disease, and the following areas in such State are hereby quarantined because of said disease:

(a) Clark County.
(b) Gove County.
(c) Meade County.

Effective date. The foregoing amendment shall become effective upon issuance.

Hereafter, the restrictions pertaining to the interstate movement of cattle from and through quarantined areas as contained in 9 CFR Part 73, as amended, will apply to these areas. The amendment imposes certain restrictions necessary to prevent the spread of scabies, a communicable disease of cattle, and must be made effective immediately to accomplish its purpose in the public interest. Accordingly, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to the foregoing amendment are impracticable and contrary to the public interest and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

(Secs. 1, 3, 33 Stat. 1264-1265, as amended, secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791-792, as amended; 21 U.S.C. 111-113, 120, 121, 123, 125; interpret or apply secs. 2, 4, 33 Stat. 1264-1265, as amended, secs. 6, 7, 23 Stat. 32, as amended; 21 U.S.C. 115, 117, 124, 126)

Done at Washington, D.C., this 6th day of February 1959.

[SEAL] M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 59-1240; Filed, Feb. 10, 1959; 8:50 a.m.]

Title 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board—Federal Aviation Agency

SUBCHAPTER A—CIVIL AIR REGULATIONS

[Supp. 4]

PART 21—AIRLINE TRANSPORT PILOT RATING

Time Limits for Written Examination

Section 21.15-1(d) provides a specific time limit for the completion of the Airline Transport Pilot Rating written examination. Since the number of hours for completion has been changed on various occasions in the past and may be changed in the future this supplement provides for the designation of the time limits on the examination booklet. This will provide a more flexible method of designating the time limits for an examination and eliminate the need for amendment of this section whenever the examination time limits are changed.

1. Section 21.15-1(d) is revised to read as follows:

§ 21.15-1 Written examination (FAA policies which apply to § 21.15).

* * * * *

(d) *Examination procedures.* The examination sections mentioned in paragraph (b) of this section should be completed within the time prescribed on the examination booklet except that the supervising inspector may, at his discretion, allow extra time in special circumstances. The examination may not be started unless sufficient time remains to complete the appropriate sections of the examination.

This amendment shall become effective on February 16, 1959.

(Sec. 313(a) of the Federal Aviation Act of 1958, Act of August 23, 1958, 72 Stat. 752 (Pub. Law 85-726). Interpret or apply sec. 601, 602, 72 Stat. 775-776)

Issued in Washington, D.C., on February 5, 1959.

E. R. QUESADA,
Administrator.

[F.R. Doc. 59-1226; Filed, Feb. 10, 1959; 8:48 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER B — STATEMENTS OF GENERAL POLICY OR INTERPRETATION NOT DIRECTLY RELATED TO REGULATIONS

PART 784 — SCOPE AND APPLICABILITY OF EXEMPTIONS PROVIDED BY SECTIONS 13(a)(5) AND 13(b)(4) OF THE FAIR LABOR STANDARDS ACT OF 1938 AS AMENDED [1]

In accordance with section 3 of the Administrative Procedure Act (60 Stat. 238, 5 U.S.C. 1002), and pursuant to authority hereinafter cited, Title 29 Code

[1] 29 U.S.C. 201-219.

of Federal Regulations, Part 784 is hereby amended to read as follows:

Sec.
784.0 Introductory statement.
784.1 Guiding interpretative principles.
784.2 Employment in exempt, nonexempt, and noncovered work during a workweek.
784.3 Off or dead season work.
784.4 Addition of foreign ingredients to the aquatic forms of animal and vegetable life.
784.5 General character of the section 13(a)(5) exemption.
784.6 General scope of section 13(a)(5) exemption.
784.7 Office, clerical and maintenance employees.
784.8 Off-shore activities.
784.9 Shore activities—"Loading, unloading, or packing of such products for shipment".
784.10 Processing (other than canning), freezing, and curing.
784.11 Fish and seafood wholesaling.
784.12 Processing or manufacturing operations which are not within the exemption.
784.13 Definition of canning under section 13(b)(4).
784.14 "Necessary preparatory operations".
784.15 "Hermetically sealing and sterilizing or pasteurizing".
784.16 Subsequent operations.
784.17 Exempt and nonexempt employees.

AUTHORITY: §§ 784.0 to 784.17 issued under 52 Stat. 1060 (29 U.S.C. 201–219). Interpret or apply 52 Stat. 1067 (29 U.S.C. 213).

§ 784.0 Introductory statement.

(a) Scope and significance: (1) The purpose of this part is to make available in one place the general interpretations of the Department of Labor pertaining to the exemptions provided in section 13(a)(5) and 13(b)(4) of the Fair Labor Standards Act of 1938, as amended.[2] It is intended that the positions stated will serve as "a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it."[3] These interpretations contain the construction of the law which the Secretary of Labor and the Administrator believe to be correct and which will guide them in the performance of their duties under the Act, unless and until they are otherwise directed by authoritative decisions of the courts or conclude upon the examination of an interpretation that it is incorrect. To the extent that prior administrative rulings, interpretations, practices and enforcement policies relating to sections 13(a)(5) and 13(b)(4) are inconsistent or in conflict with the principles stated in this part, they are hereby rescinded. The interpretations contained herein may be relied upon in accordance with section 10 of the Portal to Portal Act,[4] so long as they remain effective and are not modified, amended, rescinded, or determined by judicial authority to be incorrect.

(2) The Fair Labor Standards Act applies to employees engaged in interstate or foreign commerce or in the production of goods for such commerce, including any closely related process or occupation directly essential to such production. It requires the payment to these covered employees of a prescribed minimum hourly wage rate, and overtime compensation of not less than one and one-half times the employees' regular rates of pay for all hours worked in excess of 40 in a workweek, unless such employees are exempt from one or both of these requirements by virtue of some specific provision of the Act such as section 13(a)(5) or section 13(b)(4).

(3) Neither the minimum wage nor overtime provisions of the Act apply to employees who are exempt under section 13(a)(5). However, employees who come within the scope of section 13(b)(4) must be paid the prescribed minimum wage but need not be paid the statutory overtime compensation.

(4) Section 13(a)(5) applies to "any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing (other than canning), marketing, freezing, curing, storing, or distributing the above products or byproducts thereof;".

(5) Section 13(b)(4) applies to "any employee employed in the canning of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproduct thereof;".[5]

§ 784.1 Guiding interpretative principles.

(a) It is clear that Congress intended the Fair Labor Standards Act to be broad in its scope. "Breadth of coverage is vital to its mission,"[6] and any exemption from its coverage must be narrowly construed and applied only to those employees who are plainly and unmistakably within its terms and spirit. This construction of the exemptions is necessary to carry out the broad remedial objectives for which the Act was passed.[7]

(b) An examination of the terminology in which the exemptions from the general coverage of the Fair Labor Standards Act are stated discloses language patterns which reflect congressional intent. Thus, Congress differentiated as to whether employees are to be exempt because they are employed by a particular employer, employed in a particular type of establishment, employed in a particular industry, or employed in a particular capacity or operation.[8]

(c) The language in both sections 13(a)(5) and 13(b)(4), the legislative history, and court decisions make clear that these exemptions are not to be interpreted as though they were intended to grant an exemption to all employees employed in the fishing industry or in the fish canning industry.[9] By their own terms, the exemptions are applicable only to employees employed in certain specified capacities or occupations. Though a person may be employed in an occupation closely related and directly essential to the catching, processing, or canning of fish so as to bring him within the coverage of the Act, if his activities are not an integral part of the catching, processing, or canning of fish, the respective exemptions would not be available.[10]

§ 784.2 Employment in exempt, nonexempt, and noncovered work during a workweek.

(a) The wage and hour requirements of the Act do not apply to any employee during any workweek in which a portion of his activities falls within section 13(a)(5) if no part of the remainder of his activities is covered by the Act. Similarly, the overtime requirements are inapplicable in any workweek in which a portion of an employee's activities falls within section 13(b)(4) if no part of the remainder of his activities is covered by the Act.

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[2] Under Reorganization Plan No. 6 of 1950 and pursuant to General Order No. 45–A issued by the Secretary of Labor on May 24, 1950, interpretations of the provisions (other than the child labor provisions) of the Act are issued by the Administrator of the Wage and Hour Division. See 15 F.R. 3290.

[3] Sidmore v. Swift & Co., 323 U.S. 134, 138.

[4] 29 U.S.C. 251–262.

[5] Formerly "canning" was included in section 13(a)(5), but the 1949 Amendments explicitly removed "canning" from this section and enacted the separate section 13(b)(4).

[6] Powell v. U.S. Cartridge Co., 339 U.S. 497.

[7] Phillips v. Walling, 324 U.S. 490; Calaf v. Gonzalez, 127 F. 2d 934 (C.A. 1); Bowie v. Gonzalez, 117 F. 2d 11 (C.A. 1); Mitchell v. Stinson, 217 F. 2d 210 (C.A. 1); Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52 (C.A. 8).

[8] See Mitchell v. Stinson, 217 F. 2d 210 (C.A. 1), wherein the court in considering the various types of exemptions contained in the Act stated that the applicability of sections 13(a)(5) and 13(b)(4) depended on the capacity in which the particular employee was acting.

[9] See 83 Cong. Rec. 7443 where the sponsor of the exemption as it finally appeared in the original Act stated: "This amendment is not the same. In the last amendment I was trying to define the fishing industry. I am now dealing with those persons who are exempt." See also 83 Cong. Rec. 7408, 7421–23, 7443; Conf. Rep. No. 1453, 81st Cong. 1st Sess. (1949); U.S. Code Cong. Serv. 1949, Vol. 2 p. 2268; Mitchell v. Stinson, 217 F. 2d 210 (C.A. 1); Dize v. Maddrix, 144 F. 2d 584 (C.A. 4), affirmed 324 U.S. 697.

Compare McComb v. Consolidated Fisheries Co., 174 F. 2d 74 (C.A. 3), which was decided before the Stinson case and before the Supreme Court's decision in the Farmers' Irrigation case, 337 U.S. 755, and also before the enactment of the 1949 amendments. As pointed out in the Stinson decision, the reasoning of the Consolidated Fisheries decision is inconsistent with the legislative history and is therefore "not persuasive" authority (217 F. 2d at 216). Also, the reasoning of the Consolidated Fisheries decision is directly opposite to that of the Supreme Court's subsequent decision in the Farmers' Irrigation case, 337 U.S. at 759–760, in particular Footnote 7, where Dize v. Maddrix is cited with approval.

[10] Mitchell v. Stinson, 217 F. 2d 210 (C.A. 1); Dize v. Maddrix, 144 F. 2d 584 (C.A. 4), affirmed 324 U.S. 697. See also Farmers' Irrigation Co. v. McComb, 337 U.S. 755 wherein the Supreme Court held that the agricultural exemption which is similarly worded must be strictly limited to the particular specified operations, exclusive of activities which, though necessary or even indispensable to the specified operation were not actually a part of the operation itself.

(b) Where an employee, during any workweek, performs work that is exempt under section 13(a)(5) or 13(b)(4), and also performs nonexempt work, some part of which is covered by the Act, the exemption will be deemed inapplicable unless the time spent in performing nonexempt work during that week is not substantial in amount. For enforcement purposes, nonexempt work will be considered substantial in amount if more than 20 percent of the time worked by the employee in a given workweek is devoted to such work. However, where exempt and nonexempt work is performed during a workweek by an employee and is not or cannot be segregated so as to permit separate measurement of the time spent in each, the employee will not be exempt.[11]

(c) The combination of exempt work under section 13(a)(5) and 13(b)(4), or of one of these sections with exempt work under another section of the Act, is permitted. Where a part of an employee's covered work in a workweek is exempt under section 13(a)(5) and the remainder is exempt under another section which grants an exemption from the minimum wage and overtime provisions of the Act, the wage and hour requirements would not be applicable. If the scope of the exemptions is not the same, however, the exemption applicable to the employee is that provided by whichever exemption provision is more limited in extent unless, of course, the time spent in performing work which is nonexempt under the broader exemption is not substantial. For example, an employee may devote part of his workweek to work within section 13(b)(4) and the remainder to work exempt from both the minimum wage and overtime requirements under another section of the Act. In such a case he must receive the minimum wage but is not required to receive time and one-half for his overtime work during that week.[12] Each activity is tested separately under the applicable exemption as though it were the sole activity of the employee for the whole workweek in question. Unless the employee meets all the requirements of each exemption a combination exemption would not be available.

§ 784.3 Off or dead season work.

Generally, work such as the repair and maintenance of fishing equipment and of processing and canning equipment and machinery during the dead or inactive season is not exempt.[13] Consequently, the repair and maintenance of processing and canning machinery and equipment before or after the close of the active season are not exempt. Similarly, the repair of fishing equipment at the end of the active season would be nonexempt work. On the other hand, the repair of fishing equipment such as boats, nets and traps immediately prior to the beginning of the fishing season has a sufficiently close relationship to the exempt operations so as to bring the employees of an employer engaged in fishery operations who are employed in such duties within the exemption. In any event, nonexempt work performed in the inactive season is closely related and directly essential to the production of goods for commerce which takes place during the active season and, therefore, is subject to the provisions of the Act.[14]

§ 784.4 Addition of foreign ingredients to the aquatic forms of animal and vegetable life.

(a) By their terms, sections 13(a)(5) and 13(b)(4) provide no exemption with respect to operations performed on any products other than the aquatic products named in these subsections. Accordingly, neither of the exemptions is applicable to the making of any commodities from ingredients only part of which consist of such aquatic products, if a substantial amount of other products is contained in the commodity so produced.[15] Thus, the canning or processing of codfish cakes, clam chowder, dog food, crabcakes or livestock feed containing aquatic products is often not exempt within the meaning of either section 13(a)(5) or section 13(b)(4).

(b) To exempt employees employed in processing or canning products composed of the named commodities and a substantial amount of ingredients not named in the exemptions would be contrary to the language and purposes of such exemptions which specifically enumerate the commodities on which exempt operations were intended to be performed. Consequently, all operations performed on the mixed products at and from the time of the addition of the foreign ingredients, including those activities which are an integral part of processing or canning, would be nonexempt activities. However, activities performed in connection with the processing (other than canning) of the named aquatic products prior to the addition of the foreign ingredients would be deemed exempt processing under section 13(a)(5). Where the commodity produced contains an insubstantial amount of products not named in the exemption, the handling and preparation of the foreign ingredients for use in the exempt operations would also be considered as exempt activities.

(c) As an enforcement policy in applying the principles stated in this section, if more than 20 percent of a commodity consists of products other than aquatic products named in section 13(a)(5) or 13(b)(4), the commodity will be deemed to contain a substantial amount of such nonaquatic products.

§ 784.5 General character of the section 13(a)(5) exemption.

(a) As indicated by the legislative history, the purpose of the exemption is to except from the minimum wage and overtime provisions of the Act those activities in the fishing industry that are controlled or materially affected by natural factors or elements, such as the vicissitudes of the weather, the changeable conditions of the water, the run of the catch, and the perishability of the products obtained.[16]

(b) The activities enumerated in section 13(a)(5) fall into two general groups. The first group, which embraces "the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, including the going to and returning from work," includes those "off shore" or "trip" activities which have to do with the procurement or appropriation from nature of seafood and other forms of aquatic life, and which depend to a considerable degree on natural factors. The activities described in the latter part of the exemption, embracing "the loading, unloading, or packing of such products for shipment or * * * propagating, processing (other than canning), marketing, freezing, curing, storing or distributing the above products or byproducts thereof," are "shore" activities which in general have to do with the movement of the perishable products to a nonperishable state or to points of consumption. This latter part of the exemption may be considered as intended to implement and supplement the first part by exempting "shore" activities which are necessarily somewhat affected by the same natural factors as the "offshore" or "trip" activities mentioned in the first part of the subsection. These "shore" activities are affected primarily, however, by fluctuations in the supply of the product or by the necessity for consumption or preservation of such products before spoilage occurs.

(c) Activities performed after the conversion of an aquatic product to a nonperishable state cannot form the basis for application of the exemption unless the subsequent operation is an integral part of exempt operations on the aquatic forms of animal and vegetable life mentioned in section 13(a)(5). The exemption is, consequently, not available for the handling or shipping of nonperishable products by an employer who did not commence operations on the product in a perishable state. Thus, employees of dealers in or distributors of such nonperishable products as fish oil and fish meal, or canned seafood, are not within the exemption. Similarly, there is no basis for application of the exemption to employees employed in further processing or manufacturing operations

[11] Mitchell v. Stinson, 217 F. 2d 210 (C.A. 1); Walling v. Public Quick Freezing and Cold Storage Co., 62 F. Supp. 924 (S.D. Fla.).

[12] Cf. Mitchell v. Myrtle Grove Packing Co., 350 U.S. 891; Tobin v. Blue Channel Corp., 198 F. 2d 245 (C.A. 4).

[13] See Maneja v. Waialua Agricultural Co., 349 U.S. 254; Mitchell v. Stinson, 217 F. 2d 210 (C.A. 1); Maisonet v. Central Coloso, 6 Labor Cases (CCH) par. 61,337, 2 WH Cases 752 (D. P.R.); Abram v. San Joaquin Cotton Oil Co., 49 F. Supp. 393 (S.D. Calif.), and Heaburg v. Independent Oil Company, 46 F. Supp. 751 (W.D. Tenn. E.D.).

[14] Farmers' Irrigation Co. v. McComb, 337 U.S. 755; Mitchell v. Stinson, 217 F. 2d 210 (C.A. 1); Bowie v. Gonzalez, 117 F. 2d 11 (C.A.); Weaver v. Pittsburgh Steamship Co., 153 F. 2d 597 (C.A. 6), cert. den. 328 U.S. 858.

[15] Cf. Walling v. Bridgemann-Russell Co., 6 Labor Cases (CCH) par. 61,422, 2 WH Cases 785 (D. Minn.); Miller v. Litchfield Creamery Co., 11 Labor Cases (CCH) par. 63, 247, 5 WH Cases 1039 (N.D. Ind.).

[16] 83 Cong. Rec. 7408, 7443; Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52 (C.A. 8); Walling v. W. D. Haden, 153 F. 2d (C.A. 5), cert. den. 328 U.S. 866.

on products previously rendered nonperishable, such as refining fish oil or handling fish meal in connection with the manufacture of feeds.

(d) In applying the principle stated in paragraph (c) of this section, the Divisions have not asserted that the exemption is inapplicable to the performance of the operations described in section 13(a)(5) on frozen, smoked, salted, or cured fish. They will continue to follow this rule until further clarification from the courts.

(e) As has been noted previously, employees may at times engage in activities which would bring them within the exemption provided by section 13(a)(5) and at other times may engage in activities which would be nonexempt. When this occurs, the principles stated in § 784.2(b) will determine the applicability of the exemption in specific workweeks.

§ 784.6 General scope of section 13(a)(5) exemption.

(a) Despite its comprehensive reach, the legislative history and the court decisions make it clear that the exemption does not extend to every operation performed in the fishing industry. The scope of the named operations or activities is conditioned by the unpredictable natural factors in the industry, the perishability of the aquatic products, and the time when the operations are performed. While an employee may in a sense perform the identical work for the same purpose in two given situations, in one case a relationship may exist to cause the work to be exempt, while in the other case such relationship may be absent, causing work to be nonexempt. For example, the time at which the particular work is performed may in some cases determine whether the work is exempt, such as when certain kinds of work are done during the inactive season as compared to the active season.

(b) The exemption does not apply where the work is not sufficiently closely related to a named operation to be a part of the operation. Clearly, the actual performance of the operations enumerated in the exemption, such as the catching of fish, and the freezing of fish, are within the exemption. Whether other operations or activities are within the exemption depends on their relationship to the enumerated activities.

(c) Only those operations that are an integral part of an enumerated operation are considered sufficiently closely related to the named operation to be a part of it. Generally, the usual duties performed in connection with a named operation are an integral part of the operation. For example, the spreading of ice on fresh fish packed for shipment is part of the packing of fish. Similarly, work which contributes directly to the continuous operation of fishing boats or processing equipment or other exempt activity bears the necessary relationship. On the other hand, such work as making ice for use in packing fish cannot be said to be a part of the packing operations so as to be exempt.[17] The exemption does not extend to the manufacture of products for use in the exempt operations, such as boxes for shipment of fish or rubber boots for fishermen.

§ 784.7 Office, clerical and maintenance employees.

(a) Unless office, clerical and maintenance employees are engaged in activities which are an integral part of the named operations, they are nonexempt. For example, office and clerical employees of a firm which is engaged in operating fishing boats or selling fish are not within section 13(a)(5) except when they perform marketing or distributing activities such as selling, taking and putting up orders, recording sales, taking cash, and making telephone connections for customer or dealer calls. Whether a clerical employee working in a processing plant is exempt likewise depends on the relationship of his activities to the named operations. The work of a talleyman counting fish as they are unloaded at the plant is within the exemption as an integral part of the unloading operation. Bookkeepers, stenographers, typists, file clerks, and others who perform general office work such as posting to ledgers, sending bills and making up payrolls are not within the section 13(a)(5) exemption.

(b) Similarly, such employees as kitchen and restaurant workers who prepare and serve food to the employees engaged in exempt processing operations, laboratory workers who perform research in fishery products, and bus drivers transporting workers to and from the plant are not within the exemption.[18]

(c) The repair and maintenance of the processing plant, whether performed during the "active" or "dead" season, are generally not within section 13(a)(5) because such activities are not sufficiently closely related to the named operations. It follows that employees such as carpenters, repairmen, and janitors engaged in general maintenance work, and watchmen are not exempt. However, if the repairman or other employee is engaged in repairing, oiling or greasing machinery or equipment which is currently used in the actual processing operations or in making repairs in the production room, such as to the floor or around the processing equipment or machinery, which repair is essential to prevent interruption to the processing operation, the exemption would apply. Employees who clean the processing machinery or equipment in order to prevent interruptions or breakdowns are also so closely related to the processing as to be part of it. Similarly, the providing of heat which is used for the exempt processing is an exempt activity.

(d) Certain warehousing activities are ordinarily performed in connection with the processing operations. Articles such as salt, condiments, cleaning supplies, and boxes or other containers, are received and stored in the warehouse for use in connection with the processing operations. The unloading and storing of these ingredients and supplies in the plant or warehouse for subsequent use in the processing operation would not be exempt operations. On the other hand, the delivery of these ingredients or supplies from stock to meet the daily needs of the processing department would be exempt work. For example, assembling boxes to be currently used in packing fish would be exempt, whereas the receiving, unloading and storing of the knocked-down or already formed boxes, or the assembling of boxes for stock to be used at some relatively remote future time, would not be exempt work.

§ 784.8 Off-shore activities.

(a) *In general.* (1) The expression "off-shore activities" is used to describe the category of named operations pertaining to the acquisition from nature of aquatic forms of animal and vegetable life. The "catching, taking, harvesting, cultivating, or farming" of the various forms of aquatic life includes not only the actual performance of the activities, but also the usual duties inherent in the occupations of those who perform the activities. Thus, the fisherman who is engaged in "catching" and "taking" must see to it that his lines, nets, seines, traps and other equipment are not fouled and are in working order. He may also have to mend or replace his lines or nets or repair or construct his traps. Such activities are an integral part of the operations of "catching" and "taking" fish and are exempt.

(2) The replacement, repair, mending or construction of the fisherman's equipment performed at the place of the fishing operation would be exempt. Such activities performed in contemplation of the trip are also within the exemption if the work is closely related both in point of time and causation to the acquisition of the aquatic life. For example, the repair of the nets, or of the vessel, or the building of fish trap frames on the shore immediately prior to the opening of the fishing season would be within the exemption. It is immaterial if such work is performed by the fisherman himself or by some other employee of the fishing organization. However, the exemption would not apply to employees of a manufacturer of supplies nor to employees of independent shops which repair boats and equipment.[19]

(b) *Going to and returning from work.* The phrase "including the going to and returning from work" relates to the preceding named operations which pertain to the procuring and appropriation of seafood and other forms of aquatic life from nature. The expression obviously includes the time spent by fishermen and others who go to and from the fishing grounds or other locations where the aquatic life is reduced to possession. In performing such travel the fishermen may be required to row, guide or sail the boat or otherwise assist in its operation. Similarly, if an employee were digging for clams or other shellfish or gathering seaweed on the sand or rocks it might be necessary to drive a truck or other vehicle to reach his destination. Such activities are exempt within the meaning

[17] See footnote 10 and cases there cited.

[18] See Mitchell v. Stinson, 217 F. 2d 210 (C.A. 1), so holding in an analogous situation under section 13(b)(4).

[19] Dize v. Maddrix, 144 F. 2d 584 (C.A. 4), affirmed 324 U.S. 697.

of this language. However, the phrase does not apply to employees who are not engaged in the acquisition of aquatic animal or vegetable life such as those going to or returning from work at processing or refrigerator plants, or wholesale establishments.

(c) *Trip employees who may be exempt under section 13(a)(14).* Section 13(a)(14) provides an exemption from the minimum wage and overtime provisions of the Act for "any employee employed as a seaman". This exemption applies to employees working aboard vessels whose services are rendered primarily as an aid in the operation of the vessel as a means of transportation. Typically, the exemption extends to members of the crew such as deckhands, sailors, engineers, repairmen, radio operators, firemen, pursers, surgeons, cooks, and stewards. For a further explanation of the seaman's exemption see part 783 of this chapter issued by the Department of Labor.[20]

§ 784.9 Shore activities—"Loading, unloading, or packing of such products for shipment."

The phrase "loading, unloading, or packing of such products for shipment" applies to activities connected with the removal of aquatic products from the fishing vessels and their initial movement to markets or processing plants. Included are such activities as unloading the aquatic products from the vessels, placing the products on conveyors for movement into a processing plant or placing them into boxes, and loading the products on trucks or other transportation facilities for shipment.

§ 784.10 Processing (other than canning), freezing, and curing.

(a) Processing (other than canning), freezing and curing embrace a variety of operations that change the form of the "aquatic forms of animal and vegetable life." They include such operations as filleting, cutting, scaling, salting, smoking, drying, pickling, curing, freezing, extracting oil, manufacturing meal or fertilizer, drying seaweed preparatory to the manufacture of agar, drying and cleaning sponges.[21]

(b) Such operations as transporting aquatic products to the processing plant; moving the products from place to place in the plant; cutting, trimming, eviscerating, peeling, shelling and otherwise working on the product; packing the product; and moving the products from the production line to storage or to the shipping platform are typical of the operations included in the exemption. Removal of waste, such as clam and oyster shells, and operation of processing and packing machinery are also included. As for the application of the exemption to office, maintenance, warehouse and other employees, see the discussion in § 784.7.

(c) As previously indicated in § 784.5, after the character of the aquatic products as taken from nature has been altered by the performance of the enumerated operations so as to render them nonperishable, e.g., drying and cleaning sponges, section 13(a)(5) provides no exemption for any subsequent operations on the preserved products, unless the subsequent operation is an integral part of the exempt operations. The subsequent storing, marketing, or distributing of such preserved products (including products processed during previous weeks or seasons) by the employer who performed the exempt operations on them will be considered an integral part of those exempt operations in those weeks in which he is actively engaged in processing, freezing or curing.

(d) If, on the other hand, the aquatic products, though subjected to a processing operation, are still in a perishable state, the subsequent performance of any of the enumerated operations on the still perishable products will be within the exemption no matter who the employer performing the exempt operations may be. He may be the same employer who performed the prior processing or other exempt operations, another processor, or a wholesaler, as the case may be.

(e) The same would be true where the specified operations are performed on perishable byproducts. For example, fish-reduction operations performed on the inedible and still perishable portions of fish resulting from processing or canning operations, to produce fish oil or meal, would come within the exemption.[22] Subsequent operations on the oil to fortify it would not be exempt, however, since fish oil is nonperishable in the sense that it may be held for a substantial period of time without deterioration.

§ 784.11 Fish and seafood wholesaling.

(a) Section 13(a)(5) provides exemption for employment in "marketing * * * storing, or distributing" the named aquatic products or byproducts. As applied to the wholesaling of fish and seafood, this provision affords exemption to such activities as unloading the aquatic product at the establishment, icing or refrigerating the product and storing it, placing the product into boxes, and loading the boxes on trucks or other transportation facilities for shipment to retailers or other receivers. Transportation to and from the establishment is also included.[23] Office and clerical employees of a wholesaler who perform general office work such as posting to ledgers, sending bills and statements, preparing tax returns and making up payrolls are not exempt. Such activities as selling, taking and putting up orders, recording sales, and taking cash are, however, within the exemption. See § 784.7(a) in this connection.

(b) Employees of a wholesaler engaged in the performance of any of the enumerated operations on fresh fish or fish products will be engaged in exempt work. However, any such operations which they perform on aquatic products which have been canned or otherwise rendered nonperishable are nonexempt in accordance with the principles stated in § 784.5.

§ 784.12 Processing or manufacturing operations which are not within the exemption.

(a) Since the subject matter of the exemption is concerned with "aquatic forms of animal and vegetable life", the courts have held that the manufacture of buttons from clam shells or the dredging of shells to be made into lime and cement are not within the scope of the exemption because the shells are not living things.[24] Similarly, the production of such items as crushed shell and grit, shell lime, pearl buttons, knife handles, novelties, liquid glue, isinglass, pearl essence and fortified or refined fish oil is not within the section 13(a)(5) exemption.

(b) In addition, the exemption would not be applicable to the manufacture of boxes, barrels or ice by a seafood processor for packing or shipping its seafood products or for use of the ice in its fishing vessels. These operations, when performed by an independent manufacturer, would likewise not be exempt.[25]

§ 784.13 Definition of canning under section 13(b)(4).

(a) Section 13(b)(4) provides an exemption from the overtime but not from the minimum wage provisions of the Act for "any employee employed in the canning of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproduct thereof." The enforcement policy set forth in § 784.5(d) with reference to the performance of the operations specified in section 13(a)(5) of the Act on frozen, smoked, salted or cured fish is also applicable to canning under section 13(b)(4).

(b) This section of the Act was adopted in 1949. Unlike section 13(a)(5) which specifies a number of exempt operations, section 13(b)(4) is concerned with only one; namely, "canning". The legislative history of this section explains the type of activities included in that term as follows:[26]

> Under the conference agreement "canning" means hermetically sealing and sterilizing or pasteurizing and has reference to a process involving the performance of such operations. It also means other operations performed in connection therewith such as necessary preparatory operations performed on the products before they are placed in bottles, cans, or other containers to be hermetically sealed, as well as the actual placing of the commodities in such containers. Also included are subsequent operations such as the labeling of the cans or other containers and the placing of the sealed containers in cases or boxes whether such subsequent operations are performed as part of an uninterrupted or interrupted process. It does not include the placing of such products or

[20] 29 CFR Part 783.

[21] Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52 (C.A. 8).

[22] Any operation performed on such fish scraps, an unsegregated portion of which is to be canned, would come within section 13(b)(4) and not section 13(a)(5).

[23] Johnson v. Johnson and Company, Inc., 47 F. Supp. 650 (N.D. Ga.).

[24] Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52 (C.A. 8); Walling v. W. D. Haden, 153 F. 2d 196 (C.A. 5).

[25] Dize v. Maddrix, 144 F. 2d 584 (C.A. 4), affirmed 324 U.S. 697.

[26] House (Conference) Report No. 1453, 81st Cong., 1st Session; 95 Cong. Rec. 14878, 14932-33.

byproducts thereof in cans or other containers that are not hermetically sealed as such an operation is "processing" as distinguished from "canning" and comes within the complete exemption contained in section 13(a)(5).

§ 784.14 "Necessary preparatory operations".

(a) All necessary preparatory work performed on the exempt aquatic products as an integral part of a single uninterrupted canning process is subject to section 13(b)(4) and not to section 13(a)(5).[27] Such activities conducted as essential and integrated steps in the continuous and uninterrupted process of canning are clearly within the definition of "canning" as contemplated by Congress and cannot be viewed in isolation from the canning process as a whole. Exempt preparatory operations include the necessary weighing, cleaning, picking, peeling, shucking, cutting, heating, cooling, steaming, mixing, cooking, carrying, conveying, and transferring to the containers the exempt aquatic products. But the preparatory operations do not include operations specified in section 13(a)(5) pertaining to the acquisition of the exempt products from nature. Therefore, if a canner employs fishermen or others to catch, take, harvest, cultivate or farm aquatic animal and vegetable life, section 13(a)(5) and not section 13(b)(4) would apply to those particular operations.

(b) The mere fact that operations preparatory to canning are physically separated from the main canning operations of hermetically sealing and sterilizing or pasteurizing would not be sufficient to remove them from the scope of section 13(b)(4). If the operations of separate processors are integrated in producing canned seafood products, all employees of such processors who perform any part of the described continuous series of operations to accomplish this result would be "employed in the canning of" such products. Where preparatory operations such as the steaming or shucking of oysters are performed in an establishment owned, operated, or controlled by a canner of seafood as part of a process consisting of a continuous series of operations in which such products are hermetically sealed in containers and sterilized or pasteurized, all employees who perform any part of such series of operations on any portion of such aquatic products for canning purposes are within the scope of the term "canning".

(c) Moreover, preliminary operations performed in a separately owned processing establishment which are directed toward the particular requirements of a cannery pursuant to some definite arrangement between the operators of the two establishments would generally appear to be integrated with the cannery operations within the meaning of the above principles, so that the employees engaged in the preliminary operations in the separate establishment would be employed in "canning" within the meaning of section 13(b)(4) of the Act. Whether or not integration exists in a specific case of this general nature will depend, of course, upon all the relevant facts and circumstances in such case.

(d) The cooling, icing, or refrigeration of the aquatic products in the course of canning does not constitute such a break or discontinuance of the process as to bring the preparatory operations within section 13(a)(5) instead of section 13(b)(4) if the purpose of the refrigeration is to prevent spoilage for a short period, such as over the weekend, or during the transfer or shipment of the prepared products, or directly prior to the opening of the canning season. On the other hand, the freezing of aquatic products to be stored for a protracted or indefinite period for future canning is too remote from the actual canning to be an integral part of that operation and therefore is not within section 13(b)(4) but within section 13(a)(5).

§ 784.15 "Hermetically sealing and sterilizing or pasteurizing".

(a) As previously stated, under the conference agreement, "canning" means hermetically sealing and sterilizing or pasteurizing and a processing involving such operations would constitute canning within the meaning of section 13(b)(4).

(b) Where section 13(b)(4) and section 13(a)(5) operations are intermingled, the former and not the latter exemption applies.[28] Thus, where preparatory operations are performed on fish or seafood, some of which are to be canned and some of which are for processing (other than canning), all the necessary preparatory operations are exempt under section 13(b)(4) until that point in the operations where the commodity is channeled to accomplish the separate objectives, namely, canning or processing. Thereafter, the canning operations would be exempt under section 13(b)(4) and the processing (other than canning) operations would be exempt under section 13(a)(5). For example, all the preparatory activities in a roe canning plant such as any unloading of the fish, cutting off the heads and tails, cleaning and scaling leading up to, and including the extraction of the roe would come within section 13(b)(4), whereas the subsequent boning and filleting of the fish would come within section 13(a)(5), when none of the filleted fish is to be canned.

§ 784.16 Subsequent operations.

Canning, within the meaning of the exemption, includes operations performed after hermetic sealing of the cans or other containers such as labeling of them and placing of them in cases or boxes, which are required to place the canned products in the form in which it will be sold or shipped by the canner. This is so whether or not such operations immediately follow the actual canning operation as a part of an uninterrupted process. Storing and shipping operations performed by the employees of the cannery in connection with its canned products, during weeks in which canning operations are going on, come within the exemption. The fact that such activities relate in part to products processed during previous weeks or seasons would not affect the application of the exemption, provided canning operations such as hermetic sealing and sterilizing, or labeling, are currently being carried on.

§ 784.17 Exempt and nonexempt employees.

(a) Since canning is the only operation named in section 13(b)(4), only those employees whose activities are an integral part of that operation are within the exemption. Thus, employees engaged in placing the fish or seafood into the cans, or operating the machinery that seals the cans or the equipment that sterilizes the canned product are engaged in exempt activities. In addition, can loft workers, those engaged in removing and carrying supplies from the stock rooms for current use in canning operations, and employees whose duty it is to reform cans, when canning operations are going on, for current use and not for the purpose of producing a reserve supply of cans which may be used at a relatively remote time are engaged in exempt activities. Similarly, the repairing, oiling, or greasing during the active season of canning machinery or equipment currently used in the actual canning operations are exempt activities. The making of repairs in the production room such as to the floor around the canning machinery or equipment would also be deemed exempt activities where the repairs are essential to the continued canning operations or to prevent interruptions in the canning operations.

(b) On the other hand, office employees who make up and maintain employment, social security, payroll, and other records such as bills of lading, packing tickets, time cards, and books and ledgers, bus drivers who transport workers to and from the cannery,[29] cooks, kitchen help and waiters who prepare and serve food to the cannery employees, nurses, laboratory workers developing new products, watchmen and general maintenance employees are not considered as being engaged in exempt work. The receiving, unloading, and storing of supplies such as salt, condiments, cleaning supplies, containers, etc., in the plant or warehouse for subsequent use in the canning operations would not be within the exemption. The delivery of these articles from stock to meet the daily needs of the canning operations would, however, be exempt work.

(c) It may be that employees are engaged in the same workweek in performing exempt and nonexempt work. For example, a shop machinist engaged in making a new part to be used in the repair of a machine currently used in canning operations would be doing exempt work. If he also in the same

[27] Mitchell v. Myrtle Grove Packing Company, 350 U.S. 891; Tobin v. Blue Channel Corporation, 198 F. 2d 245 (C.A. 4).

[28] See § 784.2(c).

[29] Mitchell v. Stinson, 217 F. 2d 210 (C.A. 1).

week makes parts to be stocked for use in case of future breakdowns, this work, since it does not directly contribute to continuous operations, would be nonexempt work causing the loss of the exemption if such work occupied a substantial amount (for enforcement purposes, more than 20 percent) of the employee's worktime in that week.[30]

Signed at Washington, D.C., this 5th day of February 1959.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 59-1227; Filed, Feb. 10, 1959; 8:48 a.m.]

Title 21—FOOD AND DRUGS

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

PART 9—COLOR CERTIFICATION

FD&C Yellow Nos. 1, 2, 3, and 4

Correction

In F.R. Doc. 59-1054, appearing at page 883 of the issue for Friday, February 6, 1959, the word "as" in the 11th line of the 3d paragraph should read "at".

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR 927, 996, 1019]

HANDLING OF MILK IN CONNECTICUT; NEW YORK-NEW JERSEY; AND SPRINGFIELD, MASS., MARKETING AREAS

CROSS REFERENCE: For decision with respect to proposed marketing agreement and order and with respect to proposed amendments to tentative marketing agreements and orders, see Part II of this issue.

[7 CFR Part 989]

HANDLING OF RAISINS PRODUCED FROM RAISIN VARIETY GRAPES GROWN IN CALIFORNIA

Modification of Minimum Grade Standards for Packed Raisins

Notice is hereby given that there is being considered a proposal to modify the minimum grade standards for certain packed raisins, as hereinafter set forth. The proposed modification, on the basis of the recommendation of the Raisin Administrative Committee and other information available to the Secretary, is in accordance with the applicable provisions of Marketing Agreement No. 109, as amended, and Order No. 89, as amended (7 CFR Part 989), regulating the handling of raisins produced from raisin variety grapes grown in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

Consideration will be given to data, views, or arguments pertaining thereto which are filed with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., not later than five days after publication of this notice in the FEDERAL REGISTER.

During September 1958, rains fell on the raisins then being produced by the sun-drying of grapes, causing damage to a substantial portion of the raisins in that production. Producers and handlers have made special efforts to sort and recondition damaged lots, and to recover therefrom the maximum quantity of raisins suitable for human consumption. However, the rate of recovery has been below that necessary to prevent additional loss and to meet market demand. The changes in the minimum grade standards, as hereinafter set forth, will facilitate the recovery of such raisins and thus reduce the present shortage in the supply of raisins available for human consumption.

The proposed modification is as follows:

With respect to packed raisins of the following varietal types and continuing in effect until September 1, 1959, the minimum grade standards prescribed in § 989.59(a)(2), as modified (23 F.R. 6374) pursuant to § 989.59(b), are pursuant to the authority contained in § 989.59(b), further modified as follows:

1. With respect to natural (sun-dried) Thompson Seedless raisins, natural (sun-dried) Muscat raisins (other than Seeded (seeds removed)), natural (sun-dried) Sultana raisins, and natural (sun-dried) Zante Currant raisins, the requirements of "U.S. Grade C" or "U.S. Grade B" (as the case may be) referred to in § 989.59(a)(2) are each modified, insofar as operation under this part is concerned, by eliminating therefrom the mechanical injury restrictions and prescribing in lieu therefore the following new requirements:

(a) The raisins shall be fairly free flowing and not more than 10 percent, by weight, of raisins may be raisins that are seriously damaged by mechanical means.

(b) "Raisins that are seriously damaged by mechanical means" means raisins seriously mutilated by tearing, breaking, cutting, or mashing, or individual raisins from which more than one-fourth of the apparent whole raisin is removed.

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

FEBRUARY 6, 1959.

[F.R. Doc. 59-1238; Filed, Feb. 10, 1959; 8:50 a.m.]

[30] See § 784.2 for more detailed discussion.

Commodity Stabilization Service

[7 CFR Part 814]

1959 SUGAR QUOTA FOR THE MAINLAND CANE SUGAR AREA

Notice of Hearing on Proposed Allotment

Pursuant to the authority contained in the Sugar Act of 1948, as amended (61 Stat. 922, as amended) and in accordance with the applicable rules of practice and procedure (7 CFR 801.1 et seq.) and on the basis of information available to me, I do hereby find that the allotment of the 1959 sugar quota for the Mainland Cane Sugar Area is necessary to prevent disorderly marketing and to afford all interested persons an equitable opportunity to market sugar, and hereby give notice that a public hearing will be held in New Orleans, Louisiana, in the Auditorium of the International House, on March 10, 1959, beginning at 10:00 a.m., c.s.t.

The purpose of this hearing is to receive evidence to enable the Secretary of Agriculture to make a fair, efficient and equitable distribution of the abovementioned quota for the calendar year 1959 among persons who process and market sugar produced from sugarcane grown in the Mainland Cane Sugar Area. The preliminary finding made above is based upon the best information now available. It will be appropriate at the hearing to present evidence on the basis of which the Secretary may affirm, modify, or revoke such finding and make or withhold allotment of any such quota in accordance therewith.

In addition, the subjects and issues of this hearing include (1) the manner in which consideration should be given to the statutory factors as provided in sec. 205(a) of the act, and (2) the manner in which marketings within allotments shall be restricted.

It will also be appropriate at the hearing to present evidence on the basis of which the allotment of the quota or proration thereof may be revised or amended by the Secretary for the purposes of (1) allotting any increase, or decrease, in the quota resulting from a change in United States sugar requirements or from the proration of a deficit in the quota of any area; (2) prorating any deficit in the allotment for any allottee; and (3) substituting final data for estimates of such data wherever estimates are used in the formulation of an allotment of the quota.

Issued this 6th day of February 1959.

[SEAL] E. L. PETERSON,
Acting Secretary.

[F.R. Doc. 59-1242; Filed, Feb. 10, 1959; 8:50 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 120]

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

Notice of Filing of Petition for Establishment of Tolerances for Residues of Thiram

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), the following notice is issued:

A petition has been filed by E. I. du Pont de Nemours and Company, Wilmington, Delaware, proposing the establishment of tolerances of 7 parts per million for residues of thiram (tetramethylthiuram disulfide) in or on the raw agricultural commodities peaches and strawberries.

The analytical method proposed in the petition for determining residues of thiram is that of H. L. Pease described in "Determination of Dithiocarbamate Fungicide Residues" published in the Journal of the Association of Official Agricultural Chemists, Volume 40, page 1113 (November 1957).

Dated: February 4, 1959.

[SEAL] ROBERT S. ROE,
Director, Bureau of Biological and Physical Sciences.

[F.R. Doc. 59-1215; Filed, Feb. 10, 1959; 8:46 a.m.]

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition Regarding Establishment of Tolerance for Mineral Oil In or On Meat

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), the following notice is issued:

A petition has been filed by The Dow Chemical Company, Midland, Michigan, proposing the issuance of a regulation to establish a tolerance of 175 parts per million (0.0175 percent) of mineral oil in or on meat, as a migrant from food-wrapping material.

Dated: February 4, 1959.

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

[F.R. Doc. 59-1216; Filed, Feb. 10, 1959; 8:47 a.m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

COLORADO

Notice of Filing of Plat of Survey and Order Providing for Opening of Public Lands

FEBRUARY 5, 1959.

1. Pursuant to authority delegated by B. L. M. Order No. 541 dated April 21, 1954 (19 F.R. 2473), as amended, notice is hereby given that the plat of survey (2 sheets) accepted September 3, 1958, of T. 1 S., R. 1 W., Ute Meridian, Colorado, including lands hereinafter described, will be officially filed in the Land Office, Denver, Colorado, effective at 10:00 a.m., on the 35th day after the date of this notice:

UTE MERIDIAN, COLORADO

T. 1 S., R. 1 W.,
Sec. 28: Lots 1 through 20, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 29: Lots 1, 2, 3, N½, N½S½, SW¼SW¼;
Sec. 30: All;
Sec. 32: Lots 1, 2, N½, E½SW¼, N½SE¼;
Sec. 33: All.

The areas described aggregate 2014.64 acres of public land and 1040 acres of private land.

2. Of the lands described in Paragraph 1, the following have been classified for Small Tract purposes under Colorado Small Tract Classification No. 30. The classification order appeared as Federal Register Document 58-2056, Page 1859 of the March 20, 1958, issue and Federal Register Document 58-2785, pages 2458-2460 of the April 16, 1958, issue. These lands are available only as provided in the above classification orders.

UTE MERIDIAN, COLORADO

T. 1 S., R. 1 W.,
Section 33: NE¼NW¼NE¼, E½NW¼NW¼NE¼, SW¼NW¼NW¼NE¼, W½SE¼NW¼NE¼, SW¼NW¼NE¼, NW¼NW¼SW¼NE¼, S½NE¼NW¼, SE¼SE¼NW¼NW¼, N½SE¼NW¼, N½SE¼SE¼NW¼, SW¼SE¼NW¼, NE¼SW¼NW¼, SE¼NW¼SW¼NW¼, SE¼SW¼NW¼, E½SW¼SW¼NW¼, NW¼NW¼NE¼SW¼, N½NE¼NW¼SW¼, and NE¼NW¼NW¼SW¼.

The areas described aggregate 130 acres.

3. Of the lands described in Paragraph 1 the following are in leases issued under the Small Tract Act of June 1, 1938, (52 Stat. 609; 43 U.S.C. 682a) as amended.

UTE MERIDIAN, COLORADO

T. 1 S., R. 1 W.,
Sec. 28: Lots 11, 14, 15, 16, 17, 19, and E½SE¼SW¼SE¼.

The area described aggregates 32.99 acres.

4. Of the lands described in Paragraph 1, the following lands are privately owned:

UTE MERIDIAN, COLORADO

T. 1 S., R. 1 W.,
Sec. 29: N½NE¼, NW¼ and W½SW¼;
Sec. 30: All;
Sec. 32: W½NW¼.

The area described aggregates approximately 1,040 acres.

5. The following described lands are opened to application, location, selection, and petition as outlined in Paragraph 7 below. No application for these lands will be allowed under the homestead, desert land, small tract, or any other nonmineral public land law, unless the lands have already been classified upon consideration of an application. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified:

UTE MERIDIAN, COLORADO

T. 1 S., R. 1 W.,
Sec. 28, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 18, 20, SW¼NE¼, S½NW¼, SW¼, NW¼SE¼, N½SW¼SE¼, SW¼SW¼SE¼, W½SE¼SW¼SE¼;
Sec. 29 lots 1, 2, 3, S½NE¼, NE¼SW¼, N½SE¼;
Sec. 32, lots 1, 2, NE¼, E½W½, N½SE¼;
Sec. 33, lots 1, 2, 3, 4, 5, 6, N½N½NW¼, SW¼NW¼NW¼, W½SE¼NW¼NW¼, NE¼SE¼NW¼NW¼, W½W½SW¼NW¼, NE¼NW¼SW¼NW¼, S½SE¼SE¼NW¼, SW¼SW¼, S½N½SW¼, S½N½N½SW¼, NW¼NW¼NW¼SW¼, NE¼NW¼NE¼SW¼, N½NE¼NE¼SW¼, NW¼SE¼, NW¼NW¼NW¼NE¼, E½SE¼NW¼NE¼, SW¼NW¼SW¼NE¼, E½NW¼SW¼NE¼, S½SW¼NE¼, NE¼SW¼NE¼.

The area described aggregates 1851.17 acres.

6. The lands described in Paragraph 5 lie southwest of Grand Junction, Colorado. The land drains northeasterly and is cut by numerous steeply sided canyons. The soil is shallow and rocky, supporting a few small pinion-juniper trees and other native vegetation suited to a rainfall of less than nine inches annually. None of the land is suitable for farming.

7. Subject to any existing valid rights and the requirements of applicable law, the lands described in Paragraph 5 are hereby opened to filing of applications, selections and locations in accordance with the following:

a. Applications and selections under the non-mineral public land laws and applications and offers under the Mineral Leasing Laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications, selections and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications under the Homestead, Desert Land, and Small

Tract Laws by qualified veterans of World War II or of the Korean Conflict, and by others entitled to preference rights under the Act of September 27, 1944 (58 Stat. 747; 43 U.S.C. 279–284), as amended, presented prior to 10:00 a.m. on March 13, 1959, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour and before 10:00 a.m. on June 12, 1959, will be governed by the time of filing.

(3) All valid applications and selections under the non-mineral public land laws, other than those coming under paragraphs (1) and (2) above, and applications and offers under the Mineral Leasing laws, presented prior to 10:00 a.m. on June 12, 1959, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The lands will be open to location under the United States Mining laws, beginning 10:00 a.m. June 12, 1959. Persons claiming veteran's preference rights under Paragraph a(2) above must enclose with their applications proper evidence of military or naval service, preferably a complete photostatic copy of the certificate of honorable discharge. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

8. Inquiries concerning these lands shall be addressed to the Manager, Land Office, Bureau of Land Management, 371 New Custom House, P.O. Box 1018, Denver 1, Colorado.

LOWELL M. PUCKETT,
State Supervisor.

[F.R. Doc. 59-1209; Filed, Feb. 10, 1959; 8:46 a.m.]

Fish and Wildlife Service

[Director's Order No. 3, Revised]

ADMINISTRATIVE MATTERS

Delegation of Authority

FEBRUARY 2, 1959.

SECTION 1. *Delegation.* The officers and employees designated in the succeeding sections of this order are severally authorized to the extent stated in each case to exercise the authority of the Director, Bureau of Commercial Fisheries with respect to the administrative matters listed.

SEC. 2. *Advertising.* Authorize the publication of advertisements, notices, or proposals pursuant to section 3728, Revised Statutes (31 U.S.C. 324).

Regional Directors, Assistant Regional Directors, Administrative Officers and Property Management Officers, Regions 1 to 5 inclusive; Area Director, Assistant Area Director, Administrative Officer and Assistant Administrative Officer, Hawaii Area; Area Director, California Area; and Administrative Officers and Property Management Officers, Regions 1, 2, 3, 4, and 6, Bureau of Sport Fisheries and Wildlife.

(b) *Appropriation withdrawals and credits.* Approve SF-1151, Appropriation Transfer Authorization, in connection with non-expenditure transactions made pursuant to section 1110 of the General Appropriation Act, 1951, and Accounting Systems Memorandum No. 9 of the General Accounting Office and Special Letter No. 527 of the Chief Disbursing Officer, Treasury Department: *Provided,* That this authorization shall not extend to SF-1151's in connection with the transfer of funds to an agency not within the Department.

Chief, Division of Administration; and Chief, Division of Administration, Bureau of Sport Fisheries and Wildlife.

(c) *Certifying officers.* Exercise the authority vested in the Secretary of the Interior to designate certifying officers under 31 U.S.C. 826.

Regional Directors and Assistant Regional Directors, Regions 1 to 5 inclusive; Area Director and Assistant Area Director, Hawaii Area; and Area Director, California Area.

(d) *Claims.* Submit direct to the General Accounting Office the original or authentic copies of papers pertaining to claims which may be settled and adjusted only in that office, together with a complete report of all pertinent facts and administrative recommendation.

Chief, Division of Administration, and Chief, Branch of Budget and Finance; and Chief, Division of Administration and Chief, Branch of Budget and Finance, Bureau of Sport Fisheries and Wildlife.

(e) *Contracting Officers' decisions.* Submit direct to the General Accounting Office requests for decisions relative to errors in bids discovered prior to award of contracts.

Chief, Division of Administration, and Chief, Branch of Budget and Finance; and Chief, Division of Administration and Chief, Branch of Budget and Finance, Bureau of Sport Fisheries and Wildlife.

(f) *Disaster assistance.* Authorized and are responsible for the utilization of the resources at their disposal in providing assistance in major disasters upon request and authorization of the Federal Civil Defense Administration.

Regional Directors and Assistant Regional Directors, Regions 1 to 5 inclusive; Area Director and Assistant Area Director, Hawaii Area; and Area Director, California Area.

(g) *Evacuation of employees' families.* Designate or approve the zones from which the immediate families of civilian employees should be evacuated for military or other causes which create imminent danger to life or property, or adverse living conditions seriously affecting the health, safety, or accommodations of such families and, the payment of travel and transportation expenses to locations designated by the said employees or, if such be impossible or impracticable, to locations designated by their immediate families, pursuant to subsection (d) of section 1 of the act of August 2, 1946, as amended (5 U.S.C. 73b-1): *Provided,* That no evacuation shall be authorized or approved for military purposes without orders from the military authorities in charge of the area or place where the families are living: *Provided further,* That no evacuation shall be authorized or approved for nonmilitary purposes unless such action is fully justified by the circumstances, including but not limited to fires, floods, epidemics, earthquakes, or circumstances considered "acts of God."

Regional Directors and Assistant Regional Directors, Regions 1 to 5 inclusive; Area Director and Assistant Area Director, Hawaii Area; and Area Director, California.

(h) *Evidence of violations of laws.* Authorize and approve payments in aggregate total not exceeding the statutory limitation for information or evidence concerning violations of laws administered by the Fish and Wildlife Service.

Chief, Division of Resource Management and Chief, Branch of Alaska Fisheries.

(i) *Excess personal property.* Exercise the authority of the Secretary of the Interior to dispose of and to transfer personal property excess to the needs of the Department of the Interior, including the donation and execution of transfers and deliveries of donable property, in accordance with the Federal Property and Administrative Services Act of 1949, as amended, and regulations issued thereunder by the Administrator of General Services.

(a) *Headquarters.* Chief, Division of Administration; Chief, Branch of Budget and Finance; and Chief, Division of Administration, Chief, Branch of Budget and Finance, and Supply Officer, Bureau of Sport Fisheries and Wildlife.

(b) *Regional offices.* Regional Directors, Assistant Regional Directors, Administrative Officers, and Property Management Officers, Regions 1 to 5 inclusive; Area Director, Assistant Area Director, Administrative Officer and Assistant Administrative Officer, Hawaii Area; Area Director, California Area; and Administrtive Officers and Property Management Officers, Regions 1, 2, 3, 4, and 6, Bureau of Sport Fisheries and Wildlife.

(j) *Excess property for use in territories.* Exercise the authority of the Secretary of the Interior conferred by section 108 of the Interior Department Appropriation Act of 1953 to request transfers to the Department of the Interior without reimbursement or transfer of funds, pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 232), of equipment, material, and supplies, excess to the needs of Federal agencies, when required by this Department for operations conducted in the administration of the Territories and the Trust Territory of the Pacific Islands.

(a) *Headquarters.* Chief, Division of Administration; Chief, Branch of Budget and Finance; and Chief, Division of Administration, Chief, Branch of Budget and Finance and Supply Officer, Bureau of Sport Fisheries and Wildlife.

(b) *Regional Offices.* Regional Directors, Assistant Regional Directors, Administrative Officers and Property Management Officers, Regions 1 to 5 inclusive; Area Director, Assistant Area

Director, Administrative Officer and Assistant Administrative Officer, Hawaii Area; Area Director, California Area; and Administrative Officers and Property Management Officers, Office of the Commissioner, Fish and Wildlife Service, Regions 1, 2, 3, 4 and 6.

(k) *Excess real property improvements.* Dispose of real property improvements, except industrial improvements, having a fair market value of $1,000 or less, located on Government-owned land or on land leased to the Government which Government-owned land or leasehold interest is not excess and is not expected to become excess, pursuant to regulations of the Administrator of General Services.

Regional Directors, Assistant Regional Directors, and Administrative Officers, Regions 1 to 5 inclusive; Area Director, Assistant Area Director, Administrative Officer and Assistant Administrative Officer, Hawaii Area; Area Director, California Area; and Administrative Officers, and Supply Officers, Bureau of Sport Fisheries and Wildlife, Regions 1, 2, 3, 4, and 6.

(l) *Indebtedness of employees.* Determine whether an erroneous payment has been made to an employee and whether the employee is indebted to the United States as a result of such payment in accordance with the Act of July 15, 1954 (68 Stat. 482) and consider objections by employees to such determinations: *Provided,* That the official making a determination in any case may not consider an objection to that determination.

Authorized Certifying Officers, as to determinations of indebtedness only. Regional Directors and Assistant Regional Directors, Regions 1 to 5 inclusive, Area Director and Assistant Area Director, Hawaii Area; Area Director, California Area, as to review of determinations.

(m) *Material inspection.* Exercise the authority of the Secretary of the Interior respecting the establishment and carrying out of material inspection interchange agreements under Personal Property Management Regulation No. 11, dated December 14, 1950, of the General Services Administration, and any amendments thereof.

Regional Directors and Assistant Regional Directors, Regions 1 to 5 inclusive; Area Director and Assistant Area Director, Hawaii Area; and Area Director, California Area.

(n) *Personnel management.* To the extent stated below, exercise the authority of the Secretary with respect to personnel management, including, but not limited to (1) appointments, (2) changes, (3) position classification and pay, (4) separations, (5) designation of persons to administer oaths, (6) travel and transportation expenses incident to transfer, appointment, or death, and (7) designation of employees who are authorized to enforce the Federal laws administered by the Fish and Wildlife Service and who may administer oaths, affirmations and affidavits in connection with such duties; *Provided,* That this delegation shall not include authority to grant allowances to employees stationed in foreign areas; *Provided further,* That this authority does not include authority to approve basic labor agreements, or amendments or terminations of such agreements, negotiated between a bureau or an organizational element thereof, and labor organizations representing employees of the bureau; *Provided further,* That this authority shall not include actions in connection with the following positions:

(a) Positions in the following classes:
(1) Schedule C
(2) Grades 16, 17 and 18 or equivalent
(3) Consultants and experts
(4) Members of boards or commissions

(b) Positions in the following categories:

(1) Heads of primary organizational elements and principal staff officers reporting directly to the head or assistant head of a bureau or office.

(2) Positions, the duties of which require the incumbents to act publicly in advocating new policies and in justifying or defending the governing policies or the basic principles or philosophy which control departmental or bureau policies.

(3) Positions of a technical, professional, or administrative nature which require the incumbents to be headquartered in foreign countries.

(c) Positions which the Secretary alone has appointing authority by statute of Executive Order.

(1) *Headquarters Office.* Chief, Division of Administration, and Chief, Branch of Personnel Management—all of the authority stated above. The Assistant Personnel Officer (Compensation and Labor Relations), Branch of Personnel Management—authority for position classification and pay.

(2) *Regional Office, Region 1.* Regional Director, Assistant Regional Director and Administrative Officer; and Administrative Officer, Bureau of Sport Fisheries and Wildlife—all of the authority stated above in respect to classified positions through Grade 13 and all ungraded positions. This authority is also delegated to the Director of Personnel, Consolidated Administrative Services, Department of the Interior, Portland, Oregon, with authority to that official to redelegate to members of his staff.

(3) *Regional Offices, Regions 2 to 5 inclusive.* Regional Directors, Assistant Regional Directors, Administrative Officers and Personnel Officers; and Administrative Officers and Personnel Officers, Bureau of Sport Fisheries and Wildlife, Regions 2, 3, 4 and 6—all of the authority stated above in respect to classified positions through GS-12 and all ungraded positions.

(4) *Area Offices.* Area Director, Assistant Area Director, Administrative Officer and Assistant Administrative Officer, Hawaii Area; and Area Director, California Area—all of the authority above in respect to classified positions through GS-12 and all ungraded positions. The authority of the Area Director, California Area, is also delegated to the Administrative Officer, Region 1 and the Director of Personnel, Consolidated Administrative Services, Department of the Interior, Portland, Oregon with authority to the letter to redelegate to members of his staff.

(5) *Pribilof Islands.* Manager, St. Paul Island, and Manager, St. George Island—all authority stated above in respect to Aleut resident natives and Aleut non-resident natives employed for duty on the islands.

(6) *Field Units.* Project leaders and field party leaders—The authority stated above in respect to temporary positions with employment tenures not exceeding six months, for which the use of Form DI-353, Notice of Short Term Employment, is authorized.

(o) *Quarters, subsistence and services.* Fix rates for all quarters, subsistence and services furnished to bureau employees, to other Government employees, or to non-Government employees for deduction from compensation of Government employees or charge to non-Government employees.

Regional Directors and Assistant Regional Directors, Regions 1 to 5 inclusive; Area Director and Assistant Area Director, Hawaii Area; and Area Director, California Area.

(p) *Records inspection.* To make determinations with respect to the availability of official records for inspection or copying as authorized by Part 2, Title 43, Code of Federal Regulations: *Provided,* That inspection or copying of records shall be denied in all cases when it is determined that the disclosure would be prejudicial to the interests of the Government.

Officers and employees having custody of official records of the bureau.

(q) *Space in Post Office Buildings.* Exercise the authority of the Secretary of the Interior or of the Department to acquire space in Federal Buildings under control of the Post Office Department.

Regional Directors and Assistant Regional Directors, Regions 1 to 5 inclusive; Area Director and Assistant Area Director, Hawaii Area; and Area Director, California Area.

(r) *Telephone calls.* Make certification with respect to long-distance telephone calls pursuant to 31 U.S.C. 680a.

(1) *Headquarters Office.* Chief, Division of Administration; Chief, Branch of Budget and Finance, and Fiscal Officer, Branch of Budget and Finance; and Chief, Division of Administration, Chief, Branch of Budget and Finance, and Fiscal Officer, Branch of Budget and Finance, Bureau of Sport Fisheries and Wildlife.

(2) *Regional Offices.* Regional Directors and Assistant Regional Directors, Regions 1 to 5 inclusive; Area Director and Assistant Area Director, Hawaii Area; Area Director, California Area; and authorized certifying officers.

(3) *Field.* Project leaders and Chiefs of Field Parties.

(s) *Telephone service.* Authorize or approve in writing payments for telephone service in the private residences of officers and employees of the Department in the field when the nature of the work of the field officers or employees in whose residences such telephone service is maintained requires the use of such service for the efficient conduct of official business of the Department.

Regional Directors and Assistant Regional Directors, Regions 1 to 5 inclusive, Area Di-

rector and Assistant Area Director, Hawaii Area; and Area Director, California Area.

(t) *Testimony of employees.* Employees of the Bureau are authorized to testify in any judicial or administrative proceeding concerning land-condemnation cases arising within the bureau and violations of Federal or State laws in the enforcement of which employees of the Bureau have been authorized to assist (43 C.F.R. 2.20). Advance authorization of the Director is required before giving testimony in all other cases.

(u) *Travel.* To the extent stated below, authorize and approve official travel and transfer of official stations of officers and employees, including experts, consultants and persons serving without compensation, in accordance with the provisions of the Standardized Government Travel Regulations, applicable statutes, regulations of the Bureau of the Budget, Department policies and budgetary limitations, including payment of expenses in connection with the death of an employee in accordance with the Act of July 8, 1940 (5 U.S.C. 103) and advances of funds in accordance with the Act of June 9, 1949 (5 U.S.C. 838): *Provided,* That this delegation shall not include the direction of travel by means of general travel orders and travel for the purpose of attending meetings and conventions of societies and associations.

(1) Chiefs of Divisions of Administration, Biological Research, Industrial Research and Services, and Resource Management.

(2) Authorized certifying officers—In respect to advance of funds only.

SEC. 3. *Redelegation.* The foregoing authorities may not be redelegated, except as specifically provided herein.

SEC. 4. *Limitation.* The foregoing authorizations shall be exercised in strict conformity with applicable laws and regulations, policies and administrative procedures.

SEC. 5. *Revocation.* All prior delegations and redelegations of authorities of the types contained herein are hereby revoked. (Commissioner's Order No. 3, 22 F.R. 8126).

A. W. ANDERSON,
Acting Director.

[F.R. Doc. 59-1208; Filed, Feb. 10, 1959; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

RANGER LIVE STOCK COMMISSION CO. AND STAMFORD LIVE STOCK COMMISSION CO.

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.

Ranger Live Stock Commission Co.
Ranger, Tex.
Stamford Live Stock Commission Co.
Stamford, Tex.

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 5th day of February 1959.

[SEAL] DAVID M. PETTUS,
Director, Livestock Division, Agricultural Marketing Service.

[F.R. Doc. 59-1212; Filed, Feb. 10, 1959; 8:46 a.m.]

HALL COUNTY LIVESTOCK COMMISSION CO.

Deposting of Stockyard

It has been ascertained that the Hall County Livestock Commission Company, Memphis, Texas, originally posted on November 9, 1956, as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer comes within the definition of a stockyard under said act for the reason that it is no longer being conducted or operated as a public market. Accordingly, notice is given to the owners thereof and to the public that such livestock market is no longer subject to the provisions of the act.

Notice or other public procedure has not preceded promulgation of the foregoing rule since it is found that the giving of such notice would prevent the due and timely administration of the Packers and Stockyards Act and would, therefore, be impracticable and contrary to the public interest. There is no legal warrant or justification for not deposting promptly a stockyard which no longer is within the definition of that term contained in said act.

The foregoing is in the nature of a rule granting an exemption or relieving a restriction and, therefore, may be made effective in less than 30 days after publication in the FEDERAL REGISTER. This notice shall become effective upon publication in the FEDERAL REGISTER.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 et seq.)

Done at Washington, D.C., this 5th day of February 1959.

[SEAL] DAVID M. PETTUS,
Director, Livestock Division, Agricultural Marketing Service.

[F.R. Doc. 59-1213; Filed, Feb. 10, 1959; 8:46 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

FRANK R. BAILEY

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER.

A. Deletions: No change.
B. Additions: No change.

This statement is made as of February 1, 1959.

FRANK R. BAILEY.

FEBRUARY 1, 1959.

[F.R. Doc. 59-1221; Filed, Feb. 10, 1959; 8:47 a.m.]

LOUIS A. SCHLUETER

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER.

A. Deletions: No change.
B. Additions: No change.

This statement is made as of February 1, 1959.

LOUIS A. SCHLUETER.

[F.R. Doc. 59-1222; Filed, Feb. 10, 1959; 8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 12697, 12698; FCC 59M-162]

CONTINENTAL BROADCASTING CORP. (WHOA) AND JOSE R. MADRAZO

Order Continuing Hearing

In re applications of Continental Broadcasting Corporation (WHOA), San Juan, Puerto Rico, Docket No. 12697, File No. BP-10489; Jose R. Madrazo, Guaynabo, Puerto Rico, Docket No. 12698, File No. BP-11480, for construction permits.

The Hearing Examiner having under consideration the propriety of changing the date for commencement of the hearing;

It appearing that the hearing is currently scheduled to commence on February 18, 1959; and

It further appearing that a conference was held on February 5 at which the following schedule was adopted: Exchange of exhibits, March 23; further conference, March 31; commencement of hearing, April 14;

Therefore, it is ordered, This 5th day of February 1959, that the hearing is continued from February 18 to March 31, 1959, at which time a further conference will be held.

Released: February 5, 1959.

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

[F.R. Doc. 59-1230; Filed, Feb. 10, 1959; 8:49 a.m.]

[Docket No. 12603; FCC 59M-163]

WILLIAM F. HUFFMAN RADIO, INC. (WFHR)

Order Scheduling Hearing

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

It is ordered, This 5th day of February 1959, that hearing in the above-entitled matter heretofore postponed indefinitely is hereby scheduled to commence at 10:00 a.m., March 17, 1959, in the Commission's offices in Washington, D.C.

Released: February 6, 1959.

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

[F.R. Doc. 59-1231; Filed, Feb. 10, 1959; 8:49 a.m.]

[Docket Nos. 12720, 12721; FCC 59M-161]

VALLEY BROADCASTING CO. AND MINERS BROADCASTING SERVICE, INC.

Order Continuing Hearing

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

The Hearing Examiner having under consideration the above-entitled proceeding and agreements reached by the parties at the prehearing conference held herein on February 5, 1959;

It is ordered, This 5th day of February 1959, that the hearing session presently scheduled for March 17, 1959 is continued until April 7, 1959, at 10:00 a.m.

Released: February 5, 1959.

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

[F.R. Doc. 59-1232; Filed, Feb. 10, 1959; 8:49 a.m.]

[Docket Nos. 12751, 12752; FCC 59-83]

MALRITE BROADCASTING CO. AND DALE WINDNAGEL

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Milton Maltz and Robert Wright d/b as Malrite Broadcasting Co., Tiffin, Ohio, Docket No. 12751, File No. BP-11448; Dale Windnagel, Oak Harbor, Ohio, Docket No. 12752, File No. BP-11953; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 3d day of February 1959;

The Commission having under consideration the above-captioned applications of Milton Maltz and Robert Wright d/b as Malrite Broadcasting, Co., for a construction permit for a new standard broadcast station to operate on 1600 kilocycles with a power of 500 watts, directional antenna, daytime only, at Tiffin, Ohio; and of Dale Windnagel for a construction permit for a new standard broadcast station to operate on 1600 kilocycles with a power of one kilowatt, directional antenna, daytime only, at Oak Harbor, Ohio;

It appearing that, except as indicated by the issues specified below, Malrite Broadcasting Co. is legally, financially, technically and otherwise qualified, and Dale Windnagel is legally, technically and othewise qualified to construct and operate the stations as proposed but that Dale Windnagel has submitted insufficient financial data upon which to determine his financial qualifications; that the simultaneous operation of both proposals would result in mutually destructive interference; and that the interference which would be received by both proposals from Stations WHRV, Ann Arbor, Michigan; WBLY, Springfield, Ohio; and WHLL, Wheeling, West Virginia, may affect more than 10 percent of the population within the respective proposed primary service areas in contravention of § 3.28(c) of the Commission's rules; and

It further appearing that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the applicants were advised by letter dated November 18, 1958, of the aforementioned deficiencies; and

It further appearing that a timely reply was received from each of the applicants; and

It further appearing that on December 18, 1958, the application of Dale Windnagel was amended to include additional financial data and additional engineering data purporting to show that the population which would be affected by interference received by the proposed operation would be less than ten percent; but that the financial data submitted is not sufficient to establish that Dale Windnagel is financially qualified and the areas which would be affected by interference received are greater than shown by the applicant; and

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

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

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

2. To determine whether Dale Windnagel is financially qualified to construct and operate his proposed station.

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

4. To determine whether, because of the interference received, the proposed operations would comply with § 3.28(c) of the Commission rules; and if compliance with § 3.28(c) is not achieved, whether circumstances exist which would warrant a waiver of said section of the rules.

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

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

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

It is further ordered, That the issues in this proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: February 6, 1959.

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

[F.R. Doc. 59-1233; Filed, Feb. 10, 1959; 8:49 a.m.]

[Docket Nos. 12753, 12754; FCC 59-84]

LOUIS W. SKELLY AND MON-YOUGH BROADCASTING CO. (WMCK)

Order Designating Applications For Consolidated Hearing on Stated Issues

In re applications of Louis W. Skelly, Conneaut, Ohio, Docket No. 12753, File No. BP-11725; Mon-Yough Broadcasting Company (WMCK), McKeesport, Pennsylvania, Docket No. 12754, File No. BP-12263; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 3d day of February 1959;

The Commission having under consideration the above-captioned application of Louis W. Skelly, for a construction permit for a new standard broadcast station to operate on 1360 kilocycles with a power of 500 watts, daytime only, at Conneaut, Ohio; and of the Mon-Yough Broadcasting Company for a construction permit to change the facilities of Station WMCK, McKeesport, Pennsylvania, from operation on 1360 kilocycles with a power of one kilowatt, unlimited time, directional antenna, nighttime, to operation on the presently assigned frequency of 1360 kilocycles with a power of one kilowatt, nighttime, directional antenna, 5 kilowatts, day, unlimited time; and

It appearing that, except as indicated by the issues specified below, both applicants are legally, financially, technically and otherwise qualified to operate the proposed stations but that the simultaneous operation of both proposals would result in mutual interference; that the proposed operation of Louis W. Skelly would result in interference to existing operation of Station WMCK, McKeesport, Pennsylvania; that the proposed operation of Mon-Yough Broadcasting Company would result in interference to Stations WCVI, Connellsville, Pennsylvania and WMOD, Moundsville, West Virginia; and that the application of Mon-Yough Broadcasting Company did not contain the proper aerial photograph for a determination regarding compliance with § 3.188 of the Commission rules; and

It further appearing that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the applicants and WCVI and WMOD were advised by letter dated December 18, 1958, of the aforementioned interference; and

It further appearing that both applicants filed timely replies to the Commission's letter; and

It further appearing that, licensees of Stations WCVI and WMOD by letters dated January 14, 1959, and January 16, 1959, requested to be made parties at a hearing on the above applications;

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

1. To determine the areas and populations which would receive primary service from the proposed operation of Louis W. Skelly and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which would be expected to gain or lose primary service from the operation of Station WMCK as proposed and the availability of other primary service to areas and populations.

3. To determine whether the proposed operation of Louis W. Skelly would cause objectionable interference to existing Station WMCK, McKeesport, Pennsylvania, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby and the availability of other primary service to such areas and populations.

4. To determine whether the proposed operation of Station WMCK would cause objectionable interference to Stations WCVI, Connellsville, Pennsylvania, and WMOD, Moundsville, West Virginia, or any other existing standard broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby and the availability of other primary service to such areas and populations.

5. To determine whether the site specified by WMCK complies with § 3.188 of the Commission rules with particular regard to the presence of any structures which may adversely affect the proposed radiation pattern.

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

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

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

It is further ordered, That, the Connellsville Broadcasters, Incorporated, and Miracle Valley Broadcasting Company, Incorporated, licensees of Stations WCVI and WMOD, respectively, are made a party to the proceeding.

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

It is further ordered, That the issues in the above-entitled proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: February 6, 1959.

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

[F.R. Doc. 59-1234; Filed, Feb. 10, 1959; 8:49 a.m.]

[Docket No. 12755; FCC 59-85]

QUAD CITIES BROADCASTING CO.

Order Designating Application for Hearing on Stated Issues

In re application of Gilbert E. Metzger, Louis O. Mitzlaff, John R. Ax and Dennis J. Keller, d/b as Quad Cities Broadcasting Company, Brazil, Indiana, Docket No. 12755, File No. BP-11831; for construction permit.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 3d day of February 1959;

The Commission having under consideration the above-captioned application of Gilbert E. Metzger, et al., d/b as Quad Cities Broadcasting Company, for a construction permit for a new standard broadcast station to operate on 1380 kilocycles with a power of 500 watts, daytime only, at Brazil, Indiana;

It appearing that, except as indicated by the issues specified below, the applicant is legally, financially, technically and otherwise qualified to operate the proposed station but that the proposed operation would cause objectionable interference to Station WTTS, Bloomington, Indiana (1370 kc, 5 kw, DA-2, U); and

It further appearing that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the applicant and the licensee of Station WTTS were advised by letter dated December 9, 1958, of the aforementioned deficiency and that the Commission was unable to conclude that a grant of the application would be in the public interest; and

It further appearing that the applicant filed a timely reply on December 29, 1958, and amended its application by submitting measurements on the radials bearing 302° and 340° from WTTS, but submitted no measurements on the radial bearing 320°, the radial along which maximum interference would be received by WTTS; and that, accordingly, we are of the opinion that said measurement data are not sufficiently pertinent to establish that the instant proposal would not cause objectionable interference to Station WTTS; and

It further appearing that the licensee of Station WTTS, by letter of December 22, 1958, requested a hearing on the instant application; and

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

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

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

2. To determine whether the proposed operation would cause objectionable interference to Station WTTS, Bloomington, Indiana, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

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

It is further ordered, That Sarkes Tarzian, Inc., licensee of Station WTTS, is made a party to the proceeding.

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

Released: February 6, 1959.

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

[F.R. Doc. 59-1235; Filed, Feb. 10, 1959; 8:49 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-17763]

UNITED NATURAL GAS CO.

Order Providing for Hearing and Suspending Proposed Revised Tariff

FEBRUARY 4, 1959.

United Natural Gas Company (United Natural), on January 5, 1959, tendered for filing Fourth Revised Sheet No. 4 and Fifth Revised Sheet No. 5 to its FPC Gas Tariff, Original Volume No. 1, proposing an annual increase in its rates and charges of approximately $410,900, or 3.7 percent, based on sales for the year ending September 30, 1958. United Natural requests an effective date of February 4, 1959, for the proposed rate. The proposed increase is in addition to increased rates of $1,267,300 a year now in effect subject to refund in Docket No. G-12493.

In support of its proposed increased rates and charges, United Natural submitted actual cost data for the year ended September 30, 1958, with adjustments. The adjustments reflect, among other things, (1) increased costs of gas purchased, (2) increases in wage and salary costs, and (3) increases in taxes. United Natural also claims a 6.7 percent rate of return and associate income taxes.

Since United Natural's proposed increase is based primarily on the increased rates and charges proposed by its suppliers, Tennessee Gas Transmission Company, New York State Natural Gas Corporation, Manufacturers Light and Heat Company and Texas Eastern Transmission Corporation, which have been suspended to a future date or are being collected subject to refund, United Natural's filing is subject to the same suspension infirmities. The company requests an effective date of February 4, 1959, for its proposed increased rate, and, in event of suspension, that the suspension period in no event extend beyond May 15, 1959, the date of expiration of the period of suspension of the proposed increased rate of Tennessee Gas Transmission Company in Docket No. G-17166.

The proposed changes in rates, charges, classifications, or services provided for in the tariff sheets tendered by United Natural on January 5, 1958, have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest, and to aid in the enforcement of the provisions of the Natural Gas Act, that the Commission enter upon a hearing concerning the lawfulness of the rates, charges, classifications, and services contained in United Natural's FPC Gas Tariff, Original Volume No. 1 as proposed to be changed by said Fourth Revised Sheet No. 4 and Fifth Revised Sheet No. 5 and that the above-designated tariff sheets and the rates proposed therein be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the rates, charges, classifications and services contained in United Natural's FPC Gas Tariff, Original Volume No. 1, as sought to be amended by the proposed Fourth Revised Sheet No. 4 and Fifth Revised Sheet No. 5 thereto.

(B) Pending such hearing, and decision thereon, Fourth Revised Sheet No. 4 and Fifth Revised Sheet No. 5 to United Natural's FPC Gas Tariff, Original Volume No. 1, are suspended and the use thereof deferred until May 15, 1959, and until such further time as they may be made effective in the manner prescribed by the Natural Gas Act.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 59-1203; Filed, Feb. 10, 1959; 8:45 a.m.]

[Docket No. G-17255]

TEXAS EASTERN TRANSMISSION CORP. AND MISSISSIPPI RIVER FUEL CORP.

Notice of Application and Date of Hearing

FEBRUARY 4, 1959.

Take notice that on December 15, 1958, Texas Eastern Transmission Corporation (Texas Eastern) and Mississippi River Fuel Corporation (Mississippi) filed in Docket No. G-17255 a joint application for a certificate of public convenience and necessity, pursuant to section 7(c) of the Natural Gas Act, authorizing the exchange of natural gas from the date of authorization until December 31, 1959, all as more fully set forth in the application which is on file with the Commission and open to public inspection. A supplement to this application filed by Mississippi on January 6, 1959, is also on file.

From date of authorization until March 1, 1959, Mississippi proposes to deliver to Texas Eastern up to 25,000 Mcf of natural gas per day at 15.025 psia at the existing interconnection point near Karnack, Texas, and up to 1,500 Mcf per day at 15.025 psia at the outlet of the California Company's gasoline plant near Dubach, Louisiana. Between March 1, 1959, and December 31, 1959, Texas Eastern would deliver equal volumes to Mississippi at the same points, 75 percent of the gas received by Texas Eastern to be returned during the period March 1 to September 1, 1959, and the remaining 25 percent to be returned during the period September 1 to December 31, 1959.

The volumes to be exchanged would be those which are available and which the receiving party can receive into the respective systems. No additional facilities would be required by either party.

The proposed exchange results primarily from an increase in production allowables which the Railroad Commission of Texas has put into effect in the Woodlawn Field, Texas, which may obligate Mississippi to take from that field more gas than it can move through its so-called West Gathering Line with possible take-or-pay penalties to Mississippi, as more fully described in the application.

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

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on March 12, 1959, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, un-

less otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before February 27, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 59-1204; Filed, Feb. 10, 1959; 8:45 a.m.]

[Docket No. G-15825]

TENNESSEE GAS TRANSMISSION CO.

Notice of Application and Date of Hearing

FEBRUARY 4, 1959.

Take notice that Tennessee Gas Transmission Company (Applicant), a Delaware corporation with principal place of business at Commerce Building, Houston, Texas, filed an application pursuant to section 7(b) of the Natural Gas Act (Act) in the above-captioned proceeding on August 5, 1958 for permission to abandon service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Heretofore, by order issued on December 23, 1954, in the Matters of Tennessee Production Company, et al., Docket Nos. G-2648, et al., Applicant was granted a certificate of public convenience and necessity in Docket No. G-4226 pursuant to section 7(c) of the Act authorizing Applicant as successor to the interests of Tennessee Production Company to take over and continue the sale of natural gas in interstate commerce from production of the Johnson-Boudreaux lease, West Mermentau Field, Jefferson Davis Parish, Louisiana, to United Gas Pipe Line Company (United) for resale. The contract covering this sale, dated September 10, 1948, is on file as Applicant's Rate Schedule No. 30. Concurrently with the filing of its application to abandon service, Applicant also filed a Notice of Cancellation of its Rate Schedule No. 30.

Applicant now proposes to permanently discontinue the aforesaid sale and delivery of gas to United.

In support thereof, Applicant states that the Johnson-Boudreaux No. 1 well went dry in March of 1958; that sales and deliveries of gas from said well could no longer be continued; and that Applicant's geologists recommended that the well be abandoned based on negative results of a study with respect to economic feasibility to determine other producing possibilities of the well.

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

Take further notice that, pusuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's Rules of practice and procedure, a hearing will be held on March 10, 1959, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the Procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before February 25, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 59-1205; Filed Feb. 10, 1959; 8:45 a.m.]

[Docket No. G-17100]

TEXAS GAS TRANSMISSION CORP.

Notice of Application and Date of Hearing

FEBRUARY 4, 1959.

Take notice that on November 28, 1958, Texas Gas Transmission Corporation (Applicant) filed in Docket No. G-17100 a "budget-type" application for a certificate of public convenience and necessity, pursuant to section 7(c) of the Natural Gas Act, authorizing the construction and operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers in the general area of its existing transmission system from time to time during the 12-month period commencing May 30, 1959,[1] all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The purpose of the present proposal is to augment Applicant's ability to act with reasonable dispatch in contracting for and attaching to its pipeline system new supplies of natural gas in various producing areas generally coextensive with its existing system.

The total cost of all projects for which authorization is sought herein is not to exceed $3,000,000, with no single project to exceed a cost of $400,000.

[1] A similar certificate was issued to Applicant in Docket No. G-14514, limited to a 12-month period commencing May 29, 1958, the date of issuance of the certificate.

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

Take further notice that, pursant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on March 5, 1959, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before February 25, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 59-1206; Filed Feb. 10, 1959; 8:45 a.m.]

[Docket No. G-17764]

PURE OIL CO.

Order Permitting Rate Filing, Providing for Hearing and Suspending Proposed Change in Rates

FEBRUARY 4, 1959.

The Pure Oil Company (Pure Oil) on January 12, 1959, tendered for filing a proposed change in its presently effective rate schedule[1] for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, undated.
Purchaser: Magnolia Petroleum Company.
Rate schedule designation: Supplement No. 34 to Pure Oil's FPC Gas Rate Schedule No. 11.
Effective date: June 22, 1959 (stated effective date is the effective date on which Magnolia's related increase, suspended in Docket No. G-17526, becomes effective).

In support of the proposed revenue-sharing rate increase, Pure Oil merely cites the contract provisions and Magnolia Petroleum Company's (Magnolia) related rate increase.

[1] Present rate previously suspended and is in effect subject to refund in Docket No. G-17542 (Louisiana severance tax increase). Also subject to Commission's order in Docket No. G-14050.

Pure Oil's proposed increase of 5.8 cents from 16.75 cents to 22.55 cents per Mcf is for high pressure gas sold to Magnolia for resale to Transcontinental Gas Pipe Line Corporation (Transco). Pure Oil's contract with Magnolia provides that Magnolia will pay Pure Oil a price equal to that received from Transco by Magnolia less a gathering charge of 1.0 cent per Mcf for high pressure gas and an additional 5.529 cents per Mcf compression charge for low pressure gas. Pure Oil's subject increase is based on a related favored-nation increase filed by Magnolia on December 22, 1958, and suspended by the Commission for five months until June 22, 1959, in Docket No. G-17526. Thus, Pure Oil's instant proposal is premature and subject to rejection pursuant to Section 154.100 of the Commission's Regulations under the Natural Gas Act.

Pure Oil requests (1) that should the Commission suspend Magnolia's increased rate for a period in excess of 90 days, the notice requirement be waived to permit its increase to be filed and (2) that the notice requirement be waived to the extent necessary to permit its change in rate to become effective on the same date Magnolia's increased rate becomes effective. Pure Oil alleges that good cause exists for the granting of its request as such action would result in no increased rates to the consumer but would simply permit Magnolia to pass along to Pure Oil the increased revenues attributable to Magnolia's resale of its gas.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) Good cause has been shown that the 90-day notice requirement provided in the Commission's regulations under the Natural Gas Act be waived to permit the revenue-sharing increase contained in Supplement No. 34 to Pure Oil's FPC Gas Rate Schedule No. 11 to be filed.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Supplement No. 34 to Pure Oil's FPC Gas Rate Schedule No. 11 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) The 90-day notice requirement provided in the Commission's regulations under the Natural Gas Act is hereby waived with respect to Pure Oil's revenue-sharing rate increase contained in Supplement No. 34 to its FPC Gas Rate Schedule No. 11, and said supplement is hereby permitted to be filed.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 34 to Pure Oil's FPC Gas Rate Schedule No. 11.

(C) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until June 23, 1959, or, if later, until such date as the increased rate of Magnolia in Docket No. G-17526 is made effective in the manner prescribed by the Natural Gas Act, and until such further time as Pure Oil's supplement is made effective in the manner prescribed by the Natural Gas Act.

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

(E) Interested State commissions may participate as provided by §§ 1.8 and 1.37(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 59-1207; Filed, Feb. 10, 1959; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. SA-337]

ACCIDENT OCCURRING NEAR TRI-CITY AIRPORT, BRISTOL, TENN.

Notice of Hearing

In the matter of investigation of accident involving aircraft of United States registry N 18941, which occurred near Tri-City airport, Bristol, Tennessee, January 8, 1959.

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, particularly Title VII of said Act, in the above-entitled proceeding that hearing is hereby assigned to be held on Monday, March 2, 1959, at 9:30 a.m. (local time) in the Kingsport Inn, Kingsport, Tennessee.

Dated at Washington, D.C., February 5, 1959.

[SEAL] REID C. TAIT, *Presiding Officer.*

[F.R. Doc. 59-1236; Filed, Feb. 10, 1959; 8:49 a.m.]

[Docket No. 10130]

ALITALIA-LINEE AEREE ITALIANE-S.p.A.

Notice of Hearing

In the matter of the application of Alitalia—Linee Aeree Italiane—S.p.A. for amendment of its foreign air carrier permit.

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, that a hearing in the above-entitled proceeding is assigned to be held on February 11, 1959, at 10:00 a.m., e.s.t., in Room 911, Universal Building, Florida and Connecticut Avenues NW., Washington, D.C., before Examiner Merritt Ruhlen.

Dated at Washington, D.C., February 5, 1959.

[SEAL] FRANCIS W. BROWN, *Chief Examiner.*

[F.R. Doc. 59-1237; Filed, Feb. 10, 1959; 8:50 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 24SF-2409]

PANCAL OIL CORP.

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

FEBRUARY 5, 1959.

I. Pancal Oil Corp. (issuer), a New York corporation, 27 William Street, New York City, New York, filed with the Commission on May 13, 1957, a notification and offering circular relative to a proposed offering of 299,000 shares of its 10¢ par value common stock at $1.00 per share, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) thereof and Regulation A promulgated thereunder.

II. The Commission has reasonable grounds to believe that the terms and conditions of Regulation A have not been complied with in that the issuer has failed to file a report of sales on Form 2-A as required by Rule 260, despite requests from the Commission's staff for such report.

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

Notice is hereby given to Pancal Oil Corp. and to any person having any interest in the matter that this order has been entered, that the Commission upon receipt of a written request within thirty days after the entry of this order will within twenty days after receipt of such request, set the matter down for a hearing at a place to be designated by the Commission for the purpose of determining whether to vacate the temporary suspension order or to enter an order permanently suspending the exemption without prejudice, however, to the consideration and presentation of additional matters at the hearing, that if no hearing is requested and none is ordered by the Commission, the suspension order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission and that notice of the time and place for any

hearing will promptly be given by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 59-1223; Filed, Feb. 10, 1959; 8:48 a.m.]

[File No. 24S-1591]

FAR WEST OIL & EXPLORATION CO.

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

FEBRUARY 5, 1959.

I. Far West Oil & Exploration Co. (issuer), an Oregon corporation, filed with the Commission on January 21, 1958, a notification and offering circular, subsequently filed amendments thereto and on December 30, 1958, filed a revision thereto, relating to an offering of 2,550 shares of its common stock, $100 par value, at $100 per share for an aggregate offering of $255,000 for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) thereof and Regulation A promulgated thereunder.

II. The Commission has reasonable grounds to believe that the revised offering circular and other material filed therewith contain untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, particularly with respect to:

1. The failure to disclose that drilling a test well at a cost of $93,000 on the issuer's relatively small amount of noncontiguous acreage, under the circumstances involves risks not commensurate with the cost of such drilling.

2. The failure to disclose that the overriding royalties to be paid on oil properties to be developed initially by the issuer are in excess of the usual and customary royalties.

3. The failure to disclose that the issuer's directors have little or no experience in the exploration for oil and gas.

4. The failure to disclose that the issuer has not made the additional field and geophysical studies considered necessary and recommended by the issuer's geologist.

5. The inclusion in the financial statements as an asset of $45,000 representing the par value of shares issued to promoters for oil and gas leases, such amount being arbitrary and having no relation to the nominal cost actually paid for such leases by the promoters.

6. The failure to disclose that the proceeds from the offering will be adequate to cover only the drilling of test wells requiring the highest royalty payments on leases subject to forfeiture provisions for failure to drill within specified periods, without regard to the economic feasibility of such drilling.

It is ordered, Pursuant to Rule 261 of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A of securities of Far West Oil & Exploration Co. pursuant to said notification be, and it hereby is, temporarily suspended.

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

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 59-1224; Filed, Feb. 10, 1959; 8:48 a.m.]

[File No. 1-3996]

BUFFALO-ECLIPSE CORP.

Notice of Application To Withdraw From Listing and Registration, and of Opportunity for Hearing

FEBRUARY 5, 1959.

In the matter of Buffalo-Eclipse Corporation, common stock, File No. 1-3996.

The above named issuer, pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-1(b) promulgated thereunder, has made application to withdraw the specified security from listing and registration on the Boston Stock Exchange.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

New England holders of record have been reduced to 165, holding only 9,766 shares, through acquisition of shares by Houdaille Industries, Inc. The stock remains listed on the American Stock Exchange.

Upon receipt of a request, on or before February 20, 1959, from any interested person for a hearing in regard to terms to be imposed upon the delisting of this security, the Commission will determine whether to set the matter down for hearing. Such request should state briefly the nature of the interest of the person requesting the hearing and the position he proposes to take at the hearing with respect to imposition of terms. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington 25, D.C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application and other information contained in the official file of the Commission pertaining to the matter.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 59-1225; Filed, Feb. 10, 1959; 8:48 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 4]

APPLICATIONS FOR MOTOR CARRIER "GRANDFATHER" CERTIFICATE OR PERMIT

FEBRUARY 6, 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 40 (Sub No. 5), filed December 10, 1958. Applicant: RICHARD SALEM, Dba SALEM BROTHERS TRANSPORT, 69 Gilbert Street, North Brookfield, Mass. Applicant's attorney: Francis E. Barrett, Jr., 7 Water Street, Boston 9, Mass. 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, wool tops and noils* and *wool waste* (carded, spun, woven, or knitted), between Rensselaer and Albany, N.Y., Woonsocket, Providence and Georgiaville, R.I., Gilbertville, Barre, Holyoke, Pittsfield, Ware and North Adams, Mass.

No. MC 730 (Sub No. 128), filed November 28, 1958. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., a corporation, 1417 Clay Street, Oakland, 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: *Frozen*

fruits, frozen berries and *frozen vegetables,* in straight and in mixed loads with *certain exempt commodities,* from points in California, Idaho, Oregon, Washington, and Utah, to points in California, Arizona, Montana, Nevada, Idaho, Oregon, Washington, Utah, Colorado, Wyoming, Kansas, Nebraska, Iowa, Minnesota, Missouri, Wisconsin, Illinois, Indiana, Michigan, and Ohio.

NOTE: Applicant indicates it also transports frozen fish and/or frozen poultry when transported in the same vehicle with the above-described commodities.

No. MC 1129 (Sub No. 5), filed December 1, 1958. Applicant: INTERSTATE FREIGHT LINES, INC., 1700 First Avenue South, Seattle, Wash. Applicant's attorney: William B. Adams, Pacific Building, Portland 4, Oreg. 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 Clark, King, Snohomish, Skagit, Pierce, and Whatcom Counties, Wash., on the one hand, and, on the other, points in Multnomah, Clackamas, Marion, Washington, and Yamhill Counties, Oreg., and Whatcom County, Wash., and ports of entry on the International Boundary Line between the United States and Canada at, near and between Pt. Roberts and Sumas in Washington.

No. MC 2226 (Sub 90), filed December 9, 1958. Applicant: RED ARROW FREIGHT LINES, INC., 5307 Broadway, P.O. Box 1897, San Antonio 6, Texas. Applicant's attorney: Reagon Sayers, Century Life Building, Ft. Worth 2, Texas. 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 and irregular routes, transporting: *coffee beans,* (1) between Hidalgo, Tex., and McAllen, Tex., over U.S. Highway 281 to junction with Texas State Highway 336, thence over Texas Highway 336 to McAllen, Texas; (2) between Falcon Heights, Tex., and Mission, Tex., over Farm-Market Road 2098 and U.S. Highway 83 to Mission, Texas; (3) between Laredo, Tex., and San Antonio, Tex., over U.S. Highway 83 to junction with U.S. Highway 83 to junction with U.S. Highway 81, thence over U.S. Highway 81 to San Antonio, Tex., and between Laredo, Tex., and Beeville, Tex., over U.S. Highway 59; (4) between Progresso, Tex., over Texas Farm-Market Road to junction with U.S. Highway 83; and (5) from Brownsville, McAllen, Falcon Heights, Hidalgo, Laredo, and Progresso, Tex., to Houston, Texas.

No. MC 2307 (Sub No. 3), filed December 8, 1958. Applicant: MAINE FREIGHTWAYS, a Corporation, 185 Washington Avenue, 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 fruits, frozen berries* and *frozen vegetables,* from points in Maine, to points in Connecticut, New York, and New Jersey.

No. MC 7555 (Sub No. 29), filed November 3, 1958. Applicant: TEXTILE MOTOR FREIGHT, INC., P.O. Box 7, Ellerbe, N.C. Applicant's attorney: Reuben G. Crimm, 805 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: *Frozen fruits* and *frozen vegetables,* from points in Florida to points in New York on and west of U.S. Highway 11.

No. MC 8948 (Sub 42), filed December 7, 1958. Applicant: WESTERN TRUCK LINES, LTD., 2550 East 28th Street, Los Angeles 58, 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 regular routes, transporting: *frozen fruits, frozen berries* and *frozen vegetables,* between Watsonville, Calif., and points within 10 miles thereof, and Gilroy, Calif., over California Highway 152, and between Patterson, Calif., over unnumbered highway serving all intermediate points on the above specified routes.

No. MC 9269 (Sub No. 9), filed December 8, 1958. Applicant: BEST WAY MOTOR FREIGHT, INC., 1905 Sixth Avenue, South, Seattle Wash. 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: *Frozen fruits, frozen berries* and *frozen vegetables,* between Salem, Oreg., and Seattle, Wash., over U.S. Highways 99 and 99E, serving all intermediate points, including Woodburn, Oreg.

No. MC 9837 (Sub No. 4), filed November 17, 1958. Applicant: RED CIRCLE FREIGHT LINES, INC., 175 Front Street, Brooklyn, N.Y. 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: *Frozen fruits, frozen berries* and *coffee beans,* between Baltimore, Md., Newark, N.J., and points in the New York, N.Y., Commercial Zone, as defined by the Commission.

NOTE: A proceeding has been instituted under section 212(c) to determine whether applicant status is that of a common or contract carrier in No. MC 9837 (Sub No. 3).

No. MC 18617 (Sub No. 1), filed December 5, 1958. Applicant: RUDOLPH OLSEN, P.O. Box 176, Sherwood, Oreg. 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* and *frozen berries,* from points in Multnomah, Washington, and Yamhill Counties, Oreg., to points in Marion, Yamhill, Multnomah, Washington, and Linn Counties, Oreg.

No. MC 22987 (Sub No. 2), filed December 5, 1958. Applicant: PACIFIC TRANSPORTATION AND WAREHOUSE CO., INC., 760 South Mission Road, Los Angeles 23, 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: *Coffee beans* and *tea,* between Los Angeles Harbor Commercial Zone, Calif., and Los Angeles Commercial Zone, Calif.; and from Los Angeles Harbor Commercial Zone and Long Beach Harbor Commercial Zone, to Anaheim, Calif.

No. MC 35484 (Sub No. 38), filed November 10, 1958. Applicant: VIKING FREIGHT COMPANY, a Corporation 614 South Sixth Street, St. Louis 2, Mo. Applicant's attorney: B. W. La Tourette Jr., 1230 Boatmen's Bank Building, St Louis 2, Mo. 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, and *wool tops and noils,* between New Orleans, La., and Greenville, Miss.

No. MC 41255 (Sub No. 29), filed November 24, 1958. Applicant: GRUBB MOTOR LINES, INC., Old Salisbury Road, Lexington, N.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, frozen vegetables* and *wool* imported from any foreign country, from Lexington, N.C. Dighton, Mass., and Philadelphia, Pa., to Spartanburg, S.C., Jamestown, Albany and New York, N.Y., Raleigh and Norwood, N.C., Pittsburgh, Pa., and Memphis, Tenn.

No. MC 41601 (Sub No. 33), filed November 21, 1958. Applicant: CONVERSE TRUCKING SERVICE, a California corporation, 1026 Murray Street Berkeley, 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: *Frozen fruits, frozen berries, frozen vegetables, coffee beans* and *tea,* between points in Whatcom, Skagit, Snohomish, Chelan, Douglas, Grant, Lincoln, Spokane, King, Pierce, Thurston, Lewis, Yakima, Kittitas, Benton, Franklin, and Walla Walla Counties, Wash., and those in Umatilla, Malheur, Hood River, Wasco, Washington, Multnomah, Yamhill, Clackamas, Polk, Marion, Benton, Linn, and Lane Counties, Oreg., on the one hand, and, on the other, points in Sonoma, Yolo, Sacramento, San Joaquin, Contra Costa, Alameda, San Mateo, Santa Clara, Santa Cruz, Stanislaus, Merced, Madera, Fresno, Monterey, Kings, Tulare, San Luis Obispo, Kern, Santa Barbara, Ventura, Los Angeles and Orange Counties, Calif.

No. MC 42475 (Sub No. 5), filed December 4, 1958. Applicant: "B" LINE TRANSPORTATION CO., INC., 17 Boston Post Road, New London, Conn. Applicant's attorney: Reubin Kaminsky 410 Asylum Street, Hartford 3, Conn. 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 Weehawken, N.J., to New London, Conn.

NOTE: Applicant indicates shipments from Baltimore, Md., but states such shipments occur only during periods of emergency, strikes, or other interruptions of service at the New York-New Jersey harbor facilities and that there has been no service from Baltimore for the reason that there has been no interruption of import shipping facilities.

No. MC 46280 (Sub No. 39), filed December 8, 1958. Applicant: DARLING FREIGHT, INC., 4000 Division Avenue SE., Grand Rapids, Mich. Applicant's attorney: William B. Elmer, 1800 Buhl 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* and *frozen berries*, from points in Michigan to points in Minnesota, Wisconsin, and Illinois.

No. MC 52110 (Sub No. 67), filed December 8, 1958. Applicant: BRADY MOTORFRATE, INC., 715 Locust Street, Des Moines, Iowa. Applicant's 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 on and south of U.S. Highway 12 and east of U.S. Highway 71 to points in Iowa, Kansas, Missouri, Nebraska, Indiana, Ohio, Illinois, and Louisville, Ky.

No. MC 52920 (Sub No. 26), filed December 10, 1958. Applicant: PACIFIC HIGHWAY TRANSPORT, INC., 1765 Sixth Avenue South, Seattle, Washington. 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 Ferndale, Wash., to Portland, Oreg.

No. MC 55776 (Sub No. 9), filed December 10, 1958. Applicant: MID-AMERICA HIGHWAY EXPRESS, INC., 507 Stryker Street, Archbold, Ohio. 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, coffee beans* and *bananas*, from points in the New York, N.Y., Commercial Zone as defined by the Commission, South Kearny and Weehawken, N.J., Clayton, Del., and Philadelphia, Pa., to points in Ohio, and Detroit, Mich., Indianapolis, Ind., Chicago, Ill., and Syracuse, N.Y.

No. MC 56082 (Sub No. 26), filed December 10, 1958. Applicant: DAVIS & RANDALL, INC., Chautauqua Road, Fredonia, N.Y. Applicant's attorney: William C. Arrison, Bank of Jamestown Building, Jamestown, 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* and *frozen berries*, from Buffalo and New York, N.Y., and points in Niagara, Orleans, Monroe, and Wayne counties, N.Y., to Cleveland, Columbus, Cincinnati, Ohio, McKeesport and Philadelphia, Pa., Newark, N.J., Detroit, Mich., Brooklyn, N.Y., and Indianapolis, Ind.

No. MC 64112 (Sub No. 9), filed December 9, 1958. Applicant: NORTHEASTERN TRUCKING COMPANY, a CORPORATION, 4612 Wilkinson Boulevard, Charlotte, N.C. Applicant's attorney: Philip R. Hedrick, 605 Johnston Building, Charlotte, N.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: *Cocoa beans, coffee beans*, and *bananas*, in straight and in mixed loads with *certain exempt commodities*, from New Orleans, La., Mobile, Ala., Tampa, Fla., and Charleston, S.C., to points in North Carolina, Virginia, West Virginia, Ohio, Indiana, Illinois, Pennsylvania, Maryland, New Jersey, New York, and South Carolina.

No. MC 94265 (Sub No. 65), filed December 10, 1958, published page 516 issue of FEDERAL REGISTER January 22, 1959. Applicant: BONNEY MOTOR EXPRESS, INC., Military Highway, P.O. Box 4057, Broad Creek Station, Norfolk, Va. 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, frozen vegetables* and *bananas*, in straight and in mixed loads with *certain exempt commodities*, between points in Virginia, Michigan, Nebraska, Maryland, New Jersey, Pennsylvania, New York, Illinois, South Carolina, and Tennessee on the one hand, and, on the other, points in Virginia, Maryland, New York, Florida, Ohio, Nebraska, Wisconsin, Kentucky, Kansas, Michigan, Illinois, Missouri, Indiana, and Iowa.

NOTE: Authority is also sought to continue transporting exempt commodities in mixed or straight loads with the above. This republication corrects the previous notice which failed to include the transportation of mixed shipments.

No. MC 96412 (Sub No. 1), filed December 10, 1958. Applicant: JACOB M. MOUCHET, doing business as MOUCHET TRUCKING COMPANY, 1818 Merriman Avenue, Charlotte, N.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 waste* (carded, spun, woven or knitted), between points in North Carolina, South Carolina, Georgia, Alabama, Tennessee, and Virginia.

No. MC 99745 (Sub No. 1), filed November 24, 1958. Applicant: IMPERIAL TRUCK LINES, INC., 101 North Avenue 18, Los Angeles 31, 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: *Bananas*, between points in the Los Angeles Harbor area, those in the Long Beach Harbor area and San Diego, Calif.

No. MC 110190 (Sub No. 43), filed December 10, 1958. Applicant: JOHN W. HENNESSEY, TRUSTEE FOR PENN-DIXIE LINES, INC., 2000 South George Street, York, Pa. Applicant's attorney: Robert R. Hendon, Investment Building, Washington 5, 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, berries and vegetables*, and *wool tops and noils*, from Plant City, Fla., and Menard, Tex., to New York, N.Y., Philadelphia and Scranton, Pa., and Baltimore, Md., and Jersey City, N.J.

No. MC 111871 (Sub No. 2), filed December 9, 1958. Applicant: SOUTHEASTERN FREIGHT LINES, a Corporation, Highway 378, West Columbia, S.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: *Bananas*, from Charleston, S.C., to Columbia and Greenville, S.C.

No. MC 113024 (Sub No. 5), filed December 10, 1958. Applicant: ARLINGTON JOHN WILLIAMS, doing business as A. J. WILLIAMS, 152 Killoran Drive, New Castle, Del. Applicant's attorney: Samuel W. Earnshaw, The Munsey Building, Washington 4, D.C. 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: *Frozen vegetables* and *coffee beans*, from points in Delaware, points in Cumberland County, N.J., Philadelphia, Pa., Baltimore, Md., points in Cecil, Queen Annes, Kent, Caroline, Talbot, Somerset, Worcester, Dorchester, and Wicomico Counties, Md., points in Accomac and Northampton Counties, Va., Chicago, Ill., St. Louis, Mo., Louisville, Ky., Cleveland, Ohio, and New York, N.Y., to Chicago, Ill., St. Louis, Mo., Louisville, Ky., Cleveland, Ohio, Omaha, Nebr., and points in Delaware, New Jersey, Maryland, Illinois, Minnesota, Michigan, Missouri, Ohio, New York, and Pennsylvania.

No. MC 114569 (Sub No. 24), filed December 8, 1958. Applicant: SHAFFER TRUCKING, INC., Elizabethville, 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* and *frozen berries*, from Humboldt and Jackson, Tenn., and Biglerville (Adams County), Pa., to Peach Glen (Adams County), Chambersburg, and Greencastle, Pa., and Milwaukee, Green Bay, and Appleton, Wis.

No. MC 117675 filed October 2, 1958. Applicant: FELTON METTS, doing business as METTS TRUCKING COMPANY, 2411 Harper 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 Miami, Tampa, and Ft. Lauderdale (Pt. Everglades), Fla., Charleston, S.C., and Norfolk, Va., to Jacksonville, Fla.

No. MC 117676 filed October 2, 1958. Applicant: JOSEPH W. JADCZAK, doing business as PRATT TRANS. CO., 2225 Pratt Street, Philadelphia 37, 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: *Bananas*, from New York, N.Y., Weehawken, N.J., and Baltimore, Md., to Philadelphia, Pa.

No. MC 117786, filed November 3, 1958. Applicant: RILEY WHITTLE, Box 24, Smiths Grove, Ky. 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 New Orleans, La., Mobile, Ala., Louisville, Ky., Tampa and Miami, Fla., Brownsville, Tex., Charleston, S.C., and Norfolk, Va., to Louisville, Ky., Canton, Cleveland, Cincinnati, Mansfield, and Akron, Ohio, Chattanooga, Johnson City, and Knoxville, Tenn., Atlanta, Ga., and Kalamazoo, Mich.

No. MC 117856, filed November 19, 1958. Applicant: F. EDGAR McDONALD, P.O. Box 1951, Fairmont, W. Va. Applicant's attorney: Frank Sansalone, Bethlehem Building, Fairmont, W. 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: *Bananas*, from New York, N.Y., Weehawken, Port Newark and Hoboken, N.J., Philadelphia, Pa., and Baltimore, Md., to points in Pennsylvania, Ohio, New York, New Jersey, West Virginia, and Maryland.

No. MC 117871, filed November 24, 1958. Applicant: Z. R. SPENCER, Box No. 352, State Farmers Market, Columbia, S.C. Applicant's attorneys: E. B. Ussery, Security Federal Building, Columbia 1, S.C., and Charles D. Davis, 606 Security Federal Building, Columbia, S.C. Grandfather authority sought under section 7 of the Transportation Act of 1958 to contine to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from North Atlantic, South Atlantic, Gulf Ports, and Columbia, S.C., to Columbia S.C., Raleigh and Winston-Salem, N.C., Richmond and Norfolk, Va., and Tampa, Fla.

No. MC 117880, filed November 24, 1958. Applicant: DAVENPORT AND JOHNSTON TRUCKING, INCORPORATED, 436 Calhoun Street, Richmond, Va. Applicant's attorney: Robert T. Barton, Jr., Mutual Building, Richmond 19, 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: *Frozen fruits, frozen berries*, and *frozen vegetables*, from Leachville, Ark., and Dyersburg, Memphis, Bolivar, Humboldt, and Nashville, Tenn., to Landover (Prince Georges County), Md., Long Island City and New York, N.Y., Richmond and Norfolk, Va., Philadelphia, Pa., Newark, Jersey City, and Seabrook, N.J., and Greensboro and Hendersonville, N.C.

No. MC 117888, filed November 25, 1958. Applicant: J. M. GOLDBERG, INC., 101 Chartres, Houston 2, Texas. 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: *Coffee beans* and *bananas*, between Houston, Brownsville and Galveston, Texas, New Orleans, La., Phoenix, Ariz., and Los Angeles and San Francisco, Calif.

No. MC-117903, filed November 28, 1958. Applicant: GENE ADAMS REFRIGERATED TRUCKING SERVICE, INC., 600 Cayuga Creek Road, Buffalo, N.Y. Applicant's representative: Floyd B. Piper, Franklin Street at Mohawk, Crosby Building, Buffalo 2, 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*, from New York, N.Y., to Buffalo, N.Y.

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 common or contract carrier in No. MC-110339 (Sub-No. 4).

No. MC 117906, filed November 28, 1958. Applicant: PETTIGREW TRUCKING, INC., R.D. No. 4, White Township, Indiana, Pa. Applicant's attorney: John A. Vuono, 1211 Berger Building, Pittsburgh 19, 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: *Coffee beans* and *bananas*, from points in the New York, N.Y., Commercial Zone, as defined by the Commission and points on Long Island, N.Y., and Jersey City and Hoboken, N.J., to points in Ohio on and east of Ohio Highway 4 from Sandusky to Marion, and U.S. Highway 23 from Marion to Portsmouth, points in Pennsylvania on and west of U.S. Highway 15; and points in Brooke, Hancock, Marshall, and Ohio Counties, W. Va., and straight and mixed loads of *nuts*, edible, in shells with shipments of *coffee beans*.

NOTE: Applicant holds *contract carrier* authority in Permit No. MC 36291. Dual operations under section 210 may be involved.

No. MC-117922, filed November 28, 1958. Applicant: PERISHABLE PRODUCTS EXPRESS, INC., 1417 Clay Street, Oakland, 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: *Frozen fruits, frozen berries*, and *frozen vegetables*, in straight and in mixed loads with *certain exempt commodities*, between points in California, Idaho, Oregon, Washington, Utah, Nevada, Arizona, New Mexico, Colorado, Montana, Wyoming, Kansas, Nebraska, Iowa, Minnesota, Missouri, Wisconsin, Illinois, Indiana, Ohio, Michigan, Oklahoma, Kentucky, and Tennessee.

NOTE: Applicant states that frozen fish and frozen poultry were transported in mixed shipments with the above commodities.

No. MC 117957, filed December 3, 1958. Applicant: CARLTON M. MOYER AND PAT R. MORTON, doing business as MOYER AND MORTON, Route 2, Box No. 522, Airport Road, Lynchburg, Va. Applicant's attorney: W. G. Burnette, P.O. Box 859, 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*, in straight and in mixed loads with *certain exempt commodities*, from points in Florida, Georgia, South Carolina, North Carolina, Maryland, and the District of Columbia to Lynchburg, Charlottesville, and Norfolk, Va., and Charleston, S.C.

NOTE: Applicant states that fruits and vegetables were transported in mixed shipments with bananas.

No. MC 117977, filed December 3, 1958. Applicant: DORIS LONG, 1268 Lakeshore Boulevard, 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, Jacksonville, Fort Lauderdale, and Port Everglades, Fla., and Charleston, S.C., to points in Kentucky, Illinois, South Carolina, Tennessee, Ohio, West Virginia, Georgia, Florida, Alabama, Wisconsin, Indiana, and North Carolina.

No. MC 118007, filed December 4, 1958. Applicant: C. E. ESTES, doing business as C. E. ESTES CONTRACT CARRIER, R.F.D. 9, Box 59-A, Richmond, 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: *Coffee, tea*, and *wool* imported from any foreign country, from Norfolk and Newport News, Va., to points in Virginia.

No. MC 118039, filed December 8, 1958. Applicant: A. V. EDMONDSON, 1050 Murphy Avenue SW., Atlanta, Ga. Applicant's attorney: Guy H. Postell, 805 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: *Bananas*, between points in Alabama, Florida, Louisiana, Georgia, North Carolina, South Carolina, Tennessee, and Virginia.

No. MC 118098, filed December 9, 1958. Applicant: ALLAN FREDRICKSON, doing business as FREDRICKSON TRANSFER, 131 East South Street, Redwood Falls, Minn. Applicant's representative: A. R. Fowler, 2288 University Avenue, St. Paul 14, Minn. 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*, in straight and in mixed shipments with *certain exempt commodities*, from Sioux City, Iowa, to New Ulm and Redwood Falls, Minn.

No. MC 118112, filed December 8, 1958. Applicant: PATRICK F. IZZI, doing

business as PAT IZZI TRUCKING CO., 80 Wayland Avenue, Cranston 9, R.I. Applicant's representative: Russell B. Curnett, 49 Weybosset Street, Providence, R.I. 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, frozen vegetables, cocoa beans, coffee beans, tea* and *bananas*, from points in Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island to points in Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Rhode Island.

No. MC 118193, filed December 8, 1958. Applicant: RILEY TRUCKING COMPANY, INCORPORATED, 2221 Shenandoah Avenue NW., P.O. Box 1102, Roanoke, 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: *Coffee beans* and *bananas*, from Norfolk, Va., Wilmington, N.C., Charleston, S.C., Baltimore, Md., New York, N.Y., and Weehawken, N.J., to Roanoke, Va., and Charleston, W. Va.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary*.

[F.R. Doc. 59-1217; Filed, Feb. 10, 1959; 8:47 a.m.]

[Notice 255]

MOTOR CARRIER APPLICATIONS

FEBRUARY 6, 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 42487 (Sub No. 386), (REPUBLICATION) filed January 1, 1959, published issue February 4, 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 20, 1959, on Ground Floor, Pittock Block, 410 Southwest 10th Street, Portland, Oreg., before Joint Board No. 172, or, if the Joint Board waives its right to participate, before Examiner Mack Myers. Previous publication erroneously gave March 30, 1959 as date of hearing.

No. MC 105902 (Sub No. 10), (Second Republication) filed September 30, 1958, published issue February 4, 1959. Applicant: PENN YAN EXPRESS, INC., 100 West Lake Road, Penn Yan, N.Y. 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: *Baby foods* and *baby supplies*, from Waterport and Rochester, N.Y., to Baltimore, Md., New York, N.Y., and points within thirty (30) miles of New York, N.Y., and points in Pennsylvania on and east of U.S. Highway 15, and *empty pallets or damaged or rejected shipments* of the above-described commodities, on return. Applicant is authorized to conduct operations in New York, New Jersey, Pennsylvania, Maryland, Delaware, and the District of Columbia.

HEARING: Remains as assigned March 6, 1959, at the Hotel Buffalo, Washington and Swan Streets, Buffalo, N.Y., before Examiner Leo A. Riegel.

No. MC 107496 (Sub No. 121), (Republication) filed December 16, 1958, published issue January 28, 1959. Applicant: RUAN TRANSPORT CORPORATION, 408 Southeast 30th Street, Des Moines, Iowa. Applicant's attorney: H. L. Fabritz, 408 Southeast 30th Street, Des Moines, Iowa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid feed*, in bulk, in tank vehicles, from Crete, Nebr., to points in that part of the United States bounded by the Continental Divide on the west, the Mississippi River on the east, and to points in Illinois and Wisconsin. Applicant is authorized to conduct operations in Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Texas, and Wisconsin.

NOTE: The purpose of this republication is to show the correct spelling of origin as Crete, Nebr., instead of Cretem.

HEARING: Assigned March 6, 1959, Room 319, U.S. Court House, East and Walnut Streets, Des Moines, Iowa, before Examiner William E. Messer.

No. MC 117901 (REPUBLICATION), filed November 26, 1958, published January 14, 1959. Applicant: JOE R. MAHACH, doing business as JOE R. MAHACH PACKING, MOVING & STORAGE CO., 3624 North 14th Street, St. Louis, Mo. Applicant's attorney: Irvin A. Friedman, 1058-65 Paul Brown Building, 818 Olive Street, St. Louis 1, Mo. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods* as defined by the Commission, and *empty containers or other such incidental facilities* (not specified) used in transporting the above, (1) from St. Louis, Mo., to points in Illinois; and (2) between St. Louis, Mo., and points in Iowa.

HEARING: Assigned March 9, 1959, at Room 1408 VA Building, 415 Pine Street, St. Louis, Mo., before Joint Board No. 46.

MOTOR CARRIERS OF PASSENGERS

No. MC 66505 (Sub No. 3), filed December 3, 1958. Applicant: PEERLESS STAGES, INC., 2040 Castro Street, Oakland, Calif. Applicant's attorney: Spurgeon Avakian, First Western Building, Oakland 12, Calif. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers*, in special and charter operations, between points in California on the one hand, and, on the other, points in Arizona, Nevada, New Mexico, and Utah. Applicant is authorized to conduct operations in California.

HEARING: April 13, 1959, in Room 226, Old Mint Building, Fifth and Mission Streets, San Francisco, Calif., before Examiner Mack Myers.

APPLICATIONS IN WHICH HANDLING WITHOUT ORAL HEARING IS REQUESTED

MOTOR CARRIER OF PROPERTY

No. MC 1658 (Sub No. 43), filed February 2, 1959. Applicant: NORWALK TRUCK LINES, INC. OF DELAWARE, Manheim Pike, Lancaster, Pa. Applicant's attorney: William J. Little, Fidelity Building, Baltimore 1, Md. 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, livestock, household goods as defined by the Commission, and commodities requiring special equipment, between Geneva, N.Y., and Candor, N.Y., from Geneva over New York Highway 5 to the junction of New York Highway 96A two miles east of Geneva, thence over New York Highway 96A to the junction of New York Highway 96, thence over New York Highway 96 to the junction of New York Highway 96B, thence over New York Highway 96B to Candor, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only. Applicant is authorized to conduct operations in Pennsylvania, Delaware, West Virginia, New York, Rhode Island, Maryland, New Jersey, Virginia, Connecticut, Ohio, and the District of Columbia.

No. MC 30887 (Sub No. 88), filed January 7, 1959. Applicant: SHIPLEY TRANSFER, INC., 534 Main Street, Reisterstown, Md. Applicant's representative: Donald E. Freeman (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum chloride*, in bulk, in dump tank semi-trailers or hopper type vehicles, from Nitro, W. Va., to Wilmington, Del., Baltimore, Md., Carneys Point, Bound Brook, Keyport, Linden, and

Union Beach, N.J., Chester, Clairton, Philadelphia, Lock Haven, Pittsburgh, and West Elizabeth, Pa., Massena and Rensselaer, N.Y., Midland, Mich., Whiting, Ind., and ports of entry on the International Boundary line between the United States and Canada located at or near Buffalo and Alexandria Bay, N.Y. Applicant is authorized to conduct operations in Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia.

NOTE: Duplication with present authority to be eliminated.

No. MC 42487 (Sub No. 389), filed January 23, 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: *Perlite rock*, crude or processed, from points in Taos County, N. Mex., to Antonito, Colo., and points within eight miles thereof. Applicant is authorized to conduct operations in Arizona, California, Illinois, Idaho, Iowa, Indiana, Michigan, Minnesota, Montana, Nebraska, Nevada, Oregon, North Dakota, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

NOTE: Applicant states it presently has authority in No. MC 42487 (Sub No. 349) to transport perlite rock, crude or processed, in dump or hopper-type vehicles, from points in Taos County, N. Mex., to Antonito, Colo., and is making the above application in order to transport in addition perlite rock in other containers.

No. MC 66562 (Sub No. 1477), filed January 20, 1959. Applicant: RAILWAY EXPRESS AGENCY, INCORPORATED, 219 East 42d Street, New York 17, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities, including Class A and B explosives*, moving in express service, beginning and ending at Marquette, Iowa, from Marquette over Iowa Highway 13 to Waukon, Iowa, thence over Iowa Highway 9 to Lansing, Iowa, thence over the Interstate Bridge on Wisconsin Highway 82 to the junction of Wisconsin Highway 35, thence over Wisconsin Highway 35 to De Soto, thence return over Wisconsin Highway 35 to Prairie du Chien, thence over U.S. Highway 18 and the Interstate Bridge to Marquette, serving the intermediate points of Waukon and Lansing, Iowa, and De Soto, Ferryville, and Lynxville, Wis. Applicant is authorized to conduct operations throughout the United States.

No. MC 107403 (Sub No. 273), filed January 26, 1959. Applicant: E. BROOKE MATLACK, INC., 33rd and Arch Streets, Philadelphia 4, Pa. Applicant's attorney: Paul F. Barnes, 811–819 Lewis Tower Bldg., 225 South 15th Street, Philadelphia 2, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquefied petroleum gas*, in bulk, in tank vehicles, from points in Taylor Township, Mich., to Bryan, Ohio. Applicant is authorized to conduct operations 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.

No. MC 110264 (Sub No. 15), (REPUBLICATION) filed January 12, 1959, published January 28, 1959, at page 627. Applicant: ALBUQUERQUE PHOENIX EXPRESS, INC., P.O. Box 404, 504 Veranda Road N.W., Albuquerque, N. Mex. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities, including Class A and B explosives*, but excluding commodities of unusual value, livestock, household goods as defined by the Commission, and those requiring special equipment, serving the area between the North City limits of Albuquerque, N. Mex., and Sandoval, N. Mex., including Sandoval, N. Mex. Applicant is authorized to conduct operations in Arizona and New Mexico.

No. MC 115162 (Sub No. 45), filed January 26, 1959. Applicant: WALTER POOLE, doing business as POOLE TRUCK LINE, Evergreen, Ala. Applicant's attorney: Hugh R. Williams, 2284 West Fairview Avenue, Montgomery, Ala. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from Abbeville, Ala., and points within one mile of Abbeville, to points in Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, and Virginia. Applicant is authorized to transport lumber in Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Ohio, Tennessee, and Wisconsin.

No. MC 117626 (Sub No. 1), filed January 30, 1959. Applicant: RUSSELL W. TOLLE, Weston, Mo. Applicant's attorney: Joseph R. Nacy, 117 West High Street, Jefferson City, Mo. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked, damaged, disabled, inoperative, or repossessed motor vehicles*, by tow-truck, between all points in Kansas and Missouri within 40 miles of Weston, Mo., including Weston.

No. MC 118579, filed January 23, 1959. Applicant: EDDIE L. HICKEY, doing business as HICKEY'S WRECKER SERVICE, 100 North Fares Avenue, Evansville, Ind. Applicant's attorney: William J. Guenther, 1511–14 Fletcher Trust Building, Indianapolis, Ind. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked or disabled vehicles*, between Evansville, Ind., and points in Alabama, Georgia, Tennessee, Arkansas, Kentucky, Ohio, Illinois, and Missouri.

PETITIONS

No. MC 5649 (PETITION FOR CLARIFICATION). Petitioner: KULP AND GORDON, INC., 370 Hall Street, Phoenixville, Pa. Petitioner's attorney: Paul F. Barnes, 811 Lewis Tower Building, 225 South 15th Street, Philadelphia 2, Pa. The subject Certificate, No. MC 5649, was acquired by purchase from Donata Marine, doing business as General Motor Transportation Company, pursuant to MC-F-3828. The Certificate authorizes, among other, the transportation of *commissary supplies*, from Baltimore, Md., to Coatesville and Norristown, Pa. By petition dated January 21, 1959, petitioner seeks a clarification of the term, "commissary supplies" so as to embrace commodities described in the petition as *"unbound periodicals composed of amendments, revisions and additions to naval aviation instructions and technical manuals."*

No. MC 107044 (PETITION TO MODIFY CERTIFICATE). Petitioner: T. R. COMPTON, INC., 905 Front Street, Boise, Idaho. The subject Certificate, transferred from Thomas R. Compton, an individual, to T. R. Compton, Inc., a corporation, pursuant to MC-FC 59322, authorizes petitioner to conduct operations as a *common carrier*, by motor vehicle, transporting: *General commodities*, with exceptions, over regular routes, generally paralleling the lines of Union Pacific Railroad Company, between Boise, Idaho, and Weiser, Idaho, and between Boise, Idaho, and Huntington, Oreg. The Certificate also contains the following limitation, commonly known as a "prior or subsequent rail haul restriction": "(3) Shipments transported by said carrier shall be limited to those which it receives from or delivers to the Railway under a through bill of lading, covering, in addition to movement by said carrier an immediate prior or subsequent movement by rail". Petitioner prays that the Commission enter an order modifying the foregoing restriction to read: "(3) Shipments transported by said carrier shall be limited to those received from or delivered to the Railroad and which move under railroad bills of lading and at rail rates".

APPLICATIONS FOR CERTIFICATE OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5, GOVERNED BY SPECIAL RULE 1.240 TO THE EXTENT APPLICABLE

MOTOR CARRIER OF PROPERTY

No. MC 110144 (Sub No. 3), filed January 29, 1959. Applicant: JACK C. ROBINSON, doing business as ROBINSON FREIGHT LINES, 309 Humes Street, Knoxville, Tenn. Applicant's attorney: James W. Wrape, Sterick Building, Memphis 3, Tenn. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities, including Class A and B explosives*, (1) between Chattanooga, Tenn., and Memphis, Tenn., over U.S. Highway 64, serving the intermediate point of Hale Bar Dam; (2) between Greeneville, Tenn., and Bristol, Tenn., over U.S. Highway 11E via Johnson City, and (b) over U.S. Highways 19 and 19E via Elizabethton, Tenn., serving all intermediate points; (3) between Knoxville, Tenn. and Bristol, Tenn., over U.S. Highway 11W serving the intermediate point of Kingsport,

Tenn.; (4) between Chattanooga, Tenn., and Knoxville, Tenn., via Ooltewah, Mineral Park, MacDonald, Vonore, Maryville, and Alcoa over Tennessee Highways 2, 74, 33 and 73 serving all intermediate points except those between Cleveland and Chattanooga; (5) between Knoxville, Tenn., and Copperhill, Tenn., via Alcoa, Maryville, Vonore, Madisonville, Englewood, Etowah, Wetmore, Benton, Parksville, Ducktown, and Isabella over Tennessee Highways 73, 33, 74, and 40 serving all intermediate points; (6) between Etowah, Tenn., and Athens, Tenn., over Tennessee Highway 30 serving all intermediate points but restricted against the handling of traffic between Chattanooga and Athens, Tenn.; (7) between Cleveland, Tenn., and Greeneville, Tenn., over Tennessee Highways 2, 1, 9, and 34, serving all intermediate points except those between Cleveland and Loudon, Tenn.; (8) between Elizabethton, Tenn., and Elk Park, N.C., over U.S. Highway 19E, serving no intermediate points. Applicant is presently authorized to conduct the operations described in Routes 1 through 7 inclusive, by virtue of filing under the second proviso of section 206(a)(1) of the Interstate Commerce Act. This matter is directly related to MC-F 7089, which was published in the FEDERAL REGISTER February 4, 1959.

APPLICATIONS UNDER SECTION 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-6355. (SECURITY STORAGE & VAN COMPANY, INC.—PURCHASE (PORTION)—W. W. JARMON), published in the August 8, 1956, issue of the FEDERAL REGISTER on page 5957. Amendment filed February 2, 1959, to substitute SECURITY STORAGE & VAN COMPANY, INC., an Alabama Corporation, in lieu of SECURITY STORAGE & VAN COMPANY, INC., a Louisiana Corporation. Applicants' attorneys: Kretsinger & Kretsinger, Suite 1014-18 Temple Building, Kansas City 6, Mo.

No. MC-F-7075 (COMPLETE AUTO TRANSIT OF MISSOURI, INC.—PURCHASE (PORTION)—COMPLETE AUTO TRANSIT, INC.), published in the January 14, 1959, issue of the FEDERAL REGISTER on page 342. Supplement filed February 4, 1959, to show joinder of T. M. RINEHART, T. M. RINEHART (Executor of the Estate of Jane L. Rinehart), BETTY RINEHART COOPER, SYNTHETIC PRODUCTS, INC., a Michigan Corporation, all of 15091 La Salle Boulevard, Detroit 38, Mich., as the persons controlling vendee.

No. MC-F-7093. Authority sought for purchase by ARROW CARRIER CORPORATION, 50 Moonachie Avenue, Carlstadt, N.J., of the operating rights and property of NEEDES' EXPRESS, INC., 25 South Manor Avenue, Kingston, N.Y., and for acquisition by J. E. ACKERMAN, R. J. ACKERMAN, SHIRLEY A. DOHERTY, and P. S. DOHERTY, all of Carlstadt, N.J., of control of such rights and property through the purchase. Applicants' attorney: Robert H. Griswold, Commerce Building, P.O. Box 432, Harrisburg, Pa. Operating rights sought to be transferred: *General commodities*, with certain exceptions including household goods and commodities in bulk, as a *common carrier* over regular routes, between Troy, N.Y., and Philadelphia, Pa., serving all intermediate points and the off-route points of Schenectady, Cohoes, Hudson, Poughkeepsie, and New York, N.Y., without restriction, and those within 50 miles of the described route restricted to the delivery of mail order catalogs only; from Troy across the Hudson River to junction New York Highway 32, thence over New York Highway 32 to Albany, N.Y., thence over U.S. Highway 9W to Newburgh, N.Y., thence over New York Highway 32 to Harriman, N.Y., thence over New York Highway 17 via Suffern, N.Y., to the New York-New Jersey State line, thence over New Jersey Highway 17 to junction unnumbered highway (one mile north of Hohokus, N.J.), thence over unnumbered highway to Hohokus, N.J., thence over Maple Avenue to Paterson, N.J., thence over Lakeview Avenue to Passaic, N.J., thence over New Jersey Highway 7 to Newark, N.J., and thence over U.S. Highway 1 to Philadelphia, and return over the same route; and between Paterson, N.J., and Philadelphia, Pa., serving all intermediate and certain off-route points; *general commodities*, with certain exceptions excluding household goods and including commodities in bulk, between Albany, N.Y., and Fair Haven, Vt., serving all intermediate points and certain off-route points; *general commodities*, with certain exceptions including household goods and commodities in bulk, over irregular routes, from Philadelphia, Pa., to Princeton, N.J., and points in Morris, Union, and Middlesex Counties, N.J.; between New York, N.Y., and points in Hudson, Passaic, Bergen, and Essex Counties, N.J., on the one hand, and, on the other, Philadelphia, Pa., between points in Bergen and Passaic Counties, N.J., on the one hand, and, on the other, Chester and Marcus Hook, Pa., between points in Bergen and Passaic Counties, N.J., on the one hand, and, on the other, New York, N.Y., and points in Westchester, Orange, and Rockland Counties, N.Y., and between points in Bergen and Passaic Counties, N.J., on the one hand, and, on the other, Claymont, Del.; *magazines* and periodicals, between Sharon Hill, Pa., on the one hand, and, on the other, points in Passaic and Bergen Counties, N.J., and those in Westchester, Orange, and Rockland Counties, N.Y. Vendee is authorized to operate as a *common carrier* in the States of New York, New Jersey, Delaware, and Pennsylvania. Application has been filed for temporary authority under section 210a(b).

No. MC-F-7094. Authority sought for purchase by VICTORY CORPORATION, 516 West 27th Street, New York, N.Y., of a portion of the operating rights of THE REEVES TRANSPORTATION CO., INC. (M. JAY FEIN, TRUSTEE), 141 Broadway, New York, N.Y., and for acquisition by LEONARD KOFSKY, 5025 Horatio Parkway, Bayside, N.Y., and FRIEDA KOFSKY, 1114 Gerard Ave., Bronx, N.Y., of control of such rights through the purchase. Applicants' attorneys: Zelby & Burstein, 160 Broadway, New York, N.Y., and Palmer, Masia and Palmer, 320 Broadway, New York, N.Y. Operating rights sought to be transferred: *General commodities*, with certain exceptions including household goods and commodities in bulk, as a *common carrier*, over irregular routes, between New York, N.Y., on the one hand, and, on the other, points in New Jersey within 15 miles of Columbus Circle, New York, N.Y.; *paint thinner* and *cotton softener*, in drums, from Newark, N.J., to Springfield, Mass.; *empty containers*, for paint thinner and cotton softener, from Springfield, Mass., to Newark, N.J. Vendee is authorized to operate as a *common carrier* in New York, New Jersey, Connecticut, and Pennsylvania. Application has been filed for temporary authority under section 210a(b).

No. MC-F-7095. Authority sought for purchase by DENVER-ALBUQUERQUE MOTOR TRANSPORT, INC., 4716 Humboldt Street, Denver, Colo., of a portion of the operating rights of REFRIGERATED TRANSPORT CO., INC., 290 University Avenue, SW., Atlanta, Ga., and for acquisition by BRUCE A. HILLIKER, also of Denver, Colo., of control of such rights through the purchase. Applicants' attorneys: Marion F. Jones, Jones & Meiklejohn, 526 Denham Building, Denver, Colo., and Allan Watkins, 214-216 Grant Building, Atlanta, Ga. Operating rights sought to be transferred: *Frozen citrus products* and *frozen seafood*, in vehicles equipped with mechanical refrigeration, as a *common carrier* over irregular routes, from points in Florida to points in Colorado; *fresh orange juice*, in vehicles equipped with mechanical refrigeration, from Clearmont and Eustis, Fla., to points in Colorado. Vendee is authorized to operate as a *common carrier* in Colorado, New Mexico, Texas, Louisiana, Florida, and Oklahoma. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-7096. Authority sought for control and merger by CALORE EXPRESS CO., INC. (Rhode Island Corporation), 210 Canal Street, Providence, R.I., of the operating rights and property of CALORE EXPRESS CO., INC. (Massachusetts Corporation), 210 Canal Street, Providence, R.I., and for acquisition by JOSEPH C. CALORE, 83 Merry Mount Drive, Warwick, R.I., of control of such rights and property through the transaction. Applicants' attorney: Kenneth B. Williams, 111 State Street, Boston 9, Mass. Operating rights sought to be controlled and merged: *General commodities*, with certain exceptions excluding household goods and including commodities in bulk, as a *common carrier* over regular routes, between Boston, Mass., and Westerly, R.I., and between Providence, R.I., and Newport, R.I., serving all intermediate points; *general commodities*, with exceptions as specified

above, over irregular routes, between Boston, Mass., on the one hand, and, on the other, points in Massachusetts, New Hampshire, and Rhode Island; *asphalt*, in drums, from East Providence, and Riverside, R.I., to points in Massachusetts and New Hampshire. Vendee is authorized to operate as a *common carrier* in the State of Rhode Island. Application has not been filed for temporary authority under section 210a(b).

MOTOR CARRIER OF PASSENGERS

No. MC-F-7092. Authority sought for purchase by INTER COUNTY TRANSIT CORPORATION, 401 Tower Bldg., 1401 K Street NW., Washington, D.C., of the operating rights and property of THOMAS PARRAN, JR., doing business as SUBURBAN TRANSIT COMPANY, 10715-25 Colesville Road, Silver Spring, Md., and for acquisition by W.M.A. TRANSIT COMPANY, 4421 Southern Ave., Washington, D.C., of control of such rights and property through the purchase. Applicants' attorneys: Earl M. Foreman and D. Jay Hyman, 401 Tower Building, 1401 K Street NW., Washington 5, D.C. Operating rights sought to be transferred: *Passengers and their baggage*, and express, mail and newspapers, in the same vehicle with passengers, as a *common carrier* over regular routes, between Sandy Springs, Md., and Washington, D.C., between Sandy Springs, Md., and Ashton, Md., and between Gaithersburg, Md., and Four Corners, Md., serving all intermediate points; between Washington, D.C., and College Park, Md., serving all intermediate points except those in Maryland on U.S. Highways 1, 29 and 240; between junction U.S. Highway 1 and Maryland Highway 193, and junction Colesville Road and Maryland Highway 500, between Washington, D.C., and Rockville, Md., between junction Maryland Highways 190 and 614, and the Maryland-District of Columbia boundary line, between Ashton, Md., and Washington, D.C., between College Park, Md., and Washington, D.C., and between Gaithersburg, Md., and the site of the Atomic Energy Commission (near Gaithersburg), serving all intermediate points. Vendee holds no authority from this Commission, however it is a wholly owned subsidiary of W.M.A. TRANSIT COMPANY, which is authorized to operate as a *common carrier* in the State of Maryland and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary*.

[F.R. Doc. 59-1220; Filed, Feb. 10, 1959; 8:47 a.m.]

[Notice 72]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICE

FEBRUARY 6, 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 966 (Deviation No. 1), CAPITOL TRUCK LINES, INC., 200 West First Street, Topeka, Kans., filed January 29, 1959. Attorney for said carrier, Wentworth E. Griffin, 1012 Baltimore Building, Kansas City 5, Mo. Carrier proposes to operate as a *common carrier* by motor vehicle of *general commodities*, with certain exceptions, over two deviation routes, (a) between Kansas City, Kans., and Topeka, Kans., as follows: from Kansas City over city streets to the Eastern Terminal Interchange of the Kansas Turnpike, thence over the Kansas Turnpike and access routes to junction U.S. Highway 40, thence over U.S. Highway 40 to Topeka; and (b) between Kansas City, Kans., and junction Kansas Turnpike and U.S. Highway 75, as follows: from Kansas City over city streets to the Eastern Terminal Interchange of the Kansas Turnpike, thence over the Kansas Turnpike and access routes to junction U.S. Highway 75; and return over the same routes, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities between Kansas City, Kans., and Topeka, Kans., over the following pertinent route: from Kansas City over U.S. Highway 24 to junction U.S. Highway 75, thence over U.S. Highway 75 to Topeka.

No. MC 2988 (Deviation No. 1), DENVER CHICAGO TRUCKING COMPANY, INC., 45th and Jackson Streets, Denver, Colo., filed February 4, 1959. Attorneys for said carrier, Axelrod, Goodman, and Steiner, 39 South La Salle Street, Chicago 3, Ill. Carrier proposes to operate as a *common carrier* by motor vehicle of *general commodities*, with certain exceptions, over a deviation route, between New York, N.Y., and junction New York State Thruway and U.S. Highway 20 at or near the New York-Pennsylvania State line, as follows: from New York over various city streets and expressways to the New York State Thruway, thence over the New York State Thruway and access routes 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 the same commodities between Chicago, Ill., and New York, N.Y., over the following pertinent route: from Chicago over U.S. Highway 20 to junction U.S. Highway 62, approximately four miles north of Hamburg, N.Y., thence over U.S. Highway 62 to Buffalo, N.Y., thence over New York Highway 130 to junction U.S. Highway 20, thence over U.S. Highway 20 via Avon, Auburn, and Lafayette, N.Y., to Albany, N.Y. (also from Buffalo over New York Highway 5 to Albany), and thence over U. S. Highway 9 (also over U.S. Highway 9W), to New York.

No. MC 8948 (Deviation No. 1), WESTERN TRUCK LINES, LTD., 2550 East 28th Street, Los Angeles 58, Calif., filed January 30, 1959. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route, between Coachella, Calif., and Holtville, Calif., as follows: from Coachella over California Highway 111 to Brawley, Calif., thence over unnamed road to Holtville 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 Coachella, Calif., and Holtville, Calif., over the following pertinent route: from Coachella over U.S. Highway 99 to El Centro, Calif., thence over U.S. Highway 80 to Holtville.

No. MC 108185 (Deviation No. 3), DIXIE HIGHWAY EXPRESS, INC., P.O. Box 631, 1600 B Street, Meridian, Miss., filed January 29, 1959. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route, between Birmingham, Ala., and junction U.S. Highways 231 and 31E approximately four miles south of Westmoreland, Tenn., as follows: from Birmingham over Alabama Highway 79 to junction U.S. Highway 231, thence over U.S. Highway 231 to junction U.S. Highway 31E 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 Birmingham, Ala., and junction U.S. Highways 231 and 31E near Westmoreland, Tenn., over the following pertinent route: from Birmingham over U.S. Highway 31 to Nashville, Tenn., thence over U.S. Highway 31E to junction U.S. Highway 231 approximately four miles south of Westmoreland, Tenn.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary*.

[F.R. Doc. 59-1218; Filed, Feb. 10, 1959; 8:47 a.m.]

[Notice 83]

MOTOR CARRIER TRANSFER PROCEEDINGS

FEBRUARY 6, 1959.

Synopses of orders entered pursuant to section 212(b) of the Interstate Com-

merce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

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

No. MC-FC 61646. By order of January 29, 1959, the Transfer Board approved the transfer to Empire Van Lines, Inc., New York, N.Y., of Certificate No. MC 49466, issued September 25, 1953, to Thomas Barone, doing business as F. Barone & Son, New York, N.Y., authorizing the transportation of: *Household goods*, as defined, between New York, N.Y., on the one hand, and, on the other, points in New York, New Jersey, Connecticut, Pennsylvania, and Massachusetts. Morris Honig, 140 Broadway, New York, N.Y., for applicants.

No. MC-FC 61679. By order of January 29, 1959, the Transfer Board approved the transfer to W. E. Best, Inc., Edon, Ohio, of Permit in No. MC 114408 Sub 1, issued May 31, 1955, to W. E. Best, Edon, Ohio, authorizing the transportation of: *Sand, stone, gravel, dirt* and *bituminous concrete*, from and to specified points in Ohio, Michigan, and Indiana. John P. McMahon, 44 East Broad Street, Columbus, Ohio, for applicants.

No. MC-FC 61732. By order of January 28, 1959, the Transfer Board approved the transfer to J. W. Immel and E. L. Fender, doing business as Immel and Fender House Moving Company, Borger, Texas, of Certificate in No. MC 113782, issued July 7, 1953, to L. R. Thomas and Clifford E. Hale, doing business as Thomas & Hale Trucking Company, Borger, Texas, authorizing the transportation of: Houses and other buildings, except those prefabricated, between points in Colorado, Kansas, Oklahoma, Texas and New Mexico within 200 miles of Keyes, Okla., including Keyes. Grady L. Fox, 222 Amarillo Building, Amarillo, Texas, for applicants.

No. MC-FC 61738. By order of January 29, 1959, the Transfer Board approved the transfer to Glen Franklin Thomas, doing business as Glen Thomas, Humboldt, Kans., of Certificate No. MC 1946, issued April 3, 1953, to Millard Cress and Clyde W. Owens, doing business as Cress & Owens, Humboldt, Kans., authorizing the transportation of: Farm machinery, feed, hardware, and building materials, from Kansas City, Mo., and Kansas City, Kans., to Humboldt, Kans., and points within ten miles thereof other than Iola and Chanute, Kans., and livestock and seed, between Humboldt, Kans., and points within ten miles thereof, on the one hand, and, on the other, Kansas City, Kans., and Kansas City, Mo. Robert F. Stadler, 108 South Eighth Street, Humboldt, Kansas, for applicants.

No. MC-FC 61745. By order of January 29, 1959, the Transfer Board approved the transfer to Helen A. Berk, Philadelphia, Pa., of Permit No. MC 109011, issued May 13, 1949, to Sylvester E. Berk, Philadelphia, Pa., authorizing the transportation of: Boilers, radiators, furnaces, and other heating equipment and accessories, from Philadelphia, Pa., to points in Delaware and Pennsylvania within 25 miles thereof, and to points in that part of New Jersey south of a straight line extending from Bristol, Pa., through Lakewood, N.J., to the Atlantic Ocean, and boilers, from Bristol, Pa., to Washington, D.C., points in Maryland, and Delaware, and those in that part of New Jersey specified above. Leon Weinroth, 1616 Walnut Street, Philadelphia 3, Pa., for applicants.

No. MC-FC 61762. By order of January 29, 1959, the Transfer Board approved the transfer to Charles Robert Coyner, doing business as Coyner & Stacy Trucking Company, Stockton, Calif., of Certificate No. MC 96655, issued June 10, 1953, to Charles Robert Coyner and Roy Stacy, doing business as Coyner & Stacy Trucking Company, Stockton, Calif., authorizing the transportation of: Canned pineapple and canned pineapple juice, from the ports of San Francisco, Alameda and Oakland, Calif., to Stockton, Calif., with service to the intermediate point of the port of Oakland, Calif., and the off-route point of the port of Alameda, Calif.

No. MC-FC 61768. By order of January 28, 1959, the Transfer Board approved the transfer to Murphy's Moving and Storage Corporation, Great Neck, N.Y., of Certificate No. MC 22208, issued September 3, 1940, to Thomas I. Murphy, doing business as Murphy's Storage Warehouse, Great Neck, N.Y., authorizing the transportation of: Household goods, between New York, N.Y., and points on Long Island, N.Y., on the one hand, and, on the other, points in Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and the District of Columbia. John H. Munley, Plaza Building, Great Neck, N.Y., for applicants.

No. MC-FC 61783. By order of January 28, 1959, the Transfer Board approved the transfer to Maurice Robbins, doing business as Robbins Motor Transportation, Philadelphia, Pa., of Certificate No. MC 78368, issued October 26, 1942, to Harry C. Hambridge, Philadelphia, Pa., authorizing the transportation of: Such commodities as contractors' equipment, heavy and bulky articles, machinery and machine parts, and articles requiring specialized handling or rigging, between Philadelphia, Pa., and points in Pennsylvania, New Jersey, Delaware, and Maryland within 75 miles of Philadelphia, on the one hand, and, on the other, points in New York, New Jersey, Delaware, Maryland, Pennsylvania, and the District of Columbia. Jacob Polin, 314 Old Lancaster Road, Merion, Pa., for applicants.

No. MC-FC 61857. By order of January 29, 1959, the Transfer Board approved the transfer to JETCO, Inc., Rosslyn, Virginia, of a certificate in No. MC 65475, issued November 18, 1957, to William N. Barton, doing business as William N. Barton, General Transportation, Arlington, Va., authorizing the transportation of specified commodities from, to, and between, specified points in Virginia, Maryland, Pennsylvania, North Carolina, New York, New Jersey, Delaware, and Washington, D.C., Commercial Zone, as defined by the Commission. Reuben Bennett, 1426 G Street NW., Washington, D.C.

No. MC-FC 61871. By order of January 28, 1959, the Transfer Board approved the transfer to George F. Paravicini, doing business as D.L.W. Transportation Co., 3125 Gilham Street, Philadelphia, Pa., of the operating rights of David L. Wagner, 1011 Liberty Trust Building, Philadelphia, Pa., under Docket No. MC 116717, authorizing the transportation, over irregular routes, of wire, cable, paper boxes, sheet metal work, and air conditioners, between Philadelphia, Pa., on the one hand, and, on the other, points in Camden County, N.J., and elevators and pharmaceutical goods, between Philadelphia, Pa., on the one hand, and, on the other, points in a described portion of New Jersey.

No. MC-FC 61884. By order of January 28, 1959, the Transfer Board approved the transfer to Press Transfer, Inc., Closter, New Jersey, of the operating rights in Certificate No. MC 106209, issued June 9, 1954, to Northern Valley Transfer, Inc., authorizing the transportation, over irregular routes, of general commodities, excluding commodities in bulk, household goods, and other specified commodities, between points in Bergen County, N.J., on the one hand, and, on the other, New York, N.Y., and between Closter, N.J., on the one hand, and, on the other, Harrington Park, Rockleigh and Newark, N.J., and Nyack, N.Y., and between Rockleigh and West Norwood, N.J. Robert B. Pepper, 880 Bergen Avenue, Jersey City 6, N.J., for applicants.

No. MC-FC 61900. By order of January 29, 1959, the Transfer Board approved the transfer to Kirbery Transportation, Inc., Woodbridge, New Jersey, of the transfer of a permit in No. MC 60428, issued September 22, 1958, to Foley & Sheldon, Inc., Newark, New Jersey, authorizing the transportation of liquid petroleum products, alcohol, and acids, from points in Bergen, Essex, Hudson, Middlesex, and Union Counties, N.J., to points in Dutchess, Orange, Putnam, Rockland, Sullivan, and Westchester Counties, N.Y., and rejected, damaged, or surplus shipments of the above-specified commodities on the return trip. A. David Millner, Bowes & Millner, 1060 Broad Street, Newark 2, New Jersey.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 59-1219; Filed, Feb. 10, 1959; 8:47 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

FEBRUARY 6, 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. 35236: *T.O.F.C. rates between Illinois points and points in Kansas.* Filed by Western Trunk Lines Committee, Agent (No. A-2039), for interested rail carriers. Rates on various commodities loaded in highway trailers and transported on railroad flat cars between Abingdon and Monmouth, Ill., on the one hand, and specified points in Kansas and Missouri, on the other.

Grounds for relief: Motor truck competition.

Tariff: Supplement 28 to Western Trunk Line Committee, Agent, tariff I.C.A. A-4213.

FSA No. 35237: *Soda ash-Westvaco, Wyo., to Illinois points.* Filed by Western Trunk Line Committee, Agent (No. A-2037), for interested rail carriers. Rates on soda ash, carloads, as described in the application from Westvaco, Wyo., to Hillsboro, Lake Zurich, Lincoln, and Plainfield, Ill.

Grounds for relief: Market competition.

Tariff: Supplement 97 to Western Trunk Lines Committee, Agent, tariff I.C.C. A-4213.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 59-1185; Filed, Feb. 10, 1959; 8:45 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

LEARNER EMPLOYMENT CERTIFICATES

Issuance to Various Industries

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), the regulations on employment of learners (29 CFR Part 522), and Administrative Order No. 485 (23 F.R. 200) and Administrative Order No. 507 (23 F.R. 2720), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. The effective and expiration dates, occupations, wage rates, number or proportion of learners, learning periods, and the principal product manufactured by the employer for certificates issued under general learner regulations (§§ 522.1 to 522.11) are as indicated below. Conditions provided in certificates issued under special industry regulations are as established in these regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.20 to 522.24, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

Angelica Uniform Co., 1427 Olive Street, St. Louis, Mo.; effective 2-2-59 to 2-1-60 (women's washable service uniforms).

Michael Berkowitz Co., R.D. No. 2, Waynesburg, Pa.; effective 2-10-59 to 2-9-60 (ladies' cotton and flannel pajamas).

Burlington Manufacturing Co., 111 West Third Street, Chanute, Kan.; effective 1-29-59 to 1-28-60 (overalls, jackets, etc.).

Capitol City Manufacturing Co., 925 Huger Street, Columbia, S.C.; effective 2-4-59 to 2-3-60 (women's dresses and housecoats).

Elder Manufacturing Co., Bloomfield, Mo.; effective 2-5-59 to 2-4-60 (boys' slacks, jackets).

Eloesser-Heynemann Co., 1161 Mission Street, San Francisco, Calif.; effective 2-1-59 to 1-31-60 (overalls and work pants).

Federal Corset Co., Airport Hanger No. 1, Douglas, Ga.; effective 1-30-59 to 1-29-60 (women's girdles, brassieres).

Greer Shirt Corp., Greer, S.C.; effective 2-15-59 to 2-14-60 (men's and boys' sport shirts).

Happ Manufacturing Co., 698 Broadway, Macon, Ga.; effective 1-29-59 to 1-28-60 (men's and boys' trousers).

Hartwell Garment Co., Hartwell, Ga.; effective 2-12-59 to 2-11-60 (work pants and shirts).

The Kramer Co., 16 South Eutaw Street, Baltimore, Md.; effective 1-30-59 to 1-29-60 (ladies' blouses).

The H. D. Lee Co., Inc., 117 West 20th Street, Kansas City, Mo.; effective 1-27-59 to 1-26-60 (overalls, work pants, jackets).

Little Frocks, Inc., 545 West Main Street, Little Falls, N.Y.; effective 2-2-59 to 2-1-60 (dresses).

Meyersdale Manufacturing Co., Inc., Meyersdale, Pa.; effective 2-16-59 to 2-15-60 (men's shirts).

Monterey Mills, Monterey, Tenn.; effective 2-3-59 to 2-2-60 (boys' sport shirts).

National Garment Co., Fayette, Mo.; effective 1-29-59 to 1-28-60 (men's and children's knitted and woven sportswear).

Publix Shirt Corp., Hazleton, Pa.; effective 1-30-59 to 1-29-60 (men's and boys' dress and sport shirts).

Reliance Manufacturing Co., Dixie Factory, 10 Ferguson Street, Hattiesburg, Miss.; effective 2-8-59 to 2-7-60 (men's work shirts and pants).

Rosemont Dress Co., 24 Moser Road, Pottstown, Pa.; effective 1-30-59 to 1-29-60 (dresses).

The S & S Clothing Co., 44-48 Lehigh Street, Wilkes-Barre, Pa.; effective 2-1-59 to 1-31-60 (men's and boys' pants).

Samsons Manufacturing Corp., Wilson, N.C.; effective 2-9-59 to 2-8-60 (men's dress shirts).

Sussex Sportswear, Inc., 419 West Third Street, Lewes, Del.; effective 1-30-59 to 1-29-60. Learners may not be employed at special minimum wage rates in the production of separate skirts (ladies' blouses).

Troutman Shirt Co., Inc., Troutman, N.C.; effective 1-30-59 to 1-29-60 (work and sport shirts).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

J. Freezer & Son, Inc., Radford, Va.; effective 2-18-59 to 2-17-60; 10 learners (ladies', men's and boys' shirts).

Green Bay Clothing Manufacturers, Inc., 507 Cedar Street, Green Bay, Wis.; effective 2-3-59 to 2-2-60; 10 learners (men's, boys' and juvenile outerwear sportswear).

The Kramer Co., 1437 Fuselage Avenue, Baltimore, Md.; effective 1-30-59 to 1-29-60; 5 learners (ladies' blouses).

Nightingale Uniform Co., Georgiana, Ala.; effective 1-28-59 to 1-27-60; 10 learners (nurses' uniforms, doctors' office coats).

Peerless Sportswear Manufacturing Co., 324 South Main Street, Wilkes-Barre, Pa.; effective 2-3-59 to 2-2-60; 10 learners (girls' cotton and rayon slacks and shorts).

Royal Manufacturing Co., Inc., Crawfordville, Ga.; effective 2-7-59 to 2-6-60; 5 learners (men's and boys' drawers, cotton shorts).

Selro Manufacturing Co., Hurlock, Md.; effective 2-7-59 to 2-6-60; 10 learners (ladies' blouses, men's shirts).

Smart Girls' Dress Corp., 1498 Straight Path, Wyandanch, L.I., N.Y.; effective 1-28-59 to 1-27-60; 10 learners (women's dresses).

Washco Manufacturing Co., Millry, Ala.; effective 1-29-59 to 1-28-60; 10 learners (men's and boys' shirts and pajamas).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

Cowden Manufacturing Co., 112 Hamilton Avenue, Lancaster, Ky.; effective 1-29-59 to 7-28-59; 40 learners (overalls and jackets).

Cowden Manufacturing Co., Stanford, Ky.; effective 1-29-59 to 7-28-59; 50 learners (ladies', girls' dungarees).

Cigar Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.80 to 522.85, as amended).

General Cigar Co., Inc., 5th and Hickory Streets, Mt. Carmel, Pa.; effective 2-2-59 to 2-1-60; 10 percent of the total number of factory production workers for normal labor turnover purposes.

General Cigar Co., Inc., Robert Burns Drive, Philipsburg, Pa.; effective 2-2-59 to 2-1-60; 10 percent of the total number of factory production workers for normal labor turnover purposes.

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.40 to 522.43, as amended).

The following learner certificates were issued authorizing the employment of five percent of the total number of factory production workers for normal labor turnover purposes.

Barber Hosiery Mills, Inc., 1078 South Main Street, Mount Airy, N.C.; effective 2-2-59 to 2-1-60 (seamless).

Kayser-Roth Hosiery Co., Inc., Burlington, N.C.; effective 2-14-59 to 2-13-60 (men's and ladies' hosiery).

Kayser-Roth Hosiery Co., Inc., Maiden Division, Maiden, N.C.; effective 1-30-59 to 1-29-60 (seamless).

Vance Hosiery Co., Burlington Industries, Inc., Kernersville, N.C.; effective 1-29-59 to 1-28-60 (seamless).

Vance Hosiery Co., Burlington Industries, Inc., Kernersville, N.C.; effective 1-29-59 to 7-28-59; eight learners for plant expansion purposes (seamless).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.30 to 522.35, as amended).

Mullins Textile Mills, Inc., Mullins, S.C.; effective 1-30-59 to 1-29-60; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's and boys' knitted T-shirts, cotton and orlon placket shirts).

Shoe Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.50 to 522.55, as amended).

Selwyn Shoe Manufacturing Corp., Boonville, Mo.; effective 1-31-59 to 1-30-60; 10 percent of the total number of factory production workers for normal labor turnover purposes (ladies' dress shoes—fabric and leather).

Regulations Applicable to the Employment of Learners (29 CFR 522.1 to 522.11, as amended).

The following learner certificate was issued in Puerto Rico to the company hereinafter named. The effective and expiration dates, learner rates, occupations, learning periods, and the number or proportion of learners authorized to be employed, are as indicated.

The Carib Co., Inc., Aibonito, P.R.; effective 1-19-59 to 1-18-60; 15 learners for normal labor turnover purposes in the occupation of machine sewing and laying off for a learning period of 480 hours at the rates of 55 cents an hour for the first 240 hours and 64 cents an hour for the remaining 240 hours (women's gloves).

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at subminimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9.

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), and Part 527 of the regulations issued thereunder (29 CFR Part 527) a special certificate authorizing the employment of student-workers at hourly wage rates lower than the minimum wage rates applicable under section 6 of the Act has been issued to the firms listed below. Effective and expiration dates, occupations, and learning periods for the certificates issued under Part 527 are as indicated below.

Regulations Applicable to the Employment of Student-Workers (29 CFR 527.1 to 527.9).

Madison College, Nashville Agricultural & Normal Institute, Madison, Tenn.; effective 1-29-59 to 8-31-59; authorizing the employment of 13 student-workers in the food manufacturing industry in the skilled and semi-skilled occupations including fireman and boiler room operator in steam plant, for a learning period of 300 hours at the rates of 85 cents an hour for the first 150 hours and 90 cents an hour for the remaining 150 hours.

Brigham Young University, Provo, Utah; effective 1-29-59 to 8-31-59; authorizing the employment of 18 student-workers in the printing industry in the occupations of, pressman, compositor, printer, bindery worker and related skilled and semi-skilled occupations including incidental clerical work in the shop, for a learning period of 1,000 hours at the rates of 85 cents an hour for the first 500 hours and 90 cents an hour for the remaining 500 hours.

These student-worker certificates were issued upon the applicant's representations and supporting material fulfilling the statutory requirements for the issuance of such certificates, as interpreted and applied by Part 527.

Signed at Washington, D.C., this 5th day of February 1959.

MILTON BROOKE,
Authorized Representative of the Administrator.

[F.R. Doc. 59-1210; Filed, Feb. 10, 1959; 8:46 a.m.]

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PART II

FEDERAL REGISTER

THE NATIONAL ARCHIVES OF THE UNITED STATES 1934

VOLUME 24 NUMBER 29

Washington, Wednesday, February 11, 1959

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 927, 996, 1019]

[Docket Nos. AO-305, AO-71-A35, AO-203-A9]

HANDLING OF MILK IN CONNECTICUT; NEW YORK-NEW JERSEY; AND SPRINGFIELD, MASS., MARKETING AREAS

Decision With Respect to Proposed Marketing Agreement and Order and With Respect to Proposed Amendments to Tentative Marketing Agreements and Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR, Part 900), a public hearing was held at Hartford, Connecticut, during the period June 24 through July 11, 1958, pursuant to notice thereof issued on May 29, 1958 (23 F.R. 3863), upon a proposed marketing agreement and order regulating the handling of milk in the Connecticut marketing area and upon proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the New York-New Jersey and Springfield, Massachusetts, marketing areas.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on December 17, 1958 (23 F.R. 9847), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision, containing notice of opportunity to file written exceptions thereto.

Preliminary statement. The hearing, on the record of which the proposed regulatory provisions set forth below with respect to the New York-New Jersey and Connecticut marketing areas were formulated, was conducted at Hartford, Connecticut, during the period June 24 through July 11, 1958, pursuant to notice thereof which was issued on May 29, 1958 (23 F.R. 3863).

The hearing gave consideration, among other things, to the alternative possibilities of (1) expanding the present New York-New Jersey marketing area to regulate the handling of milk in the State of Connecticut and specified adjacent areas, (2) expanding the Springfield, Massachusetts, marketing area to regulate the handling of milk in the State of Connecticut in the event a separate order were not found appropriate for such State, or (3) issuing one or more separate orders to regulate the handling of milk in the State of Connecticut and certain adjacent areas.

In view of the findings and conclusions set forth below with respect to the need for regulation in the proposed Connecticut marketing area and to the location and organization of such market, it is concluded that the marketing of milk in such marketing area and that in any other marketing area regulated by another Federal order do not warrant regulation on common terms. It is determined, therefore, that the record of this hearing does not support expansion of the New York-New Jersey or the Springfield, Massachusetts, marketing areas. It is concluded further that there is no reason to amend any other provision of the Springfield, Massachusetts, order on this record, but that certain amendments to the New York-New Jersey milk order, as discussed below, are necessary for appropriate coordination of such regulatory program and the proposed marketing agreement and order for the Connecticut market.

The material issues of record relate to:

1. Whether the handling of milk produced for sale in the specified areas proposed for regulation is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether marketing conditions show the need for the issuance of one or more separate milk marketing agreements or orders or the amendment of an existing marketing agreement or order (No. 27 or No. 96), to tend to effectuate the policy of the Act relative to the handling of milk in Connecticut and certain specified nearby areas; and

3. If an order(s) or an amendment to an existing order were issued, what its provisions should be with respect to:

(a) The scope of regulation, including appropriate coordination with other Federal milk orders issued pursuant to the act for nearby marketing areas;

(b) The classification and allocation of milk;

(c) The determination and level of class prices;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

Findings and conclusions on proposed marketing agreement and order for the Connecticut marketing area. The following findings and conclusions on the material issues are made on evidence presented at the hearing and the record thereof:

(1) *Character of commerce.* All milk to be regulated by the proposed marketing agreement and order for the Connecticut marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and its products.

Substantial quantities of milk produced for sale in fluid form in the State of Connecticut and received by handlers in such State for processing actually cross state boundaries. Milk moves regularly from inspected farms located in Westchester, Rensselaer, Putnam, Dutchess and Columbia counties in New York State to fluid milk processing plants in Connecticut from which the major portion of receipts is distributed in fluid form on routes. Likewise, milk produced on farms in Hampden and Berkshire Counties in Massachusetts is processed and bottled in Connecticut milk plants. Of the out-of-state producers regularly delivering to Connecticut plants 89 percent by number are in New York State and 11 percent in Massachusetts. Milk produced by out-of-state "direct-ship" producers has increased steadily in recent years as a percentage of the total supply of Connecticut handlers and currently represents (January-April 1958) about one-third of such supply.

In addition, milk is imported into Connecticut from both regular and emergency plant sources. The largest amount of milk imported in this manner comes

from New York. The second most important source of outside milk supply is Massachusetts. Vermont ranks third. Imports from other states vary considerably from year to year and are relatively much smaller in volume. The largest quantities of imports from plants in other states are received at bottling plants in the Hartford area. Other sizeable importing communities are New Haven, Bridgeport and Fairfield County, in that order. Twelve plants in New York, Massachusetts and Vermont have been approved by the Connecticut Department of Agriculture to supply milk to Connecticut on a regular basis for subsequent sale in fluid form. Two of those plants are regulated under Federal Order No. 27 for the New York-New Jersey milk marketing area and a third is subject to Order No. 4 for the Boston, Massachusetts, marketing area. A substantial number of other plants in other states have supplied milk from time to time on an emergency supply basis.

Producers and plants outside Connecticut account, in total, for about 37 percent of the milk supplies of Connecticut handlers (not including producer-handlers). Volumewise this quantity exceeds 30 million pounds per month. Such milk is commingled with milk produced in Connecticut for bottling and then is distributed on wholesale and retail milk routes throughout the State in competition with other milk processed both at plants receiving Connecticut and out-of-state milk supplies and plants receiving only Connecticut-produced milk.

Some Connecticut producers supply milk to a plant located outside such State from which fluid milk is returned to Connecticut in bottled form for sale on routes. The fluid milk sales made in Connecticut from such plant exceed its receipts from Connecticut producers. Another handler with a plant located in Connecticut receives both Connecticut-produced and New York-produced milk and distributes milk from such plant to outlets in both Connecticut and New York State. Four handlers with plants outside Connecticut who receive all their milk supplies from producers in other states sell milk in bottled form in Connecticut. A handler with distribution operations extending over a large segment of New England, including all the Federally-regulated markets in the region, also distributes fluid milk in the State of Connecticut.

Since "open-market" cream may be utilized for bottling purposes in Connecticut, cream from distant states moves into and out of the State freely in competition with cream derived from Connecticut-produced milk. Substantial quantities of cream are imported in Connecticut from other states for distribution as bottled cream.

(2) *Need for regulation.* Marketing conditions in the State of Connecticut warrant the issuance of a separate marketing agreement and order to regulate the handling of milk produced for sale in such State.

Since the period of milk shortages created by World War II, consumption of fluid milk in Connecticut has increased more rapidly than milk production by Connecticut producers. Each year, to satisfy consumers' needs, increasing quantities of milk have been imported from out-of-state sources, not subject to price control pursuant to the Connecticut Milk Marketing Act, for fluid distribution to wholesale and retail outlets. Part of this State-wide need has been met by the addition of producers in a production territory located principally near the Connecticut border in Dutchess, Putnam, and Columbia Counties, New York, and in Berkshire County, Massachusetts. These producers have become regular suppliers of the Connecticut market and their milk is delivered to plants located in such State on a year-round basis by direct delivery either in cans or in bulk tank trucks for principal use in fluid milk distribution. Prices paid for such milk generally have been lower than those required to be paid by the respective recipient handlers pursuant to the Connecticut Milk Marketing Act to Connecticut producers for that portion of milk produced in the State and distributed as fluid milk. In certain cases the cost of such outside milk to handlers has been reduced by higher than customary transportation rates for transporting the milk from farm to plant, and in a few instances by a combination of higher transportation charges and lower prices. The handlers purchasing a portion of their supplies from out-of-state producers have benefited substantially in the purchase of milk as compared with handlers purchasing full supplies from producers with farms in Connecticut.

In addition, Connecticut handlers purchase tank truck loads of milk from unregulated country receiving stations or plants in eastern New York, Massachusetts, and Vermont. The lower prices paid by Connecticut handlers for this out-of-state country plant milk have caused appreciable competitive advantage for the purchasers, since such handlers are in daily competition for both wholesale and retail customers with handlers who purchase all their milk within Connecticut and account for it at the minimum class prices established by State price control. Purchases from such out-of-state country plants amounted to 71 million pounds in 1954; but in 1957, 115 million pounds were so purchased by Connecticut dealers.

As the quantities imported have increased, market stability has deteriorated. The State price control authority, as a practical matter, cannot regulate effectively the pricing of milk supplies which move across the State's boundaries to remove the price incentives which are causing unstable marketing conditions for Connecticut producers.

A further practice by handlers has disrupted the Connecticut market and the ability of Connecticut producers to maintain market outlets. Handlers buying through the Connecticut Milk Producers Association are enabled to carry ample supplies of milk without also handling amounts surplus to their needs for various fluid milk items and the minimum reserves to meet daily fluctuations in sales volumes. This is due to the fact that the association has carried on for many years a State-wide supply service for handlers as part of its marketing program for producers. For this purpose an association plant is maintained at Hartford and is used in part to "balance" milk supplies to handlers. Nearly all such handlers have been able to operate with 90 percent or more of their receipts in class I milk, with resulting high (in relation to the Class I price fixed by State control) blended prices to their Connecticut producers. The existence of the association plant has made it possible, however, for some handlers, as they procured increasing supplies of lower-priced, unregulated milk on a year-round basis, to discontinue purchasing members' milk, thus enabling such handlers to keep their supplies in alignment with their fluid needs but forcing on the cooperative increasing quantities of milk to be used as Class II milk, and consequently reducing its returns to members. This practice has proved costly to the association in the operation of its plant and service to the market since the amounts of milk handled through the association's plant may vary, for this reason, from none to 3,000 cans (40 qts.) per day. Returns to association members have been reduced substantially below those received by Connecticut producers as a whole under State price control. Further comment on the unequal sharing of the burden of market surplus is made below in connection with the discussion of the provisions for market-wide pooling.

It is concluded that the institution of an order for the State of Connecticut will tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, by restoring and maintaining orderly marketing conditions for milk produced for sale in fluid form within the State. It will assist also in insuring an adequate supply of approved milk for consumers. Basically an order will provide for:

(a) A regular and dependable method for determining prices to producers at levels contemplated under the Agricultural Marketing Agreement Act, as amended;

(b) The establishment of uniform pricing to handlers for milk received from producers according to a classified price plan based upon the utilization made of the milk;

(c) An impartial audit of handlers' records of receipts and utilization further to insure uniform prices for milk purchased;

(d) A means for insuring accurate weights and tests of milk;

(e) Uniform returns to producers supplying the market and an equitable sharing by all producers of the lower return from the sale of reserve milk; and

(f) Market-wide information on receipts, sales, and other data relating to milk marketing in the area.

In addition, public hearing procedure as required by the Agricultural Marketing Agreement Act of 1937, as amended, will assure full opportunity for representation of all interested parties in presenting evidence relating to marketing conditions and allow public participation in the determination of prices for all milk marketed in the State of Connecticut.

Major producer groups representing producers of milk both for Connecticut and for the New York-New Jersey marketing area testified to the need for regulatory action with respect to milk

produced for the Connecticut market but supported the proposition that the preferable method for accomplishing an orderly market would be to include the State of Connecticut and Fisher's Island, New York, in the New York-New Jersey marketing area under the regulation of Order No. 27. These groups proposed that such order be amended in certain minor respects to accommodate the area expansion. Certain other groups in New England, on the other hand proposed the regulation of the Connecticut market under Order No. 96 for the Springfield, Massachusetts, marketing area, with minor changes in such regulation. For various reasons, as discussed below in connection with the marketing area definition, prices, pooling and other provisions of the proposed order, it is concluded that the regulation of milk handling in Connecticut should be by separate order.

(3) *Marketing area.* The marketing area should be defined as the State of Connecticut.

There are 358 handlers of milk who operate distributing plants located in Connecticut. Of these, 184 are persons who produce the milk they distribute and do not purchase milk regularly from other dairy farmers. Handlers (sometimes referred to in the hearing record as "merchant-dealers") who purchase their supplies of milk from dairy farmers number 128. Forty-six other handlers produce some milk as well as receive and distribute milk produced by dairy farmers Of the 184 dairy farmers who distribute milk on routes, 67 do not have bottling plants but have their milk processed and bottled by other handlers on a "custom" basis; 61 of the latter sell less than 500 quarts per day. The latter group (184) distributes about six percent of the total fluid milk sold in Connecticut, mainly to customers in the smaller cities and rural towns of the State.

The small and medium volume handlers are also significant factors in distribution since they are numerous throughout the State, and like the producer-handlers, serve many of the smaller cities and rural towns.

The extent of geographical overlapping of the distribution activities of Connecticut handlers is substantial. They sell in all but four towns. There are 20 handlers in the State who distribute more than 10,000 quarts of milk per day. These 20 largest handlers distribute milk in 148 of the 169 towns within the State. There are 18 towns in which only two handlers distribute. In the 17 towns serviced by handlers, but not by any of the 20 largest handlers, there are 19 other handlers and numerous dairy farmers operating distribution routes. Since 17 of such 19 handlers operate in other towns also, only two would be eliminated if such 17 towns were not included in the defined marketing area. The 17 handlers are in substantial competition in communities where at least one, and often more, of the 20 major handlers also distribute.

Eleven of the largest handlers, together, distribute in all Connecticut towns bordering on Rhode Island. Except for the towns of Norfolk and Colebrook, they also distribute in all towns bordering upon Massachusetts; and except for the town of Sharon, in all towns bordering upon New York State. Thus, the distribution operations of such handlers nearly encircle the State.

There is such general overlapping of handlers' distribution routes within the State that it is impractical to outline a limited marketing area within the State which would encompass geographically the distribution operations of the 20 largest handlers, who operate generally over the State as a whole, which would not encompass as many handlers, less two, as a State-wide marketing area.

In sharp contrast to the general overlapping of distribution areas among handlers as a group and between handlers and producer-handlers, within the State, the movements of packaged milk across the Connecticut State boundaries are very limited. Two producer-handlers with plants located in Connecticut but close to Westerly, Rhode Island, sell fluid milk in that city; their combined sales there, however, do not exceed 25 quarts per day. A handler in Danbury, Connecticut, who sells more than 80 percent of his fluid milk within Connecticut, distributes some milk in adjacent areas in New York State. The sales of this handler in New York are less than 1,000 quarts per day. This handler is regulated under Order No. 27. No other handlers make regular route sales of packaged milk outside the State from Connecticut plants.

Ten individuals or companies have plants located outside Connecticut from which packaged milk is distributed on routes in Connecticut. Two of such plants are located in Westerly, Rhode Island, and the remaining plants are located in south central Massachusetts near the Connecticut border. Except for one handler with a plant at Dudley, Massachusetts, the combined volume of out-of-State handlers approximates 3,000 quarts per day, or four-tenths of one percent of the total volume of fluid milk sold daily in the State of Connecticut. The Dudley, Massachusetts, handler distributes milk in Connecticut through four sub-handlers. His combined sales there, through such sub-handlers, comprise less than 2 percent of the total volume of milk sold in Connecticut, although they are made over a fairly widespread area in the eastern portion of the State. A large proportion of the milk supply of the Dudley handler is obtained from sources outside the State of Massachusetts, where his plant is located, and hence is not subject to any price regulation by the Federal government, the State of Connecticut, or the State of Massachusetts. No packaged milk is distributed on routes in Connecticut from a New York State plant.

Limited volumes of specialty fluid milk products occasionally move out of the State of Connecticut to other markets. Except for two cases—in one of which the packaged milk moves into Connecticut from a plant located in another state; and the other of which the packaged milk moves out of Connecticut into a Federally-regulated market in another state—the volume of packaged milk moving between Connecticut and neighboring states is extremely limited and constitutes the exception rather than the rule.

The sanitary requirements applicable to milk produced for Connecticut are uniform over the State, making possible the distribution of milk processed anywhere in the State (or in a town bordering on the State line) in any other part of the State. As indicated previously, fluid milk is distributed widely over the State from several of the larger fluid milk plants located in Connecticut. Some of these plants are supplied with milk produced outside Connecticut which is commingled in the plant with milk produced in the State and then such commingled milk is sold in competition with other milk produced entirely within the State. However, only those plants located outside the State which have been licensed by the Connecticut Department of Agriculture and are located within a town adjacent to the Connecticut border may be used to pasteurize and package fluid milk for sale in Connecticut. Under present circumstances, competition in the route sales of fluid milk in Connecticut is carried on entirely from plants in the State or from a relatively small number of plants located in Massachusetts and Rhode Island close to the Connecticut border.

Several producer organizations operating primarily in the New York market proposed the inclusion of the State of Connecticut and Fisher's Island, New York, in the New York-New Jersey Metropolitan marketing area under Order No. 27, as amended. Such proposition was based upon the following "principles";

(1) The New York-New Jersey milkshed and the New England milkshed together constitute a single milk production region with well-defined boundaries. The Connecticut milk supply comes from within this region.

(2) All milk produced within the region which is eligible for fluid bottling is equally competitive for all fluid milk sales in the region provided the producer absorbs the respective transportation costs to the point of distribution.

(3) All producers of approved milk in the region are entitled to share the economic benefits of all the fluid sales in the region and are obligated to bear the economic burden of the surplus arising from seasonality and long time reserves in the region.

(4) Federal regulation cannot discriminate between producers on the basis of different states of residence, location of receiving and processing facilities or states of distribution of their product.

The existence of overlapping supply areas is common among milk markets. The supply area for Connecticut overlaps with that of New York, mainly in Columbia, Putnam, Dutchess, Rensselaer and Washington Counties, New York. It overlaps with the Springfield market in Hampden and Berkshire Counties, Massachusetts, and in Columbia County, New York. Some milk is produced for Connecticut in the area which may be described as the Worcester, Mass., milkshed. There is also overlapping with the Southeastern New England market

in Tolland, New London and Windham Counties, Connecticut, and to some extent in Rhode Island. There is substantial overlapping of the Connecticut supply area with that of the sizable Boston market at several points in Vermont. Similar supply area conditions prevail in varying degrees among other Federal order markets in New England and between Boston and New York. A common production area in eastern New York and western Vermont and Massachusetts has existed for many years between Boston and New York-New Jersey. In fact, three country plants serving the Boston market are located within the New York-New Jersey marketing area.

Connecticut is served from time to time with milk classified and priced under other orders. Although Class I sales of New York-New Jersey pool milk into Connecticut amounted to 4.0 million pounds in 1957, Boston pool sales of Class I milk into Connecticut in the same period totaled 6.3 million pounds. The volume of Class I sales to Connecticut from the New York-New Jersey pool was 35 percent smaller than from the Boston pool, although the New York-New Jersey market pool is about five times larger than that of Boston. The smaller market of Springfield, also, furnished ⅔ of a million pounds to Connecticut last year. Except for sales in Fairfield County, Connecticut, Class I sales from the New York-New Jersey pool to Connecticut handlers were less than from the Springfield pool. New York-New Jersey pool sales into Connecticut are less than the sales of such milk into numerous areas not regulated under the New York-New Jersey order or other Federal orders, including sizeable markets in western New York State. Supplywise the Connecticut market is related to all surrounding regulated markets but not to any one such market in particular.

As stated previously, there is little competition in milk distribution between Connecticut handlers and handlers regulated by the New York-New Jersey order. There are relatively closer ties between the distribution operations of Connecticut handlers and other New England handlers than between the former and New York-New Jersey handlers. The recent, and increasing, tendency in milk distribution to concentrate processing operations in fewer plants and to specialize operations in different plants for greater efficiency, has contributed to this condition. There is no indication in the record of any significant developments in this respect between the Connecticut and New York-New Jersey markets.

There was a further proposal to include the State of Connecticut in the Springfield, Mass., marketing area under Order No. 96 in the event a separate regulation were not found appropriate to the Connecticut situation. The Connecticut and Springfield markets are adjacent to each other. At least two milk distributors operate routes in both markets. However, the Connecticut market is by far the larger of the two markets and is more involved with surrounding markets as to both supplies and distribution operations. With class prices aligned between the Connecticut and Springfield markets and appropriate pool plant delivery requirements in each order, there is no ostensible advantage to either market in their combination. Moreover, with limited interchangeability of milk supplies for the two markets, there is little justification for equalization of the respective Class I sales among all producers supplying both markets.

It was proposed by certain New York producer groups that if the Connecticut market were not included under Order No. 27 (New York-New Jersey), three counties (Dutchess, Putnam, and Columbia) in New York State and Berkshire County, Mass., should be included together with the State of Connecticut in a single marketing area. Dutchess, Putnam and Columbia counties, New York, are included in the present marketing area of Order No. 27 and thus the handling of milk produced for sale in such counties is subject to producer price regulation at this time. The record does not reveal the existence of disrupted marketing conditions in Berkshire County. Since there is only minor connection from a distribution standpoint between the Connecticut market and any of such areas, a program to promote market stability for the Connecticut market would not be aided significantly by the inclusion of such counties under a Connecticut order.

A proposal to include the city of Westerly, Rhode Island, in the Connecticut marketing area was offered. It was contended by the proponent handler (with a processing plant at Dudley, Mass.,) that he is in competition with four handlers in Westerly, two of whom cross the Connecticut border to distribute in Stonington, and that Westerly traditionally has been more a part of the Connecticut market than it has been part of the Rhode Island market.

Proponent's sales in Westerly are made from a depot located at Stonington, Connecticut. The sales of proponent in Westerly are a relatively minor proportion of his total Class I distribution. In view of the previously described considerations supporting a marketing area co-extensive with the Connecticut State boundaries, it is concluded that Westerly should be omitted from the "Connecticut marketing area".

A proposal to regulate Fisher's Island, New York, was made. The testimony in support of this proposal was not of sufficient clarity to provide a basis for including this area in either the New York-New Jersey marketing area or a separate Connecticut marketing area. There is no indication that such area is served by any handler who would not otherwise be regulated, or that disrupted marketing conditions are present.

The fact that certain handlers distributing fluid milk in Connecticut have substantial distributing operations in other New England markets also is an important factor for consideration in designing a program to maintain orderly marketing conditions for producers. Also, significant supply relationships exist between Connecticut and other markets in New England as well as between Connecticut and the New York-New Jersey market. These factors in the Connecticut marketing situation are significant in the presence of several markets separately regulated. They militate against a program for a combined New York-New Jersey-Connecticut marketing area having the simple purpose of providing proportionate sharing among all producers, within a geographical region of the total fluid sales and reserve supplies, particularly when all the milk which would be involved is not eligible for all market outlets affected.

(3) (a) *Milk to be priced.* Handlers of milk for the Connecticut marketing area dispose of the major portion of their milk receipts in fluid form as milk.

Milk may be disposed of for fluid consumption in the marketing area from plants not meeting any reasonable standard of regular and customary service to the market. It is necessary, therefore, to establish in the order definitive standards of delivery performance to determine which plants and what milk constitute the regular and normal supplies and therefore should become fully subject to regulation. Such standards appear in the order and apply uniformly to all plants wherever located. The decision as to how a plant shall be operated in relation to the order, i. e., whether it is brought under regulation by meeting the performance standard or kept outside the scope of regulation, remains vested in the plant operator.

As indicated elsewhere in this decision, the marketwide pooling of producer returns is considered essential to the orderly functioning of this market. Since a marketwide pool results in payments to producers which reflect the average utilization value of milk for the market, individual handlers whose proportion of Class I utilization is less than such average receive payments from the producer-settlement fund while handlers who have higher than average utilization in Class I are required to make payments into the fund. This pooling procedure insures that the basis of payment to producers will be uniform for all handlers.

Under certain circumstances, operators of plants engaged primarily in the manufacture of milk in lower-valued products, such as butter or cheese, or in supplying other fluid markets on a "spot" basis, have an incentive to come under regulation for the purpose of receiving equalization payments from the producer-settlement fund in order that prices paid to their farmers will be comparable with the prices received by regular producers. Such plant operators normally would elect to join the pool when they would draw equalization payments from the fund and to withdraw from the pool when their plant utilization is above the market average and payments to the fund would be required of them.

The extra value, or differential amount, by which the Class I price exceeds the price of milk for manufacturing uses is intended to provide the incentive necessary to insure an adequate supply of pure and wholesome milk for the market. Milk in excess of Class I milk requirements cannot be expected to

return to producers more than a manufacturing milk value since this outlet is the only one remaining after fluid needs are satisfied. The inclusion in the pool of milk at such type of plant would reduce the uniform price, with adverse effect upon the returns to those producers furnishing the regular milk supply of the market. The maintenance of an adequate, dependable supply of pure and wholesome milk for the market necessitates the formation of specific rules concerning the pooling qualification of plants and the distribution of returns to producers. In this way regulation will not be extended beyond the point necessary to accomplish the objectives of the statute and, further, the purposes of the order will not be circumvented.

The performance standards established should be sufficiently flexible, however, to permit intermittent shipments of milk by plants whose primary business is in other markets, without requiring the full regulation of such plants by this order. Under the provisions of the attached order intermittent supplies, as well as supplies which are a regular and essential part of the Connecticut market, will be accommodated. The several plant definitions described below, and included in the order, provide a basis for determining which plants will be accorded pool status. The dairy farmers regularly delivering to the latter plants are those who will be entitled to receive the minimum uniform price resulting from the pool.

A "receiving plant" is defined as a plant in which milk is received directly from dairy farmers, as distinguished from other types of specialized plants which do not receive milk directly from farms and, therefore, are not eligible for pool participation. The operator of the receiving plant is the handler responsible for accounting purposes and for making payments to producers. A condition of qualification for receiving plant status is that such plant shall contain stationary facilities for receiving and holding or processing milk, and for washing and sterilizing cans or tank trucks. If milk is received in cans from dairy farmers the additional facilities necessary to receive, weigh or measure, sample and cool such milk must be present.

Association with the market through delivery performance may be established either on the basis of the extent of the distribution of Class I milk in the marketing area from the plant or on the extent to which milk is supplied from the plant to a plant where milk is processed for distribution as Class I milk in the marketing area. For the reasons indicated below it is concluded that any receiving plant from which at least 10 percent of the plant's total receipts of milk directly from dairy farmers is disposed of during the month within the marketing area on routes, and from which not less than 50 percent of such plant's total receipts of fluid milk products is disposed of during the month as Class I milk either inside or outside the marketing area, may qualify as a pool distributing plant.

A distributing-type plant from which less than 50 percent of such total receipts is distributed as Class I milk should not be considered as primarily in the business of fluid milk distribution. A plant from which less than 10 percent of its receipts of milk from dairy farmers is distributed within the marketing area on routes may not be considered as essentially associated with the Connecticut fluid milk market on the basis of such a minor part of its Class I business in this market. Full regulation in such a case might well place the operator of the plant at a competitive disadvantage in supplying other markets with which he is associated as to the major portions of his business.

While the Connecticut market is in large measure supplied by dairy farmers whose milk is received regularly at distributing plants located in the marketing area, such receipts are not sufficient to meet the total market demand for milk in all months. Substantial quantities of milk are received regularly by certain handlers from distantly situated country supply plants. The greatest need for milk from country plant sources occurs during the period July through November. These months are normally the months of lowest production for the State and adjacent production areas, and therefore should constitute the qualifying months for supply-type plants to be eligible for continuous pooling. The requirement that 30 percent of the monthly receipts of milk from dairy farmers at a supply-type plant be moved in these months to distributing-type plants primarily engaged in serving the marketing area, in order that the supply plant may participate in the pool, will identify those supply plants with the primary function of supplying such milk as is needed over and above the quantities delivered directly from farms to such distributing plants.

Any supply-type plant should be accorded pool plant status for any month during which it meets such 30 percent shipping requirement. Further, a supply-type plant with at least 30 percent of its receipts so moved in the months of July through November should be permitted automatic pool plant status for the immediately following months of December through June in order that producers at such plant may share in the market proceeds for milk on a year-round basis.

It cannot be ascertained on the basis of the hearing record which supply plants, or how many such plants, eventually will become associated with the Connecticut market. It is concluded, however, that a 30 percent shipping requirement constitutes a reasonable requirement for pooling in relation to delivery performance requirements under the other nearby orders.

In the event the order becomes effective on a date prior to July 1, 1959, a temporary delivery requirement for country supply plants will be necessary for the identification of those plants associated with the market. It is provided that from the effective date of the order to July 1959 such a plant will be qualified for pooling if 10 percent of its milk receipts from dairy farmers are moved to distributing plants serving the marketing area. This percentage figure approximates the average monthly requirement which will be effective on and after July 1, 1959, and will give plant operators an opportunity to associate plants with the market without a period of delay. For similar reason, any supply-type plant for which the handler provides proof that such plant met the 30 percent delivery requirement as described above for each of the months of July through November 1958, inclusive, will be afforded automatic pool plant status for the period from the effective date of the order to July 1, 1959 without additional delivery requirement.

Proponents proposed a 50 percent minimum shipping requirement for supply plants in the months of lowest production, contending that a lesser delivery requirement might attract more milk to the market than is needed and thereby unduly dilute returns to local producers. While it is not intended that shipping requirements be so low as to attract milk primarily associated with manufacturing outlets, too high a shipping requirement would place a higher requirement on this market than on most of the other competing markets. This market should carry a sufficient reserve supply for its Class I needs throughout the year rather than depend on adjacent Federal order markets for such reserves. This situation will be facilitated by the 30 percent requirement. Because a substantial percentage of market needs now is furnished by direct-ship producers, a 50 percent shipping requirement might well result also in uneconomic movements of milk from country plants, solely for the purpose of meeting such requirements. Milk not needed for fluid uses is disposed of in manufacturing outlets. Since most of the manufacturing facilities in New England and New York State are at rather distant country locations, milk in excess of fluid requirements normally would not move from such plants to the marketing area for processing into Class II milk products.

During the months of December through June supplies of milk received at distributing plants located in or near the marketing area may be sufficient to supply the greater part of the requirements for Class I milk, in which case it would be more economical to leave the more distant milk in the country for manufacturing and utilize the nearby supplies first. Performance standards should not force milk to be transported to distributing plants in the months of seasonally high production merely for the purpose of maintaining eligibility for pooling. It is provided, therefore, that any supply plant which meets the pooling requirements for each of the months of July through November shall be a pool plant in each of the succeeding months of December through June unless the handler's written request for nonpool status for the entire seven-month period is received by the market administrator by the date on which the handler is required to file his monthly report of receipts and utilization relative to November milk. By requiring the handler to make his decision concerning the pooling of supply-type plants in this manner, the orderly handling and distri-

bution of milk supplies among markets in this region will be served. Such provision will assist to insure that each of such markets, with overlapping milksheds, will be supplied with a reasonable degree of regularity from specific plant sources.

Producer-handlers (as defined in the attached order) should be exempt from the class price and pooling provisions of the order.

There are 184 individuals or companies distributing milk in Connecticut that produce the milk they distribute and do not purchase milk regularly from other producers. They have been described in connection with State regulation as "producer-dealers". In total such group distributes about 6 percent of the aggregate fluid milk sold in Connecticut, mainly to consumers in the smaller cities and rural towns of the State. Of such 184 producer-dealers, 67 do not operate plants but have their milk processed and bottled by other handlers on a "custom" basis. One hundred sixty-three of the 184 producer-dealers sell less than 500 quarts of milk per day, 18 sell between 500 and 1,000 quarts per day, and only 3 sell more than 1,000 quarts daily.

Generally, under a Federal order it has not been necessary, in order to achieve the purposes of the statute, to regulate fully a person who processes in his own plant milk from his own farm production and does not receive milk from other dairy farmers. The administrative difficulties and expense of regulating such persons on the same basis as other persons operating plants and distributing milk in the marketing area has warranted their limited or complete exemption from pricing and pooling, depending upon circumstances in the particular market. As a dairy farmer such person maintains control of his milk until ultimate disposition and therefore his situation is quite different from the regular producer whose milk is marketed through a handler. The protection of the minimum price provisions of the order have little significance to him in his capacity as a dairy farmer. It has been argued that the burden of carrying the market reserve supply should be extended to producer-handlers and that their exemption, even if limited, discriminates against producers and handlers. Generally, the extent of any burden upon producers and handlers which results from different regulatory treatment in the case of producer-handlers must be weighed in each market situation against the administrative problem and the degree to which the order would fail in its basic objectives.

There is no indication in the record that the producer-handler in Connecticut is a significant factor in the disrupted conditions of which complaint is made. The competitive problems handlers claim have originated with the producer-handlers have not resulted in destructive price warfare in the retail milk market. Producer-handlers are so spread over the State, being relatively few in number in any particular locality, that as a competitive factor they represent only a minute proportion of the fluid sales in the areas of population concentration where the bulk of fluid milk is sold. The number of such persons operating in the State has decreased steadily over the past six years. Provision for an exemption of 1,000 quarts of milk for each producer-handler, as suggested by proponents of the order, would result in the full regulation of only part of the milk handled by not more than three handlers in the State. Other proposals made would provide, for all practical purposes, complete exemption for the producer-handler, as defined, from pricing and pooling. We are in accord with the latter proposition.

The term "producer-handler" should not include, however, any person who does not accept individual responsibility and risk for the operation of the plant in which the milk of his own production is processed and bottled for sale.

Typically, a producer-handler conducts a small family-type operation, processing, bottling, and distributing only own farm production. In New England, and more specifically in Connecticut, there is a large number of individuals who operate in varying capacities described as closely related to the ordinary conception of a producer-handler. There are some producers who contract to have their milk processed and "custom bottled" in a plant operated by another individual, company or other organization, all or part of which milk is returned to the producer for distribution by him on routes. In some cases the milk of a number of such producers may be processed at a single plant and then returned to them for distribution. In all such cases the plant operator assumes responsibility for disposing of any milk delivered by the producer but not returned to him for sale.

There is no practical distinction in function between such a plant and the plants of handlers who buy from producers. The activity of the producer in distributing milk compares to that of the "vendor," or sub-handler, who buys fluid milk products in packaged form from a regulated handler (merchant-dealer) for distribution on routes. If full exemption from regulation were provided for all the various categories of individuals who distribute milk of their own production, the effectiveness of regulation in Connecticut would be impaired. Therefore, the exemption provided is not made applicable to the category of producers described in this paragraph, who were referred to in the hearing record as "dairy farmer-distributors".

In order to maintain producer-handler status it is provided that the maintenance, care, and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging and distribution of the milk shall be the personal enterprise of and the personal risk of the person involved. This is intended also to distinguish the family type operation, normally involved, and to bring under full regulation other operations which attempt to masquerade as producer-handlers in their normal conception through hidden leases, rental arrangements and other corporate devices designed solely to circumvent the order.

There are a number of public institutions in the State of Connecticut at which milk is produced for use or for consumption in fluid form on the premises. In some instances the milk is bottled in a plant off the premises on a "custom" basis at another State institution and returned to the first institution for its own uses. Such milk is made exempt from pricing and pooling if the institution concerned is owned and operated by the State of Connecticut.

Producer-handlers are required to make reports as the market administrator deems necessary in order that he may determine and verify the continuing status of such individual and to facilitate accounting and verification of transactions involving other handlers.

Certain additional definitions have been included in the order to clarify its application relative to milk which constitutes the regular market supply.

It is necessary to define the term "handler" essentially for the purpose of identifying those persons on whom obligations and requirements are, or may be, imposed by the order, including the obligation to pay the minimum prices established. Provision is made, however, that a qualified association of producers, as well as a proprietary operator, may be a handler even though the association does not operate a plant. However, the association will be a handler only with respect to producer milk which it causes to be diverted from a pool plant to a nonpool plant for the account of such association. This is appropriate in order that a bargaining-type cooperative association may assume full responsibility in marketing the milk of its member producers when called upon to divert milk not needed in the marketing area, and thus will expedite the efficient handling of milk.

A "dairy farmer" is defined as any person who delivers to a plant milk of his own production, in non-packaged form.

The term "producer" defines those dairy farmers who constitute the regular supply for the market and to whom the minimum uniform prices computed under the order must be paid. The health authorities having jurisdiction in the marketing area issue plant approvals and require the holding of valid farm permits or certificates of registration on milk permitted to be received at plants serving the market. However, under certain circumstances milk from dairy farmers not holding such permits or certificates for regular delivery is permitted to be received, commingled with other milk in the plant and distributed in the form of fluid milk products in the marketing area. It is presumed, therefore, that if the milk is received at a pool plant it meets the quality standards of the health authorities. The term does not include, however, producer-handlers or persons qualifying as producers under other Federal orders.

A producer-handler does not share his Class I sales with the pool and accordingly should not be permitted to share in the proceeds of the pool as a producer. However, a producer-handler who had been associated with the market regu-

larly during the months of July through November, but who elects to change his status and become a regular handler buying from producers, should not be denied status as a producer on his own production.

The nearby Federal order markets in New England have diversion provisions which permit a dairy farmer to retain producer status under those orders under specified conditions even though the milk was received at a nonpool plant. If the first receiver of the milk reports it as producer milk under another Federal order, such milk received by a handler as diverted milk from such other Federal order market will be excluded from the pricing and payment provisions of this order.

Since the day-to-day and month-to-month market requirements vary, some accommodation must be provided to permit the efficient handling of any necessary surplus of the Connecticut market. Therefore, certain diversions of milk from pool plants to nonpool plants are permitted, with the milk retained in the pool if a pool handler, including an association of producers, accepts the responsibility of accounting for it as producer milk.

The diversion privilege is primarily intended to promote efficiency in the marketing of milk not needed at the pool plants for bottling purposes. It is frequently possible for excess milk to be hauled directly from the farms to a nonpool plant for disposition instead of being physically received at the pool plant and then transferred to the nonpool plant. Most commonly, these movements occur during the months of flush production. However, diversions may be necessary during the months of low production to accommodate excess milk during holiday periods or on weekends. Associations of producers which are responsible for marketing the milk of their members must be in a position to market such milk even during times of temporarily reduced demand. Under some circumstances, it would be less feasible to make the operator of the plant from which the milk was diverted responsible for the payment to the producers (or pool). Rather, when any association which qualifies as such under § 1019.2 (f) of the order is the handler for such milk it will be required to pay the applicable class prices therefor. The association also will be required to make the monthly reports necessary with respect to such milk.

The order provisions should not be so drawn as to encourage an excessive volume of milk to associate with the pool. During the months of July through November when supply is lowest seasonally, it is unnecessary to provide for diversions to nonpool plants except insofar as may be necessary to assure the orderly handling of occasional week-end surpluses. Diversion privileges on 12 days (6 days in the case of every-other-day delivery) during the months of July through November will accommodate the situation.

The months of December through June are the months of relatively high production and it is desirable that liberal diversion privileges to nonpool plants be permitted in these months to expedite the orderly disposition of the necessary seasonal surplus. Accordingly, unlimited diversion to nonpool plants is permitted during this period.

The term "producer milk" is intended to include all milk produced by persons qualifying as producers and received at pool plants directly from such producers, including milk diverted under the conditions specified. However, to encourage regularity of producer deliveries to pool plants in those months (July through November) when production normally is lowest seasonally, and to minimize the possibility that milk of an individual dairy farmer would be pooled under more than one order during the same month, milk delivered by a dairy farmer to a pool plant during the month, in such period, as well as any milk of such dairy farmer diverted in the same month, should not be eligible for pooling if such diversions are not held within the limits prescribed. Since diversions are permitted as stated above, such diverted milk is considered, for pricing, as received at the plant to which it is diverted. However, to avoid duplication of regulation milk of a producer diverted from a plant under this order is excluded as "producer milk" when it acquires status for pooling under another Federal order.

The term "other source milk" should be defined as all skim milk and butterfat utilized by a handler in his operations except fluid milk products received from pool plants, inventory of fluid milk products and current receipts of producer milk. The term includes all skim milk and butterfat in products other than fluid milk products from any source, including those produced at the handler's plant during an earlier month, which are reprocessed or converted to other products during the current 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 the 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.

Only three criteria of "exempt milk" are set forth which grant exemption from the classification and pricing provisions of the order with respect to certain quantities of milk which move into the market during the month. The first concerns movements of milk from an unregulated plant to a regulated plant for processing and packaging during an interval in which the facilities of the unregulated plant are temporarily not available for use because of an extraordinary circumstance beyond the dealer's control, which milk is returned to the unregulated plant for distribution. Such an exemption will not affect returns to regular producers but will accommodate the handling of milk in surrounding markets during disaster conditions.

In the second case, exempt milk would move from a regulated plant to an unregulated plant for processing and packaging and be returned to the regulated plant after being packaged. The latter procedure will permit regulated handlers to have producer milk bottled at unregulated plants while at the same time preserving for the producers the full Class I value of their milk so handled. Similar provisions are contained in the other New England Federal orders. They permit flexibility in handler operations under an order and accommodate the handling of milk during emergency periods without adverse effect on the pool.

The third category consists of certain institutional milk as previously discussed in connection with producer-handlers.

(b) *Classification and allocation of milk.* A classified use plan should be established to insure that all milk and milk products are fully accounted for by the handler who is responsible for reporting to the market administrator and for making payments to producers.

Milk is disposed of in the market in a wide variety of forms, representing different proportions of butterfat and skim milk, which may vary greatly from the proportions of butterfat and skim in milk as it is first received by the handler from the producer. Measured in terms of volume, the products disposed of in the market may represent one quantity of milk; and measured in terms of butterfat content only, they may represent quite a different quantity.

There are obvious difficulties in reconciling the quantities of product to be priced as Class I milk, particularly when consideration is given to the increasing intermarket transfers of fluid milk products (in which the main component is skim milk) involved between Connecticut and other New England markets, where accounting in one area is in terms of product weight and in another area is in terms of milk equivalent of butterfat. Uniformity of prices between markets depends upon a complete measure of milk quantities involved and this must be accomplished in terms of both butterfat and the skim equivalent of nonfat solids.

Accounting procedures which require separate and detailed accounting for skim milk and butterfat have been employed in Connecticut for several years under the terms of Connecticut Milk Administrator's price order No. 1, as amended. With respect to classification (and hence accounting), that price order regulates more than 90 percent of the milk received by Connecticut handlers, and it regulates all the handlers who handle any appreciable volumes or proportions of surplus milk. Application of skim milk and butterfat accounting procedures, therefore, will not be an innovation, but in fact such procedures are customary in the market and probably will not even require extensive alterations of the milk accounting systems now generally employed by Connecticut handlers. The skim milk and butterfat accounting plan provided for in the order included in this decision corresponds also to the procedure generally used in Federal order markets for verification of the receipts and utilization of milk and milk products, and will provide for uniformity in application of the accounting system to all handlers involved. The skim milk and butterfat accounting system should be adopted in the Connecticut market.

Milk may be received at pool plants not only from producers but also from other handlers and nonpool sources. Milk from all such sources may be commingled in the handler's plant(s). It is necessary to classify all receipts of milk and milk products in a plant to properly establish the classification of producer milk and to apply the provisions of a classified-pricing plan to such milk.

The fluid milk products classified in Class I are required by the appropriate health authorities in the marketing area to be made from milk or milk products procured from approved sources. The extra cost incurred by producers in producing quality milk and in delivering it to market in the condition and in the quantities needed by the market necessitates a price for milk used in Class I somewhat above the price of milk used in manufactured products. This higher price must be at a level which will provide sufficient incentive to producers, through the uniform price, to encourage the production of those quantities of milk needed for Class I plus the necessary reserve to cover daily fluctuations in market demand.

Milk which is excess to Class I use at any time must be disposed of for use in manufactured products. These products are less perishable than fluid milk products and they compete with similar products made from unapproved milk on the national market. Milk so used must be classified as Class II milk and priced according to its value in such outlets.

Under the proposed classification scheme, Class I milk would be all skim milk and butterfat (including that used to produce concentrated milk, reconstituted skim milk and fortified skim milk) disposed of in fluid or frozen form as milk, flavored milk, skim milk, flavored or cultured skim milk, buttermilk, concentrated milk, and 50 percent by weight of the product known as "half and half" with a butterfat content of at least 10 percent but less than 12 percent. Skim milk and butterfat not specifically accounted for in Class II would be classified in Class I.

All skim milk and butterfat used to produce products other than fluid milk products as set forth above would 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.

Fluid cream would be classified in Class II although it is generally considered in its physical form to be a fluid milk product. The area herein under consideration is an open cream market. Substantial quantities of fluid cream from outside sources are available in the Connecticut market and compete with cream derived from local producer milk. The inclusion of fluid cream as a Class I product would price cream derived from local milk supplies at a level above that applicable to fluid cream imported from other sources.

"Half and half" is a mixture of milk or skim milk and cream. In Connecticut, cream must contain at least 12 percent of butterfat whereas a butterfat content of 10 to 12 percent is customary for "half and half". While this product is not currently sold within the marketing area, some handlers who will be regulated may process this product for sale in other places. Provision should be made, therefore, for its classification and pricing. Classification of 50 percent by weight of the quantity of skim milk and butterfat in "half and half" in Class I and Class II, respectively, will provide close alignment of prices for this product between Federally-regulated markets in New England.

Handlers will have inventories of milk and milk products at the end of and beginning of each month which must enter into the accounting problem. The accounting procedure will be facilitated by providing that end-of-month inventories of all fluid milk products on hand be classified as Class II milk, regardless of whether such fluid milk products are held in bulk or packaged form. Inventories of such products will be subtracted from any available Class II disposition in the following month under the proposed allocation procedure. The higher use value of any Class I product in inventory assigned to current producer receipts during the month, and allocated to Class I milk in the following month, should be reflected in returns to producers. Inventories of Class I products on hand at a pool plant at the beginning of the month in which a plant is first pooled should be allocated to Class II utilization at the plant during the month. Priority of assignment of current producer milk to current Class I use will be preserved by this procedure.

Small unavoidable losses of both skim milk and butterfat are experienced in plant operations. Since handlers are required to make full accounting for all plant receipts on a classified-use basis, the appropriate classification of these losses commonly known to the trade as "shrinkage" should be considered. An allowance of 2 percent of total receipts as Class II milk was proposed.

A relatively small portion of shrinkage is incurred in the single function of receiving milk and relatively more in its processing and bottling. Therefore, a country plant should have less shrinkage if its principal function is to receive and trans-ship milk to a distributing plant. Under the provision adopted each pool plant would receive an allowance in Class II milk for actual shrinkage on producer milk, but in an amount not to exceed ½ of one percent of producer milk received, plus 1½ percent of such receipts and receipts from other pool plants which were not, in turn, moved to another pool plant. Shrinkage on other source milk allowed in this class would not be limited. The shrinkage loss on milk moved between handlers' pool distributing plants, or transferred or diverted by a handler from a pool plant to a nonpool plant, may be taken into account in the settlement between buyer and seller for the milk, and no provision is necessary with respect to shrinkage loss in the second plant on such movements.

The skim milk and butterfat content of milk and milk products received and disposed of by a handler can be determined through recognized testing procedures. Some products, such as ice cream mix and condensed milk, present a more difficult problem in accounting in that some of the water present in the milk as received from the producer is removed in processing. The respective volumes of skim milk and butterfat in such products can be ascertained through use of adequate plant records made available to the market administrator or by the use of standard conversion factors for skim milk and butterfat used to make such products where plant records are not adequate.

The accounting for such products as condensed milk and nonfat dry milk should be based on the original pounds of skim milk and butterfat required to produce the product. The value of each pound of nonfat dry milk utilized by addition to, or as, a Class I product has a value to the handler the same as every other pound contained therein or in similar products derived originally from producer milk. Neither the form in which, nor the source from which, such solids are obtained alter their value to the handler for such purposes as reconstitution or fortification and they may not be distinguished on the basis of cost of production, need for regular supplies, sanitary requirements, seasonality of production, or value to consumers. The effect of computing the value of the added nonfat solids on actual weight rather than on a skim milk "equivalent" basis is to alter the accounting method for such solids as compared with an equivalent quantity of such solids contained in fluid skim milk from producer milk which is utilized in the same product, in another Class I product, or even in Class II milk. The actual weight basis of accounting for the added solids used in fortified skim milk has the effect, from a pricing standpoint, of retaining in Class II milk a portion of the producer milk utilized in the production of such Class I product even though it represents the only end use resulting from the producer milk involved. This is equivalent to granting the handler a price reduction with respect to a portion of his Class I milk. Therefore, the accounting procedure to be used in the case of this and any milk product condensed from milk should be based on the pounds of milk or skim milk required to produce such product.

Butterfat and skim milk in the form of Class I products, at times, because of deterioration of product or as a result of the handler's inability to dispose of route returns, may be disposed of for livestock feed. Such disposition should be classified as Class II if verifiable evidence of such disposition is available to the market administrator.

Milk and other fluid items which a handler may find necessary to dump at times should be classified in Class II milk. The proposed classification of skim milk and butterfat disposed of in this manner (as specified in the order provision) should be adopted to provide for the orderly marketing of producer milk in this market with extremely limited facilities for handling reserve milk. However, in order to provide proper safeguards against abuse of the provision, the order should set forth with specificity

the administrative procedure to be followed in determining the quantities actually dumped. To insure proper classification, the order should contain authority for the market administrator to request, and establish procedure for, advance notice to be given him by the handler when the market administrator deems such action necessary. In addition, the order may be clarified and the proper classification of milk made certain by including additional procedural requirements concerning the reporting of such dispositions in instances where the actual dumping is not witnessed by the market administrator or his agent. For these reasons, it is concluded that such reporting requirements as are set forth in § 1019.31 (b) of the order are necessary and desirable as a matter of order administration.

Except for that limited and specified proportion of shrinkage which, as already described, may be assigned to Class II milk, all skim milk and butterfat received, for which a handler is unable to establish definite utilization, shall be classified as Class I. This procedure will assure producers of full value and will remove any advantage a handler might gain from failure to maintain complete and accurate records of utilization.

Each handler must be held responsible for a complete accounting on all his receipts of skim milk and butterfat in any form. The handler who first receives milk from producers should be held responsible for establishing the classification thereof, and for making payments to producers. This principal is fundamental to effective administration of the order.

Skim milk and butterfat in the form of any fluid milk product transferred from a pool plant to another plant should be classified, under usual circumstances, on the basis of utilization in the transferee-plant.

In the case of transfers between pool plants the allocation provisions as hereinafter set forth provide for priority of assignment of pool milk in Class I. Classification in accordance with use in the transferee-plant will provide adequate assurance to producers of the proper classification of their milk.

All butterfat and skim milk in fluid milk products transferred to the plant of a producer-handler should be classified as Class I and should not be subject to reclassification.

Transfers or diversions of skim milk and butterfat in the form of fluid milk products in bulk form from a pool plant under this order to a pool plant as defined in another Federal order should be classified in the class in which assigned under the other Federal order, except as described below with respect to transfers and diversions to plants in the New York-New Jersey market. Each of the nearby Federal orders are specific relative to the classification of receipts from nonpool plants (including pool plants under other Federal orders). Accordingly, it is necessary that the classification of milk transferred or diverted be determined under the provisions of such other orders. The other New England orders presently give recognition to packaged fluid milk products moving between such markets and credit Class I utilization to the originating market. If it were feasible to do so, similar recognition might be given to milk transferred from Connecticut order plants. Such recognition would require amendments to the other orders, however, and for the sake of uniform treatment should be appropriately considered at a hearing when other provisions of the several New England orders are considered.

Milk produced in the direct-ship area of the Connecticut milkshed may be moved, from a physical standpoint, as readily to certain New York plants as to Connecticut plants. Any milk produced in this area and transferred or diverted from the Connecticut market might find the most economical disposition in a nearby New York distributing-type plant which customarily relies on milk supplies under the regulatory provisions of Order No. 27. Connecticut milk may, for the convenience of the handler, be shipped in bulk to such a distributing-type plant rather than disposed of for manufacturing, even though the New York-New Jersey market has ample supplies to fulfill its own needs in the higher-priced utilizations and the Connecticut order milk so moved would be in fact, surplus to the needs of the Connecticut market. It is provided, therefore, that with respect to a fluid milk product transferred or diverted in bulk, or transferred as a packaged fluid milk product containing at least 3 percent butterfat, from a Connecticut order pool plant to such a New York-New Jersey market plant, a Class II milk classification will apply under the Connecticut order unless such fluid milk product is assigned to Class I-B under Order No. 27. The New York-New Jersey handler who receives the fluid milk product will be obligated, pursuant to the terms of Order No. 27, to pay into the producer-settlement fund of such order the difference between such Connecticut classification price and the Order No. 27 price of the class of use in the New York-New Jersey plant. This classification provision of the Connecticut order is not applicable, however, to route sales by Connecticut handlers in the New York-New Jersey marketing area.

Skim milk and butterfat in the form of fluid milk products transferred from a pool plant to a nonpool plant (except a pool plant as defined in another Federal order), should be classified in Class I, unless Class II utilization is established. Facilities are available under this order, or in the surrounding Federal order markets, to process any milk not needed in Class I and virtually all the available manufacturing facilities are attached to this pool or to one of the other Federal order market pools. Hence, any milk disposed of to a nonpool plant (other than a pool plant as defined in another Federal order) normally would be for Class I use. The other New England Federal order markets provide that such transfers shall be Class I. The provision as herein proposed will provide assurance of classification in Class I to the extent Class I utilization is available in the transferee-plant. The amount of skim milk and butterfat transferred and assigned to Class II shall not be greater than the amount of skim milk and butterfat, respectively, received in the form of fluid milk products from pool plants under the several Federal orders in excess of the Class I utilization at the transferee-plant. The attached order accommodates handlers whose Class I sales in the marketing area are insufficient to qualify for pooling by permitting them to purchase pool milk to the extent of their Class I sales without a compensatory or equalization payment. Under such circumstances transfers of skim milk and butterfat from a pool plant to such nonpool plant will be assigned to Class I in an amount not less than that disposed of from the transferee-plant on routes (Class I) in the marketing area.

The volumes of skim milk and butterfat which move in the form of fluid milk products from a pool plant to a nonpool plant and thence to another plant should be classified in accordance with the use of such products at the final transferee-plant and by following the applicable procedure outlined previously herein for movements from a pool plant to the other various plants.

If a transfer or diversion of milk is made to such a nonpool plant located outside New England or New York, classification of the skim milk and butterfat involved should be in Class I. Ample facilities exist within New England and New York State for manufacturing all milk not needed for Class I uses. Normally, all skim milk and butterfat shipped in the form of fluid milk products to outside areas would be for use as Class I. It would be uneconomical to make shipments of fluid milk products to distant locations for manufacturing uses, particularly since adequate facilities are available for processing surplus milk nearer the market. It is appropriate for administrative convenience and conservation of market administration funds, since adequate nearby manufacturing facilities exist, to provide for automatic classification in Class I of skim milk and butterfat in fluid milk products moved to plants outside New England and New York State.

Since a plant may receive skim milk or butterfat from sources other than producers, a procedure must be established under which it may be determined what quantities of milk in each class should be assigned to producer milk. The milk from producers who are regular suppliers of milk for the Connecticut market should be given priority in the assignment of Class I utilization at pool plants. Milk which is received from other sources should be assigned to the lowest available use classification. Unless this procedure is followed there can be no assurance that 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 were advantageous to do so while producer milk in the plant were utilized in Class II, the order would not be effective in carrying out the purpose of the Act

and the market would not be insured of a dependable supply of milk.

In making assignments of skim milk and butterfat pursuant to the allocation provisions of the order, any milk received from sources not regulated by an order issued pursuant to the Act should be assigned first 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 receipts, bulk other source milk in the form of fluid milk products from plants regulated by other orders issued under the Act should be assigned to the lowest available use classification.

During the months of July through November following the assignment of other source milk from non-Federal order sources, the lesser of 15 percent of producer receipts, or the remaining pounds of available use in Class II, should be assigned to Class II milk. These are the months of greatest demand for fluid milk in the market and hence the months in which supplemental supplies would most likely be needed. It is possible that a handler may have an overall supply of producer milk during any of such months and yet because of variation in day-to-day receipts or demand find it necessary to purchase supplemental supplies. While it is not intended that milk from other Federal order markets should replace local producer milk in Class I, handlers should not be penalized by having such necessary supplementary purchases classified as Class II. This procedure may result in some producer milk being classified in Class II while other Federal order milk is assigned to Class I. However, if producer milk is not available at the time when needed, local producers should not expect to receive a Class I credit for milk produced at other times when only a Class II use is available. Under this procedure a handler has assurance that if his producer receipts are inadequate to meet his Class I needs and he purchases milk regulated under another Federal order such milk will be assigned to Class I up to the extent of utilization in Class I milk.

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 assigned to Class I use in this market (except skim milk so disposed of from Order No. 27 plants) this sequence of assignment of other source milk will tend to minimize the application of the compensatory payment provisions.

The exempt milk provisions of the order as hereinbefore set forth accommodate the processing and packaging of milk both for this market and for outside markets under specified circumstances. Such milk is always a Class I disposition but does not enter into the final accounting of pool handlers. It is necessary, therefore, that exempt milk be deducted from Class I prior to the assignment of producer milk to remove any influence it might have in subsequent computations under the pricing and payment provisions.

The adjacent Federal orders now in effect provide that movements of packaged fluid milk products from one order plant to a plant under a different order shall be credited as a Class I disposition at the originating plant. It is intended that this order shall recognize this principle of free movement of packaged milk between markets. The pricing among the several orders is such that no price advantage can be gained from the movement of packaged milk among markets. However, efficiencies of scale derived from the concentration of specialized packaging operations in a single plant may prove advantageous to multiple plant operators. This practice is being followed to a considerable extent in the case of several handlers under the adjacent Federal orders in New England. This unrestricted competition for sales among all handlers whose milk is priced and regulated on a uniform basis will provide greater flexibility in daily operations of handlers. A better balance of milk supplies between markets should be possible from the free movement of such packaged fluid milk products.

Inventory of fluid milk products on hand at the beginning of the month is subtracted from the lowest available use classification after the allocation of other source milk but prior to the allocation of producer milk. A procedure is provided (in § 1019.50(d)) to insure that compensatory payments will not be made applicable to milk priced as Class I milk under another Federal order which is carried in the handler's plant as an inventory item prior to final disposition.

Producer receipts and receipts from other pool plants are assigned in a sequence which places receipts not subject to a zone price differential first in Class I, and the remaining receipts are then assigned to the highest remaining class utilization in sequence according to the nearness of the plants to Hartford in accordance with their zone location. This sequence assures assignment of the producer receipts of each handler to the highest available use classification and minimizes the transportation charges which producers are required to bear. One exception to this principle is the assignment of out-of-area Class I sales directly from a plant subject to a zone price differential to producer receipts at such plant. The assignment of such sales in this manner maintains a proper relationship of milk prices among plants as established by the order since the difference in price between a plant with no zone price differential and those subject to such a differential is based on the cost of moving the milk to the marketing area from the particular zone.

If, after making the assignments to 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 whom the computation is being made, the remaining amount is termed "overage". When utilization records indicate a disposition greater than receipts, it is to be presumed that the handler underreported his receipts of producer milk.

Uniform prices paid producers by each handler are to be calculated monthly. The assignment of utilization as described above therefore is carried out with respect to all milk received during each month. To apply a shorter accounting period would place an accounting and reporting burden upon handlers and increase the cost of administering the order.

A proposal was made at the hearing that when Class I packaged products sold by Connecticut handlers into another Federal marketing area in which the Class I price is lower, the Connecticut handler shall account to the Connecticut pool for such product at the lesser price applicable under the order in the other area.

Producer prices in other Federally-regulated markets in which Connecticut handlers may sell may be either higher or lower than such prices in the Connecticut market. In establishing the level of price in a Federal order market, consideration is given to prices being paid for milk in competing adjacent markets. The variations in class prices for milk of similar quality generally are reflective of differences in transportation costs. These prices may be adjusted, however, to reflect differences in seasonality of production and the local supply-demand situation.

It is intended that the Class I price effective under the Connecticut order shall be at a level which 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. With general alignment of prices as between order markets in the region no further provision beyond those previously discussed is necessary to maintain equity for handlers doing business in more than one regulated market.

(c) *Class prices.* Class I prices should be established at a level which, together with an appropriate Class II price, will bring forth the required supply of fluid milk for Class I needs plus a reasonable "reserve" throughout the year. Class I prices established too low will result in the production of insufficient milk to meet the Class I needs of the market. On the other hand, Class I prices at too high a level will stimulate production and bring to the market more milk than is necessary to satisfy Class I needs, including a reasonable reserve.

Connecticut handlers compete for milk supplies with handlers in the Federal markets of New York-New Jersey and Boston as well as with handlers in the smaller markets of Springfield and Worcester. Connecticut handlers also compete for milk supplies with other dealers in Massachusetts and Rhode Island, most of whom are under State price regulation. Direct-delivery milk from producers accounted for approximately 80 percent of the total receipts of Connecticut handlers in 1957. The major portion of direct-delivery receipts of Connecticut handlers was produced on farms located in the State of Connecticut. The bulk of the out-of-state direct-delivery receipts was imported from farms located in the State of New York,

and a lesser portion was brought in from farms located in Massachusetts. The nearby, or direct-ship, supply area for Connecticut overlaps with the supply areas of Springfield, Worcester and Southeastern New England at the outer edges of the respective milksheds. The Connecticut direct-ship area overlaps also with the milkshed for the New York-New Jersey marketing area in certain counties adjacent to the eastern boundary of New York State, such as Dutchess, Columbia, Putnam, Westchester and Rensselaer.

Receipts of milk from country plants by Connecticut dealers come primarily from plants located in the States of New York, Vermont and Massachusetts. Seven of the plants are located in Massachusetts or Vermont and five are located in New York State. Four of the five New York State plants are located east of the Hudson River and one is west of the Hudson River in the Catskill area.

Some type of formula is essential to relate class prices to general economic conditions and to market supply and demand conditions for milk, and to provide for adjustments in price with changing market conditions. Inasmuch as handlers in Connecticut receive milk from plants and producers which, in large measure, are located in the same areas where the New York, Boston, Worcester and Springfield markets also draw milk supplies, the levels of class prices in Connecticut cannot be far out of line with corresponding prices in such markets, without resulting in uneconomic shifts in sources of supply or marketing difficulties for Connecticut's reserve supply.

The class pricing methods adopted herein are similar, in principle, to those proposed at the hearing and those used in other New England markets and should accomplish the above-stated purpose. No distinction in pricing among areas within the State of Connecticut need be made since all milk for fluid consumption processed in Connecticut bottling plants may be distributed on equal terms in any part of the State.

Class I price. The minimum Class I price in Connecticut should be established on the basis of the "New England basic Class I price formula", with the Connecticut f. o. b. marketing area Class I price equal to the Boston Order No. 4 price at the 201–210 mile zone, plus 54 cents. The Class I price, so computed, would be the same as the delivered-to-market Class I price under Springfield, Massachusetts, Order No. 96. Such formula should provide for automatic adjustments to reflect changes in general economic conditions and in the supply-demand relationship for milk. Recognition of seasonal fluctuations in production should be reflected in the formula.

The use of the same type of pricing formula for Class I milk as is incorporated in the other Federal orders in New England will contribute toward an integrated system of pricing fluid milk between closely related markets.

The New England Class I pricing formula contains a supply-demand adjustment factor based upon the receipts and utilization of the Greater Boston, Merrimack Valley, Springfield and Worcester markets in combination. Since all these markets and the Connecticut market draw generally from common supply areas, it is provided that the present New England supply-demand adjustment formula also be adopted for the Connecticut market at this time.

The New England basic Class I pricing formula presently contains a contra-seasonal provision which prevents any downward price movement during the months of November and December. This mechanism at times has provided a substantially higher price during such months than the formula otherwise would have provided and, as a result, the markets have experienced very abrupt price declines on January 1. In the interest of maintaining price alignment among markets, no change is being made at this time in the formula as it would apply to the Connecticut market.

The price resulting from the application of the various supply-demand formula components to the base period price is adjusted through a bracketing system to provide for price changes of 22 cents per hundredweight, or multiples thereof, which normally reflect resale price changes in multiples of one-half cent per quart. This procedure is followed under the other New England orders and provides an appropriate basis for price movements in this marketing area.

A proposal was made to establish the Class I price by means of a formula that would base the Connecticut Class I price on the city plant Class I prices effective in the New York and Boston markets, according to a schedule that, over a period of time, presumably would give producers supplying Connecticut a Class I price 15 cents per hundredweight higher than the average of such New York and Boston Class I prices.

In support of their proposal, proponents testified that actual Class I prices under Connecticut State price regulation during the past eight years had averaged 36 and 39 cents, respectively, above city plant prices in Boston and New York, and that the recommendation would produce a somewhat lesser price level.

While proponents' price formula would result in annual average Class I prices moving in the same direction as, and in relatively close alignment with, New York-New Jersey and Boston market prices, they supported a different pattern of prices on a seasonal basis. In this respect their proposal would result in substantial variations from Class I prices in both the New York-New Jersey and Boston markets on a month-to-month basis.

Major cooperatives from the New York-New Jersey market proposed that the pricing provisions for Connecticut should be made the same as in Order No. 27 whether Connecticut were regulated separately or as a part of the Order No. 27 marketing area.

The Class I prices under Order No. 27 and Order No. 4 are established on the basis of separate formulas. The resulting prices under the formulas have not been the same, but have moved in relatively close alignment and have been sufficient to attract adequate supplies of milk for each market. Most of the country plants in the Boston market are about equi-distant from Boston and Hartford. Some Order No. 27 plants and most of the plants located in New York State which are presently approved to supply milk to Connecticut are closer to Hartford than they are to New York. In view of the large supplies of milk available in the New York-New Jersey and Boston milksheds, a Class I price for Connecticut higher than that adopted is not necessary to attract milk in the amounts required, especially since it appears likely that (because of an anticipated somewhat higher percentage of Class I utilization in Connecticut at the outset) uniform or blended prices in Connecticut will be somewhat higher than in such other major markets pending adjustment in the alignment of supplies for each market in response to such price differences.

Under usual circumstances when uniform prices under one order exceed uniform prices under another order in a nearby market by a significant amount over any prolonged period of time, and both markets provide for market-wide equalization, a shifting of producers and/or plants occurs until the respective prices are returned to close alignment.

While Connecticut handlers are in competition with both New York-New Jersey and other New England handlers for milk supplies, they are in more intense competition with New England handlers than with Order No. 27 handlers for sales of Class I milk. As previously stated, there is only one Connecticut handler who distributes Class I milk in the Order No. 27 marketing area and no Order No. 27 handlers operate routes in Connecticut. On the other hand, there are several handlers in Connecticut who are either in competition for Class I sales with other Massachusetts and Rhode Island handlers or themselves operate in other New England markets. One previously mentioned Massachusetts handler whose plant is located in Dudley, Massachusetts, distributes milk in Connecticut, Rhode Island, and the Federally-regulated areas of Springfield and Worcester. This same handler operates plants regulated under Order No. 4 from which milk is shipped to his presently unregulated Dudley plant. Another Connecticut handler with multiple plant operations distributes milk throughout nearly the entire New England region. In addition to its Connecticut operations, such company has plants regulated under each of the New England Federal orders as well as plants in the Southeastern New England marketing area. A Class I price formula comparable to that in the Boston and Springfield orders not only will insure an adequate level of supply but also will contribute to uniformity of Class I price levels for competing handlers operating in several markets and thereby to orderly and stable marketing conditions in the New England region.

Class II price. The Class II price under the Connecticut order f.o.b. market

should be established on the same basis as that presently used in the pricing of Class II milk under the Boston, Massachusetts, order at the 201–210 mile zone plus 5.8 cents.

Some reserve milk in excess of that needed to meet Class I requirements is necessary to maintain an adequate supply of milk for the market on an annual basis. The price for such milk, excess to Class I needs, should be at the highest level consistent with facilitating its movement to manufacturing outlets. The Class II price should not be established at a level so low as to encourage procurement of supplies of milk by handlers solely for the purpose of converting such milk into Class II products.

The majority of handlers who would be regulated under the proposed order have very limited facilities for the handling of milk in excess of that used in Class I products. The Connecticut Milk Producers Association maintains a plant in Hartford, Connecticut, which handles a considerable portion of the seasonal surplus of Connecticut handlers. The milk at this plant is separated into cream and skim milk. The cream is disposed of in fluid or frozen form and the skim milk is made into cottage or bakers cheese. Those handlers who have some manufacturing facilities utilize reserve milk in the manufacture of various types of soft cheese, ice cream and ice cream mix. Fluid cream is disposed of by such handlers in the marketing area, or at times cream is frozen and held for later disposition within or outside the marketing area.

The Connecticut market receives cream from country plants in the Boston and New York-New Jersey market milksheds as well as from other sources. The delivered prices of such cream are about equal to the prices of cream in the Boston open cream market.

The Class II products manufactured by Connecticut handlers must be disposed of in competition with similar products produced in the Boston or New York-New Jersey milksheds or in other areas throughout the country. The operations of any plant within the State of Connecticut are no different in this respect than those of a country plant even though they happen to be located in the marketing area. This means that after allowing for the freight allowance of 5.8 cents from the 21st zone, Class II milk at marketing area plants will be priced similarly to milk so used at country plants in the New York-New Jersey or Boston markets. The use of the Boston formula for the pricing of Class II milk at the 201–210 mile zone plus 5.8 cents also will provide identical prices for Class II milk at marketing area plants under the proposed order as is provided under closely associated Federal order markets, such as Springfield and Southeastern New England.

The formula herein adopted would base the butterfat value of Class II milk on the Boston market quotations per 40-quart can of 40 percent bottling quality cream, as reported for the month by the United States Department of Agriculture. The value of the skim milk component of the Class II formula is derived from the average price of roller process and spray process nonfat dry milk, f.o.b. manufacturing plant in the Chicago area, as reported by the United States Department of Agriculture for the month. The butterfat and nonfat dry milk prices resulting from the formula computations are combined and an amount which varies the price seasonally is subtracted from such price to arrive at the Class II price applicable at those plants not subject to a zone price differential.

In recent years New England has experienced a trend toward more nearly adequate supplies of cream from local producer milk sources, and imports of cream into the Boston market have at times been so small or so sporadic that no average cream price could be established for use as a guide to cream values. During the period from November 1956 to the present time the weighted average Boston cream price has not been reported. Because of the decline in open market cream transactions it is necessary to establish an alternative formula to reflect the value of butterfat in Class II milk. It is provided that in the absence of such average cream price an alternative Class II value which is based upon the U.S. average price of milk for manufacturing purposes, as reported by the United States Department of Agriculture, shall be used. If the latter price is higher in any month than the cream formula price, such higher value shall be used. The Class II price formula herein proposed is similar to the price formula used in other Federal order markets in New England and hence it will provide for compatibility between markets in the pricing of Class II milk.

Proponents of the order proposed that 10 cents be added to the Class II price during July and August. In support of the additional 10 cents in July and August proponents stated that such additional price was intended to encourage handlers to make milk available for fluid use in the months of July and August when the market needs it most.

As discussed herein, Connecticut handlers must compete on a local as well as a national market in the disposition of Class II products. The pricing provisions in conjunction with pool plant requirements are designed to encourage the shipment of milk to the market when needed. To place a higher value on Class II milk during July and August would place Connecticut handlers at a competitive disadvantage in the disposition of Class II products and thus the proposal for a higher Class II value for milk during July and August is denied.

Handlers proposed that there be allowed a deduction from the Class II price for milk utilized in the manufacture of butter and Cheddar cheese. The proposed deduction would amount to five cents and four cents per pound of butterfat, respectively, at country and city plants. Handlers pointed out that little, if any, milk is so utilized at present in Connecticut, but that the provision, if adopted, would provide some compensation to a handler for any loss on such products. Reference was made to the New York-New Jersey and Boston orders which contain provisions for a reduced price on milk used in butter and cheese manufacture.

There is little, if any, milk manufactured into butter or cheese in the State. There is no indication in the record that milk supplies are at such levels, or soon will reach such levels, that it is necessary to facilitate the disposition of milk in such products in this area. The large eastern population centers normally provide a ready outlet for butterfat in fluid cream, ice cream and frozen cream and its use in the manufacture of butter and Cheddar-type cheeses should not be encouraged in this market. The manufacture of these products in Connecticut at the same time that fluid cream is imported into the State from outside areas would not be in the interest of the economic utilization of butterfat in producer milk.

The pricing provisions herein proposed utilize a number of reported prices and indices from specified sources. From time to time it is possible that an individual price or index may not be reported or published. It is appropriate to provide therefore, that in such circumstances 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 so that there will be no interruption in the operation of the order.

Zone price differentials. In order to reflect the cost of moving Class I milk to the marketing area from distant plants which are, or may become, regular sources of supply for the Connecticut market, it is necessary to provide zoning adjustments to allow for variation in the payments handlers are required to make to producers whose milk is received at such plant locations, based upon their relative distances from the market.

There are handlers in the Connecticut market who operate receiving plants at country points where milk is received, weighed, cooled and sampled for butterfat testing. The milk is then transported by tanker to Connecticut plants for pasteurization and bottling or is utilized for manufacturing at the country plant. To provide a uniform basis of pricing milk to handlers a zone price adjustment is needed to reflect a reasonable price for milk at the various locations in the milkshed at which milk is, or may be, received as compared with the price effective for milk delivered from farms to plants located in the marketing area. The proximity of the marketing area to other milk producing areas from which milk is being sold in other markets also requires that location adjustments be provided to insure proper price alignment at such locations.

The rates of zone Class I and uniform price differentials are 33 cents per hundredweight for milk received at a plant located outside Connecticut or a town of Massachusetts or Rhode Island bordering on the State boundary of Connecticut and 50–60 miles from Hartford, plus 1.4 cents per hundredweight for each additional 10 miles, or fraction thereof, beyond 60 miles.

The rates of zone Class II price differentials begin with 3.0 cents per hundred-

weight at a plant located outside Connecticut or a town of Massachusetts or Rhode Island bordering on the State boundary of Connecticut and 50–60 miles from Hartford, and range to 6.0 cents per hundredweight at the 191–200 mile zone. Beyond 200 miles the rate is 1.0 cent additional per 50 miles with a maximum of 8.0 cents per hundredweight. These rates correspond to applicable rates in other New England markets under regulation.

The above rates apply to the shortest mileage distance over paved, first-class all weather roads, as determined by the market administrator. Some latitude is provided to facilitate the zoning of those plants which are not located on such roads. The mechanics for the determination of mileage distance, which generally correspond to the pattern in use in New England, are described in the order.

The schedule of zone adjustment rates included in the attached order provides close alignment of class prices among the various regulated markets at competing points in the milk production areas of other New England markets and the New York-New Jersey market. This schedule of zone differentials takes into account the fixed and variable costs associated with the movement of milk and cream to market from these areas. In Connecticut milk from country receiving points moves by tank truck.

Milk produced in Connecticut and in adjacent areas can be transported readily from producers' farms to handlers' bottling plants for distribution in the marketing area and does not require country assembly. No zone differential is applicable to such milk.

It is not possible to determine the precise level of the uniform prices which will result in this market. However, when class prices are in alignment with nearby markets, differences in utilization among the markets may be expected to distribute the available milk supply among handlers and markets according to relative needs. Normally, this balancing effect is accomplished by the operations of handlers and cooperatives through the shifting of plants or producers from one market to another. The differences in uniform prices which have occurred in the past between the New York-New Jersey and Boston markets and between Boston and the secondary markets in New England have resulted in some shifting of supplies among markets. Such shifts are economically desirable and tend to equalize returns among all producers and promote equitable distribution of reserve supplies.

If class prices under a Connecticut order were established at the outset so that uniform prices paid to producers at all competing points in the milksheds for the several Federally-regulated markets were in precise price alignment there would be no inducement for additional producers or plants to associate with the Connecticut market. Hence, the Connecticut market under such circumstances would not attract and hold a sufficient supply of milk for its fluid needs plus the necessary reserves. A similar result could be expected from the inclusion of Connecticut under Order No. 27 on the basis of the payment of the same uniform price to both Connecticut and New York-New Jersey producers, which in all probability would be at a lower level than has prevailed in Connecticut. In the latter circumstance, some Connecticut handlers could obtain necessary additional milk only through the payment of premiums to producers or plant handling charges. Such handlers would incur higher costs than those buying their supplies from nearby direct-shipped producers.

Since the order will provide for the identification of that milk which is subject to total regulation under the order, the possibility remains that some milk (i.e., other source milk) will be disposed of in the marketing area as Class I milk which will not be subject to total regulation.

It should be required that on all other source milk classified as Class I milk, a payment shall be made into the equalization fund at a rate equal to the difference between the Class I and Class II price. Payments at this rate are necessary to maintain the integrity of the pricing and pooling provisions of the order.

Essentially all other source milk which might be utilized for Class I milk in the marketing area would be produced as part of a supply intended primarily to meet the demand for milk for fluid consumption (or the equivalent of Class I uses under the order) in some area other than the area regulated by this order but not used for such purposes in the area for which it was produced, or produced for manufacturing outlets. If part of the regular supply of another fluid market, it could be only milk in excess of the amount needed for fluid disposition in such market. This is particularly so in view of the health requirements generally to be found in New England and New York State for the production of milk for fluid uses. If the plant operator could not find a Class I sale for such milk within the proposed marketing area, it would be necessary for him to convert the milk into a manufactured product, such as cream and nonfat dry milk, ice cream mix or cheese. Its value therefore to the plant operator would be a surplus milk value. The Class II price under the proposed order is based on the value of milk converted into Class II uses, and this is the price which regulated handlers are required to pay for milk when they convert milk into such uses in their own plants or dispose of reserve supplies to manufacturing plants. The Class II price, therefore, is an accurate and fair representation of the value to the shipping plant operator of surplus milk from an unregulated plant which is disposed of for Class I purposes in the marketing area.

If unregulated plant operators were allowed to dispose of surplus milk for Class I purposes in the regulated marketing area without some compensating, or neutralizing, provision in the order, 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 a reasonable level of prices to the producers for the regulated marketing area, would be defeated. Inefficiencies in the marketing of milk would be encouraged, since there would be incentive for the regulated handlers to obtain milk for Class I uses not from the regular and normal sources of supply for the market but from other sources of supply generated solely as a result of the price advantage created for unregulated milk by the regulation itself. The same effects have been felt under State price regulation and have led to a disrupted market. Providing for some method of compensating for, or neutralizing the effect of, the advantage created for unregulated milk is, therefore, a necessary provision of this order.

Because the value of Class I milk in the regulated market is established by the level of the Class I price provided for in the order, and the true value of other source milk when disposed of in the marketing area is the Class II value, a payment computed as the difference between the Class II price and the Class I price will remove the advantage which other source milk otherwise would have.

On the other hand, such payments should not apply to milk entering this marketing area which is subject to pricing as Class I milk under another Federal order, except in the circumstances described below, since its proper classification pricing and pooling will be determined pursuant to the other order, and if used in Class I milk (as defined in this order) will be priced and pooled equivalently (with due allowance for the transportation cost between markets) under the other order.

There is opportunity available to handlers to move skim milk from the New York-New Jersey market (Order No. 27) into this market at a considerable cost advantage over skim milk priced under this order. Skim milk received in producer milk under that order will not carry a Class I price on shipment as fluid skim milk to Connecticut. Thus, handlers in this market may purchase fluid skim milk from Order No. 27 plants at its value for manufacturing purposes for disposition in Class I uses in this market. A compensatory payment is necessary, therefore, in the case of skim milk, as such, entering this market for Class I use from Order No. 27 pool plants, to remove any cost advantage in the use of such skim milk. Such payment should be the difference between the Class I price and the Class II price under this order for the zone location of the originating plant. There is opportunity also for certain other milk in Order No. 27 pool plants to enter the Connecticut market at a competitive advantage over milk pooled under the Connecticut order. Some milk in Class I–B under Order No. 27 is unpriced insofar as that order is concerned even though handled in a pool plant thereunder. Since such milk is not subject to the class price provisions of such order, its price status is similar to that of unregulated milk, as previously discussed. To prevent such possible advantage, a similar payment

should apply in the case of unpriced Class I-B milk disposed of in the Connecticut marketing area and allocated to Class I milk under this order.

There may be other situations in which plant operators may find it economical or desirable to make shipments of small quantities of milk to the marketing area and yet it would be neither necessary nor desirable in terms of effective regulation to bring the plants fully under regulation. For instance, a plant which is associated with another market may find it advantageous to ship milk to a plant regulated by the order in order to have such milk converted into manufactured milk products. It would be quite possible, through misunderstanding or error, for such milk, which was intended for utilization in Class II products, to be assigned a Class I classification. In such circumstances it would not be practical or desirable to place the plant under full regulation. The application of compensatory payments as prescribed will accommodate such situations.

If milk is distributed as Class I milk within the marketing area on routes from a nonpool plant it is necessary to require payments to be made into the producer-settlement fund on such milk, also, in order to maintain the integrity of the classified pricing and market-wide equalization plan, found necessary to insure orderly marketing in this area. Small quantities of milk may be disposed of in the regulated marketing area as Class I milk from plants which are not normal or regular sources of supply for the marketing area. If any small, incidental, or accidental, shipment of milk into the marketing area were to bring under total regulation all the milk at the plant from which such shipment was made, undue hardship might result for the operator of such plant and for the farmers delivering the milk involved. Accordingly, there is included in the order a provision that each handler operating routes in the area from a nonpool plant shall make payment at the difference between the Class I and Class II prices per hundredweight on that volume of "other source milk" distributed as Class I milk in the marketing area which is not priced as Class I milk under this or any other Federal order.

All funds collected from compensatory payments should be added to the producer-settlement fund. The pool handler receiving other source milk on which a payment accrues should be obligated to make the compensatory payments to the producer-settlement fund. There will be no difference in actual price paid for milk whether the payment is required of the pool handler or of the operator of the unregulated plant from which the other source milk was obtained. Because the pool handler makes the actual distribution of the milk in the marketing area, and because he reports the utilization to the market administrator, he is, from an administrative view, the logical person to make the payment.

(d) *Distribution of proceeds among producers (type of pool).* The order should provide for the distribution of returns to producers through a market-wide type of equalization pool.

Individual-handler pools have been operated under Connecticut milk regulation. The Connecticut Milk Producers Association, which represents a major portion of producers in the market, however, has operated an association-wide pool since 1942. With increasing purchases of milk by handlers from out-of-State sources, the Connecticut Milk Producers Association has been carrying increasingly greater percentages of the market's reserve supply of milk. In addition, the producers who deliver to out-of-State plants which supply milk to Connecticut handlers, have not shared equally in the Class I sales during the flush production months. Consequently, members of the Connecticut Milk Producers Association and those producers who deliver to out-of-State plants have received relatively lower uniform prices for their milk than have other producers who deliver milk to handlers whose plants are located in Connecticut.

The system of marketing which has developed in Connecticut has operated with a minimum of manufacturing facilities. Only a limited number of Connecticut handlers, including the Connecticut Milk Producers Association, maintain any surplus handling facilities. Because the Connecticut Milk Producers Association controls the hauling of its members' milk under the farm bulk tank system, it has been able to channel milk to its buying handlers in accordance with their fluid milk requirements. Also, the association's plant has been used as a reserve plant to manufacture milk over and above the needs of its buying handlers. Certain other handlers who have milk in excess of their fluid needs, and who maintain manufacturing facilities, sell some milk to smaller handlers but on a limited scale.

The Connecticut Milk Producers Association has provided a ready market for producers who are removed from a handler's payroll. Other producers, who deliver their milk to some small handlers, while generally receiving higher uniform prices for their milk than do members of the Connecticut Milk Producers Association, have been compelled at times to restrict deliveries, or to sell cows, in periods of surplus, or to purchase cows in periods of shortage, in order to balance their handlers' fluid needs and to maintain market outlets.

While the Connecticut Milk Producers Association and a few of the larger handlers have served as a balance of supply for other Connecticut handlers, the association has played the largest role in this respect. As the Connecticut supply area is expanded to acquire sufficient milk for the market to meet its fluid requirements, provision must be made for pooling the additional reserve supplies to be associated with the market. It is necessary, therefore, that a procedure for distributing producer returns be established which will provide for equitable sharing by all producers of the lower returns realized from the necessary and inevitable handling of this reserve supply of milk. This may be accomplished by the use of a market-wide pooling arrangement and it is so provided in the attached order.

A market-wide pool will facilitate also the activities of producers in moving milk supplies among handlers as required to meet their individual fluid milk needs and will encourage processing of the necessary supplies over and above such needs at plants which can make the most efficient use of such milk.

Under the market-wide 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 such difference into 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 utilization will receive the difference from the producer-settlement fund. The market administrator in making payments to any handler from the producer-settlement fund should offset such payments by the amount of any 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 market administrator's office but is financially unable to make full payment of all his obligations pursuant to the order.

If, at any time, the balance of monies in the producer-settlement fund is insufficient to cover payments due all handlers from the producer-settlement fund, payments to such handlers should be reduced uniformly per hundredweight of milk. Handlers may then reduce payments to producers by an equivalent amount per hundredweight. Amounts remaining due such handlers from the producer-settlement fund would be paid as soon as the balance in the fund is sufficient, and handlers must 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 the 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 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 as to its authority to receive the payments due such producers. This privilege is specifically provided for in the act and the practice is being followed by major cooperatives involved in the market.

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

The basic butterfat test of milk upon which uniform prices to producers should be computed is 3.7 percent. For that milk which a handler receives from producers which varies in butterfat content from this basic test of 3.7 percent it is provided that an addition or subtraction, as the case may be, of a butterfat differential shall be made for each one-tenth of one percent that such average butterfat content of the individual producer's milk varies from this basic test. The producer butterfat differential is directly related to the butterfat value computed in the Class II price formula which is based upon the market value of butterfat in fluid cream on the Boston market. An alternative value based on the New York butter price is provided for if no cream price is reported for the month. The butterfat differential adjustment assures producers of payment for their milk on the basis of its use value according to the competitive value of butterfat on the open market in fluid cream or manufactured products. Milk in this market has generally been priced at a basic test of 3.7 percent and this is also the basic test in surrounding New England Federal order markets. It is concluded that handlers should be charged the same value for differential butterfat above or below the basic test at which milk is priced whether used in Class I or Class II. Under these circumstances it is unnecessary to clear the differential butterfat through the equalization pool. In order that returns to each producer may reflect the value of his milk at the butterfat test at which such milk is received, it is provided that each handler in paying producers shall adjust the uniform price by the application of a producer-butterfat differential.

In making payments to producers for milk received at plants not located in Connecticut or in a town of Massachusetts or Rhode Island which borders on the State boundary of Connecticut but in excess of 50 miles from Hartford, the uniform price should be reduced 33 cents plus 1.4 cents for each additional 10 miles distance (or fraction thereof) which such plant is located from Hartford. These are the same zone differentials applicable to handlers under the Class I pricing provisions. Since the milk produced for the fluid market must be moved to distributing plants in or near the marketing area to have a Class I outlet, it is appropriate that the returns to more distant producers reflect the cost of moving the milk to market.

Provision should be made also for the payment of a market differential to producers in the nearby supply area. The monies for the payment of these differentials will be obtained by a deduction from the total value of all milk before completing the computation of the market-wide uniform price.

Producers with farms located in the States of Connecticut or Rhode Island, in that portion of New York State east of the Hudson River and south of the New York State Extension of the Massachusetts Turnpike, or in that portion of Massachusetts south of the Massachusetts Turnpike, should receive a differential of 46 cents per hundredweight in addition to the basic uniform price.

Producers with farms located outside the area described above, but within that portion of New York east of the Hudson River and south of the northern boundaries of North Greenbush, Sand Lake, and Stephentown townships in Rensselaer County, should receive such a differential in the amount of 23 cents per hundredweight.

The Federal order markets in New England and the New York-New Jersey market provide for similar differentials to their procedures with nearby farms. The major portion of the area herein proposed as the nearby differential area for Connecticut producers overlaps or is adjacent to the nearby differential areas of other Federally-regulated markets competing for supply.

Milk received from the nearby area has long represented the major part of the total Connecticut supply. The differentials adopted recognize the higher percentage of the milk near to the market than of milk in the more distant zones which customarily has been used for fluid purposes. Nearby producers have been able to obtain a price higher, in relation to more distant producers, than can be accounted for by the advantage in the cost of transportation to market. This historical pattern of pricing has been typical in the markets of this region, and market differentials of this type have been adopted in the nearby regulated markets. The differentials adopted will reflect more representative values with respect to the milk of both nearby and distant producers since the nearby producer will share in the higher-priced Class I market to an extent somewhat greater than otherwise would be the case under market-wide pooling.

In addition, the use of a nearby differential will assist in providing appropriate price alignments for direct delivery producers which will permit Connecticut handlers to continue to compete in the purchase of milk on reasonable terms with dealers in adjacent markets. The amounts of such differentials are very similar to those employed in other New England Federal order markets and are in reasonable alignment with the schedule employed in the New York-New Jersey market. Such differentials were proposed and generally supported by both producers and handlers at the hearing. Their employment will tend to promote orderly marketing in the milkshed.

A consumer organization represented at the hearing opposed the inclusion of a nearby differential (in excess of transportation cost) as a part of the plan for minimum prices under the order. In support of this position, it was testified that any amount to be paid by handlers for nearby milk over and above an across-the-board uniform price to producers should be determined through the bargaining process between handlers and producers rather than fixed by regulation.

The nearby differentials effective in markets surrounding Connecticut make rather certain the necessity of some differential payment in Connecticut at this time, whether determined by the bargaining process or pursuant to the regulation. Although in some markets nearby differential payments are arrived at through bargaining, the proximity to Connecticut of other markets where fixed differentials are in effect suggest that a more uniform price situation among competing markets will prevail and orderly marketing promoted if such differentials for Connecticut producers are determined on similar terms through the order.

For the reasons stated, it is concluded that nearby differentials are necessary at this time and the attached order so provides.

Proponents of the order proposed a "take out and pay back" plan, in lieu of seasonal pricing, to encourage a more even seasonal production program by producers. Under such a plan a deduction from producer returns would be made in certain months and set aside for payment to producers in other months. In support of their proposal, proponents testified that Connecticut producers and many of the out-of-state producers delivering to Connecticut handlers have operated under such a plan for several years. Further, proponents pointed to the continuing need for a strong incentive for a more even seasonal production pattern for the Connecticut market.

It has been determined elsewhere that close alignment of class prices between adjacent Federal milk orders, both annually and seasonally, is necessary to promote the stable and orderly marketing of milk. It is concluded also that a modification of the "take out-pay back" plan as proposed by proponents should be incorporated in the order as a supplement to the Class I price schedule to accomplish the desired seasonality in production. Fifteen cents ($.15) per hundredweight should be deducted from producer returns during April, May and June and one-third of the aggregate deductions be paid to producers on a per hundredweight basis in each of the months of July, August and September. The seasonal variations in the Class I price make unnecessary a deduction rate as high as proposed by the sponsoring producer organization. The latter three-months, together with October and November, constitute the period when the market tends to be short of milk on a seasonal basis. Class prices will reach a seasonal peak on October 1, under usual circumstances. Milk production is relatively heavy in April, May and June.

Such plan should contribute to more even seasonal production and tend to attract milk supplies more nearly in accordance with fluid needs during July, August and September than could be achieved with seasonal pricing alone.

The order should provide that each handler make payment to each producer, for milk received from such producer, not later than the 22d day after the end of the month in which the milk was received.

The system of partial, or "advance", payments has not been established in Connecticut; however, there is one major handler in Massachusetts with distribution in Connecticut, who makes partial

payments to producers prior to final settlement for the month's deliveries. There is no necessity for providing for advance payments under the order inasmuch as any handler who so elects is in no way prevented from making advance payments.

All payments made to a cooperative association for distribution to producer-members should be made a day prior to the date payment to individual producers is required and should be accompanied by written statements sufficient to identify the individual producers entitled to receive such payment by name and address and should show the value of milk delivered, the butterfat content of such milk and other necessary information (including amount of and reason for any handler deductions) required for proper distribution of monies to the association producer-members for whom it makes collections.

The responsible handler shall make only proper deductions for goods and services furnished to, and for payments made on behalf of, the producer upon proper authorization given him by the producer.

(e) *Other administrative provisions.* Certain other provisions are needed in the order to carry out the administrative steps necessary to accomplish the purposes of the proposed regulation.

(1) *Terms and definitions.* In addition to the definitions discussed earlier in this decision which define the scope of the regulation, certain other terms and definitions are desirable in the interest of brevity and to assure that each usage of the term implies the same meaning throughout the order.

(2) *Market administrator.* Provision is made for the appointment by the Secretary of a market administrator to administer the order and to describe the powers and duties essential to the proper functioning of his office.

(3) *Records and reports.* Provisions are included in the order which notify handlers that they are required to maintain adequate records of their operations and to make the reports necessary to establish the proper classification and pricing of producer milk and payments due producers for such milk. Time limits must be prescribed for filing such reports and for making payments to producers. Dates must be established for the anouncement of prices by the market administrator.

Handlers should maintain and make available to the market administrator (a) all records and accounts of their operations, including financial records, and such facilities he may deem necessary to determine the accuracy of the information submitted by the handler, and (b) any other information upon which the classification of producer milk depends. The market administrator likewise must be permitted to check the accuracy of weights and tests of milk and milk products received and handled, and to verify all payments required under the order.

There may be instances in which a handler, wittingly or unwittingly, fails to report all receipts and/or sales of milk. In such cases, it is necessary for the market administrator to have access to the financial as well as other pertinent records as a means of discovering omissions or inaccuracies in accounting for milk under the order. Assuring proper accounting for milk is an important feature of an order; thus, it is essential that the market administrator have access to any and all records necessary for him to properly perform his duty and broad authority is granted, in this respect, under the Agricultural Marketing Agreement Act of 1937, as amended.

It is necessary that handlers retain 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 delivered to a plant, it is necessary that such records be kept for a reasonable period of time. The order should provide, however, for specific limitations of the time that handlers shall be required to retain their books and records and of the period of time in which obligations under the order should terminate. Provision made in this regard is identical in principle with the general amendment made to all milk orders in operation 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.

Without a provision for termination of obligations after a reasonable period of time has elapsed, handlers may file claims which, because the period involved might extend back over many years, could be in substantial amounts. This creates uncertainties which would endanger the stability of the market and lead to serious inequities. The order should provide that any obligation to pay a handler shall terminate two years after the month in which the milk was received if an under-payment is claimed, or within two years after payment was made if a refund is claimed, unless within such period of time the handler files a petition, pursuant to section 8c(15)(A) of the act, claiming such money. Handlers need also the protection of provisions terminating their obligations to make payments. Since handlers cannot be forewarned always as to contingent liabilities, it is extremely difficult and burdensome for them to make adequate provision therefor by setting up reserves or by taking other precautionary measures. Except under certain extraordinary conditions, such as litigation, the obligation of any handler to pay money should terminate two years after the day of the month during which the market administrator received the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. It is concluded that, in general, a period of two years is a reasonable time within which a market administrator should complete his auditing and inspection work and render any billings for money due under the order. Provisions are necessary also, as contained in the order included herewith, to meet such contingencies as failure of the handler to submit required books and records and to deal with situations where fraud or willful concealment of information may be involved.

If a handler fails to make the required reports or payments, his name should be publicly announced at the discretion of the market administrator. Such announcement is provided for by the act, and it is concluded that its adoption will facilitate enforcement of the terms of the order.

(4) *Marketing services.* A provision should be made in the order for performance of marketing services for producers, such as verifying the tests and weights of producer milk and furnishing market information. These services should be provided by the market administrator and the cost should be borne by producers receiving the service. If a cooperative association is performing such services for its member producers, the market administrator will accept this in lieu of his own service.

Orderly marketing will be promoted through a marketing service program by assuring individual producers that payments received by them for their milk are in accordance with the pricing provisions of this order and accurately reflect the weights and tests of milk delivered. Complete verification requires that butterfat tests and weights of individual producers deliveries as reported by the handler are proved to be accurate.

Dissemination of current market information to all producers will promote efficiency in the production, utilization and marketing of milk and should be included in the order as an additional phase of the marketing service program.

A maximum deduction of 3 cents per hundredweight should enable the market administrator to perform the various marketing services for producers. This deduction will apply only to receipts of milk from producers for whom he renders marketing services. If experience indicates that marketing services can be performed at a lesser rate, provision is made for the Secretary to adjust the rate downward without the necessity of a hearing.

Any cooperative association of producers performing marketing services for its producer-members shall receive such deductions as the membership agreement authorizes in lieu of the 3-cent maximum rate deducted from payments made to non-member producers.

(5) *Expense of administration.* Each pool handler shall 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 amount as the Secretary may prescribe, on (1) producer milk (including such handler's own-production), (2) exempt milk, and (3) other source milk which is classified as Class I except other source milk subject to an expense of administration assessment under another Federal order. Nonpool handlers will be assessed on the quantities of other source milk disposed of as Class I milk in the marketing area on routes and not subject to an expense of

administration assessment under another Federal order.

The market administrator must have sufficient funds to enable him to administer properly the terms of the order. The Act provides that cost of administration shall be financed through assessments 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 including nonpool handlers, will be achieved by applying the administrative assessment in the above-described manner.

In view of the number of small handlers who do business in the market, the large volumes of milk anticipated, the distances involved and the cost of administering orders in comparable markets, an assessment rate of 4 cents per hundredweight is concluded necessary to meet the expenses of administration. Provisions should be made to enable the Secretary to reduce the rate of assessment below the 4-cent maximum rate without necessitating an amendment to the order. This should be done at such time that experience reveals that a lesser rate will provide adequate revenue to administer the order properly.

(6) *Interest payments.* The producer-settlement fund, or "pool", is a sensitive method for distributing the proceeds to producers for milk produced for market. It cannot operate to promote the objectives of the order unless equalization payments are made promptly when due. Any failure to so pay monies due the pool represents a serious obstruction to the maintenance of orderly marketing conditions for producers since orderly marketing requires assurance that all producers receive full and prompt payment for their milk. If a condition of uncertainty as to responsibility for pool payments were to exist, the order could not operate effectively to maintain orderly marketing conditions and all producers would lose the principal advantages the regulation affords. A reasonable charge of interest on monies thus due producers, or the market administrator, will encourage prompt payment of obligations by handlers and assist in facilitating the operation of the order. Monies so owed producers, or the market administrator, but retained by handlers beyond the due dates are, in effect, borrowed, and a reasonable charge for interest is proper as payment for the use of such monies. Since a monthly basis of computing obligations is used, the interest rate adopted is established on a similar basis.

Findings and conclusions relating to amendment of Order No. 27. The changes in Order No. 27 for which provision is made herein, are those found to be necessary to properly coordinate its provisions with those of the new marketing order for Connecticut, for which provision also is made herein.

Such changes (together, of course, with provisions of the Connecticut order) are designed primarily (1) to specify which of the two orders is applicable to milk from plants or dairy farmers which to some degree is associated with both markets and which otherwise might be subject to regulation under both orders, and (2) to make appropriate provision for accounting under one of the orders for milk which is classified, priced and pooled under the other order.

Provision is made in the Connecticut order for including under the definition of "producer" a dairy farmer whose milk is diverted, under specified conditions, to plants which are not pool plants pursuant to that order. Thus, the milk of a dairy farmer diverted from a pool plant under the Connecticut order to a plant which is a pool plant under Order No. 27 (but not under the Connecticut order) would be producer milk fully subject to classification, pricing and pooling under the Connecticut order. Such a dairy farmer, however, also would be defined as a "producer" under Order No. 27 as now written since the definition includes any dairy farmer whose milk is delivered directly from farm to a pool plant defined thereunder. Provisions defining the same dairy farmer as a producer under both orders obviously are undesirable. Findings set forth herein relating to provisions of the Connecticut order support the conclusion that dairy farmers whose milk is diverted to nonpool plants (under that order), including Order No. 27 pool plants, should be defined as "producers" under the Connecticut order. Similar diversions may occur from plants subject to regulation under other Federal orders. Accordingly, the definition of "producer" under Order No. 27 should be amended to exclude a dairy farmer who, if so excluded, would be defined as a producer under another Federal order. Such dairy farmers, however, should be excluded as producers under Order No. 27 only if such exclusion does not result in a transfer of the value of Class I-A or Class II milk from Order No. 27 producers to producers under the other order.

Findings and conclusions are set forth herein, together with provisions of the order for Connecticut, relating to conditions under which a plant is to be a pool plant under the Connecticut order. Provision is made in the Connecticut order for excluding from full regulation under that order, a plant which otherwise is eligible to be a pool plant if (1) the plant is designated as a permanent pool plant under Order No. 27 pursuant to §§ 927.25 or 927.28, or (2) the plant (if exempt under the Connecticut order) is a temporary pool plant pursuant to § 927.29 and one from which a greater quantity of fluid milk products is disposed of during the month in the Order No. 27 marketing area than in the Connecticut marketing area.

The purposes of these provisions can be achieved only if Order No. 27 is amended to provide for excluding from regulation as pool plants under Order No. 27 certain plants which more appropriately should be regulated as pool plants under the Connecticut order. Under present provisions of Order No. 27, a plant meeting specified conditions is subject to regulation as a pool plant irrespective of the volume or proportion of its milk disposed of in the Connecticut (or any other) marketing area.

Those plants now designated as permanent pool plants pursuant to §§ 927.25 or 927.28 have been expressly so designated on the basis of demonstrated association with the market and as constituting a part of the regular current or reserve supply for the market. The continued status of such plants as pool plants does not depend upon month by month performance in terms of a minimum volume or proportion of Class I disposition in the marketing area. Instead, the designations of such plants as permanent pool plants are subject to suspension and cancellation at any time either for failure to meet specified operating requirements or at the option of the handler. Thus, any such plant is free to acquire nonpool status under Order No. 27 and thus become eligible to be a pool plant under the Connecticut order by meeting the specified shipping requirements under that order. Present provisions of Order No. 27 impose the necessary limitation on re-entering the Order No. 27 pool after cancellation of permanent pool plant status to prevent jumping back and forth from one pool to the other on a seasonal basis. However, when a plant loses its status as a permanent pool plant, it may again, after an intervening period of April through June, acquire pool status on a temporary basis. Thus, existing provisions of Order No. 27 relating to permanent pool plants need no amendment to achieve proper coordination with the pool plant provisions of the Connecticut order.

Findings and conclusions herein relating to the Connecticut order are that a plant disposing of the specified percentage of its receipts from dairy farmers as fluid milk in the marketing area during the months of July through November should be a pool plant under that order during any of such months and also during the following period of December through June (with nonpool option before December first) even though such plant also is eligible for designation as a temporary pool plant under Order No. 27, and if the volume of fluid milk products disposed of within Connecticut is greater than the volume of such disposition in the Order No. 27 marketing area.

Effectuation of this provision requires amendment of provisions of Order No. 27 relating to the designation of plants as temporary pool plants. Accordingly § 927.29 should be amended to exclude from those plants eligible for designation as a temporary pool plant during any month any plant which is a pool plant under the Connecticut order, and during the months of December through June any plant which was a pool plant under the Connecticut order in each of the preceding months of July through November.

It has not been the practice of handlers in Connecticut to maintain facilities for handling reserve supplies of milk for other markets, and there is no basis for expecting that, upon issuance of the Connecticut order, they will take in milk from Order No. 27 plants except when it is needed for fluid use. As has been the case in the past, expanding requirements for fluid use in Connecticut may be expected in large measure to come from sources adjoining or within the

general area of supply for the New York-New Jersey marketing area.

Accordingly, § 927.35 of the order should be amended to provide for the assignment of pool milk to Class I-B milk disposed of in Connecticut before the assignment of nonpool milk to such Class I-B milk. An exception should be made, however, by providing for the assignment of Connecticut pool milk to Class I-B disposed of in Connecticut before Order No. 27 pool milk is so assigned in instances where the assignment is being made at an Order No. 27 pool plant. This will preclude the possibility of the assignment of Order No. 27 pool milk to Class I-B in Connecticut ahead of Connecticut pool milk in the instances where it might be a competitive advantage to do so.

In order to effectuate the conclusion herein set forth that payment into the Order No. 27 pool should be made on Connecticut pool milk at Order No. 27 pool plants and at distributing plants in the Order No. 27 marketing area when such milk is assigned to Class I-A or Class II, § 927.83 (b) (1) should be amended to apply to such Connecticut pool milk when received directly from farmers at an Order No. 27 pool plant.

Milk received at an Order No. 27 pool plant from a Connecticut handler will constitute a disposition by the Connecticut handler of milk not needed for fluid use in Connecticut and should be so regarded in computing payments to producers under the two orders.

Milk distributed on routes in the Order No. 27 marketing area from the plant of a Connecticut pool handler, however, is not considered to be a disposition of surplus Connecticut pool milk or milk for which Order No. 27 producers should be compensated. Accordingly, § 927.83 (b) (1) should be amended so that payments required pursuant to that section do not apply to such milk. Such provision also should be amended to make the payment on skim milk inapplicable to packaged skim milk classified and priced under the Connecticut order since such packaged skim milk will be classified and priced in Class I under such order.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled.

Marketing agreement and order. Annexed hereto and made a part hereof are four documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Connecticut Marketing Area"; "Order Regulating the Handling of Milk in the Connecticut Marketing Area"; "Marketing Agreement Regulating the Handling of Milk in the New York-New Jersey Marketing Area"; and "Order Amending the Order Regulating the Handling of Milk in the New York-New Jersey Marketing Area"; which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreements, be published in the FEDERAL REGISTER. For each marketing area, respectively, the regulatory provisions of said marketing agreement are identical with those contained in the attached order which will be published with this decision.

Referendum order re Connecticut order; determination of representative period; and designation of referendum agent. It is hereby directed that a referendum be conducted among producers to determine whether the issuance of the attached order regulating the handling of milk in the Connecticut marketing area, is approved or favored by the producers, as defined under the terms of the proposed order, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of November 1958 is hereby determined to be the representative period for the conduct of such referendum.

Andrew T. Radigan is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders as published in the FEDERAL REGISTER on August 10, 1950 (15 F.R. 5177), such referendum to be completed on or before the 30th day from the date this decision is issued.

Determination of representative period re New York-New Jersey Order. The month of November 1958 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order amending the order regulating the handling of milk in the New York-New Jersey marketing area, is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Issued at Washington D.C., this 9th day of February 1959.

[SEAL] CLARENCE L. MILLER,
Assistant Secretary.

Order[1] Regulating the Handling of Milk in the Connecticut Marketing Area

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AUTHORITY: §§ 1019.0 to 1019.85 issued under sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c.

§ 1019.0 Findings and determinations.

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

(1) The said order, and all of the terms and conditions thereof, will tend

[1] This order shall not become effective unless and until the requirements of § 1019.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

to effectuate the declared policy of the act;

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

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

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk and its products; and.

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment, as a pro rata share of such expense, of 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, as follows: (i) By each pool handler with respect to (*a*) receipts of producer milk including such handler's own production, (*b*) receipts of exempt milk under § 1019.4(g) (1), and (*c*) receipts of other source milk assigned to Class I milk and not subject to an expense of administration assessment under another Federal order, and (ii) by each nonpool handler with respect to other source milk disposed of in the marketing area on routes, except other source milk subject to an expense of administration assessment under another Federal order.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Connecticut marketing area shall be in conformity to, and in compliance with, the following terms and conditions:

DEFINITIONS

§ 1019.1 General definitions.

(a) "Act" means Public Act No. 10, 73d Congress, as amended, and re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

(b) "Connecticut marketing area", hereinafter referred to as the "marketing area" means all of the territory included within the boundary lines of the State of Connecticut, together with all piers, docks and wharves connected therewith and craft moored thereat, and including all territory within such boundaries which is occupied by Government (municipal, State or Federal) installations, institutions or other establishments.

(c) "Route" means any delivery to retail or wholesale outlets (including any disposition by a vendor, from a plant store, or to a vending machine) of fluid milk products classified as Class I milk pursuant to § 1019.21(a) other than to a plant.

§ 1019.2 Definitions of persons.

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

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

(c) "Dairy farmer" means any person with respect to milk (but not as a packaged fluid milk product) of his own production delivered to a plant.

(d) "Dealer" means any person who operates a plant at which he engages in the business of receiving fluid milk products for resale or manufacture into milk products, whether or not he disposes of any fluid milk products in the marketing area during the month.

(e) "Producer" means any dairy farmer (except a producer-handler or a dairy farmer who is a producer under another Federal order) who produces milk which is received during the month at a pool plant, or is diverted by a pool handler from a pool plant to a nonpool plant in accordance with subparagraphs (1), (2), and (3) of this paragraph, if such pool handler, in filing the report required pursuant to § 1019.30, reports such milk as received from a producer at the location of the nonpool plant to which it is diverted;

(1) To a nonpool plant(s) during any month from July through November on not more than 12 days (6 days in the case of every-other-day delivery) during such month; or

(2) To a nonpool plant(s) during any of the months of December through June.

(3) Any dairy farmer whose milk is diverted during any month from July through November, inclusive, on more than the number of days specified in subparagraph (1) of this paragraph, shall not be considered to qualify under this paragraph with respect to any of his deliveries of milk during such month.

(f) "Association of producers" means any cooperative marketing association which the Secretary determines to be qualified pursuant to the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act", and to be engaged in making collective sales or marketing of milk or its products for the producers thereof.

(g) "Handler" means (1) any person who during the month operates a pool plant, or any other plant from which fluid milk products are disposed of, directly or indirectly, in the marketing area on routes, or (2) any association of producers with respect to the milk of any producer which it causes to be diverted to a nonpool plant for the account of such association under the conditions of § 1019.2(e).

(h) "Pool handler" means (1) any handler in his capacity as the operator of a pool plant, or (2) any association of producers with respect to milk diverted under the conditions of § 1019.2(e).

(i) "Producer-handler" means any person who is both a dairy farmer and a handler who processes milk from his own production, distributing all or a portion of such milk in the marketing area on routes, and who has no other source of supply for fluid milk products except fluid milk products from pool plants: *Provided,* That both (1) the maintenance, care and management of the dairy animals and other resources necessary to produce the milk, and (2) the processing, packaging and distribution of the milk, are the personal enterprise, and the personal risk, of such person: *And provided further,* That a State owned and operated institution or establishment meeting this definition which processes and packages milk produced by another such institution or establishment may receive such milk without having it regarded as a source of supply for fluid milk products.

§ 1019.3 Definitions of plants.

(a) "Plant" means the land and buildings, whether owned or operated by one or more persons, at which are maintained stationary holding tanks for milk, facilities and other equipment for the receiving, handling or processing of milk or milk products, constituting a single operating unit or establishment: *Provided,* That this definition shall not include any building, premises, equipment or facilities used primarily (1) to hold or store packaged fluid milk products or other milk products in finished form in transit on routes, or (2) to transfer milk from one road vehicle to another.

(b) "Receiving plant" means any plant at which are maintained facilities and equipment for the washing and sanitizing of milk cans or milk tank trucks and at which milk is received under either of the following conditions: (1) Milk moved from dairy farmers' farms in cans is accepted, weighed or measured, sampled and cooled, or (2) milk moved from dairy farmers' farms in tank trucks is accepted and transferred to stationary holding or processing facilities.

(c) "Pool plant": Subject to § 1019.47, "pool plant" means:

(1) any receiving plant, other than the plant of a producer-handler, from which at least 10 percent of its total receipts of milk directly from dairy farmers is disposed of during the month within the marketing area on routes and not less than 50 percent of such plant's total receipts of fluid milk products is disposed of during the month as Class I milk either inside or outside the marketing area;

(2) Except as provided in subparagraph (3) of this paragraph, any receiving plant, other than a plant meeting the conditions of subparagraph (1) of this paragraph, from which not less than 30 percent of its receipts of milk from dairy farmers is shipped during the month in bulk to any of the plants, institutions or facilities described in subdivisions (i), (ii) and (iii) of this subparagraph: *Provided,* That any plant which qualified as a pool plant pursuant to this subparagraph during each of the preceding months of July through November shall be a pool plant during the entire period of December through June unless the handler's written request for

nonpool status for such seven-month period is received by the market administrator prior to the 10th day of December.

(i) A plant meeting the conditions of subparagraph (1) of this paragraph,

(ii) Any other plant located within the marketing area or in a town of Massachusetts or Rhode Island which borders on the State boundary of Connecticut from which at least 10 percent of such plant's total receipts of fluid milk products is disposed of in the marketing area on a route(s), or

(iii) A governmentally owned and operated institution or facility located within the marketing area which disposes of Class I milk solely for use on its own premises; or

(3) For each month from the effective date of this order until July 1, 1959, any receiving plant, other than a plant meeting the conditions of subparagraph (1) of this paragraph, (i) from which not less than 10 percent of its receipts of milk from dairy farmers is shipped during such month in bulk form to any of the three types of plants or establishments described in subdivisions (i), (ii), and (iii) of subparagraph (2) of this paragraph, or (ii) for which the handler furnishes proof that such plant met during each month of the period July through November 1958, inclusive, the shipping requirement described under subparagraph (2) of this paragraph.

§ 1019.4 Definitions of milk and milk products.

(a) "Milk" means the commodity receiver from a dairy farmer at a plant as cow's milk. The term also includes milk so received which later has its butterfat content adjusted to at least one-half of one percent but less than 10 percent; frozen milk; reconstituted milk; and 50 percent of the quantity, by weight, of "half and half."

(b) "Cream" means that portion of milk, containing not less than 12 percent of butterfat, which rises to the surface of milk on standing, or is separated from it by centrifugal force. The term also includes sour cream; frozen cream; milk and cream mixtures containing 12 percent or more of butterfat; and 50 percent of the quantity, by weight, of "half and half."

(c) "Half and half" means any fluid milk product, except concentrated milk, the butterfat content of which has been adjusted to at least 10 percent but less than 12 percent.

(d) "Concentrated milk" means the concentrated, unsterilized milk product resembling plain condensed milk which is disposed of in fluid form for human consumption.

(e) "Fluid milk product" means milk, flavored milk, skim milk, flavored skim milk, cultured skim milk, buttermilk, and concentrated milk in fluid form, or any mixture in fluid form of milk, skim milk and cream containing less than 12 percent of butterfat (except eggnog, yogurt, ice cream mix, ice milk mix, milk shake base mix, evaporated or condensed milk or skim milk (plain or sweetened), and sterilized products in hermetically sealed containers).

(f) "Producer milk" means only that skim milk and butterfat contained in milk which during the month was (1) received at a pool plant directly from producers, or (2) diverted from a pool plant in accordance with the conditions set forth in § 1019.2(e).

(g) "Exempt milk" means all skim milk and butterfat: (1) Received at a pool plant as milk, in bulk, from a nonpool plant to be processed and packaged, and for which an equivalent quantity of skim milk and butterfat in the form of packaged fluid milk products is returned to the operator of the nonpool plant during the same month if such receipt and return occurs during an interval in which the facilities of the nonpool plant at which the milk is usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the dealer's control; (2) received at a pool plant in the form of packaged fluid milk products from a nonpool plant in return for which an equivalent quantity of skim milk and butterfat in the form of bulk milk is moved from a pool plant for processing and packaging during the same month; or (3) in milk produced by a State owned and operated institution, which milk is processed and packaged at a plant operated by a similar institution if such milk is used only to serve residents of either institution on the premises thereof.

(h) "Other source milk" means all skim milk and butterfat contained in or represented by (1) receipts (including any Class II milk product produced in the handler's plant during a prior month), in a form other than fluid milk products, which are reprocessed, converted, or combined into another product during the month, and (2) receipts (other than exempt milk) in the form of fluid milk products from any source other than producers or a pool plant(s).

(i) "Packaged fluid milk product" means any fluid milk product which has been placed in a container for disposition on routes and has not been removed from such container prior to such disposition.

MARKET ADMINISTRATOR

§ 1019.10 Designation of market administrator.

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

§ 1019.11 Powers of market administrator.

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 of its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 1019.12 Duties of market administrator.

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 upon which he enters upon his duties, execute and deliver to the Secretary a bond conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to exercise his powers and perform his duties;

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

(d) Pay, out of the funds provided by § 1019.70; (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 § 1019.69, necessarily incurred by him in the maintainence 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 pool handler who, within 5 days after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1019.30 and 1019.31 (a) (3), or payments pursuant to §§ 1019.60 to 1019.70;

(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, as necessary, of handlers' records, and if made available to the market administrator, of the records of any other person upon whose utilization the classification of skim milk and butterfat for such handler depends;

(i) Prepare and disseminate for the benefit of producers, consumers, and handlers, such general statistics and information as reflect the operation of this part and which do not reveal confidential information:

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

(1) The 26th day of each month, the Class I price computed pursuant to § 1019.40(a) for the following month;

(2) The 5th day of each month the Class II price computed pursuant to § 1019.40(b) and the butterfat differen-

tial computed pursuant to § 1019.61 both for the preceding month;

(3) The 14th day of each month, the basic uniform price computed pursuant to § 1019.51 and the zone uniform prices resulting from the adjustment of the basic uniform price by the zone price differentials pursuant to § 1019.42, both for the preceding month.

(k) Give each of the producers delivering to a plant, as reported by the handler, prompt written notice of his actual or potential loss of producer status for the first month in which the plant's status has changed or is changing to that of a nonpool plant: *Provided,* That in the case of producers for whom an association of producers is collecting payments pursuant to § 1019.60(b), such notice shall be furnished such association of producers.

CLASSIFICATION

§ 1019.20 Skim milk and butterfat to be classified.

All skim milk and butterfat which is required to be reported pursuant to § 1019.30 shall be classified by the market administrator pursuant to the provisions of §§ 1019.21 to 1019.24.

§ 1019.21 Classes of utilization.

Subject to the conditions set forth in §§ 1019.22, 1019.23, and 1019.24 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 in milk: (1) Sold, distributed or disposed of in the form of fluid milk products (except as provided in paragraph (b) of this section) and (2) not 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 except a fluid milk product; (2) disposed of for livestock feed or to bakeries, soup factories, and similar establishments; (3) contained in milk, skim milk, flavored milk, flavored milk drink or buttermilk dumped, if the conditions of § 1019.31(b) are met by the handler; (4) contained in inventory of fluid milk products on hand at the end of the month; (5) in shrinkage of producer milk (except that diverted pursuant to § 1019.2(e)) not to exceed one-half of one percent of the total pounds of skim milk and butterfat, respectively, received directly from producers, plus 1½ percent of the total pounds of skim milk and butterfat in bulk fluid milk, skim milk and cream received directly from producers and by transfer from a pool plant which were not disposed of in bulk form to another plant; and (6) in shrinkage of other source milk.

§ 1019.22 Transfers and diversions of fluid milk products.

Skim milk and butterfat moved in the form of any fluid milk product from a pool plant to another plant shall be classified as follows:

(a) (1) As Class I milk if transferred as a packaged fluid milk product from a pool plant to another pool plant.

(2) As Class I milk if transferred in bulk from a pool plant to another pool plant and a Class II use is not indicated in writing to the market administrator by the operators of both plants on or before the 10th day after the end of the month within which such transfer was made, except that (i) in no event shall the amount classified in either class exceed the total use in such class at the transferee-plant, and (ii) in the case of transfers from a plant subject to a zone price differential, the amount classified as Class I milk shall not exceed that on which the zone price differential is applicable pursuant to the proviso of § 1019.42(b).

(b) As Class I milk if transferred in bulk to the plant of a producer-handler.

(c) (1) Except as provided in subparagraph (2) of this paragraph, in the class in which assigned under the other order if transferred or diverted in bulk to a pool plant as defined under another Federal order.

(2) In Class II milk to the extent it is not assigned to Class I-B (i) if diverted or transferred in bulk, or (ii) if transferred as a packaged fluid milk product containing at least 3 percent butterfat, to a pool plant as defined in Federal Order No. 27 or to any plant from which a greater aggregate quantity of fluid milk products is disposed of on routes in the New York-New Jersey marketing area under Order No. 27 than is disposed of in the Connecticut marketing area.

(d) Except as provided in paragraphs (b) and (c) of this section, as Class I milk if transferred or diverted in bulk to a nonpool plant, unless Class II utilization is established: *Provided,* That (1) the amount of such skim milk and butterfat assigned to Class I milk shall not be less than the disposition from the transferee-plant of skim milk and butterfat, respectively, in the form of fluid milk products in the marketing area on routes, and (2) the amount of such skim milk and butterfat assigned to Class II milk in no event shall be greater than that volume of skim milk and butterfat, respectively, received in the form of fluid milk products from fully regulated plants under any Federal order, which is in excess of the Class I utilization at such transferee-plant.

(e) By applying the provisions of paragraphs (b) to (d) of this section, whichever is applicable, if transferred or diverted in bulk to a nonpool plant, except the plant of a producer-handler or a fully regulated plant under another Federal order, and thence to another nonpool plant: *Provided,* That if the other plant to which such movement is made is located outside the New England States and New York State, classification shall be as Class I milk.

§ 1019.23 Responsibility of handlers and reclassification of milk.

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

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

§ 1019.24 Computation and allocation of the quantity of producer milk in each class.

For each handler the market administrator shall:

(a) Correct for mathematical and for other obvious errors the monthly report submitted by such handler and compute the total pounds of skim milk and butterfat in producer milk in each class: *Provided,* That when nonfat milk solids derived from nonfat dry milk, condensed skim milk, or any other product condensed from milk or skim milk, are utilized by such handler, the total pounds of skim milk computed shall reflect a volume equivalent to the skim milk used to produce such nonfat milk solids; and

(b) Allocate skim milk in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk, the pounds of skim milk shrinkage allowed pursuant to § 1019.21(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 fluid milk products;

(3) Subtract from the remaining pounds of skim milk in each class in series beginning with Class II milk the pounds of skim milk received during the month in other source milk in the form of fluid milk products from plants other than one of the types described under subparagraph (5) of this paragraph;

(4) During the months of July through November, subtract from the pounds of skim milk in Class II milk an amount equal to the remaining volume of skim milk in Class II milk or the product obtained by multiplying by 0.15 the pounds of skim milk in receipts of producer milk, whichever is less;

(5) Subtract from the remaining pounds of skim milk in each class in series beginning with Class II milk, the pounds of skim milk in bulk receipts of fluid milk products from (i) any plant at which milk is subject to the class price provisions of another Federal order, and (ii) any plant which receives its entire supply of fluid milk products from a plant under another Federal order;

(6) Subtract from the remaining pounds of skim milk in Class I milk the pounds of skim milk received during the month as exempt milk;

(7) Subtract from the remaining pounds of skim milk in class I milk the pounds of skim milk in packaged fluid milk products received (i) from plant sources as described in subparagraph (5) of this paragraph, and (ii) from any pool plant and any plant which receives its entire supply from a pool plant;

(8) Assign to Class II milk the pounds of skim milk subtracted pursuant to subparagraph (4) of this paragraph;

(9) Subtract from the remaining pounds of skim milk in each class, respectively, the skim milk received in bulk from other pool plants and assigned to such class;

(10) Subtract from the remaining pounds of skim milk in Class II milk the pounds of skim milk contained in inventory of fluid milk products on hand

at the beginning of the month: *Provided,* That if the pounds of skim milk in such inventory exceed the remaining pounds of skim milk in Class II the balance shall be subtracted from the pounds of skim milk in Class I milk;

(11) Assign to Class II milk the amount subtracted pursuant to subparagraph (1) of this paragraph; and

(12) If the remaining pounds of skim milk in both classes exceed the total pounds of skim milk in the producer milk of such handler, subtract such excess (hereinafter referred to as "overage") from the remaining pounds of skim milk in each class in sequence beginning with Class I milk.

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

(d) Add the pounds of skim milk and butterfat allocated to producer milk in each class, pursuant to paragraphs (b) and (c) of this section.

§ 1019.25 Shrinkage.

In computing shrinkage for the purposes of § 1019.21(b) (5) and (6), the market administrator shall determine the shrinkage of skim milk and butterfat, respectively, in producer milk and in other source milk in the following manner:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each handler, and

(b) Prorate the total shrinkage of skim milk and butterfat, respectively, computed pursuant to paragraph (a) of this section, among the pounds of producer milk, other source milk, and receipts from other handlers.

REPORTS, RECORDS AND FACILITIES

§ 1019.30 Reports of receipts and utilization.

(a) On or before the 8th day after the end of each month, or not later than the 10th day after the end of each month if the report required by this paragraph is delivered in person to the office of the market administrator, each pool handler with respect to each of his pool plants and with respect to milk diverted under the conditions of § 1019.2(e), shall report to the market administrator, in the detail and on forms prescribed by the market administrator for such month:

(1) The respective quantities of skim milk and butterfat contained in:

(i) The receipts of producer milk (including such handler's own farm production;

(ii) The receipts of fluid milk products from other pool plants;

(iii) The receipts of exempt milk;

(iv) The receipts of other source milk;

(v) Inventories of fluid milk products on hand at the beginning and end of the month;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to subparagraph (1) of this paragraph.

(b) Except as provided in paragraph (a) of this section, each handler who operates a nonpool plant shall report to the market administrator, on or before the appropriate date referred to in paragraph (a) of this section, his total receipts, his utilization of milk and milk products, his total disposition of Class I milk, including as a separate figure the quantity disposed of within the marketing area on routes, and such other information with respect to all receipts and utilization as the market administrator may prescribe.

§ 1019.31 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) Within 20 days after a producer moves from one farm to another, starts or resumes deliveries to any of a handler's pool plants, or starts delivering his milk to the handler's plant by tank truck, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the change took place, and the farm and plant locations involved. The report shall also state the plant to which the producer had been delivering prior to starting or resuming deliveries;

(2) Within 15 days after the 5th consecutive day on which a producer has failed to deliver 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 date on which the last delivery was made, and the farm and plant locations involved. The report shall also state the reason for the producer's failure to continue deliveries;

(3) Subsequent to the 22d day after the end of the month, and within 5 days after the market administrator's request, his producer payroll for such month, which shall show for each producer:

(i) The daily and total pounds of milk delivered with the average butterfat test thereof; and

(ii) The net amount of such handler's payments to such producer with the prices, deductions, and charges involved.

(b) (1) Each handler dumping pursuant to § 1019.21(b) (3) shall mail or deliver to the market administrator within 48 hours following each dumping not witnessed by the market administrator or his agent, a report in writing, as prescribed by the market administrator, showing the date on which the dumping was made and the quantity dumped, such report to be signed by both the person who performed the dumping operation and the person authorized to sign reports for the handler made pursuant to § 1019.30 (if the latter person is not available to sign the report within the 48-hour period, the signature of the plant manager or plant superintendent shall be substituted on the report).

(2) Each handler dumping also shall give the market administrator, at the request of and in accordance with instructions issued by the market administrator, advance notice of intention to make such disposition and of the quantities involved.

§ 1019.32 Notices to producers.

(a) Each pool handler shall furnish each producer from whom he receives milk with information regarding the weights, butterfat tests and payments with respect to the producer's milk as follows: *Provided,* That in the case of producers for whom the handler makes payment to a cooperative association pursuant to § 1019.60(b), the information specified in paragraph (b) (1), (2) and (5) of this section shall be furnished by the handler to such cooperative association on or before the 14th day after the end of the month for which such payment is due.

(b) In making the payments to producers prescribed in § 1019.60(a), each pool handler shall furnish each producer with a supporting statement, in such form that it may be retained by the producer, which shall show:

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

(2) The total pounds and average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to the producer is required under the provisions of § 1019.60 (a);

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, together with a description of the respective deductions; and

(6) The net amount of payment to the producer.

§ 1019.33 Records, facilities and verification.

(a) Each handler shall maintain detailed and summary records showing all receipts movements, and disposition of milk and milk products during each month, and the quantities of milk and milk products on hand at the end of the month.

(b) For the purpose of ascertaining the correctness of any report made to the market administrator as required by this part or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, each handler shall permit the market administrator or his agent, during the usual hours of business, to:

(1) Verify the information contained in reports submitted in accordance with this part;

(2) Weigh, sample, and test milk and milk products; and

(3) Make such examination of records, operations, equipment, and facilities as the market administrator deems necessary for the purpose specified in this section.

§ 1019.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the 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, until further written notification from the market administrator. 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.

MINIMUM PRICES

§ 1019.40 Class prices.

Subject to the provisions of § 1019.42 each pool handler shall pay, at the time and in the manner set forth in § 1019.60, not less than the following prices per hundredweight for the respective quantities of milk in each class computed for him pursuant to § 1019.24:

(a) *Class I price.* The Class I price for the month shall be the New England basic Class I price per hundredweight computed pursuant to § 1019.41 plus 54 cents.

(b) *Class II price.* Except as provided in paragraph (c) of this section, the Class II price per hundredweight shall be computed for each month as follows:

(1) Subtract 52.5 cents from the weighted average price per 40-quart can of 40 percent bottling quality cream f.o.b. Boston, as reported by the United States Department of Agriculture for the period between the 15th day of the month for which the price is computed and the 16th day of the preceding month, inclusive, divide the remainder by 33, multiply by 0.98, and multiply the result by 3.7;

(2) Multiply by 7.85 the simple average of the latest available prices per pound of roller process and spray process nonfat dry milk for human consumption, in carlots, f.o.b. Chicago area manufacturing plants, as reported and published by the United States Department of Agriculture;

(3) Add the results obtained in subparagraphs (1) and (2) of this paragraph, and from the sum subtract the amount shown below for the applicable month:

Month:	*Amount*
January and February	$0.612
March and April	.732
May and June	.792
July	.732
August and September	.672
October, November and December	.612

(c) For any month in which no cream price, as described in paragraph (b)(1) of this section, is reported, and for any month in which the amount determined pursuant to this paragraph is greater than the amount computed pursuant to paragraph (b)(3) of this section, the Class II price per hundredweight shall be computed as follows:

(1) Adjust the average price for milk for manufacturing purposes, f.o.b. plants United States, as reported on a preliminary basis by the United States Department of Agriculture for such month, by subtracting for each one-tenth of 1 percent of average butterfat content above 3.7 percent, or adding for each one-tenth of 1 percent of average butterfat content below 3.7 percent, an amount per hundredweight which shall be calculated by the market administrator by multiplying by 0.125 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market, as reported by the United States Department of Agriculture for the period between the 15th day of the month for which the price is computed and the 16th day of the preceding month, inclusive.

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

Month:	*Amount*
January	+$0.188
February	+ 0.178
March	+ 0.008
April	− 0.032
May	− 0.062
June	− 0.052
July	+ 0.138
August	+ 0.228
September	+ 0.198
October	+ 0.218
November	+ 0.228
December	+ 0.228

§ 1019.41 Computation of New England basic Class I price.

The New England basic Class I price per hundredweight of milk containing 3.7 percent butterfat shall be determined for each month pursuant to this section. The latest reported figures available to the market administrator on the 25th day of the preceding month shall be used in making the following computations, except that if the 25th day of such preceding month falls on a Sunday or legal holiday the latest figures available on the next succeeding work day shall be used.

(a) Compute the economic index as follows:

(1) Divide by 1.143 the monthly wholesale price index for all commodities as reported by the Bureau of Labor Statistics, United States Department of Labor, with the years 1947–49 as the base period;

(2) Using the data on per capita personal income, by States and regions, as published by the United States Department of Commerce, establish a "New England adjustment percentage" by computing the current percentage relationship of New England per capita personal income to per capita personal income in continental United States. Multiply by the New England adjustment percentage the quarterly figure showing the current annual rate of per capita disposable personal income in the United States as released by the United States Department of Commerce or the Council of Economic Advisers to the President. Divide the result by 15.34 to determine an index of per capita disposable personal income in New England;

(3) Multiply by 20 the average price per 100 pounds paid by farmers in the New England region for all mixed dairy feed of less than 29 percent protein content, as reported by the United States Department of Agriculture for the month, and divide the result by 0.884 to determine the dairy ration index. Compute the average, weighted by the indicated factors, of the following farm wage rates reported for the New England region by the United States Department of Agriculture: Rate per month with board and room, 1; rate per month with house, 1; rate per week with board or room, 4.33; rate per week without board and room, 4.33; and the rate per day without board or room, 26. Divide the average wage rate so computed by 1.458 to determine the wage rate index. Multiply the dairy ration index by 0.6 and the wage rate index by 0.4 and combine the two results to determine the grain-labor cost index; and

(4) Divide by 3 the sum of the wholesale price index, the index of per capita disposable income in New England, and the grain-labor cost index determined pursuant to this paragraph. The result shall be known as the economic index.

(b) The seasonal adjustment factor shall be the factor listed below for the month for which price is being computed.

Month:	*Seasonal adjustment factor*
January and February	1.04
March	1.00
April	.92
May and June	.88
July	.96
August	1.00
September	1.04
October, November and December	1.08

(c) Compute a New England basic Class I price index by multiplying the economic index determined pursuant to paragraph (a) of this section by the applicable seasonal adjustment factor pursuant to paragraph (b) of this section and multiplying the result by the supply-demand adjustment factor determined by the market administrator of Order No. 4 regulating the handling of milk in the Greater Boston marketing area pursuant to § 904.48(b) of that order.

(d) The New England basic Class I price shall be as shown in the following table:

New England basic Class I price index ×$0.05592		New England basic Class I price
At least—	But less than—	
$4.20 [1]	$4.42	$4.31
$4.42	4.64	4.53
$4.64	4.86	4.75
$4.86	5.08	4.97
$5.08	5.30	5.19
$5.30	5.52	5.41
$5.52	5.74	5.63
$5.74	5.96	5.85
$5.96	6.18	6.07
$6.18	[1] 6.40	6.29

[1] If the New England basic Class I price index times $0.05592 is less than $4.20 or is $6.40 or more, the New England basic Class I price shall be determined by extending the table at the indicated rate of extension.

(e) Notwithstanding the provisions of paragraphs (a) to (d) of this section, the New England basic Class I price for November or December of each year shall not be lower than such price for the immediately preceding month.

§ 1019.42 Zone price differentials.

The prices of Class I milk and Class II milk (§ 1019.40) and the basic uniform price to producers (§ 1019.51) at each plant located outside Connecticut or a town of Massachusetts or Rhode Island which borders on the State boundary of Connecticut and more than 50 miles

from Hartford, Connecticut, shall be subject to zone price differentials for such plant computed as follows:

(a) The zone location of each plant shall be determined by the market administrator and shall be based upon highway mileage distance as determined by use of the appropriate State maps contained in Mileage Guide No. 6, and revisions thereof, issued by Household Goods Carriers' Bureau, Agent, Washington, D.C. The distance shall be the lowest highway mileage between Hartford, Connecticut, and the named point on the map which is nearest to the plant, over roads designated thereon as paved, first-class, all-weather roads. In the event that the named point is not located on a through first-class road, such other roads shall be used to reach a through first-class road as will result in the lowest highway mileage to Hartford, except that such other roads shall not be used for a distance of more than 15 miles if it is otherwise possible to connect with a through first-class road. In any instance in which the map does not clearly show the mileage between points on a road, the mileage used shall be the mileage as determined by the highway authority for the State in which the road is located.

(b) The zone price differentials for each plant shall be those applicable to its zone location as shown in the following table: *Provided,* That for the purpose of applying such zone price differentials, transfers of fluid milk products in bulk between pool plants shall first be assigned to any remainder of Class II milk in the transferee-plant after making the calculations prescribed in § 1019.24(b) (1) to (8), and the comparable steps in § 1019.24(c), for such plant; such assignment to the transferor-plant to be made in sequence according to the zone price differential applicable at each plant, beginning with the plant most distant from Hartford.

PLANT ZONE PRICE DIFFERENTIALS

A Distance to Hartford	B Zone	C Class I and uniform price differentials (cents per hundredweight)	D Class II price differentials (cents per hundredweight)
50 or less	1-5	0.0	0.0
51 to 60	6	−33.0	−3.0
61 to 70	7	−34.4	−3.0
71 to 80	8	−35.8	−3.0
81 to 90	9	−37.2	−3.0
91 to 100	10	−38.6	−3.0
101 to 110	11	−40.0	−4.5
111 to 120	12	−41.4	−4.5
121 to 130	13	−42.8	−4.5
131 to 140	14	−44.2	−4.5
141 to 150	15	−45.6	−4.5
151 to 160	16	−47.0	−6.0
161 to 170	17	−48.4	−6.0
171 to 180	18	−49.8	−6.0
181 to 190	19	−51.2	−6.0
191 to 200	20	−52.6	−6.0
201 to 210	21	−54.0	−7.0
211 to 220	22	−55.4	−7.0
221 to 230	23	−56.8	−7.0
231 to 240	24	−58.2	−7.0
241 to 250	25	−59.6	−7.0
251 and over [1]	26 and over		−8.0

[1] Class I and uniform price differentials applicable to plants located more than 250 miles from Hartford shall be obtained by extending the table at the rate of 1.4 cents for each additional 10 miles, except that in no event shall the Class I or uniform price at any zone be less than the Class II price for the month for plants in such zone.

§ 1019.43 Use of equivalent factors in formulas.

If for any reason a price, index, or wage rate specified by this part for use in computing class prices and for other purposes is not reported or published in the manner described in this order, the market administrator shall use a price, index, or wage rate determined by the Secretary to be equivalent to or comparable with the factor which is specified.

APPLICATION OF PROVISIONS

§ 1019.45 Producer-handlers.

Sections 1019.40 to 1019.43, 1019.46, 1019.50 and 1019.51, and 1019.60 to 1019.70 shall not apply to a producer handler.

§ 1019.46 Payments on other source milk.

Handlers shall make payments with respect to other source milk computed as follows:

(a) Each pool handler who received other source milk which is allocated to Class I pursuant to § 1019.24 (b) (2) and (c) shall make payment on the quantity so allocated at the difference between the Class I price and the Class II price applicable at Hartford, Connecticut, as computed pursuant to § 1019.40.

(b) Each pool handler who received other source milk which is allocated to Class I milk pursuant to § 1019.24 (b) (3) and (c) shall make payment on the quantity so allocated, as follows: At the difference between the Class I and Class II price computed pursuant to § 1019.40 for the zone location of the nonpool plant.

(c) Each pool handler who receives:

(1) Other source milk (i) in the form of skim milk (bulk or packaged) from a New York-New Jersey Federal Order No. 27 pool plant which milk was classified and priced as other than Class I-A or I-B milk pursuant to such order, or (ii) as unpriced Class I-B milk (as defined in Order No. 27) which is allocated to Class I milk pursuant to § 1019.24(b) (5), shall make payment on the volume thereof at the difference between the Class I price pursuant to § 1019.40(a) and the Class II price pursuant to § 1019.40(b) for the zone location of the plant from which such other source milk was received, or

(2) Other source milk not described in subparagraph (1) of this paragraph which is allocated to Class I milk pursuant to § 1019.24(b) (5) and is not subject to pricing as Class I milk (Class I-A or I-B milk under Order No. 27) under the terms of the other Federal order, shall make payment on the volume thereof so allocated at the rate specified in subparagraph (1) of this paragraph.

(d) Each handler operating a nonpool plant who disposes of fluid milk products in the marketing area on routes from such plant shall make payment at the difference between the Class I price and the Class II price computed pursuant to § 1019.40 for the zone location of his plant on the amount of such disposition which is in excess of his receipts of fluid milk products classified and priced as Class I milk under this or any other Federal order.

§ 1019.47 Plants with milk in more than one Federal order market.

Except as provided in § 1019.46(c), milk received at a plant otherwise eligible as a pool plant under § 1019.3(c) shall be exempt from the provisions of this part if the conditions of paragraph (a), (b) or (c) of this section are met: *Provided,* That the handler of such milk shall make reports to the market administrator with respect to his total receipts and utilization of skim milk and butterfat at such times and in such manner as the market administrator may require and allow verification of such reports by the market administrator in accordance with § 1019.12(h):

(a) The Secretary determines that (1) during the month a greater quantity of fluid milk products is disposed of from such plant to another marketing area as defined in another Federal order (either on a route(s) or through a plant(s) than is disposed of during the month from such plant in the Connecticut marketing area (either on a route(s) or through plant(s)), and (2) such fluid milk products would be subject to the class price and producer payment provisions of the other Federal order upon being made exempt from this part.

(b) The plant is regulated for the month as a pool plant under any of the following: Federal Order No. 4 for the Boston, Massachusetts, marketing area, Federal Order No. 96 for the Springfield, Massachusetts, marketing area, or §§ 927.25 and 927.28 of Federal Order No. 27 for the New York-New Jersey marketing area.

(c) Any plant having status as a pool plant under another Federal order for December of any year shall not qualify as a pool plant under this part for such month of December or the next following January through June, inclusive, even though such plant meets the requirements of § 1019.3(c) (2) or (3), unless it has been withdrawn as a pool plant under the other order in the manner provided in such order.

DETERMINATION OF UNIFORM PRICE TO PRODUCERS

§ 1019.50 Computation of the obligation of each pool handler.

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

(a) Multiply the quantity of producer milk in each class computed pursuant to § 1019.24 by the applicable class price, and total the resulting amounts;

(b) Add the amount of any payments due from such handler pursuant to § 1019.46(a), (b) or (c);

(c) Add an amount computed by multiplying the amount of overage computed pursuant to § 1019.24 (b) (12) and (c) by the applicable class price adjusted by the butterfat differential computed pursuant to § 1019.61;

(d) Add the amounts computed under subparagraphs (1), (2) and (3) of this paragraph:

(1) Multiply the difference between the applicable Class II price for the pre-

ceding month and the applicable Class I price for the month by the pounds of skim milk and butterfat remaining in Class II milk after the calculations pursuant to § 1019.24 (b)(10) and (c) for the preceding month, or the pounds of skim milk and butterfat subtracted from Class I milk pursuant to § 1019.24 (b)(10) and (c) for the month, whichever is less;

(2) If the pounds on which payment applicable pursuant to subparagraph (1) above are less than the pounds subtracted from Class I milk pursuant to § 1019.24 (b)(10) and (c) for the month, add an additional amount computed by multiplying by the rate of payment pursuant to § 1019.46(b), the pounds of skim milk and butterfat in other source milk received during the preceding month and not priced under another Federal order which is in excess of the pounds of skim milk and butterfat remaining in Class II milk, exclusive of shrinkage subtracted pursuant to § 1019.24 (b)(1) and (c) for the preceding month and ending inventory for such month, and

(3) If the sum of the pounds on which payment is applicable pursuant to subparagraphs (1) and (2) above is less than the pounds subtracted from Class I milk pursuant to § 1019.24 (b)(10) and (c) for the month, add a further amount computed by multiplying by the difference between the Class II price for the preceding month and the Class I price for the month, any remaining amounts of skim milk and butterfat which are in excess of that portion classified and priced as Class I milk as defined in another Federal order and which were assigned to Class II milk pursuant to § 1019.24 (b)(5) and (c) in the preceding month.

§ 1019.51 Computation of the basic uniform price.

For each month the market administrator shall compute a uniform price per hundredweight, as follows:

(a) Combine into one total the net obligation computed pursuant to § 1019.50 for each handler who made the reports prescribed in § 1019.30(a) for the month and who were not in default of payments pursuant to § 1019.65 for the preceding month.

(b) Deduct the amount of the plus differentials applicable pursuant to § 1019.63 and add the amount of the minus differentials applicable pursuant to § 1019.62.

(c) Subtract for each of the months of April, May and June an amount computed by multiplying the total hundredweight of producer milk for such month by 15 cents;

(d) Add for each of the months of July, August and September an amount representing one-third of the aggregate amount subtracted pursuant to paragraph (c) of this section for the immediately preceding three-month period, April–June.

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

(f) Divide the resulting amount by the total hundredweight of producer milk included under paragraph (a) of this section.

(g) Subtract not less than 4 cents nor more than 5 cents. The result is the "basic uniform price" for producer milk containing 3.7 percent butterfat received at a plant to which no zone price differential is applicable.

PAYMENTS

§ 1019.60 Time and method of payment for producer milk.

Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month, as follows:

(a) On or before the 22d day after the end of each month, for the quantity of milk received during the month, at not less than the basic uniform price per hundredweight computed pursuant to § 1019.51, subject to the differentials provided in § 1019.61, § 1019.62 and § 1019.63: *Provided*, That with respect to each deduction for hauling, or for any other purpose, made from such payment, the burden shall rest upon the handler making the deduction to prove that each deduction is authorized, and properly chargeable to the producer: *And provided further*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1019.66, he may reduce pro rata his payment 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 payment pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) In the case of an association of producers which the Secretary determines is authorized by its producer-members to collect payment for their milk and which has so requested any handler in writing, such handler, on or before the 21st day after the end of each month, shall pay the association for milk received during such month from the producer-members of such association, as determined by the market administrator, an amount not less than the total due such producer-members as determined pursuant to paragraph (a) of this section.

(c) In the case of a handler who receives fluid milk products from the plant of an association of producers in its capacity as a handler, such handler, on or before the 21st day after the end of each month, shall pay such association not less than the value of skim milk and butterfat in such fluid milk products as classified pursuant to § 1019.24 at the applicable class prices computed for such month pursuant to § 1019.40 subject to the batterfat differential computed pursuant to § 1019.61.

§ 1019.61 Butterfat differential.

Each handler, in making payments to each producer or to an association of producers for milk received during each month, shall add for each one-tenth of 1 percent of average butterfat content above 3.7 percent, or deduct for each one-tenth of 1 percent of average butterfat content below 3.7 percent, an amount per hundredweight which shall be calculated by the market administrator as follows: Subtract 52.5 cents from the weighted average price per 40-quart can of 40 percent bottling quality cream, f.o.b. Boston, as reported by the United States Department of Agriculture for the period between the 15th day of the month for which the butterfat differential is computed and the 16th day of the preceding month, inclusive, divide the remainder by 330, and round to the nearest cent. If the cream price described above is not reported as indicated, the butterfat differential shall be determined by multiplying by .125 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported by the United States Department of Agriculture, for the period between the 15th day of the month for which the butterfat differential is computed and the 16th day of the preceding month, inclusive, and round to the nearest cent.

§ 1019.62 Zone price differentials.

In making payments to producers pursuant to § 1019.60 the uniform price to be paid for producer milk received at the handler's pool plant(s) shall be subject to the differential set forth in column C of the table in § 1019.42(b).

§ 1019.63 Nearby farm location differentials.

(a) In making payments to producers for milk received from a farm located in Connecticut, Rhode Island, in that portion of New York State east of the Hudson River and south of the New York State Extension of the Massachusetts Turnpike, or in that portion of Massachusetts south of the Massachusetts Turnpike, there shall be added 46 cents per hundredweight.

(b) In making payments to producers for milk received from a farm located outside the area described in paragraph (a) of this section, but within that portion of New York State east of the Hudson River and south of the northern boundaries of North Greenbush, Sand Lake and Stephentown townships in Rensselaer County, there shall be added 23 cents per hundredweight.

§ 1019.64 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit (a) all payments made by handlers of monies due producers pursuant to §§ 1019.46(d), 1019.65, 1019.67 and 1019.68 and out of which he shall make all payments of monies payable to producers pursuant to §§ 1019.66, 1019.67 and 1019.68: *Provided*, That the market administrator shall offset any such payment due to any handler against payment due from such handler; and (b) all amounts subtracted pursuant to § 1019.51(c), which shall remain therein as an obligated balance until it is withdrawn for the purpose of effectuating § 1019.51(d).

§ 1019.65 Payments to the producer-settlement fund.

On or before the 19th day after the end of each month, each handler, including an association of producers 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 computed pursuant to § 1019.50 is greater than the sum required to be paid his producers as determined by the application of the basic uniform price computed pursuant to § 1019.51 adjusted by the differentials applicable pursuant to §§ 1019.62 and 1019.63.

§ 1019.66 Payments out of the producer-settlement fund.

On or before the 21st 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 his producers as determined by the application of the basic blended price computed pursuant to § 1019.51 adjusted by the differentials applicable pursuant to §§ 1019.62 and 1019.63 is greater than the net pool obligation of such handler computed pursuant to § 1019.50: *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.

§ 1019.67 Errors in payment.

Whenever verification by the market administrator of a handler's reports, books, records or accounts results in adjustments to be made for any reason which result in moneys due the market administrator from such handler, such handler from the market administrator, or any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount due and explain the basis of such adjustment and payment thereof shall be made on or before the date for making payment, set forth in the provision under which such error occurred, for the month following that in which such notification is given.

§ 1019.68 Overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1019.46, 1019.65, 1019.69 and 1019.70 shall be increased one-half of one percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

§ 1019.69 Marketing service deductions.

(a) In making payments to producers pursuant to § 1019.60(a), each handler, with respect to all milk received from each producer other than himself during each month, except as set forth in paragraph (b) of this section, shall deduct 3 cents per hundredweight, or such lesser amount as the Secretary shall determine to be sufficient, and, on or before the 19th day after the end of each month, shall pay such deductions to the market administrator. Such moneys shall be expended by the market administrator only in providing for market information, and for varification of weights, samples, and tests of milk received from such producers. The market administrator may contract with an association or associations of producers for the furnishing of the whole or any part of such services to, or with respect to the milk received from such producers.

(b) In the case of producers who are members of an association of producers which the Secretary determines is actually performing the services set forth in paragraph (a) of this section, each handler, in lieu of the deductions specified in paragraph (a) of this section, shall make such deductions from payments made pursuant to § 1019.60(a) as may be authorized by such producers and pay, on or before the 20th day after the end of each month, such deductions to such associations, accompanied by a statement showing the pounds of milk received from each producer from whom the deduction was made.

§ 1019.70 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator, on or before the 19th day after the end of the month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, as follows:

(a) Each pool handler shall make such payment with respect to all: (1) Receipts of producer milk, including such handler's own production; (2) receipts of exempt milk under § 1019.4(g)(1); and (3) other source milk assigned to Class I milk and not subject to an expense of administration assessment under another Federal order.

(b) Each handler operating a nonpool plant shall make such payment with respect to other source milk disposed of from such plant in the marketing area on routes, except other source milk subject to an expense of administration assessment under another Federal order.

§ 1019.71 Termination of obligation.

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

(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 in writing that such money is due and payable. Service on 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 order to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the 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 set-off 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.

MISCELLANEOUS PROVISIONS

§ 1019.80 Effective time.

The provisions of this part, or any amendments to its provisions, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 1019.81.

§ 1019.81 Suspension or termination.

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

§ 1019.82 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations arising under it, the final accrual or ascertainment of which requires further acts by any person, such

further acts shall be performed notwithstanding such suspension or termination.

§ 1019.83 Liquidation.

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

§ 1019.84 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.

§ 1019.85 Separability of provisions.

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

Order[1] *Amending the Order Regulating the Handling of Milk in the New York-New Jersey Milk Marketing Area*

§ 927.0 Findings and determinations.

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

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

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

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

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

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

1. Amend § 927.6 (definition of producer) by adding the following: *"Provided,* That a dairy farmer who, if not a producer pursuant to this part, would be defined as a producer under another order issued pursuant to the Act shall not be a producer under this part if the milk received from all such dairy farmers at the plant is assigned to Class III, or is subject to payments at the rates specified in § 927.83(b)(2), or is subject to payments at the rates specified in § 927.83(b)(1) and the milk is priced at the lowest class price under the other order."

2. Amend § 927.29 (temporary pool plants) by adding to the first sentence thereof the following proviso: *"Provided,* That no plant shall be a pool plant pursuant to this section (1) in any month in which it is a pool plant pursuant to provisions of Part 1019 of this chapter, or (2) in any of the months of December through June if it was a pool plant pursuant to provisions of Part 1019 of this chapter in each of the preceding months of July through November."

3. Amend § 927.35 (accounting procedure) by (1) redesignating paragraphs (b), (c), (d) and (e) thereof as paragraphs (d), (e), (f) and (g), (2) changing paragraph references in paragraph (c) (redesignated paragraph (e)) from "(a) and (b)" to "(a) through (d)" and (3) adding new paragraphs (b) and (c) as follows:

(b) After the assignments prescribed in paragraph (a) of this section, milk from pool plants or from producers shall be assigned as far as possible to Class I-B when such classification is based upon delivery to a plant or a purchaser in the marketing area defined in Part 1019 of this chapter or to a pool plant pursuant to such part: *Provided,* That if the plant (at which assignment is being made) is a pool plant, milk classified and priced under Part 1019 of this chapter, shall be assigned to such Class I-B prior to the assignment otherwise specified in this paragraph.

(c) After the assignments prescribed in paragraphs (a) and (b) of this section, all milk received which is classified and priced under Part 1019 of this chapter shall be assigned as far as possible pro rata to the total classification of all milk, except that classified in Class I-B, on hand at or leaving such plant as whole milk.

4. Amend § 927.83 by:

a. Changing paragraph (a)(1) to read as follows:

(1) It was derived from milk received at a nonpool plant from dairy farmers, from dairy farmers defined as producers pursuant to the provisions of Part 1019 of this chapter or received from a handler designated as a producer-handler pursuant to § 927.15.

b. Inserting a new proviso immediately preceding the last sentence in paragraph (b)(1) to read as follows: *"Provided further,* That no payment shall be applicable to milk distributed on routes in the marketing area defined in this part from a plant which is a pool plant under provisions of Part 1019 of this chapter."

c. Amending the last sentence in paragraph (b)(1) by adding thereto the following: "except that no payment shall be applicable to packaged skim milk classified and priced under provisions of Part 1019 of this chapter".

[F.R. Doc. 59-1276; Filed, Feb. 10, 1959; 8:52 a.m.]

[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.