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TITLE 36—CFR

REVISED AS OF JAN. 1, 1960

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CONTENTS—Continued

Federal Reserve System

Rules and regulations:
Bank holding companies; services under section 4(a) of Bank Holding Act..... 281

Federal Trade Commission

Rules and regulations:
Prohibited trade practices:
Brooklyn Fashion Center, Inc., and Sigmund Schwartz.... 282
Kagen, Theodore, Corp. et al. 283
Stewart & Stevenson Services, Inc., et al..... 284

CONTENTS—Continued

Fish and Wildlife Service

Rules and regulations:
American mergansers; order permitting killing over designated lakes and streams in western Washington..... 284
Kentucky Woodlands National Wildlife Refuge; hunting..... 285

Food and Drug Administration

Proposed rule making:
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions from tolerances..... 317

Health, Education, and Welfare Department

See Food and Drug Administration.

Housing and Home Finance Agency

See Public Housing Administration.

Interior Department

See also Fish and Wildlife Service; Land Management Bureau.

Notices:

General provisions; delegation of authority..... 324

Interstate Commerce Commission

Notices:

Fourth section applications for relief..... 325
Motor carrier transfer proceedings..... 325

Land Management Bureau

Notices:

Proposed withdrawals and reservations of lands:
Colorado; termination..... 324
New Mexico..... 324

Public Housing Administration

Notices:

Delegations of final authority; miscellaneous amendments... 324
Rules and regulations:
General procedural provisions; low-rent housing program; miscellaneous amendments... 284

Securities and Exchange Commission

Notices:

Central and South West Corp. et al.; proposed increase of authorized common stock et al..... 325

CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

A Cumulative Codification Guide covering the current month appears at the end of each issue beginning with the second issue of the month.

7 CFR	Page
Proposed rules:	
352.....	312
927.....	293

CODIFICATION GUIDE—Con.

7 CFR—Continued	Page
Proposed rules—Continued	
947.....	293
973.....	311
12 CFR	
222.....	281
16 CFR	
13 (3 documents).....	282-284
21 CFR	
Proposed rules:	
120.....	317
24 CFR	
300.....	284
320.....	284
47 CFR	
Proposed rules:	
1.....	286
3.....	286
21.....	292
50 CFR	
6.....	284
34.....	285

services for" the four banks referred to. Under the Act such furnishing or performing of services is permissible only if the holding company owns or controls 25 percent of the voting shares of each bank receiving such services, and, since the company owns less than 25 percent of the voting shares of these banks, it follows that these activities are prohibited by section 4(a) (2).

(i) While this conclusion is required, in the Board's opinion, by the language of the statute, it may be noted further that any other conclusion would make it possible for a bank holding company or any other corporation, through arrangements for the "managing" of banks in the manner here involved, to acquire effective control of banks without acquiring bank stocks and thus to evade the underlying objectives of section 3 of the Act.

(Sec. 5(b), 70 Stat. 137; 12 U.S.C. 1844)
Dated at Washington, D.C., this 10th day of December 1959.

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 60-329; Filed, Jan. 13, 1960; 8:45 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission
[Docket 7092 o.]

PART 13—PROHIBITED TRADE PRACTICES

Brooklyn Fashion Center, Inc., and Sigmund Schwartz

Subpart—Advertising falsely or misleadingly: § 13.30 Composition of goods; 13.30-30 Fur Products Labeling Act;

§ 13.155 Prices: 13.155-15 Comparative; 13.155-100 Usual as reduced, special, etc. Subpart—Misbranding or mislabeling: § 13.1185 Composition: 13.1185-30 Fur Products Labeling Act; § 13.1212 Formal regulatory and statutory requirements: 13.1212-30 Fur Products Labeling Act. Subpart—Misrepresenting oneself and goods—Prices: § 13.1785 Comparative; § 13.1825 Usual as reduced or to be increased. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 Composition: 13.1845-30 Fur Products Labeling Act; § 13.1852 Formal regulatory and statutory requirements: 13.1852-35 Fur Products Labeling Act; § 13.1865 Manufacture or preparation: 13.1865-40 Fur Products Labeling Act; § 13.1900 Source or origin: 13.1900-40 Fur Products Labeling Act; 13.1900-40 (b) Place.

(Sec. 6, 38 Stat. 722; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f.) [Cease and desist order, Brooklyn Fashion Center, Inc., et al., Brooklyn, N.Y., Docket 7092, November 20, 1959]

In the Matter of Brooklyn Fashion Center, Inc., a Corporation, and Sigmund Schwartz, an Individual and Officer of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging operators of a retail ladies' clothing store in Brooklyn, N.Y., with violating the Fur Products Labeling Act in the offer for sale of 12 fur pieces which were "leftovers" of a stock they had purchased ten years before, by failing to comply with labeling requirements, and by advertising which failed to disclose the true name of the animal producing a fur and named other animals, and failed to disclose the country of origin of imported furs and the fact that some furs were artificially colored, and which used comparative prices and represented sale prices as reduced from regular prices without having any records as a basis for such pricing claims.

From the initial decision, complaint counsel appealed. Granting the appeal, the Commission directed modification of the order and, on November 20, adopted the initial decision as thus modified as the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents, Brooklyn Fashion Center, Inc., a corporation, and its officers, and Sigmund Schwartz, as an individual and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the sale, advertising, offering for sale, transportation or distribution of fur products, in commerce, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur", and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of) section 4(2) of the Fur Products Labeling Act.

2. Setting forth on labels affixed to fur products the name or names of any animal or animals other than the name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations.

3. Setting forth on labels affixed to fur products:

(a) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder mingled with non-required information.

(b) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in handwriting.

B. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement, or notice which is intended to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of fur products, and which:

1. Fails to disclose:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations.

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur when such is the fact.

(c) The name of the country of origin of any imported furs contained in the fur product.

2. Contains the name or names of any animal or animals other than the name or names provided for in section 5(a) (1) of the Fur Products Labeling Act and as prescribed under the rules and regulations.

C. Making price claims or representations in advertisements respecting comparative prices or reduced prices unless there are maintained by respondents adequate records disclosing the facts upon which such claims or representations are based.

By "Final Order", report of compliance was required as follows:

It is further ordered, That respondents, Brooklyn Fashion Center, Inc., and Sigmund Schwartz, shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist as modified.

Issued: November 20, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60-330; Filed, Jan. 13, 1960; 8:45 a.m.]

[Docket 6893 o.]

PART 13—PROHIBITED TRADE PRACTICES

Theodore Kagen Corp. et al.

Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 Composition.

(Sec. 6, 38 Stat. 722; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Theodore Kagen Corp. et al., New York, N.Y., Docket 6893, November 19, 1959]

In the Matter of Theodore Kagen Corp., a Corporation, and Theodore Kagen, Individually and as an Officer of Theodore Kagen Corp., and Doing Business as T. K. Co.

This case was heard by a hearing examiner on the complaint of the Commission charging New York City importers, engaged in assembling watches and wholesaling them to watchmakers, with selling watch cases incorporating bezels composed of aluminum treated to simulate gold or gold alloy without clearly disclosing that the bezels were composed of base metal; with falsely marking watchcases on the backs as "water-resistant" and "water-protected"; and with deceptive use of the word "manufacturers" on invoices and letterheads in connection with watchcases that they purchased from others.

Following the usual proceedings, the hearing examiner made his initial decision and order to cease and desist the practice of non-disclosure of base metal composition, and dismissed the other charges. Denying cross-appeals of both counsel, the Commission on November 19 adopted the initial decision as the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That the respondents, Theodore Kagen Corp., a corporation, and its officers, and Theodore Kagen, individually and as an officer of said corporation and doing business as T.K. Co., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of watch cases in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from: Offering for sale or selling watch cases composed in whole or in part of base metal which has been treated to simulate precious metal, without clearly disclosing on such cases the true metal composition of such treated cases or parts.

It is further ordered, That as to all other issues the complaint be, and it hereby is, dismissed.

By "Final Order", report of compliance was required as follows:

It is ordered, That the respondents named in the caption hereof shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they

have complied with the order to cease and desist.

Issued: November 19, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60-331; Filed, Jan. 13, 1960;
8:46 a.m.]

[Docket 7002 o.]

PART 13—PROHIBITED TRADE PRACTICES

Stewart & Stevenson Services, Inc., et al.

Subpart—Combining or conspiring: § 13.430 To enhance, maintain or unify prices.

(Sec. 6, 38 Stat. 722; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Stewart & Stevenson Services, Inc., et al., Docket 7002, Nov. 20, 1959]

In the Matter of Stewart & Stevenson Services, Inc., Lewis Diesel Engine Company (Inc.), of Memphis, Tennessee, Lewis Diesel Engine Company (Inc.), of Little Rock, Arkansas, Diesel Power Company, United Engines, Inc., Taylor Machinery Corporation, William Patrick Kennedy, Jr., trading as Kennedy Marine Engine Company, Kennedy Marine Engine Co., Inc., and George Engine Company, Inc.

This case was heard by a hearing examiner on the complaint of the Commission charging nine franchised wholesale distributors of General Motors diesel engines and replacement parts with conspiring to fix or maintain prices and selling conditions for the parts.

Five of the respondents executed consent orders effective May 23, 1959, 24 F.R. 5292. The complaint was dismissed as to one of the others.

As to the remaining three, the usual proceedings terminated in an initial decision from which one respondent appealed. The appeal was denied and on November 20 the initial decision was adopted as the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That the respondents, United Engines, Inc., a corporation, Taylor Machinery Corporation, and William Patrick Kennedy, Jr., trading as Kennedy Marine Engine Company, an individual, and their respective officers, agents, representatives, and employees, in, or in connection with the offering for sale, sale or distribution of replacement parts for diesel engines, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, carrying out, continuing, or cooperating in, any planned common course of action, understanding, agreement, combination, or conspiracy between or

among any two or more respondents, or between any one or more of them and others not parties hereto, or specifically named in this order, to establish, fix, or maintain prices, terms, or conditions of sale of replacement parts for diesel engines, or adhere to any prices, terms or conditions of sale so fixed or maintained.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Kennedy Marine Engine Co., Inc.

By "Final Order", report of compliance was required as follows:

It is further ordered, That respondents, United Engines, Inc., and Taylor Machinery Corporation, corporations, and William Patrick Kennedy, Jr., shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in the initial decision.

Issued: November 20, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60-332; Filed, Jan. 13, 1960;
8:46 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

Chapter III—Public Housing Administration, Housing and Home Finance Agency

PART 300—GENERAL PROCEDURAL PROVISIONS

PART 320—LOW-RENT HOUSING PROGRAM

Miscellaneous Amendments

Section 300.3 *Claims cognizable under the Federal Tort Claims Act* is amended as follows:

Paragraph (a) (1) is amended by deleting "\$1,000" and inserting in lieu thereof "\$2,500". As amended, paragraph (a) (1) reads as follows:

§ 300.3 *Claims cognizable under the Federal Tort Claims Act.*

(a) * * *

(1) They are for \$2,500 or less;

§ 320.6 [Amendment]

Section 320.6 *Federally owned low-rent housing* is amended as follows:

Under the heading "California" the item "Brawley, Housing Authority of the County of Imperial, Post Office Box 1001, Brawley, Calif." is deleted.

Approved: January 6, 1960.

LAURENCE DAVERN,
Acting Commissioner.

[F.R. Doc. 60-334; Filed, Jan. 13, 1960;
8:47 a.m.]

Title 50—WILDLIFE

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

SUBCHAPTER B—HUNTING AND POSSESSION OF WILDLIFE

PART 6—MIGRATORY BIRDS

Order Permitting Killing of Depredating Common Mergansers (American Mergansers) In, On, or Over Designated Lakes and Streams in Western Washington

Basis and purpose. It has been determined from investigations and observations made by the Bureau of Sport Fisheries and Wildlife and the Washington State Department of Game that serious depredations to trout populations in certain streams and lakes are occurring because of large numbers of common mergansers (American mergansers) present in western Washington. Because these depredations are so widespread in western Washington and cannot be considered as localized injury, it was further determined that these depredations can best be minimized or alleviated by permitting depredating common mergansers (American mergansers) to be killed and taken by shooting in any affected areas under specific conditions and restrictions. Accordingly, pursuant to authority contained in § 6.65, Code of Federal Regulations (23 F.R. 9712) and effective on the date of the publication in the FEDERAL REGISTER, it is ordered as follows:

1. (a) Common mergansers (American mergansers) may be killed by shooting only with a shotgun not larger than 10 gauge fired from the shoulder, during the daylight hours only on or over the following lakes and streams in western Washington when committing or about to commit serious depredations upon trout populations.

CLARK COUNTY

Lacamas Lake.

COWLITZ COUNTY

Silver Lake.
Yale Reservoir.

ISLAND COUNTY

Cranberry Lake.

SNOHOMISH COUNTY

Bosworth Lake.	Roesiger Lake.
Crabapple Lake.	Serene Lake (Hwy. 99).
Flowing Lake.	Shoecraft Lake.
Goodwin Lake.	Silver Lake.
Kl Lake.	Storm Lake.
Loma Lake.	Wagner Lake.
Martha Lake (Alderwood Manor).	
Martha Lake (Warm Beach).	

KING COUNTY

Ames Lake.	Pine Lake.
Beaver Lake.	Shadow Lake.
Desire Lake.	Shady Lake.
Joy Lake.	Steel Lake.
Meridian Lake.	Wilderness Lake.
Morton Lake.	Star Lake.
North Lake.	

PACIFIC COUNTY

Loomis Lake.

PIERCE COUNTY

Bay Lake. Crescent Lake.
Clear Lake (Eaton-ville). Spanaway Lake.
Tanwax Lake.

KITSAP COUNTY

Kitsap Lake. Scout Lake.
Mission Lake. Wildcat Lake.

MASON COUNTY

Aldrich Lake. Phillips Lake.
Benson Lake. Spencer Lake.
Cady Lake. Tiger Lake.
Clara Lake. Trask Lake.
Haven Lake. Twin Lake.
Isabella Lake. U Lake.
Nahwatzel Lake. Wooten Lake.
Panther Lake.

THURSTON COUNTY

Clear Lake (Bald Hills). McIntosh Lake.
Deep Lake. Offut Lake.
Hicks Lake. Summit Lake.
Lawrence Lake. Ward Lake.

WHATCOM COUNTY

Silver Lake.

SAN JUAN COUNTY

Hummel Lake.

SKAGIT COUNTY

Beaver Lake. Hart Lake.
Cavanaugh Lake. Pass Lake.
Clear Lake.

STREAMS

Chehalis River.	Salmon River.
Cowlitz River.	Satsop River.
Dosewallips River.	Skagit River.
Duckabush River.	Skokomish River.
Dungeness River.	Skykomish River.
Elokomish River.	Snohomish River.
Grays River.	Snoqualmie River.
Green River.	Sol Duc River.
Humtullips River.	Soos River.
Kalama River.	Stillaguamish River.
Lewis River and Forks.	Tilton River.
Newaukum River.	Toit River.
Nisqually River.	Toutle River.
North River.	Washougal River.
Nooksack River.	Willapa River.
Puyallup River.	Wind River.
	Wynooche River.

tered, or shipped for purposes of sale or barter. Any such birds which cannot be used for the purposes stated herein shall be completely destroyed.

2. This order does not permit the killing of common mergansers (American mergansers) in violation of any State law or regulation. This order contemplates emergency measures designed to aid in relieving depredations and is not to be construed as a reopening or extension of any open hunting season prescribed by regulations promulgated under section 3 of the Migratory Bird Treaty Act (sec. 3, 40 Stat. 755, as amended, 16 U.S.C. 704).

Since immediate action is necessary to alleviate an emergency condition as described in the opening paragraph, notice and public procedure on this order are impracticable and may be waived under the exceptions provided in section 4(a) of the Administrative Procedure Act of June 11, 1946. Since this order also relieves restrictions which otherwise would preclude the killing of common mergansers (American mergansers), the thirty-day advance publication requirement imposed by section 4(c) of the Administrative Procedure Act of June 11, 1946, may be waived under the exceptions provided in such section.

Issued at Washington, D.C., and dated January 12, 1960.

D. H. JANZEN,
Director, Bureau of Sport
Fisheries and Wildlife.

[F.R. Doc. 60-414; Filed, Jan. 13, 1960;
10:55 a.m.]

**SUBCHAPTER C—MANAGEMENT OF WILDLIFE
CONSERVATION AREAS**

PART 34—SOUTHEASTERN REGION

Subpart—Kentucky Woodlands National Wildlife Refuge, Kentucky

HUNTING

Basis and purpose. Pursuant to the authority conferred upon the Secretary of the Interior by section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1224; 16 U.S.C. 715i), as amended and supplemented, and acting in accordance with the authority delegated to me by Commissioner's Order No. 4 (22 F.R. 8126), I have determined that the hunting of turkey gobblers during a part of the 1960 State season on the Kentucky Woodlands National Wildlife Refuge, Kentucky, would be consistent with the management of the refuge.

By Notice of Proposed Rule Making published in the FEDERAL REGISTER of December 3, 1959 (24 F.R. 9677), the public was invited to participate in the adoption of a proposed regulation (conform-

ing substantially with the rule set forth below) which would permit the hunting of turkey gobblers during a part of the 1960 State season on the Kentucky Woodlands National Wildlife Refuge, Kentucky, by submitting written data, views, or arguments to the Director, Bureau of Sport Fisheries and Wildlife, Washington 25, D.C., within a period of 30 days from the date of publication. No comments, suggestions, or objections having been received within the 30-day period, the regulations constituting Part 34 are amended by adding § 34.62 to Subpart—Kentucky Woodlands National Wildlife Refuge, Kentucky, as follows:

§ 34.62 Hunting of turkey gobblers permitted.

Hunting of turkey gobblers is permitted on the Kentucky Woodlands National Wildlife Refuge, Kentucky, subject to the provisions of Parts 18 and 21 of this chapter and the following conditions:

(a) *Hunting methods and seasons.* Hunting with shotguns only, no larger than 12 gauge, slugs prohibited, is permitted April 27, 28, 29, 1960, inclusive, of turkey gobblers with visible beards. Strict compliance with all State laws and regulations is required. Hunters, upon entering or leaving the hunting area, shall report at such checking stations as may be established for regulating the hunting. All hunters shall check out of the refuge by 12 noon, c.s.t. The Regional Director shall regulate the number of turkey gobblers to be removed during the season.

(b) *Hunting area.* Hunting is permitted only on refuge lands directed by the Regional Director and as conspicuously posted by the officer-in-charge as open to public hunting: *Provided*, That the area open to public hunting shall not exceed 40 percent of the total lands within the boundaries of the refuge.

(c) *Hunting licenses and permits.* Any person who hunts within the refuge must possess a valid State hunting license, if such is required. In addition, each hunter must possess a Federal permit to hunt and must comply with the restrictions imposed by this permit.

(d) *Dogs.* No dogs are allowed in connection with the hunting of turkeys.

In accordance with the requirements imposed by section 4(c) of the Administrative Procedure Act of June 11, 1946, 60 Stat. 238; 5 U.S.C. 1003(c), the foregoing amendment shall become effective on the 31st day following publication in the FEDERAL REGISTER.

Dated: January 11, 1960.

D. H. JANZEN,
Director, Bureau of
Sport Fisheries and Wildlife.

[F.R. Doc. 60-354; Filed, Jan. 13, 1960;
8:49 a.m.]

(b) The authorization to kill mergansers, as contained in this order shall terminate on April 10, 1960: *Provided*, If prior to that date it is found that the emergency condition no longer exists, the killing of common mergansers (American mergansers) as permitted under this order will be terminated earlier by publication of an order of revocation in the FEDERAL REGISTER.

(c) Common mergansers (American mergansers) killed under the provisions of this order may be used or donated to charitable institutions for food purposes and they may be donated to public museums or public scientific and educational institutions for exhibition, scientific, or educational purposes. No such birds may be sold, offered for sale, bar-

PROPOSED RULE MAKING

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 1]

[Docket No. 13349; FCC 60-19]

STATION LOGS AND RECORDS

Inspection and Duplication

In the matter of amendment of Part 1 of the Commission's rules by the addition of a new § 1.76 to clarify requirements concerning inspection and duplication of station logs and records and to make provision for removal of logs and records from the licensee's premises.

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

2. It is proposed to add a new § 1.76 to the Commission's rules to clarify Commission requirements concerning inspection and duplication of station records and logs and to make provision for removal of such logs and records from the licensee's premises when so requested by the Commission or its representatives.

3. Inspection of records and logs is necessary in the performance of the Commission's enforcement functions. At times such logs or records may not be available for inspection because they have been stored at places remote from that at which an inspection is conducted, or a detailed examination may be necessary.

4. When records or logs are removed by Commission representatives, a receipt will be furnished so that licensees may maintain a record of custody.

5. The proposed amendments are issued pursuant to the authority contained in sections 4(i), 303(n) and 303(r) of the Communications Act of 1934, as amended.

6. Any interested person who is of the opinion that the proposed amendment should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before February 19, 1960, written data, views, or arguments setting forth his comments. Comments in support of the proposed amendments may also be filed on or before the same date. Rebuttal comments may be filed within ten (10) days from the last day for filing of original comments. No additional comments may be filed unless (1) specifically requested by the Commission, or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments prior to taking final action in this matter, and if comments are submitted warranting oral argument, notice of the time and place of such oral argument will be given.

7. In accordance with the provisions of § 1.54 of the Commission's rules, an

original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: January 6, 1960.

Released: January 11, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

Part 1 of the Commission rules is amended by adding a new § 1.76 which reads as follows:

§ 1.76 Availability of station logs and records for Commission inspection.

Station records and logs shall be made available for inspection or duplication at the request of the Commission or its representative. Such logs or records may be removed from the licensee's possession by a Commission representative or, upon request, shall be mailed by the licensee to the Commission by either registered mail, return receipt requested, or certified mail, return receipt requested. The return receipt shall be retained by the licensee as part of the station records until such records or logs are returned to the licensee. A receipt shall be furnished when the logs or records are removed from the licensee's possession by a Commission representative and this receipt shall be retained by the licensee as part of the station records until such records or logs are returned to the licensee. When the Commission has no further need for such records or logs, they shall be returned to the licensee. The provisions of this rule shall apply solely to those station logs and records which are required to be maintained by the Commission rules.

[F.R. Doc. 60-349; Filed, Jan. 13, 1960; 8:48 a.m.]

[47 CFR Part 3]

[Docket No. 13340]

INTERIM POLICY ON VHF TELEVISION CHANNEL ASSIGNMENTS; TELEVISION ENGINEERING STANDARDS

Notice of Proposed Rule Making

1. The Commission herein invites comments on its proposal to:

(a) Consider applications for waivers of minimum television station separations in exceptional, individual cases meeting the criteria set out below; and

(b) Adopt revised rules and standards governing calculations of the service areas of television broadcast stations.

Interim policy on VHF channel assignments. 2. In a statement submitted to the Senate Committee on Interstate and Foreign Commerce on April 17, 1959, by the Chairman of the Commission, it

was announced that the Commission is pursuing studies and negotiations needed to ascertain the practicability of four alternative approaches to basic revision of television allocations. Each of these four alternatives contemplates long-range reallocations which would require a period of years to carry out if it were found desirable and practicable to adopt it.

3. Recognizing the urgency of taking such action in the interim as would relieve the pressing scarcities of channel assignments needed to provide at least three competitive television services in the major markets, the Commission announced also that, in view of the practical limitations on the utilization of UHF channels for this purpose, it would endeavor to make such increased use of VHF frequencies as could be justified in the light of the circumstances existing in particular markets. Because of the large number of persons affected, the Commission indicated that this need is pressing in the larger markets which have so far been unable to obtain three competitive television services.

4. Recognition was also given to the near exhaustion of possibilities for making VHF assignments in such markets which would meet the minimum separation requirements which were established in the rules in 1952, and have been adhered to since that time, with negligible exceptions. The Commission continues to regard the standard minimum separations as a necessary and important factor governing the utilization of television channels generally under the existing nationwide allocations scheme. Owing, however, to the urgency of relieving serious shortages, the Commission announced that it will consider, in appropriate cases, limited and specific exceptions to the existing minimum co-channel separation requirements.

5. We propose at this stage to consider short-spaced co-channel assignments only in circumstances in which such action is clearly warranted by the urgency of the need for providing additional VHF television outlets during the interim until final decisions can be reached on basic revision of the present television allocation plan. We have concluded, after carefully considering all the courses of action available during the present "interim" period that at this stage our consideration of short-spaced VHF television assignments can be considered usefully only in cases where the following conditions are present:

(a) The assignment would make possible a second or a third VHF television station in an important television market.

(b) The need for the additional service outweighs the need for any service lost as a result of additional interference to existing stations.

(c) The new VHF service would not have substantial adverse effect on established UHF television services.

(d) A new assignment would not require an excessive number of channel changes of existing stations.

6. It is proposed to require any new station assigned at a substandard co-channel separation to suppress radiation in the direction of the existing station to the extent necessary to ensure that such new station creates no more interference to the existing station than would be caused if both stations were operating at the standard minimum spacing permitted under § 3.610 of the rules, and with maximum antenna height and power. The method for calculating the required suppression of the new station's radiation is set out in paragraphs 17 and 18, hereinbelow.

7. New co-channel stations at substandard spacings will be required to comply with all requirements of the rules and standards applicable to television broadcast stations except the minimum co-channel spacings set out in § 3.610 of the rules. This means, for example, that new stations will be required to meet minimum adjacent channel spacings, which it is now proposed to reduce to 40 miles for all television broadcast stations. They will also be required to provide a signal of the prescribed minimum field intensity over the principal city provided for in the proposed rules revisions appended hereto.

8. Since short-spaced assignments will be considered only in the exceptional circumstances conforming with the criteria set out in paragraph 6 hereof, we do not propose to reduce the co-channel separations which are now provided for in § 3.610 of the rules, and which will remain generally applicable. Our proposal herein contemplates that consideration be given to short-spaced channel assignments in individual cases either on the Commission's own motion or pursuant to petitions for amendment of the Table of Assignments in § 3.606 of the rules which are accompanied by requests for waiver of the standard minimum spacing requirements.

Revision of television engineering standards. 9. On March 16, 1959, the Television Allocations Study Organization (TASO) submitted a report to the Commission covering two and a half years of study of various factors related to the assignment of television broadcast channels on an engineered basis. The data obtained through this study makes it possible to refine some of the VHF technical data contained in our present rules. We are not prepared at this time to propose similar refinements of UHF standards in the rules.

10. The present rules of the Commission define two Grades of service and specify a certain minimum value of signal strength which must be placed over the principal city in the area served. This grading is somewhat misleading since it is concerned merely with the probability of a specified percentage of the locations which are likely to receive a certain signal strength and is not directly concerned with the quality of such reception.

11. A more meaningful definition of television service is desirable and the TASO studies provide the basis for such a definition. On this basis we deem it appropriate to consider the service area of a television station as including the area over which it provides a signal of sufficient strength to produce an acceptable picture to average home television receiving installations in at least 50 percent of the locations within the area for 90 percent of the time or better. Comprehensive subjective viewing tests conducted by TASO showed that a picture relatively free of manmade electrical noise but with a discernible interference pattern from another television station, was considered acceptable by the average television viewer. We recognize that a more critical viewer might demand a picture free from noise and interference. However, such a strict definition of service would indicate a severely restricted service area and would not be realistic. Actual field strength measurements made in the vicinity of a large number of typical homes were compared with the viewers rating of picture quality in those homes.

12. It was found that on VHF channels the following median signal strengths would produce an acceptable picture as defined above in paragraph 11:

<i>Channels</i>	<i>Channels</i>
2-6	7-13
40 dbu	50 dbu

The area encompassed by the above field strength contours taken from the F(50,90) Field Strength Charts in § 3.699 is proposed to be defined as the Normal Service Area of a television broadcast station. The F(50,90) charts give the distances at which the above median field strengths are likely to occur in at least 50 percent of the locations for 90 percent of the time or better. The above values of field strength establish the extent of the Normal Service Area of a television broadcast station in the absence of interference from other TV broadcast stations or manmade electrical noise.

13. A study of the performance capabilities of modern television receivers shows that a new and well designed receiving installation is capable of providing an acceptable picture with less than the above values of field strength. However, such performance deteriorates with aging of the receiver and antenna installation and the values chosen are representative of the required field strengths at typical home installations.

14. Our present rules contain a requirement regarding the minimum signal which must be placed over the principal city in the area to be served. Experience has shown that the present rule is inadequate in that stations which have been located at extreme distances away from the principal city do not provide the quality of service which should be available to the principal city. We now propose to redefine this requirement in a way that will insure that a picture of excellent quality will be provided to at least 90 percent of the locations within

¹ See Appendix B for a statement of the factors used to confirm the values.

the principal city for 90 percent of the time or better. This service will be called Principal City Service. Studies incorporating the use of TASO data showed that on VHF channels the following median field strengths would provide a television picture free of manmade electrical noise to reasonably good receiving installations in highly urbanized areas:²

<i>Channels</i>	<i>Channels</i>
2-6	7-13
8 dbu F(50,90)	85 dbu F(50,90)

The proposed rules would require that a television broadcast station be so located that it could provide the above median field strengths for 90 percent of the time or better over the entire principal city in the area to be served.

15. Since the Ad Hoc Committee submitted its report³ a substantial number of additional field strength measurements have become available. These new data indicate that the original Ad Hoc curves for the service fields are still valid, but that the tropospheric propagation curves for the greater distances should be modified. After studying the fit of the data to the various propagation curves available, it was decided to derive a new set of field strength curves by merging the original Ad Hoc curves for the shorter distances with the tropospheric curves of FCC Report 2.4.16 (Oct. 22, 1956). Justification for the use of these curves rather than the curves proposed by TASO as the best average propagation curves for television will be made in a forthcoming report. The revised curves, which are set out in attachments to Appendix A, hereof, are designated "F(50,90)", "F(50,50)" and "F(50,10)". These curves represent the median location field strengths exceeded for 90, 50, and 10 percent of the time. The F(50,90) curves are used to calculate the normal service and principal city service ranges in the absence of interference. The signal here specified for principal city service includes a factor for urban noise.

16. The F(50,50) and F(50,10) curves together with the required signal to interference ratio are used to determine television service in the presence of interference. The curves are drawn for a receiving antenna height of 30 feet and for transmitting antenna heights of from 100 to 5,000 feet. Since the proposed curves are based on average terrain conditions, it may be expected that there will be some disparity, depending upon local terrain, between actual service and interference conditions and those calculated in accordance with the revised curves and methods proposed herein.⁴

17. As stated in paragraph 6, above, it is proposed that any new TV stations

² See Appendix C for a statement of the factors used in determining these values.

³ See Report of the Ad Hoc Committee on TV Broadcasting, May 31, 1949, Volume I, Docket Nos. 8736, et al.

⁴ In the computation of interference, between two time fading signals, a good approximation is available when the time fading of one is at least twice as large as that of the other. See reference F of the Ad Hoc Committee Report. Under such conditions

PROPOSED RULE MAKING

exceptionally assigned at substandard co-channel separations be required to suppress radiation so as to avoid creating more interference to existing TV stations than they would receive from new stations operating with maximum facilities at the minimum separations provided for in § 3.610 of the rules. The new station will insure the required degree of equivalent protection by either reduction in power and antenna height or by directionalization of signals. The ratio of the maximum to minimum radiation in the horizontal plane shall not exceed 20 db. At this time precision offset may be used to improve service but not for the purpose of obtaining the required protection to existing stations. In computing the equivalent protection of the normal service area of a station authorized previous to the adoption of this interim program it will be assumed that the authorized station has a circular service area. For the new station at substandard spacing, the theoretical antenna radiation pattern will be used for computing service and interference. Comments are invited on the desirability and methods for establishing the operating radiation pattern of the new station and for protection of the service area of the new station.

18. Protection equivalent to that insured existing stations under the rules governing minimum separations and maximum antenna heights and powers will be afforded by requiring stations operating at substandard co-channel spacings to suppress radiation toward the existing station to the extent necessary to insure that the ratio of desired to undesired signal will not be less than 28 db (offset operation) at any point where such ratio would occur if the new and the existing station were operating with maximum facilities at the minimum spacing permitted in § 3.610 of the rules. In general, protection of the normal service range of an existing station on a line between the stations will provide protection in other directions as well but the new station must make this showing based on the particular facilities proposed. The value of 28 db was established on the basis of subjective viewing tests conducted prior to the adoption of the present TV allocation plan in 1952. (See paragraphs 97 and 98 of the Sixth Report and Order in Dockets 8736 et al). Similar subjective viewing tests conducted by TASO yielded almost identical results.⁵

the signal with the lesser fading may be assumed as constant at its median value. Thus, for co-channel interference the time fading of the desired signal is usually small enough to meet this criterion in relation to the fading of the interfering signal. In this case the desired signal may be assumed as constant at its time median value, so that 90 percent service exists when the 10 percent level of the interfering signal is equal to the permissible instantaneous interference level for the grade of service involved. Similarly, in the case of interference from noise the time fading of noise is assumed to be negligible, so that 90 percent service exists when the 90 percent desired signal is equal to the minimum required instantaneous signal level required for the grade of service involved.

⁵ The TASO evaluation yielded a figure of 26 db.

19. TASO found that conventional TV receiving antennas have directive properties which provide as much as 6 db discrimination between desired and undesired signals. While this factor was not used in determining equivalent protection, it will provide additional protection for existing stations in some directions. In computing the protected service of existing stations the desired signal strength of the existing station is obtained from the F(50,50) curves and the strength of the interfering signal is obtained from the F(50,10) curves.

20. In determining service gains and losses resulting from the assignment of a new station at substandard co-channel spacings, the effect on service rendered by adjacent channel stations will be calculated on the basis of the TASO studies which show that service is rendered out to the point where the desired to undesired ratio is minus 24 db or less.

21. All interested persons are invited to file, on or before February 19, 1960, comments supporting or opposing the proposals set out in this notice and in the Appendices hereto, or submitting any modifications or counterproposals the parties may wish to submit. Comments in reply thereto may be submitted by March 7, 1960. The Commission will consider all comments filed hereunder prior to taking final action in this matter: *Provided*, That, notwithstanding the provisions of § 1.213 of the rules, the Commission will not be limited solely to the comments filed in this proceeding.

22. The requisite statutory authority is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

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

Adopted: January 4, 1960.

Released: January 7, 1960.

FEDERAL COMMUNICATIONS COMMISSION,⁶

[SEAL] MARY JANE MORRIS, Secretary.

APPENDIX A

Proposed amendments to Part 3 of rules:

1. Amend § 3.610(c)(1) to read as follows:

(c) Minimum assignment and station adjacent channel separations applicable to all zones:

(1)	Channels	Channels
	2-13	14-83
	40 miles	55 miles

2. Amend § 3.683 as follows:

(1) Change the title of this section to read as follows: "§ 3.683 *Field strength contours*."

(2) Change the term "Grade A" and "Grade B" to "Principal City Service" and "Normal Service", respectively wherever they appear in this section.

⁶ Dissenting statements of Commissioners Bartley and Lee filed as part of the original document.

(3) Substitute the following for the present tabulation in paragraph (a):

	Principal City Service (dbu)	Normal Service (dbu)
Channels 2-6.....	80	40
Channels 7-13.....	85	50
Channels 14-83.....	80	64

¹ For the present F(50,50) chart may be used.

(4) In the last sentence of paragraph (a) change the term "F(50,50)" to "F(50,90)".

3. Amend § 3.684 as follows:

(1) Substitute the following for present paragraph (a):

(a) All predictions of coverage made pursuant to this paragraph shall be made without regard to interference and shall be made only on the basis of estimated field strengths obtained from the charts in § 3.699. The peak power of the visual signal is used in making predictions of coverage.

(2) In paragraph (c) substitute the following for the first two sentences in the present text: "In predicting the distance to the field strength contours, the F(50,90) field strength charts in § 3.699 shall be used. If the 90 percent field strength is defined as that value exceeded for 90 percent of the time, these F(50,90) charts give the estimated 90 percent field strengths exceeded at 50 percent of the locations in decibels above 1 microvolt per meter."

(3) In paragraph (c) substitute the terms "Principal City Service" and "Normal Service" for the terms "Grade A" and "Grade B" respectively, wherever they appear.

(4) In the first sentence of paragraph (e) delete the expression "Grade A and Grade B field intensity contours" and substitute therefor the expression "normal service contour".

4. Amend § 3.685 as follows:

(1) Substitute the following text for the present text of paragraph (a):

(a) The transmitter location shall be chosen so that, on the basis of the effective radiated power and antenna height above average terrain employed, the Principal City Service contour will encompass the entire principal community to be served.

(2) Delete the first sentence in paragraph (c).

(3) Substitute the following sentence for the second sentence in paragraph (c): "In considering applications proposing the use of questionable antenna locations the Commission may require site tests to be made."

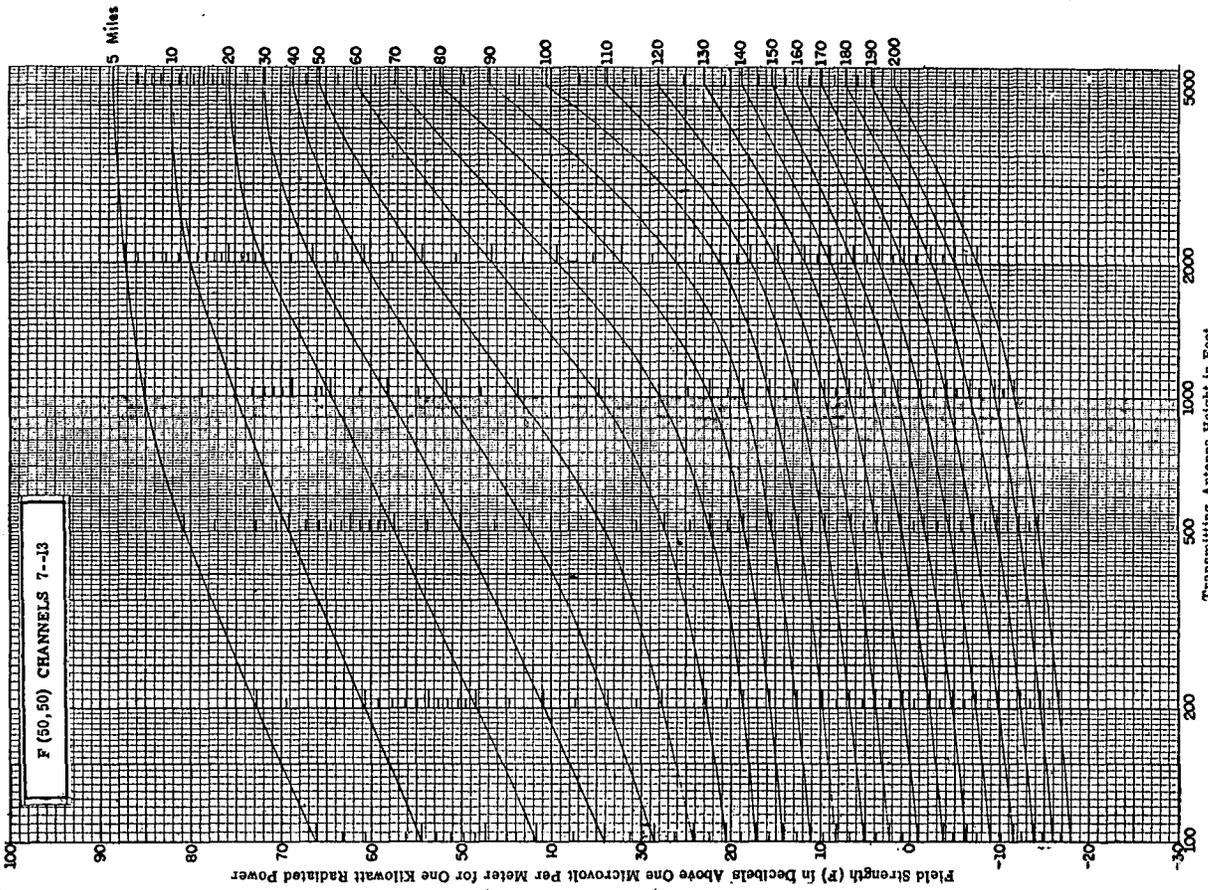
5. Amend § 3.686 as follows:

(1) Delete the first sentence in paragraph (a).

(2) In paragraph (g)(1) substitute the term "Principal City and Normal Service Contours" for "Grade A and Grade B field intensity contours".

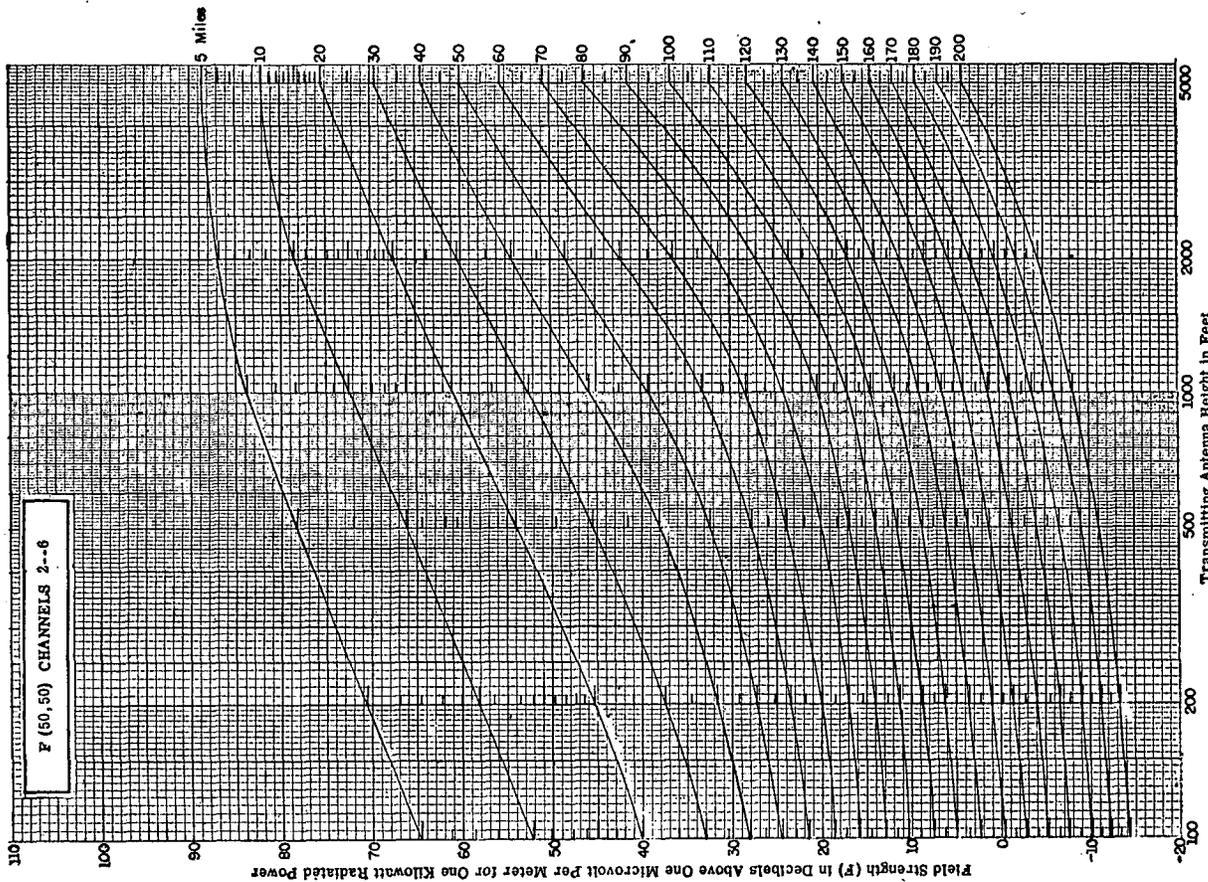
6. Insert new Propagation Curves.

² For Channels 14-83 use is made of F(50,50) chart.



TELEVISION CHANNELS 7-13
 ESTIMATED FIELD STRENGTH EXCEEDED AT 50 PERCENT OF THE POTENTIAL
 RECEIVER LOCATIONS FOR AT LEAST 50 PERCENT OF THE TIME
 AT A RECEIVING ANTENNA HEIGHT OF 30 FEET

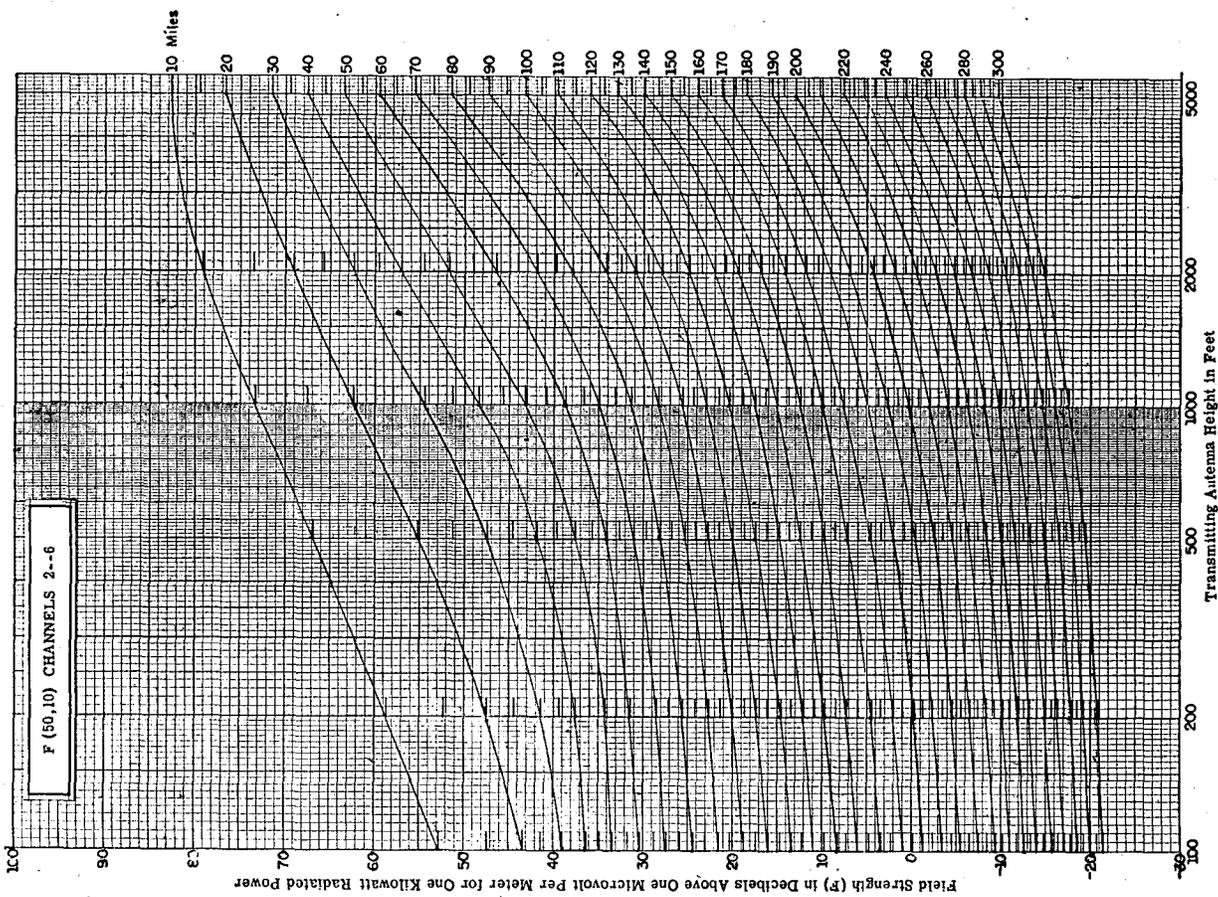
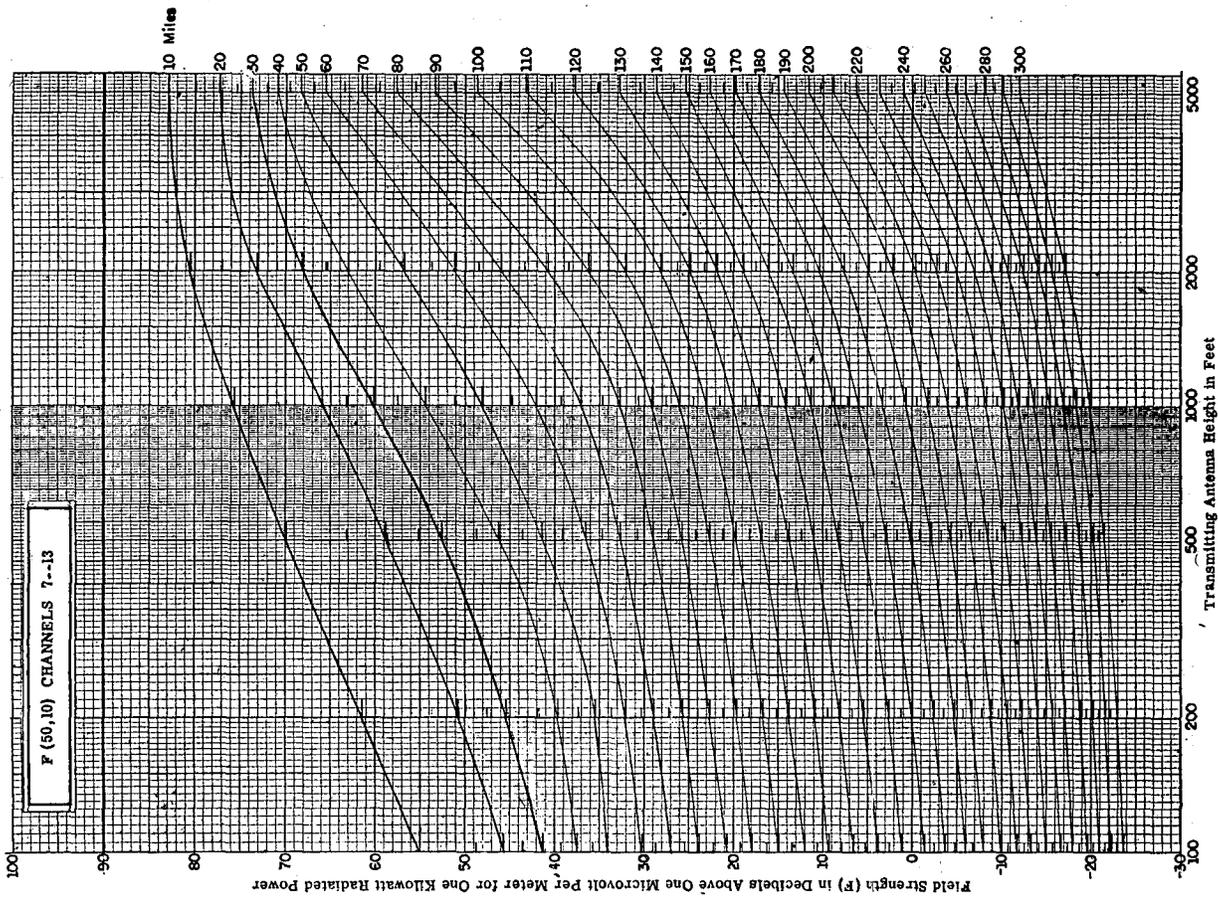
January 5, 1960



TELEVISION CHANNELS 2-6
 ESTIMATED FIELD STRENGTH EXCEEDED AT 50 PERCENT OF THE POTENTIAL
 RECEIVER LOCATIONS FOR AT LEAST 50 PERCENT OF THE TIME
 AT A RECEIVING ANTENNA HEIGHT OF 30 FEET

January 5, 1960

PROPOSED RULE MAKING

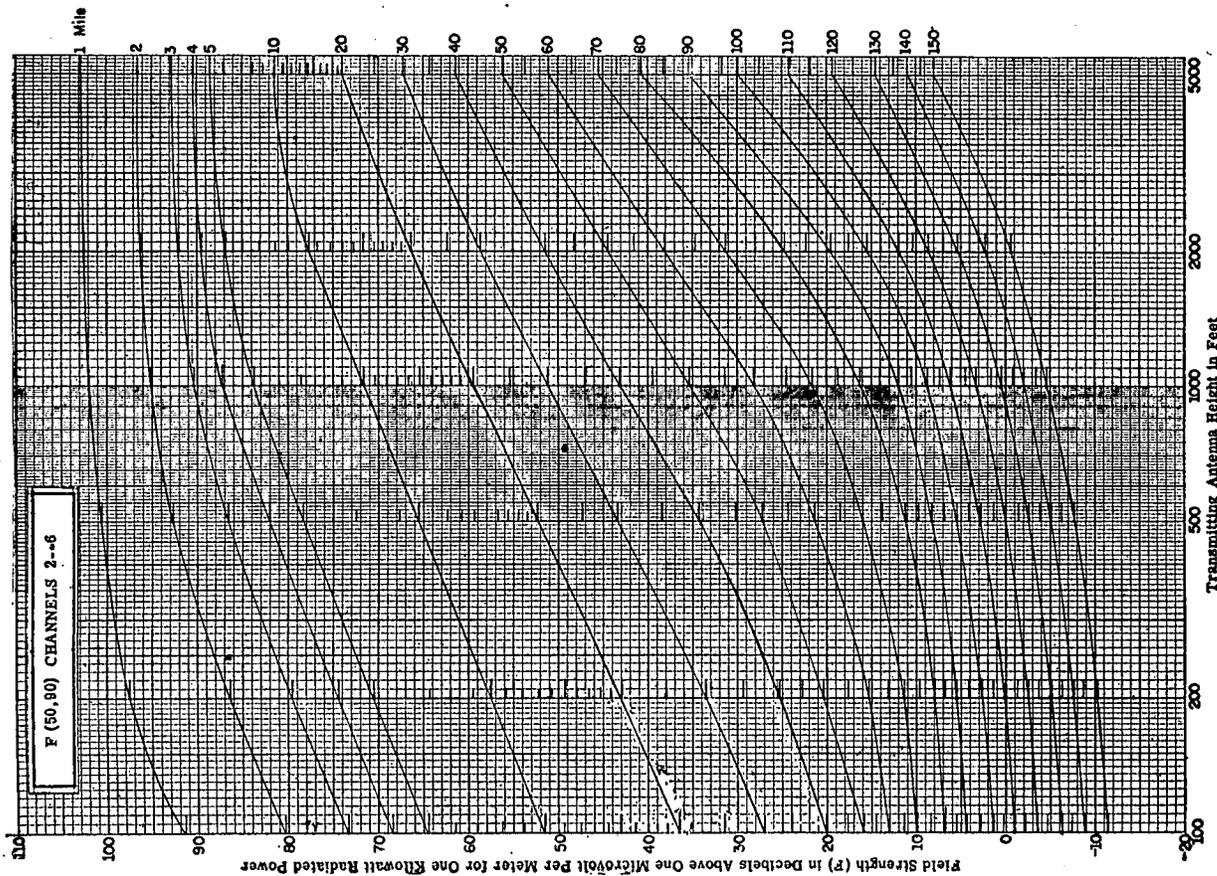
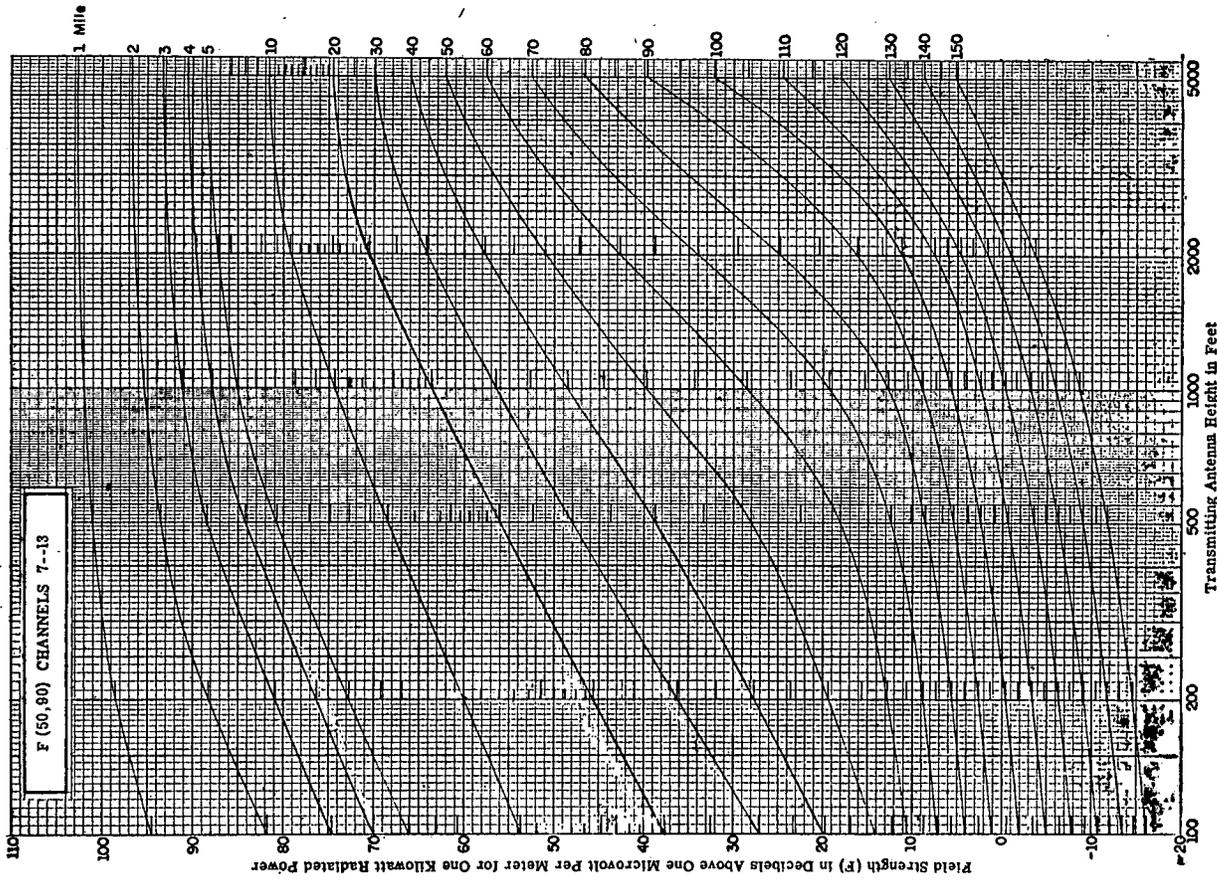


TELEVISION CHANNELS 7-13
 ESTIMATED FIELD STRENGTH EXCEEDED AT 50 PERCENT OF THE POTENTIAL
 RECEIVER LOCATIONS FOR AT LEAST 10 PERCENT OF THE TIME
 AT A RECEIVING ANTENNA HEIGHT OF 30 FEET

January 5, 1960

TELEVISION CHANNELS 2-6
 ESTIMATED FIELD STRENGTH EXCEEDED AT 50 PERCENT OF THE POTENTIAL
 RECEIVER LOCATIONS FOR AT LEAST 10 PERCENT OF THE TIME
 AT A RECEIVING ANTENNA HEIGHT OF 30 FEET

January 5, 1961



TELEVISION CHANNELS 7-13
 ESTIMATED FIELD STRENGTH EXCEEDED AT 50 PERCENT OF THE POTENTIAL
 RECEIVER LOCATIONS FOR AT LEAST 90 PERCENT OF THE TIME
 AT A RECEIVING ANTENNA HEIGHT OF 30 FEET

January 5, 1960

S.O.G. Washington, D.C.

TELEVISION CHANNELS 2-6
 ESTIMATED FIELD STRENGTH EXCEEDED AT 50 PERCENT OF THE POTENTIAL
 RECEIVER LOCATIONS FOR AT LEAST 90 PERCENT OF THE TIME
 AT A RECEIVING ANTENNA HEIGHT OF 30 FEET

January 5, 1960

APPENDIX B

The following factors were used to determine the signal strength required to provide an acceptable picture at 50 percent of the locations for 90 percent of the time; defined as Normal Service.

	Channels 1-6	Channels 7-13
1. Picture quality.....	Passable	Passable
2. Thermal noise (dbu at 300 ohms).....	7	7
3. Receiver noise figure (db).....	7	8
4. Required visual peak to R.M.S. noise ratio (db).....	30	30
5. Receiving antenna transmission line loss (db).....	2	3
6. Receiving antenna loss (db).....	-3	-6
7. Dipole factor (db).....	-3	8
8. Required local field (F(50, 90)) (dbu).....	40	50

¹The mean frequency used in computing the values used for Channels 2-6 is 71 Mc and for Channels 7-13, 195 Mc.

EXPLANATORY NOTES:

1. Taken from TASO data on subjective viewing tests.
2. This is the theoretical thermal noise which would be generated by a 300 ohm resistance at 300 degrees Kelvin over a 4 megacycle bandwidth.
3. These noise figures are typical of an average television receiver found in use today.
4. The values listed were derived from analysis of the subjective data contained in the TASO Report.
5. The values listed correspond to the average for 5 year old transmission line when wet as reported by TASO.
6. These values are typical of those found by TASO.
7. These values take into account the average physical size of a halfwave dipole at the frequencies under consideration with respect to the signal strength in microvolts per meter and is determined by the formula $-20 \log 98.5/f_{Mc}$.

APPENDIX C

The following factors were used to determine the strength of the signal which must be placed over the entire principal city, to provide an excellent picture at 90 percent of the locations for 90 percent of the time in the presence of manmade electrical noise at levels found in highly urbanized areas, if a reasonably good receiving antenna installation is employed. The value is sufficiently high to permit reception of an acceptable picture at many locations with an indoor antenna or on a lower quality receiver.

	Channels 2-6	Channels 7-13
1. Quasi-peak noise field relative to halfwave dipole (dbu).....	49	46
2. Ratio of signal to quasi-peak noise required to produce an excellent picture (db).....	24	24
3. Location probability factor (db).....	7	10
4. Urban depression loss (db).....	3	9
5. Operating receiving antenna loss referred to a halfwave dipole (db).....	-3	-4
Median field strength required for Principal City Service (F(50, 90)) (dbu).....	80	85

EXPLANATORY NOTES:

1. Obtained from the Chart on page 763 of the handbook entitled "Reference Data for Radio Engineers", 4th Edition, published by International Telephone and Telegraph Corporation, corrected for a bandwidth of 4 megacycles.
2. It is assumed that a 24 db signal-to-noise ratio is necessary to render the noise interference inconspicuous in pictures representing average program material. This corresponds to a quasi-peak noise level of 6.25 percent of the peak video level.
3. From T.R.R. 2.4.16, October 22, 1956.
4. Reduction due to signal loss in built up areas.
5. The typical urban receiving antenna is less effective than a similar antenna operated in rural areas. Consequently, this value is somewhat less than the typical gains for receiving antennas reported by TASO.

[F.R. Doc. 60-253; Filed, Jan. 13, 1960; 8:45 a.m.]

[47 CFR Part 21]

[Docket No. 13348; FCC 60-18]

DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

Assignment of Frequencies

In the matter of amendment of Part 21 of the Commission's Rules Governing Domestic Public Radio Services (Other than Maritime Mobile) to provide for assignment of frequencies in the 450-460 Mc band to control stations in the Domestic Public Land Mobile and Point-to-Point Microwave Radio Services.

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

2. Proposed amendments to the above-entitled rules of the Commission are set forth below.

3. Immediately prior to September 4, 1956, when Part 21 of the rules went into effect, all domestic common carrier point-to-point stations (including control stations), other than in the marine and special emergency radio services, were authorized only on an experimental basis under the provisions of Part 5 of the Commission's rules. If operation of such stations were permitted to continue after expiration of the experimental station licenses then current, it became necessary to obtain appropriate new station authorizations therefor under the provisions of Part 21. A substantial number of control stations, operating on frequencies in the 450-460 Mc band which were being used in connection with radio systems in the Domestic Public Radio Services, were affected thereby. However, Part 21 did not then, and does not now, make provision for the continued operation of control stations on such frequencies except for a temporary amortization period ending April 1, 1961. The failure to provide for use of frequencies in the 450-460 Mc range was motivated by the expected greater need for such frequencies for the land mobile service, and by the belief that frequencies in the 890-940 Mc band would be a satisfactory substitute. The latter band is not now available inasmuch as the frequency band 890-942 Mc was reallocated

to Government use by the Commission's Memorandum Opinion and Order of April 16, 1958.

4. The need for affording prompt relief by providing frequencies for common carrier control station operations below the microwave range was indicated in the proceedings in Docket No. 11997. In view of the magnitude and complexity of the problems involved therein, it is doubtful whether the Commission will be able to make an early determination as to the feasibility of reallocating frequencies to common carriers for the aforementioned purpose. Accordingly, as an interim measure, the Commission proposes to modify Part 21 of its rules as shown below.

5. These proposals are not intended to dispose of the pending common carrier requests in Docket No. 11997 for frequency space needed for control stations, nor is it intended to imply the adequacy thereof. The action to be taken on those requests, when finally considered, will be tempered, to the extent necessary, by the decision reached by the Commission in the instant rule-making proposal, as well as by its decision with respect to any rule-making proceeding which may flow from the Commission's pending Second Notice of Proposed Rule-Making in Docket No. 11959, in the event the Commission decides to permit establishment of a public air-ground communication service on frequencies in the bands 454.40-455.00 Mc and 459.40-460.00 Mc. Action upon all control station license renewal applications requesting use of frequencies in the 450-460 Mc band will be held in abeyance pending Commission decision in the proceeding herein instituted.

6. Any interested person who is of the opinion that the proposed amendments should not be adopted may file with the Commission on or before February 12, 1960, written data, views or arguments setting forth his comments. Comments in support of the proposed amendments may also be filed on or before the same date. Comments in reply to the original comments may be filed within 10 days from the last day for filing said original data, views, or arguments. The Commission will consider all such comments and such other material and information as may be deemed necessary and relevant prior to taking final action in this matter, and if comments are submitted warranting oral argument, notice of the time and place of such oral argument will be given.

7. This proposal to amend the Commission's rules is issued under the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

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

Adopted: January 6, 1960.

Released: January 11, 1960.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, Secretary.

Part 21 Domestic Public Radio Services (Other than Maritime Mobile), is proposed to be amended as follows:

1. Section 21.501 is proposed to be modified by amending footnote 11 to read as follows:

" Control stations which were authorized to use these frequencies, which are in the 152-162 Mc band, on September 4, 1956, may be authorized to continue operation on such frequencies until the investment in such facilities has been amortized, but in no event beyond April 1, 1961, under the condition that harmful interference is not caused to stations in the Domestic Public Land Mobile Radio Service and the Rural Radio Service. In any case where use of these frequencies is required by an applicant in the Domestic Public Land Mobile Radio Service or the Rural Radio Service for the purpose of providing any of the basic services relating thereto (i.e., for stations other than developmental or control), continued operation of control stations thereon will not be authorized beyond the term of the then effective authorization therefor.

2. Section 21.501 *Frequencies*, is proposed to be amended by adding new paragraph (i) as follows:

(i) In lieu of use of wireline circuits for control of a specific base station transmitter from its required control point, the frequencies listed below may be assigned to a control station for such purpose. Provided that:

(1) The control station and the base station controlled thereby are located over 75 airline miles from the nearest geographical boundary of the nearest urbanized area having a population over 300,000 (as determined and defined in the most recent census reports of the U.S. Bureau of the Census).

(2) The use of the frequencies requested by the applicant will not cause harmful interference to another station authorized to use such frequencies in the Domestic Public Radio Services.

(3) The rated power output of the control station transmitter does not exceed 10 watts.

(4) The effective radiated power of the control station does not exceed 50 watts.

(5) The use of such frequencies for control purposes shall be on a secondary basis to the provision of mobile and rural radio service by other classes of stations. The frequencies designated by an asterisk (*) may be assigned only to stations of miscellaneous common carriers. The remaining frequencies may be assigned only to stations of communication common carriers engaged also in the business of affording public landline message telephone service.

Mc	Mc	Mc	Mc
*454.05	*454.30	454.55	454.80
*454.10	*454.35	454.60	454.85
*454.15	454.40	454.65	454.90
*454.20	454.45	454.70	454.95
*454.25	454.50	454.75	

3. Section 21.506 is proposed to be amended by adding at the end of this section the following parenthetical cross reference: (See also § 21.501(i)).

4. Section 21.701 *Frequencies*, is proposed to be amended by addition of a new paragraph (d) to read as follows, and redesignating existing paragraphs (d), (e) and (f) as paragraphs (e), (f) and (g), respectively:

(d) Upon a satisfactory factual showing that it is impracticable to use wireline circuits for control of a specific point-to-point microwave fixed station from its control point or for automatically telemetering information relative to the operation of such station to its attended alarm center, the frequencies listed below may be assigned to a control station for such purposes: *Provided that:*

(1) The control station and the point to which its radio transmission is directed are located over 75 airline miles from the nearest geographical boundary of the nearest urbanized area having a population over 300,000 (as determined and defined in the most recent census reports of the U.S. Bureau of the Census).

(2) The use of the frequencies requested by the applicant will not cause harmful interference to another station authorized to use such frequencies in the Domestic Public Radio Services.

(3) The rated power output of the control station transmitter does not exceed 10 watts.

(4) The effective radiated power of the control station does not exceed 50 watts.

(5) The use of such frequencies for control purposes shall be on a secondary basis to the provision of mobile and rural radio service by other classes of stations. The frequencies designated by an asterisk (*) may be assigned only to stations of miscellaneous common carriers. The remaining frequencies may be assigned only to stations of communication common carriers engaged also in the business of affording public landline message telephone service.

Mc	Mc	Mc	Mc
*454.05	454.55	*459.10	459.60
*454.10	454.60	*459.15	459.65
*454.15	454.65	*459.20	459.70
*454.20	454.70	*459.25	459.75
*454.25	454.75	*459.30	459.80
*454.30	454.80	*459.35	459.85
*454.35	454.85	459.40	459.90
454.40	454.90	459.45	459.95
454.45	454.95	459.50	
454.50	*459.05	459.55	

5. Section 21.704 *Modulation requirements*, is proposed to be amended by revision paragraph (b) to read as follows:

(b) Transmitters employing type A3 or F3 emission and operating on frequencies below 500 Mc shall conform to the requirements set forth in §§ 21.507 and 21.508.

[F.R. Doc. 60-350; Filed, Jan. 13, 1960; 8:49 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 927]

[Docket No. AO-71-A40]

MILK IN NEW YORK-NEW JERSEY MILK MARKETING AREA

Supplemental Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

Notice was issued on October 2, 1959, and published in the FEDERAL REGISTER

on October 8, 1959 (24 F.R. 8184), of a public hearing with respect to 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 to be held at a date and place to be set forth in a supplemental notice. Such notice of October 2, 1959, set forth the proposed amendments on which evidence would be received.

Accordingly, notice is hereby given 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), that such public hearing will be held at the Mark Twain Hotel in Elmira, New York, beginning at 10:00 a.m., e.s.t., on February 2, 1960.

Copies of the October 2, 1959, notice of hearing, this supplemental notice and the order may be procured from the Market Administrator, 205 East 42d Street, New York 17, New York, or from the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D.C., or may be there inspected.

Issued at Washington, D.C., this 11th day of January 1960.

F. R. BURKE,
Acting Deputy Administrator.

[F.R. Doc. 60-356; Filed, Jan. 13, 1960; 8:50 a.m.]

[7 CFR Part 947]

[Docket No. AO-313]

MILK IN SUBURBAN ST. LOUIS MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions to Proposed Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to a proposed marketing agreement and order regulating the handling of milk in the Suburban St. Louis marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D.C., not later than the close of business the 20th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

Preliminary statement. The hearing on the record of which the proposed marketing agreement and order, as here-

inafter set forth, were formulated, was conducted at East St. Louis, Illinois, on June 22-26, 1959, pursuant to a notice thereof issued May 13, 1959 (24 F.R. 4000), and to a supplemental notice issued May 26, 1959 (24 F.R. 4342).

The material issues of the record relate to:

(1) Whether the handling of milk produced for sale in the proposed marketing area 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 a milk marketing agreement or order which will tend to effectuate the policy of the Act; and

(3) If an order is issued what its provisions should be with respect to:

- (a) The scope of regulation;
- (b) The classification and allocation of milk;
- (c) The determination and level of class prices;
- (d) Distribution of proceeds to producers; and
- (e) Administrative provisions.

Findings and conclusions—(1) *Character of the commerce.* All milk to be regulated by the proposed marketing agreement and order is in the current of interstate commerce, or directly burdens, obstructs or affects interstate commerce in milk and its products.

Packaged fluid milk products from plants located in St. Louis, Missouri, and Vincennes, Indiana, are regularly distributed within the area herein specified as the Suburban St. Louis marketing area in direct competition with milk distributed from plants located in the marketing area. The plants located in St. Louis obtain their supply of milk from dairy farmers located in the proposed marketing area as well as from farms located elsewhere in Illinois and in Missouri.

Plants which will be regulated under the terms of the Suburban St. Louis order, hereinafter referred to as the Suburban order, during most months of a year receive milk from plants located in Wisconsin and Iowa as well as from nearby farms. In turn, bulk milk from a plant located in the southern part of the Suburban marketing area is sold under a contract arrangement to plants located in Kentucky and Arkansas.

During certain months, milk regularly delivered by farmers to Suburban handlers is in excess of fluid demand and is manufactured into various dairy products which are distributed in other states as well as in Illinois.

(2) *The need for an order.* Marketing conditions in the Suburban St. Louis marketing area are such that the issuance of an order to regulate the handling of milk in the area will tend to effectuate the declared policy of the Act.

Stability of marketing conditions can be assured for the Suburban St. Louis marketing area only when provision is made that all milk handlers engaged in competition in the sale of milk in the area pay no less than the minimum prices specified for milk on the basis of its use, and only when all farmers supplying

milk to handlers in the market receive the same minimum price per hundred-weight for milk of equal quality.

The majority of dairy farmers who regularly deliver milk to handlers who will be regulated by the Suburban order are members of one of three proponent cooperative associations. However, no uniform method of payment for milk now exists throughout the market. Some Suburban dairy farmers receive the St. Louis order uniform price for their milk. Other dairy farmers receive prices which are less than the St. Louis uniform price. In no case does any Suburban proprietary handler pay to dairy farmers in accordance with a classified price plan based on actual utilization of the milk.

The variation in pay prices among handlers and the absence of a classification plan have caused market instability. Some Suburban handlers follow the practice of maintaining a regular supply of milk from dairy farmers during flush production months which is close to their Class I sales. During other months, when production is relatively short in relation to Class I demand, these handlers purchase supplemental supplies from other markets on an opportunity basis. Other handlers follow the practice of maintaining a supply of milk from dairy farmers during short production months which is close to their Class I demand, and, consequently, must market at surplus value concomitant excess receipts during the flush production months. Handlers who operate under both types of procurement policies pay to dairy farmers prices which are generally based upon the St. Louis uniform price without regard to utilization. Accordingly, those handlers who have a relatively high Class I utilization of producer milk have a competitive advantage over those handlers with a low Class I utilization because they pay to dairy farmers a price which is less than the use value of their milk.

Most of the plants in the Suburban area are engaged primarily in the distribution of Class I milk. Since prices paid to dairy farmers are not determined on the basis of a classified pricing plan, the farmers have no assurance that they are receiving full utilization value of their milk. Without a classified pricing plan, dairy farmers may be paid manufacturing prices for a portion of their milk which is actually disposed of for fluid consumption. This condition has caused unrest and created doubt among farmers which contributes to market instability.

Some handlers distributing milk in the Suburban marketing area will not permit agents of the two bargaining associations to check weights and butterfat content of deliveries of members' milk and will not bargain with cooperatives relative to charges for hauling members' milk from the farm to the receiving plant. Such conditions contribute to market instability.

It is concluded that a Federal milk marketing order in the Suburban St. Louis marketing area is necessary in order to assure orderly marketing conditions by providing:

(a) A regular and definitive method for determining prices to producers at levels contemplated under the Agricultural Marketing Agreement Act;

(b) The establishment of uniform prices to handlers for milk received from producers according to a classified price plan based upon utilization made of the milk;

(c) An impartial audit of handlers' receipts and utilization to insure uniform prices for milk received;

(d) A means of insuring accurate weights and butterfat tests of milk;

(e) Uniform returns to producers supplying the market and an equitable sharing by all producers of the lower returns for sale of reserve milk which is in excess of the demand for fluid milk; and

(f) Marketwide information on receipts, sales and other data relating to milk marketing in the area.

(3) *Order provisions*—(a) *Scope of regulation.* The scope of regulation is made specific by providing appropriate definitions of the terms "marketing area", "producer", "handler", "pool plant", "other source milk", and such other definitions as are necessary to describe the incidence of order regulation.

1. *Marketing area.* The Suburban St. Louis marketing area should include all the territory within the Illinois counties of Bond, Calhoun, Clinton, Fayette, Franklin, Greene, Jackson, Jefferson, Jersey, Macoupin, Madison, Marion, Monroe, Montgomery, Perry, Randolph, Washington, Williamson, and such parts of St. Clair County as are not already included in the St. Louis marketing area. All local, state and Federal reservations and installations located within this described territory should be part of the marketing area.

The sanitary requirements applicable for Grade A milk produced for fluid distribution throughout the marketing area are patterned according to a U.S. Public Health Ordinance and Code. Milk meeting the sanitary requirements of the city of St. Louis is accepted for distribution in Illinois. While milk meeting the sanitary requirements of the State of Illinois is not necessarily acceptable for distribution in St. Louis, it may be distributed throughout the proposed marketing area.

According to the United States Census, the 1950 population of the marketing area herein provided was about 705,000. The population of this area has increased significantly since 1950.

The Suburban marketing area includes the 19 counties which were proposed and supported by the various interested parties. For analytical convenience the 19 counties may be divided into three groups.

The first group, hereinafter referred to as the central group, would consist of nine counties, including Bond, Clinton, Jefferson, Madison, Marion, Monroe, Randolph, St. Clair and Washington. Within the central group almost all of the Class I sales are distributed from plants regulated under the St. Louis order, from unregulated plants located within one of the named counties, and

from plants located in surrounding Illinois counties or at Mattoon, Illinois.

The percent of total Class I sales sold in each county included in the central group by handlers fully regulated under the St. Louis order ranges from approximately 18 percent in Jefferson to about 60 percent in Monroe. All distributing plants located in the central group and several plants located in surrounding counties would be pool plants because of the volume of sales distributed within the central group.

The second group, hereinafter referred to as the southern group, would consist of Franklin, Jackson, Perry and Williamson Counties which are located south of the previously mentioned central group. St. Louis handlers supply from 20 to 30 percent of total Class I sales in each of the four counties. Handlers whose plants would be regulated by the Suburban order because of sales in the central group sell most of the remaining Class I sales in the southern group.

Three additional plants, however, would be subject to full regulation by virtue of Class I sales in the southern group. About 5 percent of total Class I sales from one of these plants is distributed in one of the counties included in the central group and the remainder in the southern group. This plant receives its full supply of milk from a supply plant located at Carbondale, Illinois. The other two plants do not distribute milk in the central group. One of these has distribution only within the confines of the southern group and also receives a full supply of milk from the supply plant located at Carbondale. The record is not clear as to the extent of the distribution area of the other; however, such plant sells between 25 and 50 percent of its total Class I sales within the southern group.

The third group of counties, hereinafter referred to as the northern group, would consist of Calhoun, Greene, Jersey, Macoupin, Montgomery and Fayette, which are located north of the central group. Several handlers who operate plants which would be regulated because of the volume of sales in the central group, if the group alone was to be included in the marketing area distribute milk in counties included in this northern group. One such handler, a cooperative association which operates a plant located at Carlinville within the northern group, distributes approximately 65 percent of this plant's total Class I sales within the central group and the remaining 35 percent in the northern group. Another handler whose plant is located at Edwardsville within the central group, disposes of approximately 10 percent of his total Class I sales within the northern group. A distributing plant at Mattoon, Illinois, which distributes approximately 22 percent of its total Class I sales within the central and southern groups, distributes about 11 percent of its total sales in three counties of the northern group.

It is estimated that handlers who either are regulated under the St. Louis order or would be regulated under the Suburban order, because of sales in the central and southern groups, distribute

at least 60 percent of all Class I sales in Fayette County. Suburban handlers make the majority of Class I sales in Calhoun, Greene, Jersey, and Macoupin Counties. The exclusion of these counties from the Suburban market would give unregulated handlers a cost advantage in the procurement of milk as compared with regulated handlers, and could contribute to an unjustifiable loss by Suburban producers of part of their Class I market. Therefore, since the majority of Class I sales in these counties would be by regulated handlers, the five counties of Calhoun, Fayette, Greene, Jersey and Macoupin should be included as part of the Suburban marketing area.

A handler with a plant located at Litchfield in Montgomery County is the largest distributor of milk in that county. If this county were excluded, his plant would still be fully regulated under the terms of the Suburban order because the volume of Class I milk distributed from the plant into other counties included in the marketing area is in excess of the minimum pooling requirement. Therefore, the majority of sales in Montgomery County would be from regulated plants. Accordingly, Montgomery County should also be included.

Several handlers operating distributing plants located north and east of the marketing area distribute a relatively small volume of Class I sales within the marketing area and would be partially regulated by the order. It is noted that the primary distribution area of most such plants has been proposed as the marketing area of a Central Illinois order. No decision has been reached as a result of the hearing held on this matter. In any event, such plants would not be disadvantaged in the competition for sales in view of the options provided for handlers operating these plants to pay either compensatory payments or the use value of their milk to dairy farmers delivering to such plants.

To summarize, the 19-county area forms a distinct milk marketing area. With two exceptions, it covers most of the sales territories served by the plants which would be fully regulated hereunder and the Illinois counties within which St. Louis handlers distribute milk. The two exceptions are the plants at Mattoon and Harrisburg, Illinois, which are located outside the proposed area as described in the notice of hearing. No smaller marketing area would so well encompass the sales areas of the handlers to be regulated and minimize the involvement of handlers whose major Class I business is elsewhere. Therefore, in order to remove any competitive disadvantage in the procurement of milk by regulated handlers and unreasonable exposure to the loss of a Class I market by dairy farmers delivering to these handlers, the 19 counties (not including that part of St. Clair County which is a part of the St. Louis marketing area), should be the Suburban St. Louis marketing area.

2. *Producer.* The term "producer" should include dairy farmers who regularly provide Grade A milk to pool plants for fluid consumption in the marketing

area. Accordingly, the definition of "producer" should distinguish between those farmers who produce milk in compliance with the sanitary requirements of a fluid market and other dairy farmers whose milk is qualified only for use in manufactured dairy products. Milk intended for fluid consumption in the Suburban marketing area is required to be produced in compliance with specific health standards, but it is not necessary that such approval of sanitary practices be given by local health authorities. Sanitary approval by Government authorities at installations under their supervision also would be considered as satisfying the health approval provision.

The qualification of a farmer as a producer should be established primarily on receipt of his milk at a plant which is substantially supplying the marketing area. (Such plants are hereinafter defined as "pool plants".) Producer should also include those dairy farmers whose milk is temporarily diverted from a pool plant to a nonpool plant either by a pool plant operator or by a cooperative association. The milk so diverted would be deemed to have been received at the pool plant from which it was diverted. This provision will accommodate the most efficient handling of milk which serves as the reserve for the market. However, to obviate the possibility that unlimited diversion would encourage handlers to add producers in excess of those needed to supply the fluid requirements of the market and the necessary reserve, a limit should be placed on the diversion privilege. Therefore, diversion should be limited to 10 days' production during any of the months of August through February. In recognition of the seasonal aspects of production and fluid consumption, no diversion limitation should apply in other months. Should more than 10 days' production of a particular dairy farmer be diverted during any of the months of August through February, that dairy farmer should be a producer during the month for that milk delivered directly to a pool plant and that milk diverted to the extent of 10 days' production.

Producers proposed that diversion should be performed only by cooperative associations. It is not necessary for market stability to so restrict the diversion privilege. Certain proprietary handlers receive milk from farmers who are not members of an association. Farms of nonmember producers may be so located in relation to a nonpool plant which has manufacturing facilities that they would be the producers whose milk could be most efficiently diverted.

It was proposed that cooperatives be permitted to divert milk between pool plants in order to facilitate the allocation of producer milk between plants in relation to the Class I needs of the respective plants. This is denied. Under certain conditions, a cooperative association may be the handler on bulk tank milk. (The findings and conclusions relative to this issue will be found in that part of the decision devoted to the definition of "handler".) Thus, flexibility in allocating producer milk is provided without necessitating inter-pool plant diversion.

A "dairy farmer for other markets" should be defined as any farmer who formerly delivered milk to a pool plant but who delivered his production to another market during those months when the Suburban market was most in need of milk and who resumed deliveries to the Suburban market during flush production months when his milk was no longer needed for Class I purposes on the other market. The milk of such farmers could only be used for manufacturing purposes during these flush months, thus contributing to a lower uniform price for those producers who have assumed the responsibility of regularly supplying the market. This circumstance would tend to place on Suburban producers the unwarranted burden of carrying the surplus of other Class I markets without a compensating participation in Class I sales.

A "dairy farmer for other markets" should be excluded from "producer" status and milk received at pool plants from such farmers would be other source milk. (Other source milk is defined subsequently.)

This method of dealing with dairy farmers who supply milk to the market on an opportunity basis will not discourage the entrance of new producers to the market. Its application will be limited to those dairy farmers who shift from the Suburban market to another market during short production months and shift back to the Suburban market during the following flush production months.

3. *Pool plant.* Generally, there are two categories of milk plants functioning in the Suburban market. In one category are plants from which packaged Class I products are distributed in the marketing area. For discussion purposes, such plants will be referred to as distributing plants. In the other category are plants at which milk is received from dairy farmers, commingled and shipped to other plants for further processing and distribution. Such plants will be referred to as supply plants.

Of plants from which Class I milk may be distributed in the marketing area, it is necessary to distinguish between those which are primarily engaged in Class I distribution and those which are not. A plant from which more than 50 percent of the receipts of milk from Grade A dairy farmers is used for manufacturing purposes is not primarily engaged in Class I distribution. All of the distributing plants presently associated with the Suburban market dispose of as Class I milk considerably more than half of the Grade A milk received from dairy farmers. There is, therefore, no need to include in the marketwide pool plants from which less than half of such receipts is distributed as Class I milk. Inclusion of such plants in the pool would result in an uneconomic dissipation of the return for Class I milk which is intended to assure an adequate supply of milk for the market. This would not be in the public interest or promote orderly marketing.

Only those distributing plants from which a substantial proportion of Class I sales are made in the Suburban area

should be fully subject to the pricing and pooling provisions of the order. The inclusion in the pool of plants from which only a minor share of their total Class I sales is distributed in the market would impose a hardship on handlers operating these plants, since it would place them at a competitive disadvantage in their primary sales territories where they compete with unregulated handlers for the major share of their business. Accordingly, it is appropriate to include in the pool only those distributing plants from which not less than 20 percent of their total Class I business is disposed of in the marketing area.

There are at least two plants from which routes are operated in the marketing area that receive no milk from producers. Their total supply of milk is received from a supply plant. Milk received at the supply plant which is not disposed of as Class I is used for manufacturing purposes. At all other distributing plants operating in the area, milk is received directly from producers. However, at most distributing plants, the volume of milk from producers is insufficient to meet Class I demands except in the flush production months. Operators of these plants purchase supplemental milk from plants located in Illinois, Iowa, and Wisconsin and from at least one plant regulated under the St. Louis Federal order.

Supply plants from which a substantial portion of their receipts of milk from dairy farmers is regularly shipped to Suburban distributing plants are clearly associated with the market and their producers should participate in the pool. Supply plants from which incidental or minor quantities of milk are shipped to Suburban distributing plants are not primarily associated with the market and should not participate in the pool. The status of milk received from such plants is covered subsequently under the heading, "Provisions with respect to unpriced milk".

The pool or nonpool status of supply plants should depend upon actual shipments to distributing pool plants rather than upon the "reserve supply credit" technique. In essence, reserve supply credit would be earned by supply plants if their milk is actually used at distributing plants for bottling purposes. Proponents testified that the "reserve supply credit" method of qualifying supply plants is essential to avoid uneconomic movements of milk.

Other provisions of the order can more appropriately be relied upon to achieve this same objective. Location adjustments are allowed only on those quantities of milk from supply plants that are actually used for Class I purposes. Any quantities of milk shipped in excess of bottling requirements must be transferred at handler's expense. This serves as one impediment to the shipment of unnecessary quantities of milk to distributing plants. The level of the Class II price is also an important factor in the desire of supply plant operators to associate unduly large volumes of milk with the market.

Difficulties inherent in the operation of the proposed reserve supply credit de-

vice include the fact that supply plant operators cannot be sure if they are qualifying in any given month. The amount of credit would be affected by unpredictable fluctuations in sales at distributing plants, and, perhaps more importantly, from unpredictable fluctuations in receipts from producers at both the distributing plants and supply plants. The "reserve supply credit" method would require operators of supply plants to be unduly conservative in developing supplies of milk for the relatively short Suburban market even though the prices provided herein may be adequate to attract additional producers.

It is concluded that a supply plant should be considered as a regular source of supply for the market if shipments to distributing plants are equal to not less than 50 percent of the receipts from dairy farmers who meet the inspection requirements described in connection with "producer" during each of the months of August through January. Supply plants which so qualify as pool plants should be allowed to maintain pool status, if the operator so desires, during the following months of February through July even though, in any of such months, he may ship to the market less than the minimum percentage. This will accommodate the economical handling of seasonal reserve supplies which normally would not be needed by distributing plants during the spring and early summer months.

Since this order may become effective during a month following the start of the fall qualifying period, a handler may pool a supply plant during the flush production months of 1960 if his plant functioned as a significant source of milk supply for the market during the preceding short production months. To this end, for each month from the effective date of this order through July 1960, a supply plant may be a pool plant if the operator of the supply plant furnishes proof that 50 percent of receipts of approved milk of dairy farmers during the preceding period of August through January was shipped to distributing plants which are pool plants.

Certain plants which otherwise would qualify as pool plants by meeting the appropriate shipping percentages should be exempt from the pooling provisions of the order. Such exemption should cover plants which would be subject to the pooling and other provisions of another Federal order when a larger volume of milk is involved with the other order market than is involved with the Suburban market.

4. *Handler.* "Handler" is a term designed to cover all persons operating plants or otherwise having responsibility with respect to the marketing of milk in the area. The handler is the person who receives milk from producers and is responsible for reporting the receipts and utilization of milk and payment therefor. It includes (a) persons operating pool plants, (b) persons operating nonpool plants from which Class I milk is distributed on routes in the marketing area, (c) a cooperative association with respect to milk diverted to a nonpool plant, and (d) a cooperative association with respect to members' milk which is delivered to a pool plant

in a tank truck owned and operated by, or under contract to, the association if the association gives prior notice to the market administrator and the plant operator of its intention to be the handler for such milk.

Proponents proposed that a cooperative association be permitted, under certain conditions, to be the handler on bulk tank and can milk which is moved from the farm to pool plants which are not operated by the association.

Designation of a bargaining-type cooperative association as the handler of bulk tank milk will assist the two bargaining associations in the efficient distribution of the available milk supply according to the needs of the various pool distribution plants. In some instances, the same tank truck load of milk may be split between two or more pool plants; and in other instances, two or more pool plants may receive the entire tank truck load on different days during the same month.

In the case of member farmers who market their milk in bulk tanks, weight readings and butterfat samples will be taken at the farm by persons responsible to a cooperative association and it therefore follows that the cooperative association will be held responsible to the pool for the receipt of such milk. In the case of dairy farmers who market their milk in cans, weight readings and butterfat tests are taken at the receiving plant where individual cans of milk of the same dairy farmer are dumped and commingled and, accordingly, the pool plant is held responsible for the milk receipt. In view of the difficulties involved, it would not be in the best interest of orderly marketing to permit or require a cooperative association to be the handler and account to the pool for can milk received at a pool plant not operated by the association.

It is necessary that the market administrator be able to establish the responsibility for milk received and, therefore, the cooperative association which intends to be the handler for bulk tank milk is required to so notify the market administrator. Otherwise, the handler at whose pool plant the milk is received must be held accountable for it and responsible for payments to producers. It follows that the association also will notify the operator of the pool plant that it intends to be the handler for the milk.

When a cooperative association is the handler for bulk tank milk delivered to the pool plant of another handler, the transaction constitutes an interhandler transfer and the milk would be classified pursuant to the interhandler transfer provision. The pool plant handler would be required to pay the association the class prices for milk received in this manner. The association, in turn, would be required to settle with the pool through the producer-settlement fund and to settle with the market administrator for the administrative expense assessment on the milk.

5. The term "producer-handler" would apply to any person who produces milk on his own farm and operates a plant from which milk is distributed in the marketing area, but receives no milk

from sources other than his own farm or from pool plants.

The milk produced by a producer-handler on his own farm would be exempt from the pooling requirement which applies to other handlers. In view of this, it is necessary in the interest of orderly marketing that the term cover a particular type of operation. A handler whose milk supply is obtained entirely from his own farm production and from pool plants would qualify as a producer-handler, and any handler who obtains part of his milk supply from another dairy farmer or from nonpool plants would not so qualify.

Only two producer-handlers are currently distributing Class I milk in the Suburban marketing area and their competitive impact on other handlers and on other dairy farmers is not contributing to instability at the present time. Under these circumstances, market stability would not be endangered if such operators purchased needed supplemental supplies of milk from pool sources and disposed of surplus milk to pool sources provided appropriate conditions are applied. The order should provide that transfers of milk to producer-handlers from pool plants should be a Class I disposition by the transferor-handler; and receipts of milk at pool plants from producer-handlers should be other source milk. Such classification is appropriate otherwise producers would be forced to assume the reserve supply of producer-handlers without a compensating share of Class I sales.

The exemption of producer-handlers from pooling may provide incentive for individuals to adopt certain devices in an attempt to circumvent the order's intent to pool plants which receive milk from other farmers. In order to preclude the use of such devices, the order provides that to be a producer-handler the maintenance, care and management of the dairy animals and all other resources used to produce milk as well as the resources used in the processing, packaging and distribution of the milk be at the sole risk of the person who claims producer-handler status.

A producer-handler would be required to make such reports of his receipts and utilization as the market administrator deems necessary to verify the continuing status of such person and facilitate verification of transactions with other handlers.

6. "Other source milk" is defined in order to distinguish certain milk from producer milk. It would include milk received at a pool plant from nonpool sources and Class II products from any source which are reprocessed or converted to another product in the plant during the month.

(b) *The classification and allocation of milk.* All milk and milk products received by a handler should be classified in two classes according to use. Skim milk and butterfat should be classified separately in accordance with their use in Class I and Class II milk.

Skim milk and butterfat are not used in most products in the same proportions as contained in producer milk and, therefore, it is appropriate that they be

classified separately according to use. Class prices, however, will apply to each hundredweight of milk, and will be adjusted by butterfat differentials according to the butterfat content of the milk used in each class. The skim milk and butterfat content of milk products received and disposed of by handlers can be determined by recognized testing procedures. Some products such as fortified skim milk, condensed milk, and concentrated products present an accounting problem in that some water contained in the milk used to produce these products has been removed. It is necessary in the case of such products to provide an acceptable means of ascertaining the amount of skim milk and butterfat used to produce them. This can be established through the use of plant records made available to the market administrator, or by conversion factors.

1. *Milk classes.* Class I milk would be defined as skim milk and butterfat disposed of in those milk products which are now required by health authorities having jurisdiction in the marketing area to be made from milk from approved sources. The extra cost of getting Grade A quality milk produced and delivered to the market in the condition and quantities required makes it necessary to provide a price for milk used as Class I higher than the price for uninspected milk which is used for manufacturing purposes.

More specifically, Class I should be defined to include all skim milk and butterfat disposed of in fluid form as milk, skim milk, concentrated milk, milk drinks (plain or flavored), cream (sweet or sour) and any mixture of milk, skim milk or cream (except frozen dessert mixes, eggnog, aerated cream products and sterilized products packaged in hermetically sealed containers).

Class I products which contain concentrated skim milk solids, such as skim milk drinks and buttermilk to which extra solids are often added, or concentrated whole milk disposed of in unsterilized fresh form for fluid use, should be included under the Class I definition. Products commonly known as evaporated milk or condensed milk, which are either packed in hermetically sealed containers or are used in the manufacture of other milk products, should not be considered concentrated milk and should not be classified as Class I.

It is necessary in accounting for Class I sales of fortified, concentrated and reconstituted milk that the order provisions prevent the displacement of producer milk in Class I use. This requires that such disposition be accounted for on the basis of milk used to produce such products, which includes all water originally associated with the milk solids used. Fortified, concentrated and reconstituted milk compete for the same Class I sales as whole milk or skim milk and, if made from other source milk, could displace producer milk which is available for the same purpose. It is concluded, therefore, that accounting for skim milk in these Class I products on the basis of original volume, including all the water originally associated with the solids, is necessary to return to pro-

ducers a value commensurate with the use and availability of their milk for Class I purposes.

Producers proposed classification as Class I for that skim milk and butterfat used to produce "Smetna" and "salad dressing". The record is not clear as to the full ingredients of "Smetna" and "salad dressing" or is it clear as to whether they are distributed only from plants processing dairy products or from food warehouses as well. No description of either product is contained in the Grade A milk law provided and administered by the State of Illinois which is the authority responsible for the minimum sanitary regulations on milk throughout the marketing area. Accordingly, the specific inclusion of "Smetna" and "salad dressing" as Class I is denied. However, if "Smetna" and "salad dressing" are Grade A fluid cream mixtures, they, and any other such mixtures, would be classified as Class I.

Class II milk should include all skim milk and butterfat used to produce any product other than those specified as Class I, including, but not restricted to, butter, cheese, evaporated and condensed milk, nonfat dry milk, cottage cheese, ice cream mix and egg nog. These products are not required to be made from Grade A milk.

Class II should also include the skim component of any skim milk which is dumped after prior notification to, and opportunity for verification by, the market administrator; and skim milk and butterfat used for livestock feed to the extent that appropriate records of such utilization are maintained by the handler.

Butterfat and skim milk used to produce Class II products should be considered disposed of when so used. Handlers will need to maintain stock records of such products, however, to permit audit of the utilization by the market administrator.

Handlers have inventories of milk and fluid milk products at the beginning and end of each month which enter into the accounting of receipts and utilization. Manufactured products on hand are not included in the inventory account because the milk used to produce such products will already have been accounted for. Handlers will need to keep records of such manufactured products but such products will not be included in inventories for the purpose of accounting for current receipts.

Closing inventory would be accounted for as Class II milk. Accordingly, it is necessary to provide a proper method of reclassifying in the following month, the milk in beginning inventory which is used for Class I disposition. The method of reclassifying beginning inventory would be in accordance with the general procedure of giving precedence in Class I assignment to producer milk received during the month. Priority of Class I assignment is then given to receipts of the handler in the previous month from other pool sources which were priced as Class II milk.

It may be necessary to determine to what extent in the previous month other source milk became an inventory item. The amount of beginning inventory as-

signed to Class I milk but not covered by the reclassification charge would be subject to compensatory payments, provided that such payments would not apply to any milk which has been classified and priced as Class I milk under another Federal order.

Allowance of Class II classification would be made for a reasonable amount of shrinkage in recognition that there is some loss of skim milk and butterfat in the processing and distribution of milk. A shrinkage allowance of up to two percent received from producers is provided. This amount of shrinkage allowance is common under Federal orders and official notice is here taken of a similar allowance in Federal Order 3 regulating the handling of milk in the St. Louis, Missouri, marketing area.

Milk may be received at a pool plant in tank trucks from other pool plants and from cooperative associations in their capacity as handlers. In this case the maximum shrinkage allowance of 2 percent would be allocated at the rate of 1.5 percent to the plant where received, leaving the other 0.5 percent for the shipping plant or cooperative association. This system of applying shrinkage allowance recognizes that relatively little shrinkage occurs in the receiving of milk and relatively more in its processing, bottling and distribution.

No shrinkage allowance would be allowed to the operator of a pool plant on producer milk diverted to a nonpool plant inasmuch as such milk is not physically received at the pool plant.

Since it is not feasible to segregate shrinkage of other source milk from shrinkage of producer milk, total shrinkage is prorated between the two on the basis of the respective volumes of receipts. The amount prorated to the producer milk would be classified as Class II utilization only up to a total of 2 percent. Any shrinkage above the 2 percent maximum would be classified as Class I milk. No limit is necessary on shrinkage of other source milk since such milk is deducted from the lower use classification under the allocation procedure.

2. *Transfers.* It is necessary to establish rules for the classification of skim milk and butterfat which are transferred or diverted from one plant to another.

In the case of skim milk and butterfat used in the production of manufactured milk products, Class II classification should be established at the pool plant where the product is made. Packaged Class I products should be classified as Class I at the transferor plant. Therefore, the rules for classification for transfers need apply only to skim milk and butterfat which are moved in bulk fluid form.

Milk products in bulk fluid form transferred to another pool plant should be classified as Class I milk unless the operator of each plant indicates in his report to the market administrator that such milk is to be classified as Class II and there is sufficient Class II classification available at the transferee plant pursuant to the allocation procedure. Class II classification, however, should be subject to the provision that such classification will result in the maximum

amount of producer milk at both plants being assigned to Class I milk.

Milk products in bulk fluid form may also be transferred or diverted to nonpool plants. When diverted, milk will move directly from the producer's farm to the nonpool plant. Transfers or diversions to nonpool plants which are more than 150 miles from the main U.S. post office in the nearest of the cities of Alma, Alton, Benton or Red Bud, Illinois, should be classified as Class I milk. Adequate manufacturing facilities are located within this radius so that no producer milk must be moved beyond this limit to find an outlet in manufacturing uses. Administrative feasibility requires that some limit be set on the area within which the market administrator should send his staff to verify utilization.

Transfers and diversions to nonpool plants located within the 150-mile range may be classified as Class II provided the following conditions are met: (1) The transferring or diverting handler claims classification in Class II milk in his regular report of receipts and utilization; (2) the operator of the nonpool plant, if requested, makes his books and records available to the market administrator for the purpose of verifying receipts and utilization of all milk in the nonpool plant; and (3) the Class I milk (as defined in the order) disposed of from the nonpool plant does not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers approved to supply Grade A milk and receipts in consumer packaged form which are priced as Class I under this or other Federal orders. If the Class I disposition from the nonpool plant exceeds such receipts, provision should be made to classify as Class I an amount equivalent to such excess.

The order should not provide duplication of Class I classification on milk transferred to the same nonpool plant from other plants regulated by this and other Federal orders. It is reasonable, therefore, to assign receipts in packaged form which are classified as Class I under any Federal order to Class I disposition at the nonpool plant before bulk transfers are so classified. Bulk transfers to such nonpool plant which are classified as Class I should not be less than the Suburban market's pro rata share of the remaining Class I sales from such nonpool plant. This method of classification and proration of Class I sales provide equality of treatment among handlers under the Suburban order as well as handlers under other Federal orders in case of transfers to a common nonpool plant.

Milk transferred from a pool plant to the plant of a producer-handler should be Class I milk for reasons explained in the previous findings relative to producer-handlers. Transfers to a pool plant from a plant of a producer-handler should be classified as other source milk and allocated accordingly.

3. *Allocation.* Milk from sources other than producers frequently will be received at pool plants. Since the order applies class prices only to producer milk, it is necessary to determine the classification of skim milk and butterfat con-

tained in milk received from these other sources.

In order to insure the effectiveness of the classified pricing program, producer milk must have priority in assignment to Class I utilization. The allocation to Class I and Class II utilization of receipts from different sources as set forth in the order will accomplish this objective. The allocation should provide further that after setting aside the appropriate allowances for shrinkage of producer milk, skim milk and butterfat in other source milk should be subtracted from Class II utilization before skim milk and butterfat contained in producer milk are so assigned.

One exception should be made to the prior allocation to Class II utilization of other source milk. Other source milk in packaged Class I form received from plants fully regulated under another Federal order which are disposed of in the same packages as received should be subtracted from Class I utilization at the receiving plant. Plants which will be regulated under the proposed Suburban order regularly receive packaged Class I products from plants regulated under other Federal orders. One Suburban plant receives packaged milk from a St. Louis pool plant which milk is distributed by the Suburban handler in the St. Louis marketing area. Other Suburban plants regularly receive packaged Class I products from plants regulated under another order. Since this milk is regularly received at Suburban plants from other Federal order plants, it can only be concluded that the dairy farmers supplying milk to the other Federal order plants have assumed the responsibility of supplying the milk for such products and for the reserve supply associated therewith. Therefore, Suburban St. Louis producers who will not be the regular source of supply of milk for such products should not receive priority of classification to such Class I disposition. However, in order to prevent abuse and inequities to Suburban producers, the Suburban order should provide that plants which receive packaged milk from other Federal orders shall not receive prior allocation to Class I for such milk if the same product is processed and packaged in containers of the same type and size in the Suburban plant during the month.

Other source bulk milk which is priced and pooled as Class I under another Federal order may also be received at pool plants. Such milk should take priority with respect to the highest utilization over other source milk not so priced and pooled. This will minimize compensatory payments by Suburban handlers on supplemental milk purchased from unpriced sources.

Receipts of milk from other pool plants would be subtracted from the class utilization to which they are assigned pursuant to the transfer provisions.

The sequence of subtractions from Class II utilization (except where otherwise indicated) to achieve proper assignment of Class I utilization to producer milk should be as follows:

(1) Allowable shrinkage of producer milk;

(2) Receipts of packaged Class I products from plants regulated under other Federal orders should be subtracted from Class I utilization;

(3) Receipts of unpriced other source milk;

(4) Receipts of bulk other source milk classified and not priced as Class I under another Federal order;

(5) Receipts of bulk other source milk classified and priced as Class I under another Federal order;

(6) Receipts from other handlers according to classification;

(7) Beginning inventory; and

(8) Overage.

The order should not provide a 5 percent assignment of producer milk to Class II utilization before the Class II assignment of other source milk. While Suburban handlers frequently find it necessary to utilize as Class I bulk milk received from other sources, such other source milk is purchased and so used only when producer milk is insufficient for the particular handler's Class I sales. Therefore, it can be concluded that the other source milk is a supplemental rather than a regular dependable supply. It is elsewhere provided that no compensatory payments would apply on unregulated other source milk which is used for Class I purposes whenever milk from producers is inadequate to meet Class I demand plus a normal reserve. Under these conditions, a 5 percent allocation of producer milk to Class II utilization prior to allocation of other source milk is not necessary.

(c) *The determination and level of class prices*—1. *Class I price.* For the first 18 months, the minimum Class I price each month per hundredweight of milk containing 3.5 percent butterfat at plants located in the "base zone" should be the St. Louis Federal order Class I price effective at a pool plant located at Collinsville, Illinois, minus 10 cents. The "base zone" should include the counties of Clinton, Franklin, Jackson, Jefferson, Madison, Marion, Monroe, Perry, Randolph, Washington, Williamson, and that part of St. Clair County not included in the St. Louis marketing area. The minimum Class I price at plants located elsewhere in the marketing area should be the St. Louis order Class I price at a pool plant located at Collinsville minus 15 cents. Pursuant to the Class I location differentials in the St. Louis order, the Class I price at a pool plant located at Collinsville is now 12 cents less than the Class I price effective at pool plants located within the city of St. Louis.

Various Class I prices were proposed for the Suburban order, all of which were tied to the St. Louis order Class I price. Because of the overlapping of the Suburban and the St. Louis milk procurement areas, the various proposals were predicated on the necessity of equating the uniform prices paid to Suburban producers with the uniform prices paid to those producers delivering to plants regulated under the St. Louis order whose farms are located in the Illinois portion of the St. Louis milkshed.

Other factors must be considered. Primarily, the level of the Class I price

must be such as to bring forth a regular and dependable supply of Grade A milk for the Suburban market. As corollary considerations, the Class I price must recognize (a) the desirability of so aligning Suburban and St. Louis Class I prices to provide equity for both groups of handlers and to eliminate the possible inequity to St. Louis or Suburban producers if one of the respective Class I prices is so low in relation to the other as to precipitate the transfer of a Class I market; (b) the difference in cost to Grade A dairy farmers in complying with inspection requirements of St. Louis health authorities as compared with inspection requirements of Suburban health authorities; and (c) the need to align Suburban prices with prices in other areas which may serve as alternative sources of supply.

One guide in determining the Class I price which will assure an adequate supply of milk for the Suburban market is the historical price relationship between St. Louis and Suburban plants. As previously stated, no uniform method of calculating payments to dairy farmers has existed in the Suburban market. However, it is possible to approximate the average prices paid. Generally, operators of distributing plants which will be regulated have paid prices that approximate that St. Louis order uniform price at the zone where their respective plants are located. Such prices have not attracted an adequate and regular supply of Grade A milk for the market from local dairy farmers. Suburban handlers have found it necessary to import milk during approximately 9 months of the year to supplement deliveries from local dairy farmers. The supplemental milk is bought principally from plants located at Platteville and Madison, Wisconsin, and Cedar Rapids, Iowa. However, in view of the fact that the compulsory Illinois Grade A statute is relatively recent, it is necessary to allow a period of time to evaluate supply response under these conditions.

At least five plants regulated by the St. Louis order are located within the Suburban marketing area and one is located in Effingham County which lies east of the Suburban area. The Class I and uniform prices applicable at all of these plants, because of location adjustments, are less than those payable for direct-delivered milk at St. Louis pool plants located in the center zones of the St. Louis marketing area. At three of these plants, one of which is located at Collinsville, the Class I price is 12 cents less, at the fourth 16 cents less and at the fifth 17 cents less. At the plant located in Effingham it is 22 cents less.

The three St. Louis pool plants, including the one at Collinsville, which pay 12 cents less for Class I milk than plants located in the city of St. Louis distribute Class I milk in various counties including in the Suburban marketing area. Thus, Collinsville will provide the point of St. Louis pricing pursuant to which the appropriate Suburban Class I price may be computed.

St. Louis order handlers distribute significant proportions of the total fluid milk sales distributed in 14 of the 19

counties herein specified as the Suburban marketing area. In the spring of 1958, the magnitude of St. Louis distribution ranged from a low of approximately 20 percent of total Class I sales in Franklin County to a high of approximately 60 percent of such sales in Monroe County. It is evident that while the St. Louis marketing area is the primary market of St. Louis handlers, the magnitude of sales in the Suburban market by these handlers cannot be overlooked in arriving at an appropriate price plan. Producers delivering to these St. Louis handlers have assumed the responsibility of supplying the Grade A milk needed for the Class I sales in Illinois made by such handlers. Any Class I price advantage to Suburban handlers beyond that dictated by economic considerations would tend to jeopardize a significant proportion of the established Class I market of St. Louis producers.

It is generally accepted that the Grade A inspection requirements of the St. Louis health department are more stringent than those enforced by authorities responsible for the Suburban market. Therefore, it would be expected that St. Louis order Class I prices should be higher than the Suburban Class I prices by the additional cost of complying with St. Louis Grade A inspection. Various witnesses estimated the magnitude of the additional cost involved. Such estimates differed considerably because of the comparatively larger costs of converting existing facilities to meet St. Louis standards as compared with the lower additional costs of building new facilities to meet St. Louis rather than Illinois standards. It is concluded that 10 cents appropriately represents the lesser cost involved in producing Grade A milk for the Suburban market.

Another measure of the appropriateness of the Suburban Class I price is a comparison of such price with the Class I price effective at plants located in other areas which are alternative sources of supply for the Suburban market. During the 12-month period ending with September 1959, the average price for Class I milk under the Chicago Federal milk order at a plant located in the same zone as is the Platteville, Wisconsin, plant was \$3.50. Adding a transportation cost computed at a rate of 1.5 cents for each 10 miles or fraction thereof (this is the rate of location adjustments included herein), the price of Class I milk delivered to a Suburban plant located at Collinsville, Illinois, which is a relatively large population center located north of Highway 50 in the Suburban marketing area, would have been approximately \$4.01. This computation does not include a handling charge. Applying similar assumptions to milk delivered from the unregulated plant at Madison, Wisconsin, the average price for Class I milk delivered to a plant located at Collinsville would have been \$4.10. Class I milk from a plant regulated under the terms of the Cedar Rapids, Iowa, order would have cost about \$4.26 delivered to a plant located at Collinsville. During the same 12-month period the average Suburban Class I price at plants located in the base zone would have been \$4.09.

The order should provide that the Class I and uniform prices applicable at pool plants located in the northern zone should be five cents less than those applicable at plants located in the base zone. The northern zone should include the counties of Bond, Calhoun, Fayette, Greene, Jersey, Macoupin and Montgomery.

Madison and St. Clair Counties are by far the most densely populated counties included in the Suburban area. The plants of several of the larger Suburban handlers are located in these two counties as are the plants of several St. Louis handlers. Not including the 10-cent difference in the cost of producing Grade A milk for the two markets, Suburban plants should pay for milk at least as much as do St. Louis plants similarly located.

Historically, prices received by dairy farmers delivering to plants located in other counties included in the base zone have been higher than those received by farmers delivering to plants located in the northern zone of the marketing area. One handler entered specific data on this subject. During 1958 prices paid to farmers delivering milk to a plant operated by this handler which is located in the northern zone, at Carlinville, were less than the prices received by farmers who deliver to a plant located in the southern zone, at Carbondale, which is operated by the same handler.

Plants located in the northern counties of the marketing area are closer to alternative supply sources and, therefore, can obtain Class I supplies at a lower cost. Handlers with plants located in these northern counties distribute Class I milk in base zone counties in competition with handlers operating plants located therein, however, the cost of moving milk from the northern counties to the base zone should offset the difference in the Class I prices.

While the Suburban Class I price will be tied to that in the St. Louis order, it is appropriate to include in the Suburban order stated Class I differentials to be used in determining the Suburban Class I price in the event a Class I price is not reported for the St. Louis order.

2. *Class II price.* During the months of August through February, the Class II price should be the basic formula price plus 4 cents; and during the months of March through July it should be the amount remaining after subtracting a 71-cent make allowance from the sum of the butter-spray powder computation used in the Class II price provision of the St. Louis order. Pursuant to this formula, in each month the Suburban Class II price will be 10 cents higher than the St. Louis Class II price. During 1958, the average Suburban Class II price would have been \$3.00.

The use of the butter-spray powder formula as a determinant of the Class II price in the flush production months will provide a lower Class II price for these months which will aid in the disposition of excess supplies of milk which are common during these months.

Two of the proponent cooperative associations supported a Class II price five cents higher than that effective under the St. Louis order. They argued

that St. Louis handlers pay a five-cent inspection fee on Grade A milk which is used for manufacturing purposes whereas Suburban handlers do not pay a similar fee. The third proponent cooperative testified that the Class II price should be the same as that in the St. Louis order.

Some milk in excess of Class I requirements is necessary to maintain an adequate supply of milk for the market on an annual basis. The price for this excess milk should be maintained at the highest level consistent with facilitating its use in manufactured products. The price, however, should not be so low that handlers will be encouraged to procure supplies of Grade A milk solely for manufacturing purposes.

Milk of manufacturing grade is produced throughout the Suburban milkshed. Some large shippers of ungraded milk are receiving a price for their milk which is well in excess of \$3.00 per hundredweight. On the average, members of one of the proponent associations received a price for ungraded milk at least 20 cents in excess of the St. Louis Class II price.

On a 3.5 percent butterfat basis, during 1958 the average prices paid for milk used primarily for evaporated milk, American cheese, and butter and creamery by-products were \$3.00, \$2.97 and \$3.00, respectively. (Such prices have been adjusted to 3.5 percent basis by the use of the Class II butterfat differential contained herein.) During 1958 the average St. Louis Class II price was \$2.90.

Grade A milk in this market is worth at least as much as ungraded milk for manufacturing purposes. Accordingly, the Suburban order should provide a Class II price which is approximately the St. Louis order Class II price plus 10 cents.

3. *Butterfat differentials.* Butterfat and skim milk are to be accounted for separately for classification purposes. Class and uniform prices are to be established for milk containing 3.5 percent butterfat. Therefore, to reflect differences in the value of the milk due to variations in butterfat content, it will be necessary to adjust Class I, Class II and uniform prices in accordance with the average butterfat test of milk in each class, and of the milk delivered by each producer.

The values resulting from multiplying the average price of 92-score butter at Chicago by 0.120 for Class I milk and 0.115 for Class II milk will provide an appropriate basis for adjusting such prices for each one-tenth percent variation in butterfat content. The resulting differentials will conform with those applied under the St. Louis order.

The butterfat differential to producers should correspond to the weighted average values of butterfat used for Class I and Class II purposes. This follows the principle of uniform prices to all producers and will reflect changes in the use of butterfat in each class.

4. *Location differentials.* Class I and uniform prices paid by handlers operating plants located a considerable distance from the market should be subject to minus adjustments to reflect the cost of moving milk to the market. Adjust-

ments to Class I prices at such plants are necessary to equalize the cost of milk to all handlers distributing in the marketing area. Adjustments to producer prices will recognize the lesser location value of producer milk which must be transported a considerable distance to the Suburban market.

No location adjustments should apply at plants located less than 50 miles from the nearest main U.S. post office in Alma, Alton, Benton or Red Bud, Illinois. The area thus circumscribed will insure that no handler operating a distributing plant located within or adjacent to the marketing area will have a competitive advantage over any other handler operating a plant which is similarly located.

A location differential of 1.5 cents for each 10 miles should be used for adjusting Class I and uniform prices. This rate approximates the cost of moving milk to the Suburban market and conforms with rates similarly used in other Federal milk orders in this region. Accordingly, it is concluded that a rate of 9 cents should be established at plants located more than 50 miles but less than 60 miles from the nearest of the named basing points. For each additional 10 miles or fraction thereof, the per hundredweight location adjustment should be increased 1.5 cents.

No location adjustment should be allowed on Class II milk. Costs involved in moving manufactured products are minor relative to costs of moving whole milk. Manufactured dairy products are much less perishable and the components of manufactured products are usually in concentrated form. Accordingly, there is little value in milk used for manufacturing purposes which can be equated to plant location.

In computing the aggregate Class I location adjustment allowed at distributing plants on milk received in bulk from distant plants, a method should be provided for allocating Class I utilization. Such allocation of Class I should begin with milk received from producers. Receipts from other pool plants which are not subject to location adjustments should be next allocated to Class I and, then in sequence, milk received from those plants which have the least location adjustment.

5. Equivalent price. If for any reason a price quotation required for computing class prices or for any other purpose is not available in the manner described, the market administrator should use a price determined by the Secretary to be equivalent to the price which is required. Experience has shown that quotations described in the order may not be available at all times. It is concluded that provision for such contingencies should be made by providing for a determination by the Secretary of an equivalent price.

6. Provisions with respect to unpriced milk. The order should provide for payments to the producer-settlement fund with respect to unpriced milk which is allocated to Class I at a pool plant. Operators of nonpool distributing plants would have the choice of making payments to the producer-settlement fund or paying Grade A dairy farmers from whom they receive milk the use value of

such milk pursuant to the pricing, classification and all other provisions of the order.

The rate of payment on such milk should be equal to the difference between the Class I and Class II prices during the months of March through July and the difference between the Class I and uniform prices during the months of August through February.

At times, operators of pool plants may purchase milk for Class I use from sources which are not fully subject to classification and pricing under the terms of any Federal order. Unpriced Grade A milk which is purchased from such unregulated sources by Suburban handlers to supplement deliveries from dairy farmers will usually represent Grade A milk which is in excess of the demand for Grade A distribution in another market. As surplus, its value in the other market is less than the value of milk used for Class I purposes. If Suburban handlers were allowed to purchase such milk and dispose of it for Class I purposes without some compensatory feature in the order, such handlers would have a competitive advantage as compared with other Suburban handlers, and would have incentive to replace regular producer milk with milk which is surplus in another market.

To avoid both these deleterious consequences to the orderly marketing of milk in the Suburban area, it is concluded that handlers operating pool plants at which other source milk which is not priced as Class I under any Federal order is allocated to Class I should pay into the producer-settlement fund a compensatory amount which will reflect generally the difference in value between regulated and unregulated milk used for Class I purposes.

When milk is available in substantial volumes from nonpool sources, pool plants could obtain such milk at prices reflecting its value as surplus milk which would approximate the Class II price under the order. During the seasonally high production months of March through July, therefore, the rate of payment on other source milk allocated to Class I should be the difference between the Class II price and the Class I price adjusted to the location of the plant from which such other source milk was received from dairy farmers. During the months of August through February, milk supplies are shorter than in other markets. It is not likely that other source milk will be available to the market at surplus prices. It reasonably may be expected that during such months such milk will be available from unregulated sources at prices not less than the level of the uniform price under the order. Compensation payments during these months, therefore, should be the difference between the uniform price to producers and the Class I price, adjusted to the plant from which such other source milk is supplied.

It is administratively necessary to use the stated rate of compensatory payment instead of attempting to determine a particular rate in each given case. Pool plant operators may obtain other source milk with little or no advance notice

from a wide variety of sources. Any attempt to determine the actual cost of such milk to the regulated handler would be complicated by the number of plants involved. Some of the plants supplying the other source milk might be operated by the same handler, in which case the interplant billing would be purely arbitrary. There is the possibility of arbitrary billing even where the plants are not under common ownership. In addition, the originating plant would not be subject to the audit and payment provisions of the order. It is, therefore, necessary to have definite and specified rates applicable to all handlers similarly situated. The rates herein provided are those which will best effectuate the intent of the Act under current marketing conditions in the area.

Other source milk used in the form of nonfat dry milk or condensed skim milk should be considered to be from a source at the location of the plant where it is used. The transportation cost on such skim milk in terms of the skim milk equivalent and the basis of accounting for such milk under the order, will be insignificant or relatively minor. By following this procedure, the compensatory payment on other source milk derived from nonfat dry milk or condensed skim milk will be comparable to that on any unpriced other source whole milk which is allocated to Class I milk.

No compensatory payment would be required on milk which is classified and priced as Class I under any other Federal order. The alignment of Class I prices for the Suburban market with those for other Federal orders precludes any significant competitive advantage to Suburban handlers who purchase other Federal order milk.

Another type of unpriced milk is that distributed in the marketing area by a handler operating a nonpool plant. Such a nonpool plant is primarily associated with another market since less than 20 percent of its total Class I sales are made in the marketing area. Several handlers operating plants located to the north and east of the proposed area would be in this category.

The use of other source milk by these nonpool distributors differs in an important respect from the use of other source milk by operators of pool plants. Sales by nonpool distributors in the market are on a regular basis, whereas the purchase of supplemental milk by pool plants is usually sporadic and from different, more-distant sources.

The integrity of the regulation can be maintained by providing alternative methods of determining compensatory payments at a nonpool distributing plant. Subject to proper reporting and the maintenance of adequate records, the operator of such plant should be given an opportunity to choose between payment into the producer-settlement fund of: (1) An amount equal to the volume of Class I milk disposed of in the marketing area at the same rate applying to unpriced milk allocated to Class I at pool plants, or (2) the amount by which total payments to dairy farmers delivering to such plant are less than the total obli-

gation to producers which would be due if such plant were a pool plant.

If the partially regulated handler elects to make payments under the first option, the regulation would be protected in the same manner and to the same extent as is provided with respect to compensatory payments on other source milk at pool plants. If the handler chooses to pay the full utilization value of his milk either directly to his own farmers, or by combination of payments to his farmers and to the producer-settlement fund, he will not have any advantage in terms of the minimum order class prices on his sales of Class I milk in the marketing area. His total minimum obligation for milk will be determined in the same manner as if he were a fully regulated handler.

Affording this second option to partially regulated nonpool plants will adequately protect the regulatory plan in this market. The option to pay directly to dairy farmers who regularly supply such nonpool plants with milk at the full utilization value of such milk in accordance with the order will not place the operators of pool plants at a competitive disadvantage in the procurement of their milk supply.

Under the second option, the operator of the nonpool plant would be required to file a complete report of receipts and utilization. From such reports, subject to audit, the value of his milk would be computed at the class prices and adjusted for location and butterfat content in the same manner as for a pool plant. From this utilization value the market administrator would subtract the payments to the Grade A dairy farmers who constitute the regular supply of milk for the nonpool plant as verified from the producer payroll. Only such payments would be allowed as had been made to such farmers by the 20th day following the end of the month. The payment would be the gross amount paid to such farmers for milk at the nonpool plant. Bona fide deductions for supplies and services, such as hauling, would be allowed as authorized by the dairy farmer.

The assessment of administrative expense should depend upon which option is chosen by the nonpool distributor. If he elects to pay on his in-area sales he should be required to pay administrative expense only on such quantities of milk so disposed of in the marketing area. If he elects the payment based on the utilization value of his milk, he should pay administrative expense on his entire receipts of milk from Grade A dairy farmers and any other receipts from unpriced sources which are allocated to Class I milk the same as is required of pool plants. Obviously, the second option necessitates as much verification of the reports and utilization by the market administrator as at a pool plant. Such verification might well include the checking of weights and butterfat tests of receipts from dairy farmers and products sold as well as a complete audit of the books and records for such plant.

It is possible that nonpool plants from which milk is distributed in the Suburban market will also be nonpool distributing plants under the terms of

another Federal order. To eliminate any duplication of equalization and administrative payments, the Suburban order should credit such handlers with payments made under similar provisions of another Federal order.

(d) *Distribution of proceeds to producers*—1. *Type of pool.* Returns from the sale of milk should be distributed to producers through a marketwide pool rather than through individual-handler pools.

The Act specifies that an order must provide for (1) the payment of uniform prices for all milk delivered by producers to the same handler, or (2) the payment of uniform prices for all milk delivered by producers to all handlers based upon the marketwide use of such milk. The former method of payment is by individual-handler pools, the latter by a marketwide pool. Under either method, all handlers pay the same class prices for producer milk except for plant location and butterfat content differences.

Under the individual-handler pool, the minimum prices to be paid producers will be uniform to all producers delivering their milk to the same handler. The uniform price will depend upon the proportion of producer receipts used in each class by the handler. Although each handler is required to pay minimum uniform prices to all the producers who deliver milk to his plant during each month, the prices paid by different handlers may differ because the proportion of milk used in each class may vary.

While locally produced Grade A milk for the Suburban market has been in relatively short supply on an annual basis, daily and seasonal fluctuations in receipts in relation to sales inevitably result in the necessity of utilizing some Grade A milk in lesser valued manufactured products. The manufacturing facilities for handling reserve supplies of milk vary considerably. Some handler's plants are equipped to handle their own reserve as well as the reserve of other handlers while other handlers have extremely limited manufacturing facilities. One cooperative association which operates several plants in the area supplies all the milk required by at least two proprietary plants which will become regulated and supplemental milk to other proprietary plants. The reserve supply associated with these sales is manufactured at a plant operated by the cooperative. Under such situation, a marketwide pool would better contribute to market stability and most efficient handling of reserve supplies by insuring an equal return to all producers engaged in supplying the Class I demand of the Suburban market.

A marketwide pool will also contribute to the flexibility of milk marketing in two other important respects. One of these is that supplemental supplies may be freely distributed among handlers without affecting the prices paid to producers at each plant. The other is that temporary or seasonal reserves may be shifted between plants either by transfer of the milk or of the producers so as to result in the most economical use of milk and facilities without affecting the prices paid to producers at individual plants.

2. *Payments to individual producers and to members of cooperative associations.* Each handler should make final payment to each producer for milk delivered by such producer at the appropriate uniform price on or before the 20th day of the month following receipt of the milk. Provision is made for partial payments on milk received during the first 15 days of the month, such payment to be made on or before the last day of the month.

Payments due any producer for milk should be paid by the handler to a cooperative association if the cooperative association makes a written request for such payment and if the member producer has given the cooperative association written authorization, in the form of a contract or in any other form, to collect such payments. The association's request should also provide for any loss incurred because of any improper claim.

Unless a cooperative association can receive payment for the milk marketed on behalf of its producer-members, it cannot reblend the sales proceeds from milk sold in various outlets. This important function is specifically provided for in the Act.

Provision is made for handlers to make payments to a cooperative association two days in advance of the time the handler is required to make payments to individual producers in order that all producers will receive payment on approximately the same date.

In making such payments for producer milk to a cooperative association, the handler should at the same time furnish the cooperative association with a statement showing the name of each producer for whom payment is being made, the volume and average butterfat content of milk delivered by each such producer, and the amount of and reasons for any deductions which the handler withheld from the amount payable to each producer. This statement is necessary so the cooperative association can make proper distribution of the money to producers for whom it collects payment.

3. *Producer-settlement fund.* Since the amount which the order requires a particular handler to pay for his milk may be more or less than the amount he is required to pay to producers or cooperative associations, some method of balancing these amounts is necessary. A producer-settlement fund should be established for this purpose. All 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 should pay the 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 should receive the difference from the producer-settlement fund. Amounts paid into and out of the producer-settlement fund for this purpose will be equal except for minor differences that may result from rounding of uniform prices.

In order to permit this rounding of prices, to allow for unavoidable delays in receiving payments from handlers, and to permit payments to be made to any handler which audit by the market administrator reveals is due such handler from the producer-settlement fund, a reserve should be held in the producer-settlement fund at all times. The amount of the reserve contemplated in the proposed order should be sufficient for these purposes. This reserve would be adjusted each month.

(e) *Administrative provisions.* The remaining provisions are of a general administrative nature, are incidental to the other provisions of the proposed order, and are necessary for proper and efficient administration. They provide for the selection of a market administrator, define his powers and duties, provide for an administrative assessment, prescribe the information to be reported by handlers and set forth the rules to be followed in making the computations required. They also prescribe the length of time that records must be retained and provide a plan for the liquidation of the order in the event of suspension or termination. They are similar to like provisions of other milk orders, and, except as set forth below, require no comment.

1. *Records and reports.* Provisions should be included in the order to advise handlers that they are required to maintain adequate records of their operations and to make the reports necessary to establish classification of producer milk and payments due for such milk. Time limits must be prescribed for filing such reports. Dates must also be established for the announcement of prices by the market administrator.

It should be provided that the market administrator report to each cooperative association which so requests, the percentage class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the utilization of members' milk in each handler's plant will be prorated to each class in the proportion that total receipts of producer milk were used in by such handler. These reports are necessary for the cooperative association to market effectively the milk of its members.

Reports are required from handlers on receipts and utilization so that the market administrator may make the computations necessary for the marketwide and the uniform price. Handlers are also required to submit payroll reports which would show the details of milk receipts from each producer, the value of the milk received from the producer, deductions therefrom, and the net amount paid to the producer.

There are limitations on the period of time handlers shall retain books and records which are required to be made available to the market administrator, and on a period of time after which obligations under the order shall terminate. The provision made in this regard is identical in principle with the general amendment made to all orders in operation on July 30, 1947, effective February 22, 1949. The Secretary's decision of

January 26, 1949 (14 F.R. 444), covering the retention of records and limitations of claims is equally applicable in this situation and is adopted as part of this decision.

Dates must be prescribed for announcing prices, filing reports and making payments. The following time schedule (which applies to the indicated day of the month following the month for which computations are being made) should allow all interested persons adequate time to perform each function:

6th: Announcement by the market administrator of the Class I price and Class I butterfat differential for the current month and of the Class II price and Class II butterfat differential for the preceding month.

7th: Submission by handlers of report of monthly receipts and utilization.

12th: Announcement by market administrator of uniform prices.

12th: Notification by market administrator to handlers of the value of their producer milk, the amounts due to or payable from producer-settlement fund, and the amounts due the administrative assessment and marketing service accounts.

15th: Payment by handlers of amounts due to producer-settlement fund.

17th: Payments by market administrator out of producer-settlement fund.

18th: Payments by handlers to cooperative associations.

20th: Payments by handlers to producers and to market administrator for expenses of administration and marketing services.

2. *Expenses of administration.* Each handler operating a pool plant, or a cooperative association in its capacity as a handler, should be required to pay to the market administrator, as his pro rata share of the cost of administering the order, not more than 5 cents per hundredweight, or such lesser amounts as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I which is not classified and priced under another Federal order; and

(c) As previously specified with respect to nonpool plants from which Class I milk is distributed in the marketing area.

Each handler operating a nonpool plant from which milk is distributed in the marketing area should pay the same rate of assessment on the basis of the hundredweight of Class I milk distributed in the marketing area or on the basis of total receipts from qualified dairy farmers and unpriced other source milk allocated to Class I. The findings and conclusions relative to the necessity of the alternative determination of the expense of administration payable by such handlers have been detailed previously in this decision.

The market administrator must have sufficient funds to enable him to administer properly the terms of the order. The Act provides that such costs of administration shall be financed through an assessment on handlers. In view of the manner in which the regulation applies to various handlers and types of handler operations, the described application of administrative assessment appropriately assigns a proportionate share of expense to each handler.

The volume of milk which would be subject to administrative assessment in the Suburban market is relatively small in relation to that in some other Federal markets. It is necessary, therefore, to prescribe a somewhat higher rate of assessment for this market than is prescribed for larger markets to insure that the market administrator has adequate funds to perform his obligations. It is therefore determined that an administrative assessment rate of 5 cents is needed to assure proper administration of this order. Provision should be made to reduce this rate if experience shows that a lower rate is adequate.

3. *Marketing services.* A provision should be included in the order for furnishing market services to producers, such as verifying the tests and weights of producer milk, and furnishing market information. These services should be provided by the market administrator, unless such services are provided by a qualified cooperative association for its producer-members. The costs should be borne by the producers receiving the service. A marketing service assessment of 6 cents per hundredweight is necessary in this market. This amount should be deducted from payments to such producers for the use of the market administrator in financing such services. Provision should be made for the Secretary to reduce this rate if experience shows a lower rate will furnish adequate funds for supplying such service by the market administrator. For producers for whom a cooperative association is rendering such services, the handler should pay to the cooperative association such deductions as the producer has authorized the cooperative to collect in lieu of the payments to the market administrator.

4. *Interest payments.* Provision should be made for the payment of interest on overdue accounts.

Producers proposed that interest payments be applied to overdue payments to and from the producer-settlement fund, the accounts for audit adjustments, administrative expenses, and marketing services.

The application of interest payments on overdue accounts is a normal business practice to compensate for the cost of borrowing money. Accordingly, any unpaid obligation of handlers or the market administrator with respect to the producer-settlement fund, administrative or marketing service provisions of the order, should be increased one-half of one percent for each month or portion thereof that such payment is overdue, commencing with the first day of the month following the month in which payments are due. This rate is reasonable and in accord with current business practices.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties

PROPOSED RULE MAKING

are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or to reach such conclusions are denied for the reasons previously stated in this decision.

General findings. (a) The proposed marketing agreement and order and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

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

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

DEFINITIONS

Sec.	Act.
947.1	Secretary.
947.2	Department.
947.3	Person.
947.4	Cooperative association.
947.5	Suburban St. Louis marketing area.
947.6	Producer.
947.7	Producer-handler.
947.8	Handler.
947.9	Dairy farmer for other markets.
947.10	Distributing plant.
947.11	Supply plant.
947.12	Pool plant.
947.13	Nonpool plant.
947.14	Producer milk.
947.15	Approved milk.
947.16	Other source milk.
947.17	Route.
947.18	

MARKET ADMINISTRATOR

947.20	Designation.
947.21	Powers.
947.22	Duties.

REPORTS, RECORDS AND FACILITIES

947.30	Reports of receipts and utilization.
947.31	Other reports.
947.32	Payroll reports.
947.33	Reports to cooperative associations.
947.34	Reports of transportation rates.
947.35	Records and facilities.
947.36	Retention of records.

CLASSIFICATION OF MILK

947.40	Basis of classification.
947.41	Classes of utilization.
947.42	Responsibility of handlers.
947.43	Transfers.
947.44	Computation of skim milk and buttermilk in each class.

Sec.	Allocation of skim milk and butterfat.
947.45	
947.46	Shrinkage.

MINIMUM PRICE

947.50	Basic formula price.
947.51	Class prices.
947.52	Location differentials to handlers.
947.53	Butterfat differentials to handlers.
947.54	Equivalent price.
947.55	Rate of payment on unpriced milk.

APPLICATION OF PROVISIONS

947.60	Producer-handlers.
947.61	Plants subject to other Federal orders.
947.62	Handlers operating nonpool distributing plants.

DETERMINATION OF UNIFORM PRICE TO PRODUCERS

947.70	Computation of the obligation of each handler.
947.71	Computation of the uniform price.
947.72	Notification of handlers.

PAYMENTS

947.80	Time and method of payment for producer milk.
947.81	Butterfat differential to producers.
947.82	Location differentials to producers.
947.83	Producer-settlement fund.
947.84	Payments to the producer-settlement fund.
947.85	Payments out of the producer-settlement fund.
947.86	Adjustment of accounts.
947.87	Expense of administration.
947.88	Marketing services.
947.89	Adjustment of overdue accounts.

TERMINATIONS OF OBLIGATIONS

947.90	Termination of obligations.
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MISCELLANEOUS PROVISIONS

947.100	Effective time.
947.101	Suspension or termination.
947.102	Continuing obligations.
947.103	Liquidation.
947.104	Agents.
947.105	Separability of provisions.

DEFINITIONS

§ 947.1 Act.

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

§ 947.2 Secretary.

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

§ 947.3 Department.

"Department" means the United States Department of Agriculture.

§ 947.4 Person.

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

§ 947.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress, February 13, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

§ 947.6 Suburban St. Louis marketing area.

"Suburban St. Louis marketing area" (hereinafter called the marketing area) means all the territory, including all Government installations, within the perimeter boundaries of the area which includes the counties of Bond, Calhoun, Clinton, Fayette, Franklin, Greene, Jackson, Jefferson, Jersey, Macoupin, Madison, Marion, Monroe, Montgomery, Perry, Randolph, St. Clair (except Scott Military Reservation, East St. Louis, Centerville, Canteen and Stites Townships and the city of Belleville), Washington and Williamson, all in the State of Illinois. "Base zone" means that portion of the marketing area included in Clinton, Franklin, Jackson, Jefferson, Madison, Marion, Monroe, Perry, Randolph, St. Clair, Washington and Williamson Counties. "Northern zone" means that portion of the marketing area included in Bond, Calhoun, Fayette, Greene, Jersey, Macoupin and Montgomery Counties.

§ 947.7 Producer.

"Producer" means any person, except a producer-handler or a dairy farmer for other markets, who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (a) delivered directly from the farm to a pool plant, or (b) diverted to a nonpool plant which is not a pool plant under the terms of another order issued pursuant to the Act for the account of a handler any number of days during the months of March through July or to the extent of not more than 10 days' production during any month from August through February. Milk so diverted shall be deemed to have been received by the diverting handler at a pool plant at the location of the plant from which diverted.

§ 947.8 Producer-handler.

"Producer-handler" means any person who operates a distributing plant and processes milk from his own farm production, and who distributes all or a portion of such milk within the marketing area on a route but who receives no milk from other dairy farmers or from nonpool plants in the form of items designated in § 947.41(a): *Provided*, That such person provides proof satisfactory to the market administrator that (a) the care and management of all the dairy animals and other resources used to produce milk on his own farm(s) are the personal enterprise of and at the personal risk of such person, and (b), the operation of the processing and distribution facilities is the personal enterprise of and at the personal risk of such person.

§ 947.9 Handler.

"Handler" means:
(a) Any person in his capacity as the operator of a distributing plant or a supply plant;

(b) Any cooperative association with respect to milk from producers diverted for its account from a pool plant to a nonpool plant; and

(c) Any cooperative association with respect to the milk of its members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by, or under contract to such cooperative association, if the cooperative association, prior to delivery, notifies in writing the market administrator and the handler to whose plant the milk is delivered, that it will be the handler for the milk. Milk so delivered shall be deemed to have been received by the cooperative association at a pool plant at the location of the pool plant to which it is delivered.

§ 947.10 Dairy farmer for other markets.

"Dairy farmer for other markets" means any dairy farmer whose milk is received at a pool plant during the months of March through July from a farm from which approved milk, which was not producer milk under this part, was delivered to another market on any day during the preceding months of August through February: *Provided*, That milk from the same dairy farm was delivered by the same dairy farmer to a pool plant during the months of March through July preceding the August through February period.

§ 947.11 Distributing plant.

"Distributing plant" means a plant at which approved milk is processed and packaged and from which approved milk is disposed of during the month as Class I milk in the marketing area on routes.

§ 947.12 Supply plant.

"Supply plant" means a plant from which no milk is distributed in the marketing area on routes and from which approved milk is moved during the month to a distributing plant which is a pool plant.

§ 947.13 Pool plant.

"Pool plant" means:

(a) A distributing plant from which during the month not less than 50 percent of total receipts of approved milk from dairy farmers, from cooperative associations in their capacity as handlers pursuant to § 947.9(c) and from supply plants described in § 947.12 is distributed as Class I milk on routes, and from which not less than 20 percent of the plant's total Class I sales are disposed of in the marketing area on routes;

(b) A supply plant from which during the month not less than 50 percent of total receipts of approved milk from dairy farmers and from cooperative associations in their capacity as handlers pursuant to § 947.9(c) is shipped to distributing pool plants described in paragraph (a) of this section: *Provided*, That a supply plant which qualifies as a pool plant in each of the months of August through January shall be a pool plant in each of the following months of February through July unless the operator of such plant requests in written notice to the market administrator that such plant not be a pool plant, such non-

pool status to be effective the first month following such notice and thereafter until the plant qualifies as a pool plant on the basis of shipments: *And provided further*, That for each month from the effective date of this order through July 1960, a supply plant may be a pool plant if the operator of such supply plant furnishes proof that 50 percent of such plant's receipts of approved milk of dairy farmers during the preceding period of August through January, inclusive, was shipped to distributing plants pursuant to paragraph (a) of this section.

§ 947.14 Nonpool plant.

"Nonpool plant" means any milk receiving, manufacturing, or processing plant other than a pool plant.

§ 947.15 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in milk (a) received at a pool plant directly from producers, or (b) received by a cooperative association in its capacity as a handler pursuant to § 947.9 (b) and (c).

§ 947.16 Approved milk.

"Approved milk" means any skim milk and butterfat contained in milk, skim milk or cream which is approved by a duly constituted health authority for distribution as Class I milk in the marketing area.

§ 947.17 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of products designated as Class I milk pursuant to § 947.41(a), except (1) such products received from a pool plant, or (2) producer milk; and

(b) Products designated as Class II milk pursuant to § 947.41(b) (1) from any source (including those from a plant's own production), which are reprocessed or converted to another product in the plant during the month.

§ 947.18 Route.

"Route" means disposition of Class I products (including disposition through a vendor and sales from a plant or plant store) to a wholesale or retail stop other than to a pool or nonpool plant.

MARKET ADMINISTRATOR

§ 947.20 Designation.

The agency for the administration of this part shall be a market administrator, appointed by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal by the Secretary.

§ 947.21 Powers.

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

(a) Administer its terms and provisions;

(b) Receive, investigate, and report to the Secretary complaints of violations;

(c) Make such rules and regulations as are necessary to effectuate its terms and provisions; and

(d) Recommend amendments to the Secretary.

§ 947.22 Duties.

The market administrator shall perform all the duties necessary to administer the terms and provisions of this part, including, but not limited to, the following:

(a) Within 45 days following the date on which he enters on duty, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of 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 administer the terms and provisions of this part;

(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 from the funds received pursuant to § 947.87, the cost of his bond and of the bonds of his employees, his own compensation and all other expenses, except those incurred under § 947.88 that are necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

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

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

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

(h) Publicly announce on or before:

(1) The 6th day of each month, the minimum price for Class I milk, pursuant to § 947.51(a), and the Class I butterfat differential, pursuant to § 947.53 (a), both for the current month; and the minimum price for Class II milk, pursuant to § 947.51(b), and the Class II butterfat differential, pursuant to § 947.53 (b), both for the preceding month; and

(2) The 12th day after the end of each month, the uniform price, pursuant to § 947.71, and the producer butterfat differential, pursuant to § 947.81.

(i) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the class utilization of producer milk received by each handler from members of the association. For the purpose of this report, the milk so received shall be allocated to each class for each handler in the same ratio as all approved milk received by such handler during the month; and

PROPOSED RULE MAKING

(j) The 12th day after the end of each month, report to each handler the amount and value of producer milk, amounts payable to or payable from the producer-settlement fund, and amounts due the administrative assessment and marketing service accounts.

REPORTS, RECORDS AND FACILITIES

§ 947.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler, for each of his pool plants, and each cooperative association who is a handler pursuant to § 947.9 (b) and (c), shall report to the market administrator for the preceding month, in the detail and on the forms prescribed by the market administrator, the following information:

(a) The quantities of skim milk and butterfat contained in producer milk;

(b) The quantities of skim milk and butterfat contained in milk and milk products received from other pool plants;

(c) The quantities of skim milk and butterfat contained in other source milk, including milk under other Federal orders;

(d) The inventories of Class I milk and milk products on hand at the beginning and end of the month;

(e) The utilization of all skim milk and butterfat required to be reported by this section;

(f) The name and address of each producer from whom milk was not received during the previous month, and the date in the month on which milk was first received from such producer;

(g) The name and address of each producer who discontinues deliveries of milk, and the date on which milk was last received from such producer; and

(h) Such other information with respect to receipts and utilization of milk and milk products as the market administrator may request.

§ 947.31 Other reports.

(a) On or before the 7th day after the end of the month, each handler, except a producer-handler, who operates a nonpool plant from which fluid milk products are disposed of during the month in the marketing area on routes shall report to the market administrator the quantities of skim milk and butterfat so disposed of, and shall make such other reports with respect to receipts of milk and utilization thereof as are requested by the market administrator.

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

§ 947.32 Payroll reports.

On or before the 20th day after the end of the month, each handler shall report to the market administrator in the detail and on forms prescribed by the market administrator his producer payroll for that month, which shall show for each producer:

(a) His name and address;

(b) The total pounds of milk received from such producer;

(c) The plant at which such milk was received;

(d) The days for which milk was received from such producer;

(e) The average butterfat content of such milk; and

(f) The net amount of the handler's payment to the producer, together with the price paid and the amount and nature of any deductions.

§ 947.33 Reports to cooperative associations.

Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to § 947.80(b) shall report to such cooperative association for each such producer on forms approved by the market administrator as follows:

(a) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month;

(b) On or before the 7th day after the end of the month (1) the total pounds of milk received from each producer together with the butterfat content of such milk, and (2) the amount or rate and nature of any deductions.

§ 947.34 Reports of transportation rates.

On or before the 10th day after a request is received from the market administrator, each handler who makes deductions from payments to producers for hauling shall submit a schedule of transportation rates which are charged and paid for such transportation of milk from the farm of the producer to such handler's plant(s). Any changes made in this schedule of transportation rates and the effective dates thereof shall be reported to the market administrator within 10 days.

§ 947.35 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business, such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data which are required to be reported pursuant to §§ 947.30 through 947.34 and the payments required to be made pursuant to §§ 947.80 through 947.88.

§ 947.36 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the calendar month to which such books and records pertain: *Provided*, That if, within such 3-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or

when the records are no longer necessary in connection therewith.

CLASSIFICATION OF MILK

§ 947.40 Basis of classification.

All skim milk and butterfat received by a handler at a pool plant or by a cooperative association in its capacity as a handler pursuant to § 947.9(c) which is required to be reported pursuant to § 947.30 shall be classified by the market administrator pursuant to the provisions of §§ 947.41 through 947.45.

§ 947.41 Classes of utilization.

Subject to the conditions set forth in §§ 947.42 and 947.43, the classes of utilization shall be as follows:

(a) *Class I milk*. Class I milk shall be all skim milk and butterfat:

(1) Disposed of in fluid form as milk, skim milk, buttermilk, flavored milk, milk drinks (plain or flavored), cream (sweet or sour), concentrated milk, fortified milk or skim milk, reconstituted milk or skim milk and mixtures of milk, skim milk and cream (except frozen dessert mixes, eggnog, aerated cream, and sterilized products in hermetically sealed containers); and

(2) Not specifically accounted for as Class II milk.

(b) *Class II milk*. Class II milk shall be all skim milk and butterfat:

(1) Used to produce any product other than those specified as Class I in paragraph (a) (1) of this section;

(2) In inventory on hand in the form of products designated as Class I milk in paragraph (a) of this section at the end of the month;

(3) Accounted for and used for livestock feed;

(4) Dumped (skim milk portion only) with the prior approval of the market administrator;

(5) Actual shrinkage of skim milk and butterfat allocated pursuant to § 947.46 (b) (2) not to exceed the following: 2 percent of the skim milk and butterfat, respectively, received from producers except that which is diverted pursuant to § 947.7, plus one and one-half percent of skim milk and butterfat, respectively, received from pool plants of other handlers in bulk tank lots or from a cooperative association which is the handler for the milk pursuant to § 947.9(c), less one and one-half percent of skim milk and butterfat, respectively, disposed of in bulk tank lots to other plants excluding milk diverted pursuant to § 947.7; and

(6) In shrinkage of skim milk and butterfat, respectively, allocated to other source milk pursuant to § 947.46(b) (1).

§ 947.42 Responsibility of handlers.

In establishing the classification of skim milk and butterfat as required by this part, the burden rests upon the handler who first receives such skim milk and butterfat to establish to the satisfaction of the market administrator that such skim milk and butterfat should not be classified as Class I.

§ 947.43 Transfers.

Skim milk and butterfat transferred or diverted in bulk form as any item speci-

fied in § 947.41(a) (1) from a pool plant or by a cooperative association in its capacity as a handler pursuant to § 947.9 (b) and (c) shall be classified as follows:

(a) As Class I milk if transferred to a pool plant unless:

(1) The transferee and transferor-handlers claim Class II utilization in their reports submitted pursuant to § 947.30; and

(2) The transferee plant has utilization in Class II of an equivalent amount of skim milk and butterfat, respectively, after the subtractions pursuant to § 947.45(a) (1), (2), (3), and (4) and the corresponding subtractions pursuant to § 947.45(b): *Provided*, That if the transferor plant receives other source milk, the classification of the skim milk and butterfat transferred results in the highest valued class utilization to milk of producers.

(b) As Class I milk if moved to the plant of a producer-handler.

(c) As Class I milk if moved to a non-pool plant which is not the plant of a producer-handler unless:

(1) The transferee plant is located less than 150 miles from the main U.S. post office in either Alma, Alton, Benton or Red Bud, Illinois;

(2) The transferor-handler claims classification of such skim milk and butterfat in Class II in his report submitted pursuant to § 947.30; and

(3) The operator of the transferee plant maintains books and records showing the utilization of skim milk and butterfat at such plant, which are made available if requested by the market administrator for the purpose of verification.

(d) As Class I if moved to a nonpool plant to the extent of the pro rata quantity of skim milk and butterfat pursuant to the following computations if the skim milk and butterfat, respectively, is not classified as Class I milk pursuant to paragraph (c) of this section:

(1) From the total skim milk and butterfat, respectively, disposed of from such nonpool plant and classified as Class I milk pursuant to the classification provisions of this part applied to such nonpool plant, subtract the skim milk and butterfat received at such plant directly from dairy farmers who are approved to supply Grade A milk and who the market administrator determines constitute the regular source of supply for such nonpool plant;

(2) From the remaining amount of skim milk and butterfat, respectively, classified as Class I milk at such nonpool plant subtract any Class I milk received in consumer-type packages from a plant fully regulated by this or another Federal order issued pursuant to the Act;

(3) Prorate the remaining Class I milk to bulk receipts at the nonpool plant which are fully subject to the classification and pricing provisions of this and other Federal milk orders issued pursuant to the Act; and

(4) The quantity of such Class I prorated to receipts from pool plants subject to this part shall be further prorated to such plants in accordance with the quantities claimed to be moved to such nonpool plant as Class II milk.

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

For each month the market administrator shall correct for mathematical and other obvious errors the reports submitted by each handler and compute the total pounds of skim milk and butterfat, respectively, in each class, at each of the pool plants of such handler, or in the case of a cooperative association for that milk received pursuant to § 947.9(c) or diverted to a nonpool plant pursuant to § 947.9(b): *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be a quantity equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

§ 947.45 Allocation of skim milk and butterfat.

(a) The pounds of skim milk remaining in each class after making the following computations with respect to each pool plant shall be the pounds of skim milk in each class allocated to the producer milk received at such plant:

(1) Subtract from the total pounds of skim milk in Class II milk the shrinkage of skim milk classified as Class II milk pursuant to § 947.41(b) (5);

(2) Subtract from the total pounds of skim milk in Class I milk the pounds of skim milk in Class I products received in consumer packages and disposed of in the same packages, if such skim milk is subject to the Class I pricing provisions of another order issued pursuant to the Act: *Provided*, That the same Class I products are not processed and packaged in containers of the same type and size in the plant during the month;

(3) Subtract from the pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk which is not classified, priced and pooled as Class I under the terms of another order issued pursuant to the Act (with that subject to another order subtracted last);

(4) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk not subtracted pursuant to subparagraph (2) of this paragraph which is priced and pooled as Class I under the terms of another order issued pursuant to the Act;

(5) Subtract the pounds of skim milk in items designated in Class I milk pursuant to § 947.41(a) received from other pool plants and from cooperative associations which are the handlers for the milk pursuant to § 947.9(c) from the pounds of skim milk in the respective classes in which such skim milk is classified pursuant to § 947.43(a);

(6) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II milk the pounds of skim milk contained in inventory of items designated as Class I milk pursuant to § 947.41(a) on hand at the beginning of the month;

(7) Add to the pounds of skim milk remaining in Class II milk the pounds

of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

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

(b) Determine the pounds of butterfat in each class to be allocated to producer milk in the manner prescribed in paragraph (a) of this section for determining the allocation of skim milk to producer milk; and

(c) Add the pounds of skim milk and pounds of butterfat remaining in producer milk in each class pursuant to paragraphs (a) and (b) of this section and determine the percentage of butterfat in producer milk in each class.

§ 947.46 Shrinkage.

The market administrator shall allocate shrinkage to each pool plant and to a cooperative association in its capacity as a handler pursuant to § 947.9(c) as follows:

(a) Compute the total shrinkage of skim milk and butterfat for each handler; and

(b) Prorate the resulting amounts between (1) skim milk and butterfat in other source milk received in bulk fluid form, and (2) skim milk and butterfat in producer milk (excluding diverted milk) and in bulk fluid receipts from other pool plants and from cooperative associations in their capacity as handlers pursuant to § 947.9(c).

MINIMUM PRICE

§ 947.50 Basic formula price.

The basic formula price for each month to be used in determining the class prices, set forth in § 947.51, shall be the higher of the prices computed pursuant to paragraphs (a) and (b) of this section, rounded to the nearest cent.

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

Concern and Location

Borden Co., Mount Pleasant, Mich.
 Borden Co., Orfordville, Wis.
 Borden Co., New London, Wis.
 Carnation Co., Ava Mo.
 Carnation Co., Seymour, Mo.
 Carnation Co., Sparta, Mich.
 Carnation Co., Richland Center, Wis.
 Carnation Co., Oconomowoc, Wis.
 Litchfield Creamery Co., Litchfield, Ill.
 Pet Milk Co., Greenville, Ill.
 Pet Milk Co., Wayland, Mich.
 Pet Milk Co., Coopersville, Mich.
 Pet Milk Co., New Glarus, Wis.
 Pet Milk Co., Belleville, Wis.
 White House Milk Co., Manitowoc, Wis.
 White House Milk Co., West Bend, Wis.

(b) The price per hundredweight obtained by adding any plus amounts obtained pursuant to subparagraphs (1) and (2) of this paragraph:

(1) Multiply by 3.5 the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) of 92-score bulk creamery butter per pound at Chicago, as reported by the Department during the month; add 20 percent thereof;

(2) From the weighted average of carlot prices per pound of nonfat dry milk spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the month by the Department, subtract 5.5 cents and multiply by 7.0.

§ 947.51 Class prices.

Subject to the provisions of §§ 947.52 and 947.53, the minimum class prices per hundredweight for producer milk for the month shall be determined by the market administrator as follows:

(a) *Class I price.* The price per hundredweight of Class I milk for the first eighteen months beginning with the effective date of this section at plants located in the base zone shall be 10 cents less, and at plants located in the northern zone shall be 15 cents less than the St. Louis Federal milk order (Part 903 of this chapter), Class I price effective at a pool plant located at Collinsville, Illinois: *Provided*, That if a Class I price for the St. Louis order is not available for the month, the price per hundredweight of Class I milk shall be computed each month by adding to the basic formula price for the preceding month the amount shown for the appropriate month:

January -----	\$0.88	July -----	\$0.88
February ----	.88	August -----	.88
March -----	.88	September ---	1.18
April -----	.43	October -----	1.18
May -----	.43	November ---	1.18
June -----	.43	December ---	.88

(b) *Class II price.* For the months of August through February, the price for Class II milk shall be the basic formula price plus 4 cents. For all other months, the Class II price shall be an amount computed as follows:

(1) Multiply by 4.24 the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of 93-score bulk creamery butter per pound at Chicago, as reported by the Department during the month: *Provided*, That if no price is reported for 93-score butter, the highest of the prices reported for 92-score butter for that day shall be used in lieu thereof;

(2) Multiply by 8.2 the weighted average of carlot prices per pound for spray process nonfat dry milk for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 71 cents.

§ 947.52 Location differentials to handlers.

For producer milk which is received at a pool plant located 50 miles or more

from the main U.S. post office in either Alma, Alton, Benton or Red Bud, Illinois, whichever is nearest, by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is classified as Class I milk, the price specified in § 947.51(a) shall be reduced at the rate set forth in the following schedule:

	<i>Rate per hundredweight (cents)</i>	
Distance (miles):		
50 but not more than 60-----		9
For each additional 10 miles or fraction thereof-----		1.5

Provided, That for the purpose of calculating such location differential, transfers of milk, skim milk and cream between pool plants shall be assigned to Class I milk in a volume not in excess of that by which Class I disposition at the transferee plant exceeds receipts from producers and from cooperative associations in the capacity as a handler, such assignment to transferor plants to be made first to plants at which no location credit is applicable and then in sequence beginning with the plant at which the lowest location differential would apply.

§ 947.53 Butterfat differentials to handlers.

If the average butterfat test of Class I milk or Class II milk, as calculated pursuant to § 947.45(c), is more or less than 3.5 percent, there shall be added to, or subtracted from, respectively, the price for such class of utilization, for each one-tenth of one percent that such average butterfat test is above or below 3.5 percent, a butterfat differential calculated for each class of utilization as follows:

(a) *Class I milk.* Multiply by 0.120 the average of the daily wholesale prices (using the midpoint of any price range as one price) of 92-score bulk creamery butter per pound at Chicago, as reported by the Department of Agriculture during the previous month, and round to the nearest one-tenth cent.

(b) *Class II milk.* Multiply by 0.115 the average of the daily wholesale prices (using the midpoint of any price range as one price) of 92-score bulk creamery butter per pound at Chicago, as reported by the Department of Agriculture during the month, and round to the nearest one-tenth cent.

§ 947.54 Use of equivalent prices.

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

§ 947.55 Rate of payment on unpriced milk.

The rate of payment per hundredweight on unpriced Class I milk shall be calculated as follows:

(a) For the months of March through July subtract the Class II price, adjusted by the Class II butterfat differential, from the applicable Class I price, adjusted by the Class I butterfat differential and the Class I location differential at the location of the plant from which such milk is supplied.

(b) For the months of August through February, subtract the uniform price adjusted by the producer butterfat differential to producers from the Class I price adjusted by the Class I butterfat and location differentials at the location of the plant from which such milk is supplied.

APPLICATION OF PROVISIONS

§ 947.60 Producer-handlers.

Sections 947.40 through 947.45, 947.50 through 947.53, 947.70 through 947.71, and 947.80 through 947.88 shall not apply to a producer-handler.

§ 947.61 Plants subject to other Federal orders.

The provision of this part shall not apply to a plant specified in paragraph (a), (b) or (c) of this section except as follows: The operator of such plant shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at each time and in such manner as the market administrator may require, and allow verification of such reports by the market administrator.

(a) Any distributing plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualifies as a pool plant pursuant to § 947.13(a) and the Secretary determines that more Class I milk is disposed of from such plant to retail or wholesale outlets (except pool plants) in the Suburban St. Louis marketing area than in the marketing area regulated pursuant to such other order;

(b) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant is a pool plant pursuant to § 947.13(b); or

(c) The Secretary determines that a plant should be subject to another order.

§ 947.62 Handlers operating nonpool distributing plants.

On or before the 25th day after the end of each month, each handler, except a producer-handler, operating a nonpool distributing plant shall pay to the market administrator the amounts computed pursuant to paragraph (a) of this section, unless the handler elects at the time of reporting pursuant to § 947.31(a) to pay the amounts computed pursuant to paragraph (b) of this section;

(a) An amount:

(1) For deposit to the producer-settlement fund, equal to the hundredweight of skim milk and butterfat disposed of from such nonpool plant as Class I milk in the marketing area on routes multiplied by the rate of payment on unpriced milk pursuant to § 947.55; and

(2) For administrative assessment, equal to the rate specified in § 947.87 multiplied by the hundredweight of such Class I skim milk and butterfat disposed of in the marketing area on routes, unless an administrative assessment is applied to milk at such nonpool plant pursuant to another order issued pursuant

to the Act on the same basis as plants fully regulated by such other order; or

(b) An amount:

(1) For deposit to the producer-settlement fund, equal to any plus amount remaining after deducting the amounts computed under subdivisions (i) and (ii) of this subparagraph from the obligation that would have been computed pursuant to § 947.70 for such nonpool plant and any supply plant(s) (meeting the requirements equivalent to § 947.13(b)) which serves as a source of milk for such nonpool plant, had such plant(s) been a pool plant(s):

(i) The gross payments made on or before the 20th day after the end of the month for milk received at such nonpool plant(s) during the month from dairy farmers who supply approved milk, and

(ii) Any payments to the producer-settlement funds under other orders issued pursuant to the Act applicable to milk handled at such plant during the month as a partially regulated plant under such other orders;

(2) For administrative assessment, equal to the amount which would have been computed pursuant to § 947.87 if such nonpool plant were a pool plant during the month: *Provided*, That such amount shall be reduced by any amount paid as an administrative expense assessment determined on the basis of Class I milk disposed of on routes in other marketing areas, pursuant to the terms of other orders issued pursuant to the Act: *And provided further*, That

(i) If less Class I milk is disposed of from such nonpool plant on routes in the Suburban St. Louis marketing area than is disposed of on routes in another marketing area as defined in an order issued pursuant to the Act, and

(ii) If an administrative expense assessment is applied at such nonpool plant as if a fully regulated plant pursuant to the order for the marketing area where the volume of Class I milk disposed of from such nonpool plant is greatest, no administrative expense assessment shall be applicable under this order.

DETERMINATION OF UNIFORM PRICE TO PRODUCERS

§ 947.70 Computation of the obligation of each handler.

For each month the market administrator shall compute the value of producer milk for each handler as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 945.45 by the applicable class price and total the resulting amounts;

(b) Add an amount computed as follows: Multiply the pounds of skim milk and butterfat subtracted from Class I milk pursuant to § 947.45 (a) (3) and (b) by the rate of payment on unpriced milk pursuant to § 947.55 adjusted by the location differential applicable at the nearest plant(s) from which an equivalent amount of other source milk was received;

(c) Add the amount computed by multiplying the pounds of overage deducted from each class pursuant to § 947.45 (a) (8) and (b) by the applicable class price; and

(d) Add the amounts computed under subparagraphs (1) and (2) of this paragraph:

(1) Multiply the difference between the applicable Class II price for the preceding 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 § 947.45(a) (6) and the corresponding step of (b) for the preceding month, or the pounds of skim milk and butterfat subtracted from Class I milk pursuant to § 947.45(a) (6) and the corresponding step of (b) for the month, whichever is less;

(2) Multiply the rate of payment on unpriced milk pursuant to § 947.55 by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 947.45(a) (6) and the corresponding step of (b), which are in excess of the sum of (i) the pounds of skim milk and butterfat, respectively, on which a payment is applicable pursuant to subparagraph (1) of this paragraph, and (ii) the pounds of skim milk and butterfat assigned in the preceding month to Class II pursuant to § 947.45(a) (4) and the corresponding step of (b).

§ 947.71 Computation of the uniform price.

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

(a) Combine into one total the values computed pursuant to § 947.70 for all handlers who made the reports prescribed in § 947.30 and who are not in default of payments pursuant to § 947.84;

(b) Add an amount equivalent to the total deductions made pursuant to § 947.82 and add an amount computed by multiplying 5 cents by the hundredweight of producer milk received at plants located in the northern zone;

(c) Subtract if the weighted average butterfat content of milk received from producers is more than 3.5 percent, or add if such average butterfat content is less than 3.5 percent, an amount computed by multiplying the producer butterfat differential by the difference between 3.5 and the average butterfat content of producer milk, and multiplying the resulting figure by the total hundredweight of such milk;

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

(e) Divide the resulting amount by the total hundredweight of producer milk; and

(f) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (e) of this section. The resulting figure shall be the uniform price per hundredweight of producer milk containing 3.5 percent butterfat delivered to plants located in the base zone.

§ 947.72 Notification of handlers.

On or before the 12th day after the end of each month, the market administrator shall mail to each handler, at his last known address, a statement showing:

(a) The amount and value of his producer milk in each class and the total thereof;

(b) The uniform price computed pursuant to § 947.71 and the producer of butterfat differential computed pursuant to § 947.81; and

(c) The amounts to be paid by such handler pursuant to §§ 947.84, 947.87 and 947.88, and the amount due such handler pursuant to § 947.85.

PAYMENTS

§ 947.80 Time and method of payment for producer milk.

(a) Except as provided in paragraph (b) and (c) of this section, each handler shall make payment to each producer for milk received during the month as follows:

(1) On or before the last day of each month to each such producer who did not discontinue shipping milk to such handler before the 25th day of the month an amount equal to not less than the Class II price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this subparagraph.

(2) On or before the 20th day of the following month, an amount equal to not less than the uniform price adjusted by the butterfat and location differentials to producers multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made such producer pursuant to subparagraph (1) of this paragraph;

(ii) Less marketing service deductions made pursuant to § 947.88;

(iii) Plus or minus adjustments for errors made in previous payments made to such producer;

(iv) Less proper deductions authorized in writing by such producer; and

(v) Less 5 cents for each hundredweight of milk received from each producer at a plant located in the northern zone.

(b) In the case of a cooperative association which has so requested the handler in writing, such handler shall, on or before the second day prior to the date payments are due to individual producers pursuant to paragraph (a) of this section, pay the association for milk received during the month from the producer-members of such association an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section: *Provided*, That the association has provided the handler with a written promise to reimburse the handler the amount of any actual loss incurred by such handler because of any improper claim on the part of the cooperative association.

(c) On or before the second day prior to the date payments are due individual producers, each handler shall pay a cooperative association for milk received by him from such association for which the association is the handler not less than the minimum prices for milk in

PROPOSED RULE MAKING

each class, subject to the applicable location and butterfat differentials.

§ 947.81 Butterfat differential to producers.

In making payments for milk received from producers pursuant to § 947.80 the uniform price shall be adjusted by adding or subtracting, respectively, for each one-tenth of one percent by which the average butterfat content of such milk is more or less than 3.5 percent, respectively, an amount determined by multiplying the pounds of butterfat in producer milk allocated to each class by the appropriate butterfat differential for such class as determined by § 947.53, dividing by the total butterfat in producer milk, and rounding to the nearest tenth of a cent.

§ 947.82 Location differentials to producers.

In making payments for milk received from producers at a pool plant located 50 miles or more from the main U.S. post office in either Alma, Alton, Benton or Red Bud, Illinois, whichever is nearest, by the shortest hard-surfaced highway distance, as determined by the market administrator the applicable uniform price shall be reduced at the rates set forth on the following schedule:

Distance (miles):	Rate per hundredweight (cents)
50 but not more than 60.....	9
For each additional 10 miles or fraction thereof.....	1.5

§ 947.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund", into which he shall deposit all payments made by handlers pursuant to §§ 947.62, 947.84 and 947.86, and out of which he shall make payments due handlers pursuant to §§ 947.85 and 947.86.

§ 947.84 Payments to the producer-settlement fund.

On or before the 15th day after the end of each month, each handler shall pay to the market administrator the amount by which the value of his milk as computed pursuant to § 947.70 for such month is greater than the obligations of such handler for milk received from producers, pursuant to § 947.80.

§ 947.85 Payments out of the producer-settlement fund.

On or before the 17th day after the end of each month, the market administrator shall pay to each handler the amount by which the obligation of such handler for milk received from producers, pursuant to § 947.80, exceeds the value of milk for such handler calculated pursuant to § 947.70, less any unpaid balances due the market administrator from such handler pursuant to §§ 947.84, 947.86, 947.87, 947.88 or 947.89.

§ 947.86 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses er-

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

§ 947.87 Expense of administration.

As his pro rata share of the expense of the administration of this part, each handler shall pay to the market administrator on or before the 20th day after the end of each month 5 cents, or such lesser amount as the Secretary may prescribe, for each hundredweight of skim milk and butterfat contained in (a) producer milk, and (b) other source milk allocated to Class I milk pursuant to § 947.45(a)(3) and the corresponding step of § 947.45(b) excluding other source milk on which a corresponding assessment is payable under another Federal order. A handler operating a distributing plant which is a nonpool plant shall pay administrative assessments pursuant to § 947.62.

§ 947.88 Marketing services.

(a) *Deduction of marketing services.* Except as set forth in paragraph (b) of this section, each handler in making payments to producers, pursuant to § 947.80, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from producers (excluding such handler's own production) during the month, and shall pay such deductions to the market administrator on or before the 20th day after the end of such month. Such monies shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide them with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) *Producers cooperative association.* In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section each handler, in lieu of the deduction specified in paragraph (a) of this section, shall make such marketing service deductions as are authorized by producer-members, and pay the money so deducted to the cooperative association on or before the 20th day after the end of the month.

§ 947.89 Adjustment of overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to §§ 947.62, 947.80, 947.84, 947.85, 947.86, 947.87 and 947.88 shall be increased one-half of one percent for each month or portion thereof that such payment is overdue on the first day of the month following the month during which such payment is due.

TERMINATION OF OBLIGATIONS

§ 947.90 Termination of obligations.

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

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

(1) The amount of the obligation;

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

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

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

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the

applicable period of time, files, pursuant to section 8c(15)(a) of the Act, a petition claiming such money.

MISCELLANEOUS PROVISIONS

§ 947.100 Effective time.

The provisions of this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 947.101.

§ 947.101 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.

§ 947.102 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations arising under this part the final accrual or ascertainment of which requires further acts by any person, such further acts shall be performed notwithstanding such suspension or termination.

§ 947.103 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 pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

§ 947.104 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.

§ 947.105 Separability of provisions.

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

Issued at Washington, D.C., this 11th day of January 1960.

F. R. BURKE,
Acting Deputy Administrator.

[F.R. Doc. 60-357; Filed, Jan. 13, 1960; 8:51 a.m.]

[7 CFR Part 973]

[Docket No. AO-178-A11]

MILK IN MINNEAPOLIS-ST. PAUL MARKETING AREA

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held in the Basement Auditorium, 1750 Hennepin Avenue, Minneapolis, Minnesota, beginning at 9:00 a.m., c.s.t., on January 22, 1960, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Minneapolis-St. Paul marketing area.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the Twin City Milk Producers Association:

Proposal No. 1:

1. Delete from § 973.9(b) (1) the words "July through October, beginning in 1958" and add in lieu thereof "July, August, September and October".

2. Change § 973.9(c) to § 973.9(d) and add new paragraph (c) in such section, as follows:

(c) A plant which is operated by a cooperative association whose deliveries of skim milk and butterfat direct from the farms of member producers amount to 30 percent of such cooperative association Class I sales each month, to plants described in paragraph (a) of this section, during July, August, September and October, and 30 percent of the receipts of skim milk and butterfat direct from farms of member producers at said plant each month during July, August, September and October, is skim milk and butterfat, which is normally received by plants described in paragraph (a) of this section.

Proposal No. 2. Delete § 973.11, and substitute therefor the following:

§ 973.11 Producer.

"Producer" means any person, except a producer-handler, who produces milk eligible for sale in fluid form as Grade A milk within the marketing area, which is received from the farm at a pool plant: *Provided*, That any such person whose milk is received from the farm at a pool plant during any portion of the period of July through October, but

subsequently is received at a nonpool plant during any portion of the period July through October, shall not regain status as a producer prior to next July 1st.

Proposal No. 3. Add the following as a new section:

§ 973.19 Emergency provision.

In the event of storm, flood, explosion, or any act of God, which causes the emergency shutdown of a pool plant, the plant operator may petition the Secretary and the Secretary may designate as producer milk for the period of the emergency, as determined by the Secretary, the milk of producers listed on the producer payroll of such plant at the time of shutdown, but received at a nonpool plant during the period of emergency.

Proposal No. 4. In § 973.22(h) delete "13th" and substitute "15th".

Proposal No. 5:

1. In § 973.30(a) delete "8th" and substitute "10th".

2. In § 973.30(b) delete "8th" and substitute "10th".

Proposal No. 6. In § 973.45(b) delete "for disposition in reconstituted form", and substitute "for disposition by a handler in reconstituted form".

Proposal No. 7. In § 973.53 delete the standard percentages in the table and substitute the following standard percentages:

Month:	Standard percentage
January	85
February	79
March	75
April	70
May	68
June	67
July	65
August	63
September	67
October	79
November	85
December	85

Proposal No. 8. In § 973.72(b) delete the phrase "plus 8 cents".

Proposal No. 9. In § 973.73 delete "13th" and substitute "15th".

Proposal No. 10. In § 973.80(a) delete "10th" and substitute "11th".

Proposal No. 11. In § 973.91(a) delete "2" and substitute "8".

Proposed by Norris Creameries, Inc.:

Proposal No. 12:

1. Delete from § 973.53 the phrase "plus 70 cents for the months of December through June" and substitute therefor the phrase "plus 80 cents for the months of December through June".

2. Delete from § 973.53 the phrase "plus \$1.10 for July through October; and plus \$1.00 for November" and substitute therefor the phrase "plus \$1.00 for July through November".

Proposed by Fairmont Foods Co.:

Proposal No. 13. Review § 973.41 (a) and (b) to determine the proper classification of skim milk and butterfat used in sour cream and related products.

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 14. Delete from § 973.77 (d) the word "producer" and substitute therefor "dairy farmer".

Proposal No. 15. Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the market administrator, Room 307, 1750 Hennepin Avenue, Minneapolis 3, Minnesota, or from the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D.C., or may be there inspected.

Issued at Washington, D.C., this 11th day of January 1960.

F. R. BURKE,
Acting Deputy Administrator.

[F.R. Doc. 60-355; Filed, Jan. 13, 1960;
8:49 a.m.]

Agricultural Research Service

[7 CFR Part 352]

PLANT QUARANTINE SAFEGUARD REGULATIONS

Notice of Proposed Rule Making

Notice is hereby given under section 4 of the Administrative Procedure Act (5 U.S.C. 1003) that the Administrator of the Agricultural Research Service, pursuant to sections 1, 5, 7, and 9 of the Plant Quarantine Act of August 20, 1912, as amended (37 Stat. 315-318, as amended; 7 U.S.C. 154, 159, 160, 162), sections 103, 105, 106, and 107 of the Federal Plant Pest Act of May 23, 1957 (71 Stat. 32-34; 7 U.S.C. 150bb, 150dd, 150ee, 150ff), the Mexican Border Act of January 31, 1942, as amended (56 Stat. 40, as amended; 7 U.S.C. 149), section 501 of the Act of August 31, 1951 (65 Stat. 290; 5 U.S.C. 140), and the Act of August 28, 1950 (64 Stat. 561; 5 U.S.C. 576), is considering amending the provisions in 7 CFR, Part 352, as amended, to read as follows:

Sec.	
352.1	Definitions.
352.2	Purpose; relation to other regulations; applicability.
352.3	Enforcement and administration.
352.4	Documentation.
352.5	Permit; requirement, form, and conditions.
352.6	Application for permit and approval or denial thereof.
352.7	Notice of arrival.
352.8	Marking requirements.
352.9	Ports.
352.10	Inspection; safeguards; disposal.
352.11	Mail.
352.12	Baggage.
352.13	Certain conditions under which change of Customs entry or diversion is permitted.
352.14	Costs.
352.15	Caution.
252.16-352.29	[Reserved]
352.30	Administrative instructions: Certain oranges, tangerines, and grapefruit from Mexico.

AUTHORITY: §§ 352.1 to 352.30 issued under sec. 9, 37 Stat. 318; secs. 103 and 106, 71 Stat. 32, 33; 56 Stat. 40, as amended; 7 U.S.C. 162,

150bb, 150ee, 149. Interpret or apply secs. 1, 5, and 7, 37 Stat. 315-317, as amended; secs. 105 and 107, 71 Stat. 32, 34; sec. 501, 65 Stat. 290; and 64 Stat. 561; 7 U.S.C. 154, 159, 160, 150dd, 150ff, 5 U.S.C. 140, 576.

§ 352.1 Definitions.

(a) This part may be cited by the short title: "Safeguard Regulations." This title shall be understood to include both the regulations and administrative instructions in this part.

(b) Words used in the singular form in this part shall be deemed to import the plural and vice versa as the case may demand. For purposes of this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(1) *Division.* The Plant Quarantine Division, Agricultural Research Service, of the United States Department of Agriculture.

(2) *Director.* The Director of the Division, or any officer or employee of the Division to whom authority has heretofore been delegated or may hereafter be delegated to act in his stead.

(3) *Inspector.* A properly identified employee of the United States Department of Agriculture or other person authorized by the Department to enforce the provisions of the Federal Plant Pest Act and the Plant Quarantine Act.

(4) *Customs.* The Bureau of Customs, United States Treasury Department, or, with reference to Guam, the Customs Office of the Government of Guam.

(5) *Person.* Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(6) *Owner.* The owner, or his agent (including the operator of a carrier), having responsible custody of a plant, plant product, plant pest, soil, or other product or article subject to this part.

(7) *Carrier; means of conveyance.* Automobile, truck, animal-drawn vehicle, railway car, aircraft, ship, or other means of transportation.

(8) *Ship.* Any means of transportation by water.

(9) *Stores and furnishings.* Plants and plant products for use on board a carrier; e.g. as food or decorative material.

(10) *Plant pest.* "Plant pest" means any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.

(11) *Plants and plant products.* Nursery stock, other plants, plant parts, roots, bulbs, seeds, fruits, nuts, vegetables, and other plant products, and any product constituted, in whole or in part, of plant material which has not been so manufactured or processed as to eliminate pest risk.

(12) *Soil.* The loose surface material of the earth in which plants grow, in most cases consisting of disintegrated rock with an admixture of organic material and soluble salts.

(13) *Other product or article.* Any product or article of any character whatsoever (other than plants, plant products, soil, plant pests, and means of conveyance), which an inspector considers may be infested or infected by or contain a plant pest.

(14) *Prohibited or restricted product or article.* Any product or article as defined in subparagraphs (7) through (13) of this paragraph of a kind which is prohibited or restricted importation into the United States under Part 319, 320, 321, or 330 of this chapter.

(15) *Prohibited.* Importation into the United States forbidden by Part 319, 320, 321, or 330 of this chapter.

(16) *Restricted.* Importation into the United States allowed only in accordance with provisions in Parts 319, 320, 321, and 330 of this chapter.

(17) *Immediate (export, transshipment, or transportation and exportation).* The period which, in the opinion of the inspector, is the shortest practicable interval of time between the arrival of an incoming carrier and the departure of the outgoing carrier transporting a consignment of prohibited or restricted products or articles.

(18) *Safeguard.* A procedure for handling, maintaining, or disposing of prohibited or restricted products and articles subject to this part so as to eliminate the risk of plant pest dissemination which the prohibited or restricted products and articles may present.

(19) *Plant Quarantine Act.* The act of August 20, 1912, as amended (37 Stat. 315, as amended; 7 U.S.C. 151 et seq.).

(20) *The Federal Plant Pest Act.* Title I of the Act of May 23, 1957 (Title I, 71 Stat. 31; 7 U.S.C. 150aa et seq.).

(21) *Brought in for temporary stay where unloading or landing is not intended.* Brought in by carrier but not intended to be unloaded or landed from such carrier. This phrase includes movement (i) departing from the United States on the same carrier directly from the point of arrival therein; and (ii) transiting a part of the United States before departure therefrom, and applies whether movement under Customs procedure is as residue cargo or follows some form of Customs entry.

(22) *Unloaded or landed for transshipment and exportation.* Brought in by carrier and transferred to another carrier for exportation from the same port, whether or not some form of Customs entry is made.

(23) *Unloaded or landed for transportation and exportation.* Brought in by carrier and transferred to another carrier for transportation to another port for exportation, whether or not some form of Customs entry is made.

(24) *Intended for importation but refused entry.* Brought in by carrier but (i) entry refused under Part 319, 320, 321, or 330 of this chapter after arrival but before unloading or landing and retained on board pending removal from the United States or other disposal, or (ii) entry refused under any of said parts after unloading or landing.

(25) *Intended for unloading and entry at a port other than the port of first arrival.* Brought in by carrier at a port for movement to the port of entry under residue cargo procedure of Customs.

(26) *Residue cargo.* Shipments authorized by Customs to be transported under the Customs bond of the carrier on which the shipments arrive, without entry being filed, for direct export from the first port of arrival, or to another port for entry or for direct export at that port without entry being required.

(27) *Port.* Any place designated by the President, Secretary of the Treasury, or Congress at which a Customs officer is assigned with authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the Customs and Navigation laws in force at that place.

(28) *Port of arrival.* Any port in the United States at which a prohibited or restricted product or article arrives.

(29) *Port of entry.* A port at which a specified shipment or means of conveyance is accepted for entry or admitted without entry into the United States.

(30) *Foreign trade zone.* A formally prescribed area containing various physical facilities located in or adjacent to ports of entry under the jurisdiction of the United States and established, operated, and maintained as a foreign trade zone pursuant to the Foreign-Trade Zones Act of June 18, 1934 (48 Stat. 998-1003; 19 U.S.C. 81a-81u), as amended, wherein foreign merchandise, as well as domestic merchandise, may be deposited for approved purposes. Movement into and from such area is subject to applicable customs, plant quarantine, and other Federal requirements.

(31) *United States.* The States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States, and the territorial waters of the United States adjacent to those land areas.

(32) *Administrative instructions.* Published documents set forth in this part relating to the enforcement of this part, and issued under authority thereof by the Director.

§ 352.2 Plant Quarantine Safeguard Regulations; purposes; relation to other regulations; applicability.

(a) The importation into the United States of certain plants, plant products, plant pests, soil, and other products and articles which may be infested or infected by, or contain, plant pests is prohibited or restricted by quarantines, orders, and other regulations in Parts 319, 320, 321, and 330 of this chapter, issued under authority of sections 1, 5, 7, and 9 of the Plant Quarantine Act, sections 103, 105, 106, and 107 of the Federal Plant Pest Act, the Mexican Border Act (7 U.S.C. 149), and related laws (5 U.S.C. 140; 576). Under said authorities it is hereby determined that it is not necessary to impose such prohibitions and restrictions upon plants, plant products, plant pests, soil, and other products and articles designated in said parts when they come within any of the following categories and are moved into the United States from any foreign country and handled in the United States in compliance with this part, and said categories of plants, plant products,

plant pests, soil, and other products and articles are hereby excepted from said prohibitions and restrictions if they comply with this part, except as otherwise provided in this part; (1) Are brought in for temporary stay where unloading or landing is not intended; (2) are unloaded or landed for transshipment and exportation; (3) are unloaded or landed for transportation and exportation; (4) are intended for unloading and entry at a port other than the port of arrival. However such determination and exception shall not apply to cotton and covers imported into the United States from any country for exportation or transshipment and exportation or transportation and exportation as provided in §§ 319.8, 319.8-1 et seq. of this chapter and such cotton and covers must comply with said sections in lieu of this part. Moreover, the applicable provisions of §§ 330.100 through 330.109 and 330.400 of this chapter shall continue to apply to products and articles subject to this Part 352.

(b) Prohibited or restricted products and articles offered for entry into the United States and refused such entry under Part 319, 320, 321, or 330 of this chapter shall be subject to the applicable provisions in this part with respect to their subsequent handling in this country.

(c) (1) The provisions in this part shall apply whether the controls over arrival, temporary stay, unloading, landing, transshipment and exportation, or transportation and exportation, or other movement or possession in the United States are maintained by entry or other procedures of the Bureau of Customs, U.S. Department of the Treasury, or in Guam by the Customs of the Government of Guam. Such provisions shall apply to arrivals in the United States, as defined in § 352.1(b) (31), including arrivals in a foreign trade zone in the United States to which admission is sought in accordance with the Customs Regulations in 19 CFR. Prohibited or restricted products and articles which have arrived in the United States and have been exported therefrom pursuant to this part, and which for any reason are returned to the United States are, upon arrival, again subject to the applicable requirements of this part.

(2) Any restrictions and requirements under this part with respect to the arrival, temporary stay, unloading, landing, transshipment, exportation, transportation and exportation, or other movement or possession in the United States of any product or article shall apply to any person who, respectively, brings into, maintains, unloads, lands, transships, exports, transports and exports, or otherwise moves or possesses in the United States such product or article, whether he is the person who was required to have a permit for the product or article or a subsequent custodian of such product or article, and failure to comply with all applicable restrictions and requirements under this part by any such person shall be deemed to be a violation of this part.

§ 352.3 Enforcement and administration.

(a) Plants, plant products, plant pests, soil, and other products and articles subject to the regulations in this part which are unloaded or landed, or otherwise brought, or moved into or through the United States in contravention of this part may be seized, destroyed, or otherwise disposed of as authorized by section 10 of the Plant Quarantine Act (7 U.S.C. 164a), section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), or the Mexican Border Act (7 U.S.C. 149). Any person who unloads or lands or otherwise brings or moves into or through the United States, any plants, plant products, plant pests, soil, or other products or articles subject to this part in any manner contrary to this part, shall be subject to prosecution under the applicable provisions of law.

(b) Whenever the Director of the Division shall find that existing conditions of danger of plant pest escape or dissemination involved in the arrival, unloading, landing, or other movement, or possession in the United States of plants, plant products, plant pests, soil, or other products or articles subject to the regulations in this part, make it safe to modify by making less stringent the restrictions contained in any such regulation, he shall publish such findings in administrative instructions, specifying the manner in which the regulations shall be made less stringent with respect thereto, whereupon such modification shall become effective; or he may, upon request in specific cases, when the public interests will permit, authorize arrival, unloading, landing, or other movement, or possession in the United States under conditions that are less stringent than those contained in the regulations in this part.

(c) The Director also may set forth and publish, in administrative instructions, requirements and conditions for any class of products or articles supplemental to the regulations in this part, and may promulgate interpretations of this part.

(d) The Director shall employ procedures to carry out the purposes of this part which will impose a minimum of impediment to foreign commerce, consistent with proper precaution against plant pest dissemination.

§ 352.4 Documentation.

(a) *Manifest.* Immediately upon the arrival of a carrier in the United States the owner shall make available to the inspector for examination a complete manifest or other documentation from which the inspector may determine whether there are on board any prohibited or restricted products or articles subject to this part, other than accompanied baggage and mail.

(b) *Other documentation.* Any notifications, reports, and similar documentation not specified in the regulations in this part, but necessary to carry out the purpose of the regulations, will be prescribed in administrative instructions.

(c) *Procedure after examination of documents.* After examination of the

carrier cargo manifest or other documentation the inspector may notify the owner and the Customs officer that certain products or articles on board the carrier are subject to this part and may not be unloaded or landed for any purpose pending plant quarantine inspection. In such case the owner shall not unload or land such products or articles without authorization by an inspector.

§ 352.5 Permit; requirement, form and conditions.

(a) *General.* (1) Permits are required for the arrival, unloading or landing, or other movement into or through the United States of plants, plant products, plant pests, and soil subject to this part. The permit may consist of a general authorization as set out in paragraph (b), (c), or (d) of this section or § 352.11, or it may be a specific permit. A specific permit may be formal or oral except as a formal permit is required by paragraph (c) or (e) of this section. The Director may in administrative instructions require specific or formal permits for any class of products or articles subject to this part.

(2) A formal permit may be issued in prescribed form, in letter form, or a combination thereof. A rubber stamp impression or other endorsement made by the inspector on pertinent Customs documents covering the products or articles involved may constitute the formal permit in appropriate cases.

(b) *Permit for prohibited or restricted products or articles brought in for temporary stay where unloading or landing in the United States is not intended.* No permit other than the authorization contained in this paragraph shall be required for bringing into the United States any plants, plant products, plant pests, or soil subject to this part for temporary stay where unloading or landing in the United States is not intended, e.g., in connection with residue cargo movement under Customs procedure, or in connection with Customs entry for exportation or for transportation and exportation. This authorization also includes transshipment of products and articles under this paragraph from a carrier directly to another carrier of the same company when necessitated by an emergency or operating requirement and effected in accordance with safeguards prescribed in writing or orally by the inspector under § 352.10.

(c) *Permit for prohibited or restricted products or articles unloaded or landed for immediate transshipment and exportation, or immediate transportation and exportation.* When in the opinion of the inspector it is unnecessary to specify in a formal permit the safeguards required to prevent plant pest dissemination, plants, plant products, plant pests, or soil subject to this part may be unloaded or landed for immediate transshipment and exportation or for immediate transportation and exportation, as provided in § 352.10, with the approval of the inspector and no further permit than the authorization contained in this paragraph; otherwise a formal permit

shall be required for such unloading or landing.

(d) *Permit for restricted products or articles moving as residue cargo from port of first arrival to port of entry.* Restricted plants, plant products, plant pests, or soil subject to this part arriving in the United States for movement under residue cargo procedures of Customs from a port of first arrival to another port for Customs entry into the United States may be allowed to so move without permit other than the authorization contained in this paragraph, if the inspector finds that apparently they can meet the applicable requirements of Parts 319, 320, 321, and 330 of this chapter at the port where entry is to be made; otherwise a formal permit shall be required for such movement. Such restricted products and articles shall become subject to the applicable permit and other requirements of Parts 319, 320, 321, and 330 of this chapter upon arrival at the port where Customs entry is to be made and shall not be unloaded or landed unless they comply with the applicable requirements.

(e) *Formal permits required for certain prohibited or restricted products or articles brought into a foreign trade zone.* A formal permit must be obtained to bring any prohibited or restricted plants, plant products, plant pests, or soil subject to the provisions in this part, into a foreign trade zone for storage, manipulation, or other handling, except for immediate transshipment and exportation or for immediate transportation and exportation. Special conditions to safeguard such storage, manipulation, or other possession or handling may be specified in the permit, and when so specified shall be in addition to any other applicable requirements of this part or the safeguards prescribed by the inspector or otherwise under this part.

§ 352.6 Application for permit and approval or denial thereof.

(a) *Plants and plant products.* Except as otherwise provided in this paragraph, any person desiring to unload or land, or otherwise move into or through the United States, any plants or plant products for which a specific permit is required by § 352.5, shall in the case of prohibited plants or plant products, and should in the case of restricted plants or plant products, in advance of arrival in the United States of the plants or plant products, submit an application for a permit to the Division,¹ stating such of the following information as is relevant: the name and address of the importer, the approximate quantity and kind of plants and plant products it is desired to import under this part, the country where grown, the United States port of arrival, the United States port of export, the proposed routing from the port of arrival to the port of exportation, means of transportation to be employed (i.e., mail, air mail, express, air express, freight, air freight, baggage), and the

¹ Application for such permits should be addressed to the Plant Importations Branch, Plant Quarantine Division, Agricultural Research Service, U.S. Department of Agriculture, 209 River Street, Hoboken, N.J.

name and address of the agent representing the importer. Applications may be made on forms provided for the purpose by the Division, or orally, or by letter, telegram, or other means of communication furnishing all the information required by this paragraph. Applications need not be made for shipments handled under general authorizations set forth in § 352.5 (b), (c), or (d), or in § 352.11.

(b) *Plant pests.* Any person desiring to unload or land, or otherwise move into or through the United States, any plant pest for which a specific permit is required by § 352.5 shall, in advance of the arrival of the plant pests in the United States, submit an application to the Division² for a permit as specified by § 330.201 of this chapter.

(c) *Soil.* Any person desiring to bring into or unload or land, or otherwise move into or through the United States, any soil for which a specific permit is required by § 352.5, shall, in advance of the arrival of the soil in the United States, submit an application for permit to the Division² as specified by § 330.300(b) of this chapter.

(d) *Constructive oral application.* If a permit has not been issued in advance of arrival, application for any required permit (other than a formal permit) shall be considered to have been made orally to the inspector at the port of arrival by presentation of the shipment for entry or its listing on the manifest or other documentation, but this shall not excuse failure to make timely application as required by this section. Express application is required for a formal permit.

(e) *Approval or denial of permits.* Upon approval of the application, the permit will be issued. Any conditions necessary to eliminate danger of plant pest dissemination may be specified in the permit, or otherwise as provided in § 352.10. Permits will be denied if, in the opinion of the Director, it is not possible to prescribe conditions adequate to prevent danger of plant pest dissemination by the plants, plant products, plant pests, or soil involved.

§ 352.7 Notice of arrival.

Immediately upon arrival of any shipment of plants or plant products subject to this part and covered by a specific permit, the importer shall submit in duplicate through the U.S. Collector of Customs for the U.S. Department of Agriculture a notice of such arrival on a form provided for that purpose (PQ-368) and shall give such information as is called for by that form and, in addition, where relevant, the proposed routing to the proposed U.S. port of exit. Notice of arrival shall not be required for other products or articles subject to this part since other available documentation meets the requirement for this notice.

§ 352.8 Marking requirements.

Prohibited and restricted products and articles subject to this part shall be ade-

² Application for permits should be made to the Plant Quarantine Division, Agricultural Research Service, U.S. Department of Agriculture, Washington 25, D.C.

quately marked or otherwise identified by documentation to indicate their nature.

§ 352.9 Ports.

The arrival, unloading, landing, or possession of plants, plant products, plant pests, soil, or other products or articles subject to this part shall not be allowed at points within the United States other than at the ports specified in the Customs Regulations in 19 CFR 1.1 and 19 CFR 6.13, and Agana, Guam, or such other ports as may be named in permits or administrative instructions. Restrictions on the ports which may be used for particular types of handling of any products or articles subject to this part may be specified generally in administrative instructions or in permits in specific cases. When ports are specified in permits or otherwise, the arrival, unloading, landing, or possession of the products or articles involved at other ports will not be allowed except as the inspector may authorize changes in the ports specified.

§ 352.10 Inspection; safeguards; disposal.

(a) *Inspection and release.* Prohibited and restricted products and articles subject to this part shall be subject to inspection at the port of first arrival in accordance with § 330.105(a) of this chapter and shall not be released by Customs officers for unloading, landing, or other onward movement or entry until released by an inspector or a Customs officer on behalf of an inspector in accordance with the procedure prescribed in § 330.105(a) of this chapter. If diversion or change of Customs entry is not permitted for any movements authorized under this part, the inspector at the original port of Customs entry shall appropriately endorse Customs documents to show that fact. However, the inspector at the U.S. port of export may approve diversion or change of Customs entry to permit movement to a different foreign country, or entry into the United States, subject to all other applicable requirements under this part or Part 319, 320, 321, or 330 of this chapter. If diversion or change of Customs entry is desired at a Customs port in the United States where there is no inspector, the owner may apply to the Division³ for information as to applicable conditions. If diversion or change of entry is approved at such a port, confirmation will be given by the Division to the appropriate Customs officers and Division inspectors.

(b) *Safeguards.* (1) The unloading, landing, retention on board as stores and furnishings or cargo, transshipment and exportation, transportation and exportation, onward movement to the port of entry as residue cargo or under a Customs entry for immediate transportation, and other movement or possession within the United States of prohibited or restricted products and articles under this part shall be subject to such safeguards

as may be prescribed in the permits and this part and any others which, in the opinion of the inspector, are necessary and are specified by him to prevent plant pest dissemination. In the case of prohibited or restricted products or articles subject to this part which are unloaded or landed for transshipment and exportation or transportation and exportation, or for onward movement to the port of entry as residue cargo or under a Customs entry for immediate transportation, this shall include necessary safeguards with respect to any movement within the port area between the point of arrival and the point of temporary storage, other handling, or point of departure, including a foreign trade zone. Prohibited and restricted products and articles subject to this part which are unloaded or landed for transshipment and exportation or transportation and exportation, or for onward movement as residue cargo or under a Customs entry for immediate transportation, shall be transhipped, or transported and exported from the United States, or moved onward immediately. This shall mean the shortest practicable interval of time commensurate with the risk of plant pest dissemination required to transfer the products or articles from one carrier to another and to move them onward or from the United States. If, in the opinion of the inspector, considerations of risk of plant pest dissemination require, such movement shall be made without regard to the non-competitive or competitive relations of the carriers concerned. Prohibited or restricted plants, plant products, plant pests, and soil which were intended for entry into the United States under Parts 319, 320, 321, or 330 of this chapter, or for movement into or through the United States under this part, and which were refused such entry or movement before unloading or landing, or which were refused such entry or movement after unloading or landing and are immediately reladed, on the same carrier, may be retained on board pending removal from the United States or other disposal, but shall be subject to the safeguards specified under this section. Prohibited or restricted products and articles which were refused entry or movement under said parts after unloading or landing and which are not immediately reladed in accordance with this section shall be subject to such safeguard action as the inspector deems necessary to carry out the purposes of this part.

(2) Safeguards prescribed by an inspector under this section shall be prescribed to the owner by the inspector in writing except that the inspector may prescribe the safeguards orally when, in his opinion, the circumstances and related Customs procedures do not require written notice to the owner of the safeguards to be followed by the owner. In prescribing safeguards, the relevant requirements of Parts 319, 320, 321, and 330 of this chapter and this part shall be considered. The safeguards prescribed shall be the minimum required to prevent plant pest dissemination. Destruction or exportation shall be required only when no less drastic measures are deemed by the inspector to be

adequate to prevent plant pest dissemination. The inspector may follow administrative instructions promulgated for certain situations, or he may follow a procedure selected by him from administratively approved methods known to be effective in similar situations. In prescribing safeguards consideration will be given to such factors as:

(i) The nature and habits of the plant pests known to be, or likely to be, present with the plants, plant products, soil, or other products or articles.

(ii) Nature of the plants, plant products, plant pests, soil, or other products or articles.

(iii) Nature of containers or other packaging and adequacy thereof to prevent plant pest dissemination.

(iv) Climatic conditions as they may have a bearing on plant pest disposal, and refrigeration if provided.

(v) Routing pending exportation.

(vi) Presence of soil.

(vii) Construction or physical condition and type of carrier.

(viii) Facilities for treatment, or for incineration or other destruction.

(ix) Availability of transportation facilities for immediate exportation.

(x) Any other related factor which should be considered, such as intent to export to an adjacent or nearby country.

(c) *Disposal.* (1) If prohibited or restricted products or articles subject to this part are not safeguarded in accordance with measures prescribed under this part, or cannot be adequately safeguarded to prevent plant pest dissemination, they shall be seized, destroyed, or otherwise disposed of according to law. Whenever disposal action is to be taken by the inspector he shall notify the local Customs officer in advance.

(2) When a shipment of any products or articles subject to this part has been handled in accordance with all conditions and safeguards prescribed in this part and in the permit and by the inspector, the inspector shall inform the local Customs officer concerned of the release of such products or articles, in appropriate manner.

§ 352.11 Mail.

(a) *Transit mail.* (1) Plants, plant products, plant pests, and soil which arrive in the United States in closed dispatches by international mail or international parcel post and which are in transit through the United States to another country shall be allowed to move through the United States without further permit than the authorization contained in this section. Notice of arrival shall not be required as other documentation meets the requirement for this notice.

(2) Inspectors ordinarily will not inspect transit mail or parcel post, whether transmitted in open mail or in closed dispatches. They may do so if it comes to their attention that any such mail or parcel post contains prohibited or restricted products or articles which require safeguard action. Inspection and disposal in such cases will be made in accordance with this part and Part 330 of this chapter, and in conformity with regulations and procedures of the Post

³ The Director, Plant Quarantine Division, Agricultural Research Service, U.S. Department of Agriculture, Washington 25, D.C. Telephone: DUdley 8-4493.

Office Department for handling transit mail and parcel post.

(b) *Importation for exportation.* Plants and plant products to be imported for exportation, by mail, will be handled under permit in accordance with Part 351 of this chapter.

§ 352.12 Baggage.

Products or articles subject to this part which are contained in baggage shall be subject to the requirements of this part in the same manner as cargo.

§ 352.13 Certain conditions under which change of Customs entry or diversion is permitted.

When plants, plant products, plant pests, and soil released for exportation, transshipment and exportation, or transportation and exportation, under this part, have met all applicable permit and other requirements for importation, including inspection and treatment, as provided in Part 319, 320, 321, or 330 of this chapter, the form of Customs entry may be changed and the shipment may be diverted at any time to permit delivery of the products and articles to a destination in the United States, so far as the requirements in this part are involved. The Customs officer concerned at the original port of Customs entry shall be informed by the inspector that such release has been made and that such change of entry or diversion is approved under this part by appropriate endorsement of Customs documents.

§ 352.14 Costs.

All costs incident to the inspection, handling, safeguarding, or other disposal of prohibited or restricted products or articles under the provisions in this part, except for the services of an inspector during regularly assigned hours of duty and at the usual places of duty, shall be borne by the owner.

§ 352.15 Caution.

In applying safeguards or taking other measures prescribed under the provisions in this part, it should be understood that inexactness or carelessness may result in injury or damage. It should also be understood by the owners that emergency measures prescribed by the inspector to safeguard against plant pest dissemination may have adverse effects on certain products and articles and that they will take the calculated risk of such adverse effects of authorized measures.

§§ 352.16 through 352.20 [Reserved]

§ 352.30 Administrative instructions: Certain oranges, tangerines, and grapefruit from Mexico.

The following provisions shall apply to the movement into or through the United States under this part of oranges, tangerines, and grapefruit from Mexico in transit to foreign countries via United States ports on the Mexican border.

(a) *Untreated fruit; general*—(1) *Permit and notice of arrival required.* The owner shall, in advance of shipment of untreated oranges, tangerines, or grapefruit from Mexico via United States

ports on the Mexican border to any foreign country, procure a formal permit as provided in § 352.6, or application for permit may be submitted to the inspector at the port in the United States through which the shipment will move. Notice of arrival of such fruit shall be submitted as required by § 352.7.

(2) *Origin; period of entry.* Such fruit may enter from any State in Mexico throughout the year, in accordance with requirements of this section and other applicable provisions in this part.

(3) *Cleaning refrigerator cars and aircraft prior to return to the United States from Canada.* Refrigerator cars and aircraft that have been used to transport untreated oranges, tangerines, or grapefruit from Mexico through the United States to Canada shall be carefully swept and freed from all fruit, as well as boxes and rubbish, by the carrier involved prior to reentry into the United States.

(4) *Inspection; safeguards.* (i) Each shipment under this paragraph (a) shall be subject to such inspections and safeguards as are required by this section and such others as may be prescribed by the inspector pursuant to § 352.10.

(ii) Truck loads of untreated oranges, tangerines, and grapefruit arriving from Mexico at authorized ports in the United States for loading into refrigerator cars, aircraft, or ships for movement to a foreign country shall be preinspected by an inspector for freedom from citrus leaves before entry into the United States or be accompanied by an acceptable certificate from an inspector as to such freedom. Trucks loaded with such untreated fruit that are not free of such leaves will be denied entry into the United States. Loaded trucks free of such leaves shall be conveyed by an inspector from point of arrival in the United States to the point of unloading, or shall move under such other safeguards as the inspector shall prescribe.

(iii) All trucks, refrigerator cars, aircraft, and ships used to transport untreated fruit from Mexico through the United States to a foreign country under this paragraph (a) shall be subject to such treatment at the port of first arrival and elsewhere as may be required by the inspector, pursuant to this part, in order to prevent plant pest dissemination.

(b) *Additional conditions for overland movement of certain untreated fruit.* Untreated oranges, tangerines, and grapefruit from Mexico may move overland through the United States to a foreign country only in accordance with the following additional conditions:

(1) *Containers.* Such fruit shall be packed in containers of approximately the size customarily used by the trade for marketing such fruit in the United States.

(2) *Ports of entry.* Such fruit may enter only at Nogales, Arizona; or Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, Texas.

(3) *Carriers.*—(i) *Railway cars.* Refrigerator cars, in good condition, of United States or Canadian ownership

only shall be used to transport such fruit by railway through the United States to Canada or other foreign country.

(ii) *Aircraft.* Aircraft may be used to transport such fruit from the ports named in subparagraph (2) of this paragraph to points in Canada.

(iii) *Trucks.* Trucks may be used to haul such fruit from Mexico to shipside, or to approved refrigerated storage pending lading aboard ship, in Brownsville, or alongside refrigerator cars or aircraft at the ports named in subparagraph (2) of this paragraph for movement to a foreign country. Such trucks shall be of the van-type and shall be kept closed from time of entry into the United States until unloading is to commence; or the load shall be covered with a tarpaulin tightly tied down which shall not be removed or loosened from time of entry into the United States until unloading is to commence. Trucks may not be used otherwise to transport such fruit from Mexico overland through the United States.

(4) *Bonded rail movement*—(i) *Routing.* Shipments of such fruit may move by direct route, in Customs bond and under Customs seal, without diversion or change of Customs entry en route, from the port of entry to the port of exit en route to Canada or to an approved North Atlantic port in the United States for export to another foreign country, as follows: The fruit may be entered at Nogales, Arizona, only for direct rail routing to El Paso, Texas, after which it shall traverse only the territory bounded on the west by a line drawn from El Paso, Texas, to Salt Lake City, Utah, and then to Portland, Oregon, and on the east by a line drawn from Brownsville, Texas, through Houston, Texas, and Kinder, Louisiana, to Memphis, Tennessee, and then to Louisville, Kentucky, and due east therefrom, such territory to include railroad routes from Brownsville to Houston and direct northward routes therefrom. Such fruit may also enter the United States from Mexico at any port listed in subparagraph (2) for direct eastward rail movement in Customs bond and under Customs seal, without diversion en route, for reentry into Mexico.

(ii) *Icing.* All refrigerator cars transporting such fruit from States in Mexico other than Sonora shall be iced prior to crossing at Brownsville, Eagle Pass, El Paso, or Laredo, Texas, and shall be re-iced if necessary to prevent plant pest dissemination south of Little Rock, Arkansas, or a line drawn east and west therefrom. North of such a line no further icing is required. Icing, insofar as this part requires, may be omitted if all openings leading from the car to the ice bunkers are covered with a 14-mesh fly screen in a manner satisfactory to the inspector. All such cars must move through the United States with all doors closed and sealed.

(5) *Bonded air cargo movement.* Shipments of such fruit may move by direct route as air cargo, in Customs bond and without change of Customs entry while in the United States en route from the port of entry, to Canada. If

an emergency occurs en route to the port of export that will require transshipment to another carrier, the owner should apply to the Division³ for information as to applicable conditions.

(c) *Additional conditions for movement of certain untreated fruit by water route.* Untreated oranges, tangerines, and grapefruit from Mexico may move from Mexico to a foreign country by water route through the United States under this section only in accordance with the following additional conditions:

(1) *Ports of entry.* Such oranges, tangerines, and grapefruit may enter only at New York, Boston, or such other North Atlantic ports in the United States as may be named in permits, for exportation, or at Brownsville, Texas, for exportation by water route.

(2) *Routing through North Atlantic ports.* Such fruit entering via North Atlantic ports in the United States shall move by direct water route to New York or Boston, or to such other North Atlantic ports as may be named in the permit only for immediate direct export by water route to any foreign country, or for immediate transportation and exportation in Customs bond by direct rail route to Canada.

(3) *Exportation from Brownsville by water.* (i) Such fruit laden in refrigerated holds for export from Brownsville shall be stowed in closed compartments if the ship is to call at other Gulf or South Atlantic ports in the United States. The compartments are not to be opened while in such other Gulf or South Atlantic ports.

(ii) Such fruit for export from Brownsville, not laden in refrigerated holds, shall be stowed in closed compartments separate from other cargoes. Bulkheads of such compartments shall be kept closed. Hatches containing such fruit shall be closed and the tarpaulin battened down and sealed with Division seals. Such seal shall remain unbroken while the ship is in any such Gulf or South Atlantic port or waters. Vents and ventilators leading to compartments in which the fruit is stowed must be screened with fine mesh screening. Advance notice of arrival of ships carrying untreated Mexican oranges, tangerines, or grapefruit shall be given to the inspector at such Gulf or South Atlantic ports of call.

(d) *Restriction on diversion or change of Customs entry.* Diversion or change of Customs entry shall not be permitted with movements authorized under paragraph (b) (4) or (5) or paragraph (c) of this section and the inspector at the original port of Customs entry shall appropriately endorse the Customs documents to show that fact: *Provided*, That the inspector at such port of entry may, when consistent with the purposes of this part, approve diversion or change of Customs entry to permit movement to a different foreign country or entry into the United States subject to all other applicable requirements under this part or Part 319 of this chapter. If diversion

or change of Customs entry is desired at a Customs port in the United States where there is no inspector, the owner may apply to the Division³ for information as to applicable conditions. If diversion or change of entry is approved at such a port, confirmation will be given by the Division to appropriate Customs officers and Division inspectors.

(e) *Treated fruit.* Oranges, tangerines, and grapefruit from Mexico which have been treated in Mexico in accordance with § 319.56-2e of this chapter may be imported through the United States ports on the Mexican border for exportation in accordance with §§ 319.56 and 319.56-1 through 319.56-8 of this chapter.

(f) *Costs.* Costs shall be borne by the owner of the fruit as provided in § 352.14. This includes all costs for preinspection and conveying of loaded trucks and supervision of transloading from trucks to approved carriers or storage in United States ports when augmented inspection service has to be provided for such preinspection, conveying, and supervision.

The purpose of this revision of the provisions in Part 352 is to bring them into conformity with present day trade and transportation practices and bring together for the benefit of the public an outline of the procedures deemed necessary to safeguard the United States from the risk of dissemination of plant pests during the presence in this country of foreign plants, plant products, plant pests, soil, and other products and articles, transiting, or otherwise temporarily within, the territorial limits of the United States. This revision also resolves apparent conflicts between the existing language in Part 352 and certain subparts of Part 319. It reduces the responsibilities of those having charge over shipments in the categories covered with respect to application for certain permits. Furthermore, it should also result in a simplification of the minimum essential procedures to prevent plant pest dissemination with these movements.

All persons who desire to submit written data, views, or arguments concerning the foregoing proposals should file

the same with the Director of the Plant Quarantine Division, Agricultural Research Service, U.S. Department of Agriculture, Washington 25, D.C., within 30 days after the date of the publication of this notice in the FEDERAL REGISTER.

Done at Washington, D.C., this 11th day of January 1960.

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

[F.R. Doc. 60-358; Filed, Jan. 13, 1960; 8:51 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 1-Naphthyl N-Methylcarbamate

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 Union Carbide Chemicals Company, 30 East Forty-second Street, New York 17, New York, proposing the establishment of a tolerance of 10 parts per million for residues of 1-naphthyl N-methylcarbamate in or on cucumbers and summer squash.

The analytical method proposed in the petition for determining residues of 1-naphthyl N-methylcarbamate is that described in the FEDERAL REGISTER of January 9, 1959 (24 F.R. 238).

Dated: January 5, 1960.

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

[F.R. Doc. 60-339; Filed, Jan. 13, 1960; 8:47 a.m.]

NOTICES

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 13341-13344; FCC 60-13]

CREEK COUNTY BROADCASTING CO. ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of T. M. Raburn, Jr., tr/as Creek County Broadcasting Co., Sapulpa, Oklahoma, Requests: 1220 kc, 1 kw, DA-Day, Docket No. 13341, File No. BP-11605; Tinker Area Broadcasting

Co., Midwest City, Oklahoma, Requests: 1220 kc, 1 kw, DA-Day, Docket No. 13342, File No. BP-12410; Sapulpa Broadcasting Corporation, Sapulpa, Oklahoma, Requests: 1220 kc, 1 kw, DA-Day, Docket No. 13343, File No. BP-12595; M. W. Cooper, Midwest City, Oklahoma, Requests: 1220 kc, 250 w, DA-Day, Docket No. 13344, File No. BP-12887; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 6th day of January 1960;

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

³ The Director, Plant Quarantine Division, Agricultural Research Service, U.S. Department of Agriculture, Washington 25, D.C. Telephone: DUdley 8-4493.

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

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated September 24, 1959, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues as hereinafter specified; and in which the applicants stated that they would appear at a hearing on the instant applications; and

It further appearing that by letter dated September 24, 1959, the applicant in BP-11605 was asked to submit pertinent measurement data to establish whether 2 and 25 mv/m contour overlap will occur with Station KOKL, Okmulgee, Oklahoma, in contravention of § 3.37 of the Commission rules, but to date, the above data has not been submitted, although it is still required in order to make the above determination; and

It further appearing that after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which would receive primary service from each of the instant proposals and the availability of other primary service to such areas and populations.

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

3. To determine whether the interference received by each of the instant proposals from the other proposals

herein and any existing stations would affect more than ten percent of the population within its normally protected primary service area in contravention of § 3.28(c)(3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said section.

4. To determine whether the instant proposals of BP-11605 and BP-12595 would involve objectionable interference with Stations KOFO, Ottawa, Kansas and KOKL, Okmulgee, Oklahoma, 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 overlap of the 2 mv/m and 25 mv/m contours would occur between the instant proposal of BP-11605 and KOKL, Okmulgee, Oklahoma in contravention of § 3.37 of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver thereof.

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

7. To determine on a comparative basis which of the competing applicants for the community selected as having the greater need, pursuant to section 307(b), would better serve the public interest, convenience and necessity in the light of the evidence adduced under the issues herein and the record made with respect to the significant differences between the said applicants as to:

(a) The background and experience of each having a bearing on the applicants' ability to own and operate its proposed station.

(b) The proposals of each of said applications with respect to the management and operation of the proposed station.

(c) The programming service proposed in each of the said applications.

8. To determine, in the light of the evidence adduced, pursuant to the foregoing issues which, if any of the instant applications should be granted.

It is further ordered, That Ottawa Broadcasting Co. and Okmulgee Broadcasting Corporation, licensees of Stations KOFO and KOKL, respectively, are made parties to the proceeding.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and party respondents herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support

thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: January 11, 1960.

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

[F.R. Doc. 60-351; Filed, Jan. 13, 1960;
8:49 a.m.]

[Docket No. 13345; FCC 60-14]

SERVICE BROADCASTING CO.

Order Designating Application for Hearing on Stated Issues

In re application of Service Broadcasting Company, Concord, California, Requests: 1480 kc, 500 w, DA-Day, Docket No. 13345, File No. BP-12184; for construction permit.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 6th day of January 1960;

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

It appearing that except as indicated by the issues specified below, the instant applicant is legally, technically and otherwise qualified but may not be financially qualified to construct and operate the instant proposal; and

It further appearing that prior to September 4, 1959, the instant applicant (hereinafter Service) submitted a series of financial amendments to the subject proposal; that a Commission letter of September 4, 1959 notified Service that a "recently submitted (financial) amendment appear(ed) to include conflicting information concerning the plan of financing the proposed station"; and that Service was, therefore, requested to submit new sections II and III of Form 301 as an amendment to its instant application, in addition to subscription agreements, signed under oath, if financing plans called for securing funds through the sale of capital stocks or the use of loans; and

It further appearing that pursuant to this request, Service on October 26, 1959, filed with the Commission new sections II and III with the requisite exhibits, and, also, stock subscription agreements signed under oath; and

It further appearing that Donnelly C. Reeves will be issued capital stock in payment for services rendered; that A. Judson Sturtevant, Jr. and the Frank M. Helm Company have agreed to pay cash for their capital stock but that the balance sheets do not appear to show adequate cash or liquid assets readily available to cover their subscription agreements; that Service is also an applicant for a new standard broadcast facility in Roseville, California (File No. BP-12555) and, in said application, Frank M. Helm is shown as being the stockholder and subscriber whereas the subject application indicates that the Frank

M. Helm Company is such; that in view of the foregoing it cannot be presently determined that Service is financially qualified to construct and operate the subject proposal; and

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended; the Commission, in letters dated January 22, March 10, and September 4, 1959, and incorporated herein by reference, notified the instant applicant, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of the application would serve the public interest, convenience and necessity; and that copies of the aforementioned letters are available for public inspection at the Commission's offices; and

It further appearing that the applicant filed timely replies to the aforementioned letters, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the application and requiring an evidentiary hearing on the particular issues hereinafter specified; and in which the applicant stated that it would appear at a hearing on the instant application; and

It further appearing that the instant proposal will cause interference to the proposed operation (File No. BP-11534) of Station KXOA, Sacramento, California, but that said application was granted on October 28, 1959, with a condition in the construction permit that KXOA accept interference from the instant proposal in the event it is granted; and

It further appearing that the applicant was requested by the Commission letter of September 4, 1959, to demonstrate how satisfactory measurement data could be made which would indicate that the proposed low inverse distance fields in the north and southeast protection directions have been achieved in the face of relatively high ambient co-channel signal levels from KYOS; that in a reply received September 24, 1959, the applicant submitted a plan for making the proposed measurements, but that Commission study of the proposed measurement plan reveals that certain questions still obtain regarding the feasibility of proving attainment of the proposed pattern; and

It further appearing that after consideration of the foregoing and the applicant's replies, the Commission is still unable to make the statutory finding that a grant of the application would serve the public interest, convenience, and necessity; and is of the opinion that the application must be designated for hearing on the issues specified below;

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

1. To determine the areas and populations which would receive primary service from Service Broadcasting Company and the availability of other primary service to such areas and populations.

2. To determine whether the instant proposal of Service Broadcasting Company would involve objectionable interference with Station KAFP, Petaluma, California, 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 whether Service Broadcasting Company is financially qualified to construct and operate its proposed station.

4. To determine whether Service Broadcasting Company will be able to adjust and maintain the directional antenna system as proposed in the instant application.

5. 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 Broadcast Associates, Inc., licensee of Station KAFP, Petaluma, California, 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 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: January 11, 1960.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-352; Filed, Jan. 13, 1960; 8:49 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 11037]

CIE. DE TRANSPORTS AERIENS INTERCONTINENTAUX (TAI)

Notice of Hearing

In the matter of the application of Cie. De Transports Aeriens Intercontinentaux (TAI) for a foreign air carrier permit.

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, that the hearing in the above-entitled proceeding will be held January 25, 1960, at 10:00 a.m., e.s.t., in Room 803, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Bar-ron Fredricks.

Dated at Washington, D.C., January 7, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-359; Filed, Jan. 13, 1960; 8:51 a.m.]

[Dockets 9772, 9920]

SEABOARD AND WESTERN AIRLINES, INC. AND PAN AMERICAN WORLD AIRWAYS, INC.

Notice of Hearing

Complaint of Seaboard & Western Airlines, Inc. v. Pan American World Airways, Inc., Docket 9772; Complaint of Pan American World Airways, Inc. v. Seaboard & Western Airlines, Inc., Docket 9920.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, that a hearing in the above-entitled proceedings is assigned to be held on January 26, 1960, at 10:00 a.m., e.s.t., in Room 513, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Ferdinand D. Moran.

Dated at Washington, D.C., January 11, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-360; Filed, Jan. 13, 1960; 8:51 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-20047]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Notice of Application and Date of Hearing

JANUARY 7, 1960.

Take notice that on November 2, 1959, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. G-20047 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of meter stations, lateral pipelines and taps on Applicant's existing transmission system to enable it to take into its certificated main pipeline system natural gas which will be purchased from producers thereof from time to time during the calendar year 1960, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The total cost of all projects for which authorization is sought in this "budget-type" application is not to exceed \$2,000,000 with the total cost of any single project limited to \$500,000.

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

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 February 9, 1960, 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 January 29, 1960. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-326; Filed, Jan. 13, 1960;
8:45 a.m.]

[Docket No. E-6922]

PORTLAND GENERAL ELECTRIC CO.
Order To Show Cause

JANUARY 7, 1960.

The 1958 Annual Report (FPC Form No. 1) of Portland General Electric Company (Company), an Oregon corporation with its principal place of business at Portland, Oregon, indicates that Company is currently accounting and reporting certain credits arising from accounting procedures for deferred taxes on income in a manner contrary to the requirements of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

Company is both a public utility and licensee within the meaning of those terms under the Federal Power Act.

Commencing January 1, 1958, all public utilities and licensees were required by this Commission's Order No. 204 (19 FPC 837) to classify all accruals of deferred federal and state¹ income taxes in Account 266—Accumulated Deferred Taxes on Income and in Account 507A—Provision for Deferred Taxes on Income. Company's Annual Report to the Commission for 1958 shows a balance of \$2,783,518.07 in Account 266 classified as follows: Federal income tax \$2,595,780.66,

¹Note A to Account 266 as set forth in Order No. 204 states: "The text of sub-accounts below are designed primarily to cover deferrals of federal income taxes pursuant to provisions of the Internal Revenue Code of 1954 but the subaccounts are also applicable to deferrals of state taxes on income."

state income tax \$187,737.41. Instead of using Account 507A as prescribed for the annual accruals, Company improperly used and unauthorized account—Account 539. Company's 1958 report also contains a credit of \$978,250 for deferred taxes in Account 258, Other Reserves, identified as "Possible Additional Income Taxes and Other Contingencies". This amount was accumulated initially during 1954 through 1957 in Accrued Taxes by tax differentials related to liberalized depreciation charged to tax expense in that period. This amount should be classified in Account 266.2, Accumulated Deferred Taxes on Income—Liberalized Depreciation.

Company's 1958 Annual Report to stockholders shows that Company is currently reporting, the accumulated accruals of deferred taxes on income (which the Commission has required to be set forth in Account 266), in the surplus section of the balance sheet in an unauthorized account described as "Earned Surplus Restricted for Deferred Income Taxes".² Company's Annual Report to stockholders is required to be appended as a part of Company's FPC Form No. 1, Annual Report to the Commission.³

Correspondence between Company representatives and this Commission's staff has failed to show any justification for Company's departure from the requirements of this Commission's Uniform System of Accounts. Moreover, Company's representatives have indicated that Company proposes to continue the afore-mentioned accounting practices.

In view of the foregoing, it is necessary and appropriate for the purposes of the Federal Power Act (particularly sections 301(a), 304 and 309 thereof), that Company show cause, if there be any, for its past and continuing departure from the requirements of this Commission's Uniform System of Accounts; all in the manner hereinafter provided.

The Commission orders: Company shall show cause, if there be any, under oath and in writing within sixty days from the issuance of this order, why the Commission should not find and determine:

(1) That Company is reporting certain credits arising from accounting procedures for deferred taxes on federal and state income taxes, otherwise than through the Commission's prescribed accounts, all as indicated above, and therefore that it has and continues to violate the accounting and reporting requirements prescribed by the Commission through its Uniform System of Accounts;

(2) That this action by Company constitutes a willful and knowing violation of the Federal Power Act;

(3) That the Company be required to make, keep, preserve and report its ac-

²Not prescribed as part of this Commission's Uniform System of Accounts for Public Utilities and Licensees. Order No. 204 (19 FPC 837) finds that surplus, even though restricted, is not an appropriate account for the classification of deferred taxes on income.

³Registration Statements heretofore filed by Company under the Securities Act of 1933 reflect this same practice.

counts in the manner prescribed by this Commission in the Uniform System of Accounts for Public Utilities and Licensees;

(4) That the Company be ordered to file such substitute pages of its Annual Report for 1958 (FPC Form No. 1) to make the reporting of accumulated deferred taxes on income therein consistent, and in compliance with the requirements for such reports as prescribed by the Commission.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-327; Filed, Jan. 13, 1960;
8:45 a.m.]

[Docket No. G-18442]

SENECA GAS COMPANY OF WEST VIRGINIA, INC.

Notice of Continuance of Hearing

JANUARY 7, 1960.

Take notice that, pursuant to the authority 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, the hearing now set to be held on January 11, 1960, at 10:00 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 the application of Seneca Gas Company of West Virginia, Inc. in the above-entitled proceeding, is hereby continued subject to further notice by the Secretary.

Notice of application and date of hearing was published in the FEDERAL REGISTER on December 8, 1959 (24 F.R. 9918).

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-328; Filed, Jan. 13, 1960;
8:45 a.m.]

[Docket No. G-19865]

ALBANY OIL AND GAS CO., INC.

Notice of Application

JANUARY 7, 1960.

The Albany Oil and Gas Company, Inc. (Applicant) filed on August 31, 1959, an application as supplemented on October 26, 1959, pursuant to section 7(a) of the Natural Gas Act for an order directing The Ohio Fuel Gas Company (a subsidiary of the Columbia Gas System) to establish physical connection of its gas transmission system with facilities to be installed by the Applicant and to sell volumes of natural gas to it on a firm basis, for distribution in the unincorporated community of New Marshfield, Athens County, Ohio, all as more fully described in the application and supplement on file with the Commission and open to public inspection.

Applicant presently provides retail service in the nearby community of Albany, Athens County, Ohio with gas pur-

[Docket No. G-13679 etc.]

CARTER OIL CO. ET AL.

Notice of Applications and Petitions, Consolidation, and Date of Hearing

JANUARY 7, 1960.

In the matters of The Carter Oil Company, Docket No. G-13679; Pan American Petroleum Corporation, Docket No. G-15387; Pacific Northwest Pipeline Corporation, Docket No. G-16188; Belco Petroleum Corporation, Docket No. G-17640.

Take notice that applications for certificates of public convenience and necessity and petitions to amend certificates of public convenience and necessity heretofore issued have been filed in the above-captioned proceedings, pursuant to sections 7(c) and 16 of the Natural Gas Act, (Act), authorizing the applicants therein to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the applications and petitions which are on file with the Commission and open for public inspection.

Pacific Northwest Pipeline Corporation (Pacific), a Delaware corporation with principal place of business at P.O. Box 1526, Salt Lake City 10, Utah, filed its application for a certificate in Docket No. G-16188 on September 3, 1958. Pacific seeks a certificate authorizing it to construct and operate approximately 4.56 miles of 6 $\frac{1}{2}$ -inch lateral supply pipeline, together with necessary related facilities, extending northeasterly from a point of connection with Pacific's existing 16-inch Big Piney lateral supply line in Lincoln County, Wyoming, to a point of connection with convergent field lines from two wells in the East LaBarge Field, Lincoln and Sublette Counties, Wyoming. The estimated total cost of these facilities is \$137,351 which will be financed by Pacific out of funds then currently available. The facilities will be used for the purpose of enabling Pacific to transport natural gas from the East LaBarge Field which it proposes to purchase from Pan American Petroleum Corporation (Pan American), Belco Petroleum Corporation (Belco) and The Carter Oil Company (Carter) as hereinafter described. This gas will be used by Pacific to supplement its total gas supply.

Pan American, a Delaware corporation with principal place of business at 511 South Boston Avenue, Tulsa 3, Oklahoma, filed its application for a certificate of public convenience and necessity in Docket No. G-15387 on June 30, 1958, pursuant to section 7(c) of the Act, seeking authorization to sell natural gas in interstate commerce to Pacific for resale. This sale is covered by a separate gas sales contract between Pan American and Pacific, dated May 1, 1958, which provides, inter alia, for a base initial price of 15 cents per Mcf at 15.025 psia plus an additional price, adjustable upwards annually as conditions warrant, of not less than 1 cent per Mcf for all gas delivered thereunder, with or without compression, at a pressure equal to or greater than 860 psig.

Belco, incorporated under the laws of Delaware on July 28, 1959 and having principal place of business at Belco Petroleum Building, 630 Third Avenue, New York 17, New York, filed a motion in Docket No. G-17640 on September 30, 1959 whereby it seeks to have itself substituted as the party applicant in that docket for Belfer Natural Gas Company (Belfer), a partnership. Belfer entered into an agreement with Belco, dated June 22, 1959, whereby Belfer agreed to transfer, assign and convey to Belco, effective as of October 2, 1959, all of its interest in the properties covered by the gas sales contract here involved, as amended, and as covered by the instant application. Belfer's application in Docket No. G-17640 for a certificate of public convenience and necessity was filed on January 23, 1959, pursuant to section 7(c) of the Act, seeking authorization to sell natural gas in interstate commerce to Pacific for resale. Belfer's application in Docket No. G-17640 covers an amendatory agreement, dated November 14, 1957 and tentatively designated as Supplement No. 5 to Belco's FPC Gas Rate Schedule No. 3, which dedicates additional acreage to Belfer's basic gas sales contract with Pacific, dated August 26, 1955, which sale was authorized by permanent certificate granted Belfer in Docket No. G-10208 by order issued on October 23, 1956. In the Matters of Belco Petroleum Corporation and David C. Bintliff, et al., Docket No. G-10207, et al. The basic contract, as amended, provides, inter alia, for a base initial price of 14 cents per Mcf at 15.025 psia, plus an additional 1 cent per Mcf during the first ten years after commencement of deliveries for all gas delivered at a pressure equal to or greater than 500 psig, plus an additional price, adjustable upwards annually as conditions warrant, of not less than 1 cent per Mcf for all gas delivered thereunder at a pressure equal to or greater than 860 psig. A change in rate under the basic contract from 15 cents per Mcf to 16 cents per Mcf was suspended by order issued in Docket No. G-14319 on January 31, 1958, and subsequently made effective subject to refund by order issued in said docket on December 15, 1958.

Carter, a West Virginia corporation with principal place of business at the National Bank of Tulsa Building, Tulsa, Oklahoma, filed a petition to amend the certificate of public convenience and necessity heretofore granted it in Docket No. G-13679 by order issued on March 25, 1958, in the Matters of Glenn L. Haught, et al., Docket No. G-11133, et al. This certificate authorized the sale of gas from the East LaBarge Field, Lincoln and Sublette Counties, Wyoming, to Pacific under a gas sales contract, dated August 23, 1957, and designated as Carter's FPC Gas Rate Schedule No. 54, which provides, inter alia, for a base initial price of 15 cents per Mcf at 15.025 psia at such delivery pressure as Pacific designates not to exceed 500 psig during the first 10-years after commencement of deliveries. In its petition, Carter states that no delivery of gas has been made

chased from Ohio Fuel. The proposed facilities to serve New Marshfield would be separate and distinct from Applicant's Albany system. Applicant states that it will take about two months to complete the construction of the proposed facilities.

There are no existing gas distribution facilities in the town of New Marshfield. Fuels now in use in the area consist of fuel oil, bottled gas and coal, which are stated to be more expensive and less convenient than natural gas both for the domestic and the commercial consumers.

Applicant proposes to construct and operate the necessary transmission facilities to make connection with Ohio Fuel's transmission line E at a point near the community of New Marshfield, and also to construct and operate the distribution facilities in the town itself.

Total cost of the proposed facilities is estimated at \$15,625. Applicant expects 25 percent of the cost of the project will be financed by the registered customers (each contributing \$40) and 75 percent of the cost will be financed by Applicant from cash on hand. Applicant's balance sheet for the year ending May 31, 1959, shows cash in bank in the amount of \$12,924.66.

Requirements. It is estimated that approximately 100 consumers of New Marshfield will purchase natural gas when the operation commences. Applicant states that 75 such potential customers have already signed subscriptions for natural gas service. Applicant's peak day and annual requirements in Mcf @ 14.73 psia are estimated as follows:

	Requirements	
	Peak day	Annual
1960	125	13,688
1961	135	14,783
1962	145	15,878
1963	155	16,973
1964	165	18,068

Tariff. Applicant proposes to serve New Marshfield at the same rates as those charged in Albany, which was authorized by the rate ordinance No. 88, passed by the Council of the Village of Albany on November 3, 1958. The filing of the proposed rate schedule has been authorized by the Public Utilities Commission of Ohio.

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 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 9, 1960.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-344; Filed, Jan. 13, 1960; 8:47 a.m.]

² Assuming the annual requirements to be 30 percent load factor.

NOTICES

under this certificate or rate schedule. The petition covers an amendment to the basic contract, dated August 23, 1957 and tentatively designated as Supplement No. 1 to said Rate Schedule No. 54. This amendment provides for the payment by Pacific of an additional 1 cent per Mcf, adjustable upward annually as conditions warrant, for all gas delivered under the basic contract at a pressure equal to or greater than 860 psig.

These related matters should be heard on a consolidated record and disposed of 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 February 9, 1960 at 10:00 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 said applications and petition.

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 January 29, 1960.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-345; Filed, Jan. 13, 1960; 8:48 a.m.]

[Docket No. G-18868]

CITIES SERVICE GAS CO.

Notice of Application and Date of Hearing

JANUARY 7, 1960.

Cities Service Gas Company, a Delaware Corporation with its principal place of business in Oklahoma City, Oklahoma, filed an application in Docket No. G-18868 on June 29, 1959, pursuant to section 7 of the Natural Gas Act, for a certificate of public convenience and necessity to construct and operate the following described facilities, on its Ottawa-Sedalia line in the states of Kansas and Missouri, subject to the jurisdiction of the Commission, and as more fully described in the application on file with the Commission and open to public inspection.

The proposed facilities are required to enable Applicant to meet the increased demands of its existing customers on the Ottawa-Sedalia-Carrollton section of its system during the 1959-1960 heating season and thereafter.

Applicant proposes to construct and operate the following facilities:

(1) Approximately 10.21 miles of 20-inch transmission pipeline looping its existing 12-inch Ottawa-Sedalia line between Ottawa Compressor Station and the Pleasant Hill take-off, in Franklin County, Kansas.

(2) A 340 horsepower addition to its existing Knobnoster Compressor Station, in Johnson County, Missouri.

(3) Approximately 4.5 miles of 16-inch transmission pipeline extending from a connection with the existing 12-inch Ottawa-Sedalia line east of the Warrensburg take-off to the Knobnoster Compressor Station, in Johnson County, Missouri.

Applicant states that these proposed facilities, together with the existing Ottawa-Sedalia facilities will enable Cities Service to meet the natural gas requirements of the area served by them, which are estimated as follows:

Requirements in Mcf @ 14.73 psia

	Actual, 1958-59		Estimated							
	Peak day	Annual	1959-60		1960-61		1961-62		1962-63	
			Peak day	Annual	Peak day	Annual	Peak day	Annual	Peak day	Annual
Firm.....	57,724	6,059,443	61,433	6,302,152	63,721	6,534,067	66,294	6,794,967	69,164	7,090,064
Interruptible.....	21,598	6,797,770	23,398	8,598,105	18,045	7,118,672	17,146	5,648,116	19,453	5,688,861
Total.....	79,322	12,857,213	84,831	14,900,257	81,766	13,652,739	83,440	12,443,083	88,617	12,778,925

Applicant states that to meet the 1961-1962 requirements of the Ottawa-Sedalia-Carrollton area with existing facilities, it would be required to operate the Knobnoster Compressor Station at a 115 percent overload. To avoid this, it proposes to construct and operate the subject facilities, which will enable it to meet the estimated requirements of these customers through the 1961-1962 heating season. Cities Service states that the proposed facilities will more than meet the requirements of its customers for the 1959-1960 winter, however, it believes it will be more economical to install these facilities at one time rather than in a piecemeal fashion.

Applicant estimates the total capital cost of its proposed facilities at \$817,000, which will be paid out of treasury cash.

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 February 16, 1960, 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 5, 1960. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-346; Filed, Jan. 13, 1960; 8:48 a.m.]

[Docket Nos. G-19575, G-19588]

TEXAS EASTERN TRANSMISSION CORP. AND ALGONQUIN GAS TRANSMISSION CO.

Notice of Application and Date of Hearing

JANUARY 7, 1960.

In the matters of Texas Eastern Transmission Corporation, Docket No.

G-19575; Algonquin Gas Transmission Company, Docket No. G-19588.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern), a Delaware corporation with its principal office in Shreveport, Louisiana, filed an application in Docket No. G-19575 on September 31, 1959, as supplemented on November 10, 1959, pursuant to section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the sale of natural gas in interstate commerce to Algonquin Gas Transmission Company (Algonquin), subject to the jurisdiction of the Commission, all as more fully described in the application on file with the Commission, and open to public inspection.

Take further notice that Algonquin, a Delaware corporation with its principal place of business in Boston, Massachusetts, filed an application in Docket No. G-19588 on October 1, 1959, as supplemented on October 16, and November 13, 1959, pursuant to section 7 of the Natural Gas Act, for: (1) a certificate of public convenience and necessity authorizing the transportation and sale of natural gas in interstate commerce to Consolidated Edison Company of New York, Inc. (Consolidated), for resale, subject to the jurisdiction of the Commission; and (2) permission and approval to abandon the emergency, interruptible, and transportation services which it now renders for Consolidated, as authorized in Docket Nos. G-2338, G-2476, and G-9009, subject to the jurisdic-

tion of the Commission, all as more fully described in the application on file with the Commission, and open to public inspection.

Texas Eastern proposes to sell and deliver additional volumes of gas to certain of its existing customers, as follows:

Customer	Volume in Mcf @ 14.73 psia			
	Rate schedule	Presently authorized	Proposed increase	Proposed total
Algonquin Gas Transmission Co.	GS-D	214,000	0	214,000
	DCQ-D	10,200	7,609	17,809
Grayville, Ill. Huntingdon Gas Co.	SGS-B	224,200	7,609	231,809
	GS-D	765	204	969
Tennessee Gas Co.	GS-D	3,825	255	4,080
	SGS-B	2,917	408	3,325
Total		231,707	8,476	240,183

Deliveries will be made by Texas Eastern to these customers at existing delivery points. Increased annual obligations to such customers are estimated at 3,069,670 Mcf.

Texas Eastern states that the proposed service can be rendered from existing excess capacity available on its system as a result of the installation of facilities authorized in Docket Nos. G-12446, et al.¹

Market estimates of the customers to be served indicate that they need the additional gas principally for residential and commercial space heating commencing in the 1959-60 winter season and thereafter. This is in addition to the winter storage gas they expect to obtain from Texas Eastern's Docket No. G-18969. Texas Eastern would be obligated to sell approximately 3,069,670 Mcf per year of additional gas to these customers under the subject proposal.

With the additional 7,609 Mcf per day proposed to be supplied by Texas Eastern, Algonquin proposes to make the following additional sales and deliveries, on a firm basis, at existing interconnections with the named customers:

Customer	Mcf @ 14.73 psia			
	Presently authorized peak day	Proposed		Proposed total peak day
		Peak day	Annual	
The Connecticut Gas Co.	19,900	1,600	432,000	21,500
Consolidated Edison Co. of New York, Inc.	0	1,500	405,000	1,500
The Hartford Electric Light Co.	2,600	200	54,000	2,800
New Jersey Natural Gas Co.	5,100	300	81,000	5,400
City of Norwich, Conn.	2,457	193	52,110	2,650
Providence Gas Co.	24,684	916	247,320	25,600
Worcester Gas Light Co.	9,848	500	135,000	10,348
The Hartford Gas Co.	15,500	2,400	648,000	17,900
Total	80,089	7,609	2,054,430	87,698

¹ Docket Nos. G-12446, et al., involve Texas Eastern's Rayne Field reserves.

All of the above are existing firm customers of Algonquin with the exception of Consolidated. Algonquin was authorized to sell emergency and interruptible gas to Consolidated Edison in Docket Nos. G-2338 and G-2476, through interconnections established near Peekskill, Cortlandt and Yorktown in Westchester County, New York for service in those areas, which are considerably north of its main service areas. In Docket No. G-9009, Algonquin was further authorized to transport gas received from Tennessee Gas Transmission Company at Ramsey, New Jersey, for the account of Consolidated,² and to deliver equivalent volumes to Consolidated at the existing interconnections. Algonquin now proposes to sell Consolidated up to 1,500 Mcf per day of firm long-term gas, to be delivered through the existing interconnections authorized in Docket Nos. G-2338 and G-2476. The gas which Algonquin now receives from Tennessee for Consolidated's account, will be delivered by Tennessee under the proposed arrangement to Consolidated directly at White Plains, New York.³ The northern Westchester County area, now served by Consolidated with the transportation gas, will be served partly from its main system south of Westchester County and partly with the 1,500 Mcf per day of firm gas (and any interruptible gas available) to be sold to it by Algonquin at Peekskill, Cortlandt and Yorktown.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on February 18, 1960 at 9:30 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance

² This is part of the gas which Tennessee sells to Consolidated Edison on a long-term, firm basis from Tennessee's Hebron-Greenwich line.

³ At present, Consolidated purchases 25,000 Mcf per day from Tennessee, of which up to 10,000 Mcf is transported for it by Algonquin and the remainder is delivered to it by Tennessee at White Plains.

with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before February 8, 1960. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-348; Filed, Jan. 13, 1960; 8:48 a.m.]

[Docket No. E-6921]

SOUTH CAROLINA ELECTRIC AND GAS CO.

Order To Show Cause

JANUARY 8, 1960.

The 1958 Annual Report (FPC Form No. 1) of South Carolina Electric and Gas Company (Company), a South Carolina corporation with its principal place of business at Columbia, South Carolina, indicates that Company is currently accounting and reporting certain credits arising from accounting procedures for deferred taxes on income in a manner contrary to the requirements of the Commission's Uniform System of Accounts prescribed for Public Utilities and Licensees.

Company is both a public utility and licensee within the meaning of those terms under the Federal Power Act.

Company's Annual Report to the Commission for 1958 shows as of December 31, 1958, a credit of \$5,016,200,¹ in Account 266—Accumulated Deferred Taxes on Income, of annual accruals of deferred taxes pursuant to Section 124A of the Federal Internal Revenue Act of 1950. Company's annual charges to income for the federal income taxes thus deferred have been charged to Account 507A—Provision for Deferred Taxes on Income. These two accounts constitute the balance sheet and income accounts, respectively, prescribed by this Commission's Order No. 204 (19 FPC 837) as the appropriate accounting classification for federal income taxes deferred by reason of accelerated amortization and liberalized depreciation practices under Sections 168² and 167, respectively, of the Internal Revenue Code of 1954.

Notwithstanding these applicable accounting classifications, Company's 1958 Annual Report to stockholders shows that Company is currently reporting the

¹ Represents \$1,478,000 resulting from the use of liberalized depreciation and \$3,538,200 due to accelerated amortization. The latter amount includes \$2,583,000 in income tax reductions estimated to result from the use in consolidated returns of accelerated amortization deductions of Company's subsidiary, South Carolina Generating Company.

² Formerly section 124A of the Federal Internal Revenue Act of 1950.

HOUSING AND HOME FINANCE AGENCY

Public Housing Administration

DELEGATIONS OF FINAL AUTHORITY

Miscellaneous Amendments

Section II *Delegations of final authority*, is amended as follows:

(1) Paragraph E1 is amended by deleting "\$1,000" and inserting in lieu thereof "\$2,500".

(2) Paragraph E9 is amended to read as follows:

9. To exercise all the powers vested in the Commissioner under the United States Housing Act of 1937, as amended, with respect to federally owned rural farm housing project Georgia 12-1:

Assistant Commissioner for Management.

Approved: January 6, 1960.

[SEAL] LAURENCE DAVERN,
Acting Commissioner.

[F.R. Doc. 60-333; Filed, Jan. 13, 1960;
8:46 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

NEW MEXICO

Notice of Proposed Withdrawal and Reservation of Lands

JANUARY 6, 1960.

The Bureau of Land Management has filed an application, Serial Number NM 077260 for the withdrawal of the lands described below, from all forms of appropriation including the general mining but not the mineral leasing laws. The applicant desires the land for an administrative site for warehouse and storage yard purposes for the Farmington District Office, Farmington, New Mexico.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, P.O. Box 1251, Santa Fe, New Mexico.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

NEW MEXICO PRINCIPAL MERIDIAN

T. 29 N., R. 13 W.,
Sec. 7, W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$
NW $\frac{1}{4}$.

The area described above contains 10 acres.

EVERT L. BROWN,
Acting State Supervisor.

[F.R. Doc. 60-335; Filed, Jan. 13, 1960;
8:47 a.m.]

COLORADO

Notice of Termination of Proposed Withdrawal and Reservation of Lands

JANUARY 4, 1960.

Notice of an application, Serial No. Colorado 011495, for withdrawal and reservation of lands was published as Federal Register Document No. 58-1377 on page 1199 of the issue for February 26, 1958. The applicant agency has canceled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR Part 295, such lands will be at 10:00 a.m. on January 18, 1960, relieved of the segregative effort of the above-mentioned application.

The lands involved in this notice of termination are:

SIXTH PRINCIPAL MERIDIAN, COLORADO

T. 7 N., R. 94 W.,
Sec. 19, lot 5, N $\frac{1}{2}$ N $\frac{1}{2}$ lot 6, NE $\frac{1}{4}$ NW $\frac{1}{4}$ and
N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.

The above area aggregates approximately 109 acres.

J. ELLIOTT HALL,
Lands and Minerals Officer.

[F.R. Doc. 60-336; Filed, Jan. 13, 1960;
8:47 a.m.]

Office of the Secretary/

GENERAL PROVISIONS

Delegation of Authority

The following material is a portion of the Departmental Manual and the numbering system is that of the Manual.

CHAPTER 1—INTRODUCTION

200.1.1 *Scope.* An officer who re-delegates authority does not divest himself of the power to exercise the authority, nor does it relieve him of the responsibility for action taken pursuant to the delegation.

200.1.2 *Exercise of authority.* An officer or employee who receives a delegation of authority must exercise it in conformity with any requirements which the delegator would be called upon to observe. Such requirements may be found in provisions of this Manual, statutes, regulations issued by other agencies—for example, the Civil Service Commission and GSA—or Executive orders. Delegated authority must be exercised in accordance with relevant policies, standards, programs, organization and budgetary limitations, and administrative instructions prescribed by officials of the Office of the Secretary or bureau. While failure to comply with administrative instructions not issued as limitations on authority will not impair the legality of an action as far as the public is concerned, it may be grounds for appropriate disciplinary measures.

CHAPTER 2—LIMITATIONS

200.2.1 *General limitations.*

D. Nothing in Parts 211 to 299 of this Delegation Series authorizes the head of a bureau to exercise authority:

accumulated accruals of deferred taxes on income which the Commission has required to be set forth in Account 266, through another balance sheet account, "Surplus: Earned—Restricted for future Federal income taxes".³ Company's annual report to stockholders is required to be appended as a part of Company's FPC Form No. 1, Annual Report to the Commission.⁴

Correspondence between Company representatives and this Commission's staff has failed to show any justification for Company's departure from the requirements of this Commission's Uniform System of Accounts. Moreover, Company representatives have indicated that Company proposes to continue the above-mentioned accounting practices.

In view of the foregoing, it is necessary and appropriate for the purposes of the Federal Power Act (particularly sections 301(a), 304 and 309 thereof), that Company show cause, if there be any, for its past and continuing departure from the requirements of this Commission's Uniform System of Accounts; all in the manner hereinafter provided.

The Commission orders: Company shall show cause, if there be any, under oath and in writing within 60 days from the issuance of this order, why the Commission should not find and determine:

(1) That Company is reporting the financial data set forth in Account 266 (i.e., accumulated deferred taxes on income), otherwise than as prescribed by the Commission's Uniform System of Accounts, all as indicated above, and therefore that it has and continues to violate the accounting and reporting requirements prescribed by the Commission through its Uniform System of Accounts;

(2) That this action by Company constitutes a willful and knowing violation of the Federal Power Act;

(3) That the Company be required to make, keep, preserve and report its accounts in the manner prescribed by this Commission in the Uniform System of Accounts for Public Utilities and Licensees; and

(4) That the Company be ordered to file such substitute pages of its Annual Report for 1958 (FPC Form No. 1) to make the reporting of accumulated deferred taxes on income therein consistent, and in compliance with the requirements of such reports as prescribed by the Commission.

By the Commission.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-347; Filed, Jan. 13, 1960;
8:48 a.m.]

³ Not prescribed as part of this Commission's Uniform System of Accounts for Public Utilities and Licensees. Order No. 204 (19 FPC 837) finds that surplus, even though restricted, is not an appropriate account for the classification of deferred taxes on income.

⁴ Registration Statements heretofore filed by Company under the Securities Act of 1933 reflect this same practice.

(1) Respecting the legal work of the Department as set forth in 210 DM 2;
 (2) Granted in Part 205 other than in accordance with the provision of such delegations.

CHAPTER 3—REDELEGATION OF AUTHORITY

200.3.2 *General provisions on redelegation.* Any officer or employee to whom authority is delegated in this Series may, in writing, redelegate or authorize written redelegation of such authority, unless redelegation of authority is specifically prohibited or is limited.

FRED A. SEATON,
Secretary of the Interior.

JANUARY 7, 1960.

[F.R. Doc. 60-337; Filed, Jan. 13, 1960;
 8:47 a.m.]

**INTERSTATE COMMERCE
 COMMISSION**

[Notice 247]

**MOTOR CARRIER TRANSFER
 PROCEEDINGS**

JANUARY 11, 1960.

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

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

No. MC-FC 62793. By order of January 7, 1960, the Transfer Board approved the transfer to Duncan Transfer, Inc., Alexandria, Va., of Certificate in No. MC 93641 issued March 17, 1941, to William M. Duncan, doing business as Duncan's Transfer, Alexandria, Va., authorizing the transportation of: Household goods between Alexandria, Va., and points in Arlington County, Va., on the one hand, and, on the other, Washington, D.C., and points in Maryland within 50 miles of Alexandria. Paul F. Sullivan, Attorney at Law, 1821 Jefferson Place NW., Washington 6, D.C.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-343; Filed, Jan. 13, 1960;
 8:47 a.m.]

**FOURTH SECTION APPLICATIONS
 FOR RELIEF**

JANUARY 11, 1960.

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. 35940: *Substituted service—CGW for Acme Carriers, Inc.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 127), for interested carriers. Rates on property loaded in highway trailers and transported on railroad flat cars between Council Bluffs, Iowa, and Chicago, Ill., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 8 to The Eastern Central Motor Carriers Association, Inc., tariff MF-I.C.C. A-158.

FSA No. 35941: *Substituted service—CRI&P for Acme Carriers, Inc.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 128), for interested carriers. Rates on property loaded in highway trailers and transported on railroad flat cars between Council Bluffs, Iowa, and Chicago, Ill., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 8 to The Eastern Central Motor Carriers Association, Inc., tariff MF-I.C.C. A-158.

FSA No. 35942: *Substituted service—Erie for Motor Carriers.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 129), for interested carriers. Rates on property loaded in highway trailers and transported in substituted rail service on railroad flat cars by way of Chicago, Ill., and Hammond, Ind., on the one hand, and Jersey City, N.J., on the other, on traffic over motor-rail-motor routes between points in territories served by motor carriers described in the application.

Grounds for relief: Motor-truck competition under revised rail compensation.

FSA No. 35943: *Grain and grain products from Lushton and Bixby, Nebr.* Filed by The Chicago, Burlington & Quincy Railroad Company (No. 62), for and on behalf of itself. Rates on corn, oats, sorghum grains, also direct products thereof, and soybeans, as described in the application, in carloads from Lushton and Bixby, Nebr., to Council Bluffs, Iowa, Omaha and South Omaha, Nebr.

Grounds for relief: Cross country competition.

Tariff: Supplement 116 to Chicago, Burlington & Quincy Railroad Company's tariff I.C.C. 20259.

FSA No. 35944: *Commodities between points in Texas.* Filed by Texas-Louisiana Freight Bureau, Agent (No. 377), for interested rail carriers. Rates on brick, blocks, slabs or tile, and other commodities described in the application, in carloads or tank-car loads between points in Texas, over interstate routes through adjoining states.

Grounds for relief: Intrastate competition and maintenance of rates from or to points in other states not subject to the same competition.

Tariff: Supplement 97 to Texas-Louisiana Freight Bureau tariff I.C.C. 865.

FSA No. 35946: *Automobile bodies—Central Territory to North Atlantic Ports.* Filed by Traffic Executive Association-Eastern Railroad, Agent (CTR No. 2424), for interested rail carriers. Rates on automobile bodies, freight or passenger, automobile body parts, and automobile chassis parts, in carloads from points in Central Freight Association territory to North Atlantic Ports.

Grounds for relief: Grouping.

AGGREGATE OF INTERMEDIATES

FSA No. 35945: *Commodities between points in Texas.* Filed by Texas-Louisiana Freight Bureau, Agent (No. 378), for interested rail carriers. Rates on carrots, onions, and potatoes, and other commodities described in the application, in carloads from, to, and between points in Texas, over interstate routes through adjoining states.

Grounds for relief: Maintenance of depressed rates established to meet intrastate competition without use of such rates as factors in constructing combination rates.

Tariff: Supplement 97 to Texas-Louisiana Freight Bureau tariff I.C.C. 865.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-342; Filed, Jan. 13, 1960;
 8:47 a.m.]

**SECURITIES AND EXCHANGE
 COMMISSION**

[File No. 70-3844]

**CENTRAL AND SOUTH WEST CORP.
 ET AL.**

**Proposed Increase, Issuance and Sale
 of Common Stock by Subsidiaries,
 and Acquisition Thereof by Parent
 for Cash**

JANUARY 7, 1960.

In the matter of Central and South West Corporation, Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company; File No. 70-3844.

Central and South West Corporation ("Central"), a registered holding company, and three of its public-utility subsidiaries, Public Service Company of Oklahoma ("Public Service"), Southwestern Electric Power Company ("Southwestern"), and West Texas Utilities Company ("West Texas"), have filed a joint application-declaration with the Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6, 7, 9, 10, and 12(f) of the Act as applicable to the following proposed transactions:

Public Service, Southwestern, and West Texas propose to issue and sell to Central for cash at the par value thereof, and Central proposes to acquire from said subsidiaries for said consideration,

NOTICES

additional shares of the common stock, par value \$10 per share, of said subsidiaries in the following amounts: Public Service—200,000 shares, Southwestern—200,000 shares, and West Texas—100,000 shares.

It is stated that the \$5,000,000 to be invested by Central in the common stock of said subsidiaries will provide them with additional funds to finance a part of the cost of their construction programs.

West Texas, by amendment to its Articles of Incorporation, proposes to increase its authorized common stock from 1,575,000 shares, all of which are presently outstanding, to 2,000,000 shares, such amendment to be adopted and made effective prior to the proposed issuance and sale of the 100,000 shares of common stock.

The expenses to be incurred by the companies in connection with the proposed transaction are estimated at \$6,500, which includes Federal original issue stamp taxes, \$5,000; miscellaneous expenses, \$1,400; and legal fees, \$100.

The legal services to be rendered by Messrs. Stevenson, Dendler, Bailey & McCabe, counsel to said companies, incident to the proposed transactions are covered by annual retainer agreements with such companies. The portion of such annual retainers estimated to be allocable to these transactions is estimated at \$1,500.

The filing states that the Corporation Commission of the State of Oklahoma has jurisdiction over the proposed issuance and sale of common stock by Public Service, that application for the requisite authorization will be made, and that a certified copy of the order and certificate of said State commission will be filed with this Commission. The filing further states that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than January 27, 1960, at 5:30 p.m., request in writing that a hearing be held on

such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, the joint application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

By the Commission.

[SEAL]

ORVAL L. DuBois,
Secretary.

[F.R. Doc. 60-338; Filed, Jan. 13, 1960;
8:47 a.m.]

CUMULATIVE CODIFICATION GUIDE—JANUARY

A numerical list of parts of the Code of Federal Regulations affected by documents published to date during January. Proposed rules, as opposed to final actions, are identified as such.

3 CFR	Page	7 CFR—Continued	Page	26 (1954) CFR—Continued	Page
<i>Proclamations:</i>		<i>Proposed rules—Continued</i>		301.....	78, 143
3330.....	139	960.....	183	504.....	145
<i>Executive Orders:</i>		970.....	59	<i>Proposed rules:</i>	
Oct. 30, 1916.....	78	973.....	311	1.....	178, 220
10857.....	33	1002.....	9	48.....	43, 44
		1009.....	9	280.....	111
5 CFR		9 CFR		32 CFR	
6.....	105, 217	<i>Proposed rules:</i>		206.....	211
325.....	217	131.....	151	208.....	211
6 CFR		12 CFR		517.....	42
6.....	233	222.....	281	33 CFR	
7.....	233	14 CFR		92.....	110
351.....	35, 76	40.....	167, 168	203.....	78
354.....	76	41.....	167, 169	42 CFR	
421.....	1	42.....	167, 170	21.....	43
427.....	3	507.....	76	33.....	43
474.....	35	600.....	105, 107, 108, 171-174	51.....	43
485.....	213	601.....	107-109, 172-174	53.....	43
7 CFR		602.....	174	55.....	43
722.....	214, 237	608.....	108, 109, 217	71.....	43
727.....	73	609.....	175	72.....	43
877.....	214	<i>Proposed rules:</i>		73.....	43
903.....	75	406.....	122	<i>Proposed rules:</i>	
905-908.....	75	507.....	204, 220, 250	73.....	61
911-913.....	75	514.....	204	43 CFR	
914.....	5, 34, 163, 238	600.....	63, 82, 84, 122, 220, 221, 250	<i>Proposed rules:</i>	
916-919.....	75	601.....	62,	160.....	81
921.....	75	602.....	63, 83, 84, 122, 220-222, 250, 251	161.....	81
923-925.....	75		85, 86, 123, 124, 222	<i>Public land orders:</i>	
928-932.....	75	16 CFR		2038.....	7
933.....	139, 141, 164, 165	13.....	6,	2039.....	78
935.....	75	35-37, 77, 166, 239, 240, 282-284		2040.....	111
937.....	238	17 CFR		2041.....	111
941-944.....	75	<i>Proposed rules:</i>		2042.....	244
946.....	75	230.....	151	46 CFR	
948-949.....	75	270.....	252	10.....	145
952.....	75	19 CFR		70.....	149
953.....	5, 166, 239	1.....	141	72.....	146
954.....	75	9.....	6	73.....	146
956.....	75	16.....	78, 243	110.....	146
963.....	75, 76	22.....	142	157.....	149
965-968.....	75	23.....	143	172.....	8
971-972.....	75	20 CFR		187.....	149
974-978.....	75	<i>Proposed rules:</i>		<i>Proposed rules:</i>	
980.....	75	401.....	18	201-380.....	60
982.....	75	21 CFR		47 CFR	
985-988.....	75	9.....	110, 143	2.....	7
991.....	75	120.....	241	11.....	7, 79
994-995.....	75	141a.....	242	16.....	79
998.....	75	141c.....	37	20.....	7
1000.....	75	146a.....	242	<i>Proposed rules:</i>	
1002.....	75	146c.....	37, 243	1.....	286
1004-1005.....	75	146e.....	243	3.....	17, 286
1008-1009.....	75	<i>Proposed rules:</i>		21.....	292
1011-1014.....	75	120.....	121, 317	49 CFR	
1016.....	75	121.....	61, 249	73.....	217
1017.....	5	23 CFR		95.....	80, 81
1018.....	75	20.....	218	145.....	178
1023.....	75	24 CFR		186.....	178
1109.....	105	300.....	284	<i>Proposed rules:</i>	
<i>Proposed rules:</i>		320.....	284	10.....	63
352.....	312	26 (1954) CFR		170.....	86
728.....	218, 219	1.....	39-41	50 CFR	
900-1027.....	245			6.....	284
913.....	149			34.....	285
927.....	293				
942.....	115				
946.....	44				
947.....	293				

