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TITLE 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 25—UNITED STATES STANDARDS FOR GRADES OF DRY BUTTERMILK

TITRATABLE ACIDITY

In the Federal Register Document 54-4971, appearing on pages 3955 and 3957 of the issue for Wednesday, June 30, 1954 (19 F. R. 3955, 3957), the following changes are made:

1. Paragraph (a) (9) of § 25.4 is corrected to read:

(a) *Titratable acidity.* Not less than 0.10 percent; not more than 0.18 percent.

2. Paragraph (a) (9) of § 25.5 is corrected to read:

(a) *Titratable acidity.* Not less than 0.10 percent; not more than 0.20 percent.

Done at Washington, D. C., this 16th day of August, 1954.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator,
Agricultural Marketing Service.

[F. R. Doc. 54-8450; Filed, Aug. 18, 1954; 8:52 a. m.]

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

PART 959—IRISH POTATOES GROWN IN THE COUNTIES OF CROOK, DESCHUTES, JEFFERSON, KLAMATH, AND LAKE IN OREGON, AND MODOC AND SISKIYOU IN CALIFORNIA

LIMITATIONS OF SHIPMENTS

§ 959.311 *Limitation of shipments*—(a) *Findings.* Pursuant to Marketing Agreement No. 114 and Order No. 59, as amended (7 CFR Part 959) regulating the handling of Irish potatoes grown in the counties of Crook, Deschutes, Jefferson, Klamath, and Lake in the State of Oregon, and Modoc and Siskiyou in the State of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.), and upon the basis

of the recommendation and information submitted by the Oregon-California Potato Committee, established pursuant to said marketing agreement and amended order, and upon other available information, it is hereby found that the limitation of shipments, as herein-after provided, will tend to effectuate the declared policy of the act.

(2) It is hereby found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U. S. C. 1001 et seq.) in that (i) the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, (ii) more orderly marketing in the public interest, than would otherwise prevail, will be promoted by regulating the shipment of potatoes, in the manner set forth below, on and after the effective date of this section, (iii) compliance with this section will not require any preparation on the part of handlers which cannot be completed by the effective date, and (iv) information regarding the committee's recommendations has been made available to producers and handlers in the production area.

(b) *Order.* (1) During the period August 23, 1954 to June 30, 1955, both dates inclusive no handler shall ship any potatoes unless such potatoes meet the requirements of the U. S. No. 2 or better grade.

(2) During the period beginning August 23, 1954 and ending November 1, 1954, inclusive, no handler shall ship potatoes unless such potatoes meet the requirements of subparagraph (1) of this paragraph, and, in addition, are not more than slightly skinned, as such term is defined in the U. S. Standards for Potatoes, which means that not more than 10 percent of the potatoes in any lot have more than one-fourth of the skin missing or "feathered": *Provided*, That during such period, not to exceed 100 hundredweight of each variety of such potatoes may be handled every 7 days for any producer without regard to the aforesaid skinning requirement,

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CFR SUPPLEMENTS

(For use during 1954)

The following Supplements are now available:

Title 7: Parts 210-899 (\$2.25)

Title 19, Revised 1953 (\$5.00)

Title 32A, Revised Dec. 31, 1953 (\$1.50)

Title 46: Part 146 to end (\$6.50)

Previously announced: Title 3, 1953 Supp. (\$1.50); Titles 4-5 (\$0.60); Title 6 (\$2.00); Title 7: Parts 1-209, Revised 1953 (\$7.75); Part 900 to end (\$1.25); Title 8 (\$0.35); Title 9 (\$0.50); Titles 10-13 (\$0.50); Title 14: Parts 1-399 (\$1.25); Part 400 to end (\$0.50); Title 15 (\$1.25); Title 16 (\$1.00); Title 17 (\$0.50); Title 18 (\$0.45); Title 20 (\$0.70); Title 21 (\$1.50); Titles 22-23 (\$1.00); Title 24 (\$0.75); Title 25 (\$0.45); Title 26: Parts 1-79, Revised 1953 (\$7.75); Parts 80-169 (\$0.50); Parts 170-182 (\$0.75); Parts 183-299, Revised 1953 (\$5.50); Part 300 to end, and Title 27 (\$1.00); Titles 28-29 (\$1.25); Titles 30-31 (\$1.00); Title 32: Parts 1-699 (\$1.75); Part 700 to end (\$2.25); Title 33 (\$1.25); Titles 35-37 (\$0.70); Title 38 (\$2.00); Title 39 (\$2.00); Titles 40-42 (\$0.50); Title 43 (\$1.75); Titles 44-45 (\$0.75); Title 46: Parts 1-145 (\$0.35); Titles 47-48, Revised 1953 (\$7.75); Title 49: Parts 1-70 (\$0.60); Parts 71-90 (\$0.65); Parts 91-164 (\$0.45); Part 165 to end (\$0.60); Title 50 (\$0.55)

Order from
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If the handler thereof reports, prior to such handling, the name and address of the producer of such potatoes, and each shipment hereunder is handled as an identifiable entity.

(3) Pursuant to § 959.54 each handler may ship not in excess of five hundred-weight per week without regard to the limitations set forth in subparagraphs (1) and (2) of this paragraph and §§ 959.41 and 959.60.

(4) The limitations set forth in subparagraphs (1) and (2) of this paragraph shall not be applicable to shipments of potatoes for the following purposes: (i) Grading or storing in the production area, (ii) seed, (iii) export, (iv) canning, freezing, (v) dehydration, or manufacture or conversion into starch, flour and alcohol, (vi) charity, and (vii) livestock feed within the production area.

(5) The terms used in this section shall have the same meaning as when used in Marketing Agreement No. 114 and Order No. 59, as amended, and grades and sizes shall have the same meaning assigned those terms in the U. S. Standards for Potatoes (§§ 51.1540 to 51.1559 of this title), including the tolerances set forth therein.

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

Done at Washington, D. C., this 13th day of August 1954, to become effective August 23, 1954.

[SEAL]

S. R. SMITH,
Director, Fruit and Vegetable
Division, Agricultural Mar-
keting Service.

[P. R. Doc. 54-6426; Filed, Aug. 18, 1954; 8:48 a. m.]

TITLE 15—COMMERCE AND FOREIGN TRADE

Chapter VII—Committee for Reciprocity Information

REVISION OF RULES OF PROCEDURE

The Rules of Procedure of the Committee for Reciprocity Information are revised as of August 16, 1954, and appear as set forth below.

PART 701—GENERAL

- Sec.
- 701.1 Publication of notices.
 - 701.2 Matters of official record available to the public.
 - 701.3 Matters of official record not available to the public.
 - 701.4 Action taken upon information received.
 - 701.5 Suggestions for presentations.

AUTHORITY: §§ 701.1 to 701.5 issued under sec. 4, 48 Stat. 945, as amended; Pub. Law 464, 83d Cong., 19 U. S. C. 1354, E. O.'s 10082, 10170, 14 P. R. 6105, 15 P. R. 6901; 3 CFR, 1949 Supp., 1950 Supp.

§ 701.1 *Publication of notices.* Concurrently with the publication pursuant to section 4 of the act approved June 12, 1934, as amended (48 Stat. 945, 19 U. S. C. (1946) 1354; Pub. Law 464, 83d Cong.), of formal notice of intention to negotiate a trade agreement, the Committee for Reciprocity Information shall publish notice of the time during which views in writing may be presented, together with the period within which application may be made to present oral views and the date of the public hearings. Such notice shall be published in the FEDERAL REGISTER, and it shall also be issued to the press and published in the Department of State Bulletin, the Treasury Decisions, and the Foreign Commerce Weekly.

§ 701.2 *Matters of official record available to the public.* The following information may be inspected by persons concerned during regular office hours, on request to the Executive Secretary, at the office of the Committee for Reciprocity Information, Tariff Commission Building, Washington 25, D. C.:

(a) Written views filed with the Committee concerning proposed trade-agreement negotiations or the operation of a trade agreement already in effect, except information and business data submitted for official use only of Committee.

(b) Transcripts of testimony taken and exhibits submitted at public hearings and informal conferences.

(c) Notices concerning public hearings and the filing of written views.

§ 701.3 *Matters of official record not available to the public.* The following information is not available for public inspection:

(a) Information and business data submitted for official use only of Committee. (Title 18, U. S. C., sec. 1905 (62 Stat. 791) imposes criminal penalties upon an officer or employee of the United States or of any department or agency thereof who discloses "in any manner or to any extent not authorized by law any information coming to him in the course

of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association * * *")

(b) Information and business data submitted to the Committee for its official use only shall be submitted on separate pages clearly marked "For official use only of Committee for Reciprocity Information". The Committee may refuse to accept any particular information or data so marked which it determines is not entitled to exemption from inspection under § 701.2.

§ 701.4 *Action taken upon information received.* Information of any kind received by the Committee will be made available to all governmental agencies represented on the Committee for Reciprocity Information.

§ 701.5 *Suggestions for presentation.* Suggestions regarding the preparation and presentation of written views and oral testimony will be supplied to interested persons upon request to the Executive Secretary of the Committee.

PART 702—WRITTEN PRESENTATION OF VIEWS

- Sec.
- 702.1 Place and time of submission.
 - 702.2 Number of copies.
 - 702.3 Form of submission.

AUTHORITY: §§ 702.1 to 702.3 issued under sec. 4, 48 Stat. 945, as amended; Pub. Law 464, 83d Cong., 19 U. S. C. 1354, E. O.'s 10082, 10170, 14 P. R. 6105, 15 P. R. 6901; 3 CFR, 1949 Supp., 1950 Supp.

§ 702.1 *Place and time of submission.* Views in writing shall be addressed to the Committee for Reciprocity Information, Tariff Commission Building, Washington 25, D. C. Such views can be assured of full consideration only if received by the Committee before the close of the period announced for their submission to the Committee.

§ 702.2 *Number of copies.* Written views must be submitted in not less than fifteen copies.

§ 702.3 *Form of submission.* No special form is required in the presentation of written views to the Committee. Written views shall be legibly typed, printed, or duplicated and at least one copy shall be under oath or affirmation.

PART 703—ORAL PRESENTATION OF VIEWS AT PUBLIC HEARINGS

- Sec.
- 703.1 Request for permission to present oral testimony.
 - 703.2 Notice of permission to present oral testimony.
 - 703.3 Oath.

AUTHORITY: §§ 703.1 to 703.3 issued under sec. 4, 48 Stat. 945, as amended; Pub. Law 464, 83d Cong., 19 U. S. C. 1354, E. O.'s 10082, 10170, 14 P. R. 6105, 15 P. R. 6901; 3 CFR, 1949 Supp., 1950 Supp.

§ 703.1 *Request for permission to present oral testimony.* Requests to present oral views to the Committee at public hearings shall be made prior to the expiration of the time announced for submitting such requests and will be granted only if written views have been submitted by or on behalf of the person making the request. Oral presentations should supplement information contained in written views.

§ 703.2 *Notice of permission to present oral testimony.* After receipt and consideration of requests to present oral testimony, the Committee will notify the applicant whether or not the request is granted, and, if so, the time and place of the hearing.

§ 703.3 *Oath.* All oral statements made to the Committee at public hearings shall be under oath or affirmation.

PART 704—PRESENTATION OF VIEWS WITHOUT STATUTORY NOTICE

Sec.

704.1 Request for an informal conference.
704.2 Purposes of an informal conference.
704.3 Written views in other situations.

AUTHORITY: §§ 704.1 to 704.3 issued under sec. 4, 48 Stat. 945, as amended; Pub. Law 464, 83d Cong.; 19 U. S. C. 1354, E. O.'s 10082, 10170, 14 P. R. 6105, 15 F. R. 6901; 3 CFR, 1949 Supp., 1950 Supp.

§ 704.1 *Request for an informal conference.* Persons desiring to make oral presentations to the Committee other than at public hearings may request an informal conference with the Committee. A request for an informal conference should be accompanied by a statement of the reasons for the request. Fifteen copies of such statement should be submitted to the Committee.

§ 704.2 *Purposes of an informal conference.* An informal conference may be arranged for the purpose of enabling interested persons to present their views with respect to the operation and effect of a trade agreement which is in force or to any aspect thereof. Such a conference may also be arranged in order to enable interested persons to present information and views concerning some important development in reference to a proposed trade agreement that may have occurred after a public hearing. An informal conference will not be granted as a substitute for a public hearing.

§ 704.3 *Written views in other situations.* Written views with respect to the operation and effect of trade agreements which are in force or to any aspect thereof may be submitted to the Committee by interested persons at any time. To the extent considered appropriate by the Committee, the provisions of parts 701 to 703 of this chapter shall be applied to the receipt of written and oral views by the Committee in cases not covered by § 701.1 of this chapter; except that §§ 701.2 to 701.4, inclusive, of this chapter, shall apply in all cases.

By direction of the Committee for Reciprocity Information this 16th day of August 1954.

EDWARD YARDLEY,
Executive Secretary.

[P. R. Doc. 54-6452; Filed, Aug. 18, 1954;
8:54 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 6205]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

BUCHANAN HEARING AID CO.

Subpart—*Advertising falsely or misleadingly:* § 3.110 *Indorsements, approval and testimonials:* § 3.170 *Qualities or properties of product or service:* § 3.200 *Sample, offer or order conformance.* Subpart—*Claiming or using indorsements or testimonials falsely or misleadingly:* § 3.330 *Claiming or using indorsements or testimonials falsely or misleadingly.* Subpart—*Offering unfair, improper and deceptive inducements to purchase or deal:* § 3.2060 *Sample, offer or order conformance.* I. In connection with the offering for sale, sale, and distribution of a device designated as the "Dahlberg Tru-Sonic Canal Earphone", or any device of substantially similar character, whether sold under the same or any other name, disseminating, etc., any advertisements by means of the United States mails, or in commerce, or by any means to induce, etc., directly or indirectly, the purchase of said device in commerce, etc., which advertisements represent directly or by implication that said device: (a) Will fit the ear canal of all persons; (b) is hidden and out of sight when inserted in the ear canal; (c) will fit all hearing aids; and (d) has been accepted by the American Medical Association; and, II, in connection with the offering for sale, sale, and distribution of hearing aids or other merchandise in commerce, representing directly or by implication that hearing aids or other merchandise are offered for sale, when such offer is not a bona fide offer to sell the merchandise so offered; prohibited.

(Sec. 6, 38 Stat. 722; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719; 15 U. S. C. 45) [Cease and desist order; Anthony W. Hagedorn d. b. a. Buchanan Hearing Aid Company, Washington, D. C., Docket 6205, July 30, 1954]

This proceeding was heard by James A. Purcell, hearing examiner, upon the complaint of the Commission which charged respondent with misrepresentation in advertising, and upon a stipulation, which appears of record in the instant formal proceeding, for a consent order.

By the terms of said stipulation, the parties agreed that the complaint and said stipulation should constitute the entire record in the matter; that respondent admitted all of the jurisdictional allegations set forth in the complaint; that both parties waived the

making of findings of fact or conclusions of law by the hearing examiner or by the Commission; that respondent waived the right to file exceptions or to demand oral argument before the Commission, as well also all further and other procedure before the hearing examiner or the Commission to which, but for the execution of said stipulation, respondent was entitled under the Federal Trade Commission Act or rules of practice of the Commission.

Said stipulation further recited that it was executed for settlement purposes only, did not constitute an admission by respondent of violation of law as alleged in the complaint, and that said complaint might be used in construing the terms of the order herein, which order might be altered, modified, or set aside in the manner provided by law.

Thereafter said examiner, on the basis of the foregoing, concluded that the proceeding was in the public interest and made his initial decision and, in conformity with the action contemplated and agreed as above set forth, made his order to cease and desist in disposition of the proceeding.

No appeal having been filed from said initial decision of said hearing examiner, as provided for in Rule XXII of the Commission's rules of practice, nor any other action taken as thereby provided to prevent said initial decision becoming the decision of the Commission thirty days from service thereof upon the parties, said initial decision, including said order, accordingly, under the provisions of said Rule XXII became the decision of the Commission on July 30, 1954.

Said order is as follows:

It is ordered, That respondent, Anthony W. Hagedorn, an individual doing business as Buchanan Hearing Aid Company, or under any other name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the device designated as the "Dahlberg Tru-Sonic Canal Earphone," or any device of substantially similar character, whether sold under the same or an other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated by means of the United States Mails or by any other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication that said device:

(a) Will fit the ear canal of all persons;
(b) Is hidden and out of sight when inserted in the ear canal;
(c) Will fit all hearing aids;
(d) Has been accepted by the American Medical Association.

2. Disseminating or causing to be disseminated by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph (1) above.

It is further ordered. That respondent, Anthony W. Hagedorn, an individual doing business as Buchanan Hearing Aid Company, or under any other name, and respondent's agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of hearing aids or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication that hearing aids or other merchandise are offered for sale when such offer is not a bona fide offer to sell the merchandise so offered.

By "Decision of the Commission and Order to File Report of Compliance", Docket 6205, June 30, 1954, which announced and decreed fruition of said initial decision, report of compliance was required as follows:

It is ordered. That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Issued: June 30, 1954.

By the Commission.

[SEAL] ROBERT M. FARRISH,
Secretary.

[F. R. Doc. 54-6385; Filed, Aug. 18, 1954;
8:45 a. m.]

**TITLE 38—PENSIONS, BONUSES,
AND VETERANS' RELIEF**

Chapter I—Veterans' Administration

PART 3—VETERANS CLAIMS

PROVISIONAL REGULATIONS; TO RESTORE ELIGIBILITY OF CERTAIN CITIZENS OR SUBJECTS OF GERMANY OR JAPAN TO RECEIVE BENEFITS UNDER VETERANS' LAWS

A new § 3.1519 is added as follows:

§ 3.1519 *To restore eligibility of certain citizens or subjects of Germany or Japan to receive benefits under veterans' laws.* (a) Public Law 467, 83d Congress, approved July 1, 1954, provides:

That any person who, but for the last proviso of the Act entitled "An Act to provide for the payment of pension or other benefits withheld from persons for the period they were residing in countries occupied by enemy forces in World War II," approved August 7, 1946 (Public Law 622, Seventy-ninth Congress), would be entitled to compensation or pension benefits payable under laws administered by the Veterans' Administration shall be entitled to such benefits from the date of enactment of this Act, if claim therefor is filed within one year after such date, or from the date of claim, if claim therefor is filed more than one year after such date.

(b) The quoted law has the effect of repealing the last proviso of Public Law 622, 79th Congress, thereby restoring eligibility of certain citizens or subjects of Germany or Japan to receive benefits under veterans' laws provided payments are otherwise in order. Benefits are payable from July 1, 1954, if a claim is filed within one year after that year.

If claim is not filed within that period, any benefits payable will be authorized from date of claim. Benefits may not be paid pursuant to this law for any period prior to July 1, 1954. A claim pending on July 1, 1954 will be considered a claim under this act. (Instruction 2, Pub. Law 467, 83d Cong.)

(Sec. 5, 43 Stat. 608, as amended, sec. 2, 46 Stat. 1016, sec. 7, 48 Stat. 9; 38 U. S. C. 11a, 426, 707)

This regulation is effective August 19, 1954.

[SEAL] J. C. PALMER,
Acting Deputy Administrator.

[F. R. Doc. 54-6445; Filed, Aug. 18, 1954;
8:51 a. m.]

**TITLE 43—PUBLIC LANDS:
INTERIOR**

**Chapter I—Bureau of Land Management,
Department of the Interior**

Appendix C—Public Land Orders

[Public Land Order 991]

ALASKA

**PARTIAL REVOCATION OF PUBLIC LAND ORDER
NO. 910 OF AUGUST 7, 1953**

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Public Land Order No. 910 of August 7, 1953, reserving certain public lands in Alaska for the use of the Department of the Army for military purposes is hereby revoked so far as it affects the following-described lands:

Beginning at the corner of Public Land Order 910 at the intersection of the west bank of the Gerstle River and the south boundary line of the Alaska Highway Reserve. Thence north 61° 41.5' west along the south boundary line of the Alaska Highway Reserve 1320'; thence south 56° 30' west 19,049.5'; thence south 58° 36' east to the west bank of the Gerstle River; thence north-easterly along the west bank of the Gerstle River to the place of beginning.

The tract described contains approximately 1,000 acres.

At 10:00 a. m. on the 35th day after the date of this order the said lands shall, subject to valid existing rights and to the provisions of existing withdrawals, be opened to settlement under the homestead laws or the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended, or, if nonmineral in character, under the Alaska Home Site Act of May 26, 1934 (48 Stat. 809; 48 U. S. C. 461), and to those forms of appropriation only by qualified veterans of World War II and the Korean conflict for whose services recognition is granted by the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279-284), as amended, and by other qualified persons entitled to credit for service under the said act. Commencing at 10:00 a. m. on the 126th day after the date of this order, any of such lands not settled upon by veterans or other persons entitled to credit for service shall become subject to settlement and other forms of appropria-

tion by the public generally in accordance with appropriate laws and regulations.

All applications filed pursuant to the Veterans' Preference Act of 1944, as amended, on or before 10:00 a. m. of the 35th day after the date of this order shall be treated as though simultaneously filed at that time. All other applications under the public-land laws filed on or before 10:00 a. m. of the 126th day after the date of this order shall be treated as though simultaneously filed at that time.

Inquiries concerning these lands shall be addressed to the Manager, Land Office, Fairbanks, Alaska.

RALPH A. TUDOR,
Acting Secretary of the Interior.

AUGUST 13, 1954.

[F. R. Doc. 54-6419; Filed, Aug. 18, 1954;
8:46 a. m.]

[Public Land Order 992]

NEVADA

**MODIFYING EXECUTIVE ORDER NO. 8927 OF
OCTOBER 29, 1941 TO PERMIT MINERAL
LEASING OF PORTIONS OF THE RESERVED
LANDS**

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Executive Order No. 8927 of October 29, 1941, withdrawing certain public lands under the jurisdiction of the Secretary of the Interior for use in connection with the production of magnesium metals and magnesium alloys for national defense purposes, is hereby modified to the extent necessary to permit the issuance of mineral leases pursuant to the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C., sec. 181 et seq.), as amended and supplemented, for the following described lands:

MOUNT DIABLO MERIDIAN

- T. 21 S., R. 62 E.,
Sec. 25, N½NE¼, SE¼NE¼, NE¼NW¼,
SW¼SE¼, SE¼SW¼;
- Sec. 31, SW¼NE¼, NW¼NW¼, SE¼NW¼,
SE¼SE¼;
- Sec. 33, NE¼, SE¼NW¼;
- Sec. 33, NW¼;
- Sec. 34, NW¼SE¼, S½SE¼, W½;
- Sec. 35, N½NE¼, N½NW¼, W½SW¼SE¼,
NE¼SW¼, S½SW¼.
- T. 22 S., R. 62 E.,
Sec. 2, W½;
- Sec. 9, NW¼SE¼.
- T. 21 S., R. 63 E.,
Sec. 30, N½, S½S½.
- T. 22 S., R. 63 E.,
Sec. 19, W½, SE¼;
- Sec. 20, SW¼
- Sec. 21, E½;
- Sec. 27;
- Sec. 28, SW¼;
- Secs. 29, 33 and 34.

The areas described aggregate approximately 5,260 acres.

ORME LEWIS,
Assistant Secretary of the Interior.

AUGUST 13, 1954.

[F. R. Doc. 54-6420; Filed, Aug. 18, 1954;
8:46 a. m.]

TITLE 24—HOUSING AND HOUSING CREDIT

Chapter II—Federal Housing Administration, Housing and Home Finance Agency

Subchapter D—Multifamily and Group Housing Insurance

PART 232—MULTIFAMILY HOUSING INSURANCE; ELIGIBILITY REQUIREMENTS OF MORTGAGE COVERING MULTIFAMILY HOUSING

APPLICATION AND COMMITMENTS

Sec. 232.1 Information for preliminary examination.

232.2 Issuance of commitment.

ELIGIBLE MORTGAGES

232.3 Mortgage forms.

232.4 Eligibility for insurance.

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232.6 Payment requirements.

232.7 Interest rate.

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232.10 Covenant for fire insurance.

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232.12 Accumulation of next premium.

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232.14 Prepayment privilege and late charges.

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232.21 Qualification of lenders.

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ADJUSTMENT OF MORTGAGE AMOUNT

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232.27 Adjustment resulting from cost certification.

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OTHER ELIGIBLE MORTGAGES

232.30 Eligibility of miscellaneous type mortgages.

232.31 Eligibility of refinanced mortgages.

232.32 Reinsurance of Commissioner-held mortgages.

TITLE

232.33 Eligibility of title.

232.34 Title evidence.

EFFECTIVE DATE

232.35 Effective date.

AUTHORITY: §§ 232.1 to 232.35 issued under sec. 211, 52 Stat. 23; 12 U. S. C. 1715b.

§ 232.1 *Information for preliminary examination.* (a) Information required for the examination of a Rental Housing Project under section 207 shall be submitted in the form of an application for mortgage insurance by an approved

mortgagee and by the sponsors of such project through the local Federal Housing Administration office, on approved FHA Application Form (executed in triplicate). No application will be considered unless the exhibits called for by such form are furnished and a fee of \$1.50 per thousand of the face amount of the mortgage loan applied for (referred to as "application fee") is paid.

(b) (1) A further sum (referred to as commitment fee) which when added to the application fee will aggregate \$3.00 per thousand of the face amount of the mortgage loan set forth in the commitment shall be paid within 30 days subsequent to the date of the commitment.

(2) In the case of a mortgagor of the character described in § 232.17 (b), the application and commitment fees to be paid under this section shall be fixed by the Commissioner, but shall not exceed three dollars (\$3.00) per thousand of the original face amount of the mortgage.

(c) Upon application for an increase in the amount of an existing commitment, an additional application fee of \$1.50 per thousand dollars shall be paid based upon the amount of the increase requested. Any increase in the amount of a commitment shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate \$3.00 per thousand of the amount of the increase. If the amount of the insured mortgage is increased after insurance and prior to final endorsement either by amendment or by the substitution of a new insured mortgage the fees herein provided for shall be based upon the amount of such increase.

(d) If an application is rejected before it is assigned for processing by the Commissioner, the application fee will be returned to the applicant.

§ 232.2 *Issuance of commitment.* (a) Upon approval of an application a commitment will be issued setting forth the terms and conditions upon which the mortgage will be insured, including special requirements applicable to the project and requiring the submission in final form within a time specified of all appropriate documents, drawings, plans, specifications, and other instruments evidencing full compliance satisfactory to the Commissioner with the provisions of this part and with such terms and conditions.

(b) Such commitment may be on a form providing for advances of mortgage money during construction and the insurance of such advances as made, or it may be on a form providing for the insurance of the mortgage after completion of the improvements.

(c) No commitment shall be valid unless signed by the Commissioner or his agent authorized for that purpose, and shall, with respect to commitments to insure advances, be effective for a stated period, not in excess of 120 days, provided that the commitment fee shall have been paid as required. A commitment may be renewed in such manner as the Commissioner may from time to time specify.

(d) The mortgagee may collect from the mortgagor the amount of the appli-

cation and commitment fees provided for in this section and may charge the mortgagor an initial service charge to reimburse itself for the cost of closing the transaction, in an amount not to exceed 1½ percent of the original principal amount of the mortgage. Any additional charges shall be subject to prior approval of the Commissioner.

(e) An inspection fee computed at the rate of \$5.00 per thousand dollars of the face amount of the commitment shall be paid as provided for in the commitment.

ELIGIBLE MORTGAGES

§ 232.3 *Mortgage forms.* The mortgage must be executed upon a printed form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, by a mortgagor with the qualifications hereinafter provided in this part, must be a first lien upon property that conforms with the property standards prescribed by the Commissioner, and the mortgagee must be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgages, to, or for the account of, the mortgagor in an amount due in accordance with the provisions of this part and in conformity with the terms of the commitment. Any changes in the printed form desired by the mortgagor and mortgagee must receive prior written approval of the Commissioner. The mortgage must secure a principal obligation in multiples of \$100.

§ 232.4 *Eligibility for insurance.* (a) A mortgage executed by a mortgagor of the character described in § 232.17 (b) may involve a principal obligation not to exceed \$50,000,000 and not to exceed 80 percent of the estimated value of the property or project; and not to exceed, for such part of such property or project as may be attributable to dwelling use, \$2,000 per room (or \$7,200 per family unit if the number of rooms in such property or project does not equal or exceed four per family unit). *Provided, however,* That as to any projects to consist of elevator type structures, the Commissioner may, in his discretion, increase the dollar amount limitation of \$2,000 per room to not to exceed \$2,400 per room and the dollar amount limitation of \$7,200 per family unit to not to exceed \$7,500 per family unit, as the case may be, to compensate for the higher costs incident to the construction of elevator type structures of sound standards of construction and design.

(b) A mortgage, other than a mortgage executed by a mortgagor of the character described in § 232.17 (b) may involve a principal obligation not exceeding \$5,000,000 and not in excess of 80 percent of the estimated value of the property or project; and not in excess of the amount which the Commissioner estimates will be the cost of the completed improvements of the property or project exclusive of public utilities and streets, and organization and legal expenses; and not to exceed, for such part of such property or project as may be attributable to dwelling use, \$2,000 per room (or \$7,200 per family unit if the number of rooms in such property or

project does not equal or exceed four per family unit): *Provided, however*, That as to any projects to consist of elevator type structures, the Commissioner may, in his discretion, increase the dollar amount limitation of \$2,000 per room to not to exceed \$2,400 per room and the dollar amount limitation of \$7,200 per family unit to not to exceed \$7,500 per family unit, as the case may be, to compensate for the higher costs incident to the construction of elevator type structures of sound standards of construction and design.

(c) Notwithstanding any of the limitations contained in paragraphs (a) and (b) of this section, if the number of bedrooms in such property or project is equal to or exceeds an average of two per family unit, and the principal obligation of the mortgage does not exceed \$7,200 per family unit for such part of such property as may be attributable to dwelling use, the mortgage may involve a principal obligation not in excess of 90 percent of the estimated value of the property or project.

(d) Notwithstanding any of the limitations contained in paragraphs (a) and (b) of this section, a mortgage covering property located in the Territory of Alaska or in Guam may involve a principal obligation not in excess of \$50,000,000 or \$5,000,000 as the case may be, and not to exceed 90 percent of the amount which the Commissioner estimates to be the replacement cost of the property or project; and the Commissioner may, if he finds that because of higher costs prevailing in the Territory of Alaska, in Guam or in Hawaii, it is not feasible to construct dwellings on property located in Alaska, in Guam or in Hawaii, without sacrifice of sound standards of construction, design, and livability, within the limitations as to maximum mortgage amounts provided in this section, prescribe by regulation or otherwise, with respect to dollar amount, a higher maximum for the principal obligation of mortgages otherwise meeting the requirements of this paragraph covering property located in Alaska, in Guam or in Hawaii, in such amounts as he shall find necessary to compensate for such higher costs but not to exceed, in any event, the maximum otherwise applicable by more than one-half thereof.

(e) The maximum mortgage amount based upon the limitations in paragraphs (a), (b), (c), and (d) of this section is subject to reduction by an amount equal to the capitalized value of the ground rent in the event the mortgage is on a leasehold estate rather than on a fee simple holding.

(f) The aggregate amount of any commitment or commitments issued and outstanding at any time with respect to a project or projects in the same area or locality and involving the same mortgagor (or substantially the same mortgagor, as determined by the Commissioner) shall not exceed the dollar amount limitations of \$50,000,000 and \$5,000,000, respectively, prescribed in paragraphs (a) and (b) of this section.

§ 232.5 *Maturity.* The mortgage shall have a maturity satisfactory to the

Commissioner, depending upon the risk involved and the general character of the project, and shall contain complete amortization or sinking-fund provisions satisfactory to the Commissioner.

§ 232.6 *Payment requirements.* The mortgage shall provide for monthly payments on the first day of each month by the mortgagor to the mortgagee on account of interest and principal. Such monthly payments may be on a level annuity or declining annuity basis as agreed upon by the mortgagor, the mortgagee and the Commissioner. Where the insured mortgage does not exceed \$300,000 payments on account of principal shall begin not later than the first day of the twelfth month following execution of the mortgage. Where the mortgage does exceed \$300,000 such principal payments shall begin not later than the first day of the twenty-fourth month following execution of the mortgage. Within the foregoing limitations, the Commissioner will estimate the time necessary to complete the project and will establish the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than necessary to obtain occupancy. In cases where a commitment to insure upon completion has been issued, the respective dates for commencement of amortization will be figured on the same basis from the date the commitment is issued.

§ 232.7 *Interest rate.* The mortgage shall bear interest, not exceeding 4¼ percent per annum, on the amount of the principal obligation outstanding at any time, as may be agreed upon between the mortgagor and the mortgagee. All charges made in connection with the mortgage transaction shall be subject to the approval of the Commissioner.

§ 232.8 *Mortgage to cover the entire property.* The mortgage shall cover the entire property included in the housing project.

§ 232.9 *Covenant against liens.* The mortgage shall, except as otherwise provided in this part, contain a covenant against the creation by the mortgagor of liens against the property superior or inferior to the lien of the mortgage.

§ 232.10 *Covenant for fire insurance.* The mortgage shall contain a covenant acceptable to the Commissioner binding the mortgagor to keep the property insured by a standard policy or policies against fire and such other hazards as the Commissioner, upon the insurance of the mortgage, may stipulate, in an amount which will comply with the co-insurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage shall be in an amount estimated by the Commissioner at the time of completion of the entire project or units thereof. The policies evidencing such insurance shall have attached thereto a standard mortgagee clause making loss payable to the mort-

gagee and the Commissioner, as interests may appear.

§ 232.11 *Soundness of project.* No mortgage shall be accepted for insurance unless the Commissioner finds that the property or project with respect to which the mortgage is executed is economically sound, except that as to mortgages covering property located in Alaska or in Guam, or in Hawaii, no mortgagee shall be accepted for insurance unless the Commissioner finds that the property or project is an acceptable risk giving consideration to the acute housing shortage in Alaska, or in Guam, or in Hawaii.

§ 232.12 *Accumulation of accruals.* (a) The mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such ground rents, taxes, water rates and assessments, and insurance premiums, before the same become delinquent. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 232.13 *Application of payments.* (a) The mortgage shall provide that all monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

- (1) Premium charges under the contract of insurance;
- (2) Ground rents, taxes, special assessments and fire and other hazard insurance premiums;
- (3) Interest on the mortgage;
- (4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of any such aggregate monthly payment shall constitute an event of default. The mortgage shall further provide for a grace period of 30 days, within which time the default must be made good.

§ 232.14 *Prepayment privilege and late charge.* The mortgage must contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment

date after giving to the mortgagee 30 days' notice in writing in advance of its intention to so prepay. The mortgagee may, however, include in the mortgage a provision for such additional charge in the event of prepayment of principal as may be agreed upon between the mortgagor and mortgagee: *Provided, however,* That the mortgagor must be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one calendar year without any such additional charge and any reduction in the original principal amount of the mortgage resulting from the certification of costs requirements of this part shall not be construed as a prepayment of the mortgage. The mortgage may provide for the collection by the mortgagee of a "late charge," not to exceed 2 cents for each dollar of each payment to interest and/or principal more than 15 days in arrears, to cover the extra expense involved in handling delinquent payments. Late charges may not be deducted from any aggregate monthly payment if not collected.

§ 232.15 *Issuance of bonds.* In the event that bonds are to be issued as a part of the insured mortgage transaction, all arrangements with respect to the issuance and sale of such bonds shall be subject to approval by the Commissioner.

§ 232.16 *Mortgage covenant regarding racial restrictions and use of property.* (a) The mortgage shall contain a covenant by the mortgagor that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, he will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color, or creed. Such covenant shall be binding upon the mortgagor and his assigns and shall provide that upon violation thereof, the mortgagee may, at its option, declare the unpaid balance of the mortgage immediately due and payable.

(b) The mortgage shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended at the date the mortgage was executed.

ELIGIBLE MORTGAGORS

§ 232.17 *Classification.* In order to be eligible as a mortgagor under this part the applicant must be:

(a) *Private mortgagors.* A private corporation or association (referred to in this subchapter as "mortgagor," "corporation," or "mortgagor corporation"), formed or created, with the approval of the Commissioner for the purpose of providing housing for rent or sale, and possessing powers necessary therefor and incidental thereto, which corporation, or association, is regulated or restricted by the Commissioner as to rents or sales, charges, capital structure, rate of return, and methods of operation. Such regulation or restriction shall remain in effect until such time as the mortgage insurance contract terminates without obligation upon the Commis-

sioner to issue debentures as a result of such termination. So long as such contract of insurance is in effect, the corporation or association shall engage in no business other than the construction and operation of a Rental Housing project limited to nontransient occupancy; or

(b) *Public mortgagors.* A federal or state instrumentality, a municipal corporate instrumentality of one or more states, or a limited dividend or redevelopment or housing corporation formed under and restricted by federal or state laws or regulations of a state banking or insurance department as to rents, charges, capital structure, rate of return, or methods of operation.

SUPERVISION OF MORTGAGORS

§ 232.18 *In general.* (a) In the case of an eligible mortgagor which is regulated or restricted for the purposes and in the manner provided in § 232.17 (b), or in the case in which the mortgagor or mortgagee is the Alaska Housing Authority, or the Government of Guam or Hawaii or any agency or instrumentality thereof, liens inferior to the lien of the insured mortgage may be allowed against properties of such mortgagors; *Provided,* That the mortgagor in any such case, must have initial funds which may be considered in lieu of the equity required of other mortgagors, and such funds (which may be in the form of Government loans, grants, or subsidies or in other form) if sufficient in amount, will be considered satisfactory provided they do not create a lien against the property prior to that of the insured mortgage.

(b) In all other cases a mortgagor must certify at final endorsement of the loan for insurance that the property covered by the mortgage is free and clear of all liens other than such mortgage, and that there will not be outstanding any other unpaid obligation contracted in connection with the mortgage transaction, the purchase of the mortgaged property, or the construction of the project, except such obligations as may be approved by the Commissioner as to terms, form and amount.

(c) Supervision of mortgagors other than those described in § 232.17 (b) is required by the provision of section 207 of the act that such mortgagors shall be regulated or restricted by the Commissioner. Such regulation or restriction will be set forth in the certificate of incorporation or other instrument under which the mortgagor is created (hereinafter referred to as the "charter") and will be made effective through the issuance of certain shares of special stock (or other evidence of a beneficial interest in the mortgagor) which stock or interest will acquire majority voting rights in the event of default under the mortgage or violation of a provision of the charter, or until such time as the Commissioner is assured against future violations of a similar nature. Such special stock or interest issued to the Commissioner, his nominee or nominees and/or the Federal Housing Administration shall be in sufficient amount to constitute under the laws of the particular state a

valid special class of stock or interest and shall be issued in consideration of the payment by the Commissioner of not exceeding in the aggregate \$100. Such stock shall be represented by a certificate or certificates issued in the name of the Commissioner, and/or in the name of his nominee or nominees, and/or in the name of the Federal Housing Administration, as the Commissioner shall require. If, for any reason satisfactory to the Commissioner such regulation or restriction is not feasible as to a particular mortgagor through the issuance of shares of special stock or other evidence of beneficial interest, such regulation or restriction shall be effected in such form and in such manner as shall be satisfactory to the Commissioner. Upon the termination of all obligations of the Commissioner under his contract of mortgage insurance or any succeeding contract or agreement covering the mortgage obligation, all regulation and restriction of the mortgagor shall cease. When the right of the Commissioner to regulate or restrict the mortgagor shall so terminate, the shares of special stock or other evidence of beneficial interest shall be surrendered by the Commissioner upon reimbursement of his payments therefor plus accrued dividends, if any, thereon.

§ 232.19 *Required supervision of private mortgagors.* The following are the items which will be regulated or restricted, except in the case of mortgagors of the character described in § 232.17 (b):

(a) *Capital structure.* (1) The number of shares of capital stock, in the case of a corporation, or such appropriate evidences of interest in the case of an association may be issued in such amounts and form as may be agreed upon by the sponsors and the Commissioner prior to the endorsement of the mortgage for insurance. No stock or interest shall be redeemed, purchased, or paid off by the mortgagor during the period in which the mortgage insurance is in force, except with the approval of the Commissioner.

(2) The shares of stock or interest issued to the Commissioner shall be in sufficient amount to constitute, under the laws of the particular jurisdiction, a valid special class of stock or interest and shall be issued in consideration of the payment by the Commissioner of not exceeding \$100.

(b) *Rate of return.* Dividends upon the stock of the corporation or other distributions of income may be declared only as at and after the end of an annual or semi-annual fiscal period. No dividends or other distributions of income shall be declared or authorized except out of earned income legally available for that purpose. No dividends shall be paid nor shall other distribution be made except out of funds legally available and remaining after (1) the payment of all amounts due or required to be paid under the terms of the insured mortgage up to the end of the applicable dividend period, (2) all amounts due to the Reserve for Replacements Fund, (3) after the segregation of funds for the payment of all operating expenses, security deposits

held, taxes, assessments, fixed charges, whether due or accrued, and (4) after similar provision for any liabilities currently due and arising as a result of necessary expenditures incident to the normal operations of the project.

(c) *Requirements incident to insurance of advances.* (1) The mortgagor shall deposit with the mortgagee or, in a depository satisfactory to the mortgagee and under control of the mortgagee an amount equivalent to not less than two percent of the original principal amount of the mortgage, for the purpose of meeting the cost of equipping and renting the project subsequent to completion of construction of the entire project or units thereof and, during the course of construction, for allocation by the mortgagee to the accruals for taxes, mortgage insurance premiums, hazard insurance premiums and assessments required by the terms of the mortgage.

(2) The mortgagor must establish in a manner satisfactory to the Commissioner that, in addition to the proceeds of the insured mortgage, the mortgagor has funds sufficient to assure completion of construction of the project and to pay all carrying charges, financing and organization expenses incidental to the construction of the project. Unless other provisions acceptable to the Commissioner are made, such funds shall be deposited with and held by the mortgagee in a special account or by an acceptable depository designated by the mortgagee under an appropriate agreement approved by the Commissioner which will require all such funds to be expended for work and material on the physical improvements and for other charges and expenses to be paid when due prior to the advance of any mortgage money.

(3) The Commissioner may require the deposit with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee, under an appropriate agreement, of such cash as may be required for the completion of off-site public utilities and streets.

(4) The mortgagor and the mortgagee shall, prior to the insurance of the mortgage, execute an agreement acceptable to the Commissioner providing for the manner and conditions under which advances (if any) during construction are to be made by the mortgagee and approved for insurance by the Commissioner. Such agreement shall require the mortgagee to notify the Commissioner, through the insuring office having jurisdiction over the territory in which the property is situated, in writing, on an application form prescribed by the Commissioner, of the proposed date and the amount of the advance to be made, and the Commissioner shall deliver to the mortgagee within a reasonable time from the date of such notice a certificate executed on behalf of the Commissioner on a form prescribed by him setting forth the amount approved for insurance or advising the mortgagee of the Commissioner's nonapproval and setting forth the reasons therefor. Such agreement shall be set forth on a form prescribed by the Commissioner; shall contain such additional terms, condi-

tions, and provisions as the Commissioner shall in the particular case prescribe or approve, and when properly executed by the Commissioner and the mortgagee, shall constitute a part of the mortgage insurance contract.

(5) Assurance for the completion of a project may be either a bond of a surety company satisfactory to the Commissioner on the standard form prescribed by the Commissioner with the mortgagor and mortgagee as joint obligees in the penal sum of at least 10 percent of the cost of construction of the project; the personal undertaking or obligation in a form and by an obligor or obligors designated by the mortgagee and satisfactory to the Commissioner in an amount at least equal to 10 percent of the construction cost of the project; or an escrow deposit with the mortgagee, or with a depository satisfactory to the mortgagee and the Commissioner, of cash or securities of, or fully guaranteed as to principal and interest by, the United States of America, under a completion assurance agreement prescribed by the Commissioner, of an amount at least equal to 10 percent of the estimated cost of construction of the project; or may be in such other form as may be recommended by the mortgagee and approved in writing by the Commissioner.

(d) *Labor standards and prevailing wage requirements.* (1) Any contract or subcontract executed for the performance of construction of the project shall comply with all applicable Labor Standards and provisions of the Regulations of the Secretary of Labor, issued May 9, 1951, 29 CFR 5.1-5.12 (16 F. R. 4430.)

(2) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General, pursuant to § 5.6 (b) of the Regulations of the Secretary of Labor, issued May 9, 1951, 29 CFR 5.6 (b) (16 F. R. 4431).

(3) No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed on the ineligible list established by the Comptroller General, pursuant to the provisions of the Secretary of Labor, issued May 9, 1951, 29 CFR 5.6 (b) (16 F. R. 4431).

(4) No advance under any mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings, or housing project involved have been paid not less than the wages prevailing in the locality

in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

(5) Any contract or subcontract executed for the performance of construction of the project shall contain the provision that there shall be no discrimination against any employee, or applicant for employment, because of race, color, creed, or national origin.

(6) Compliance with the provisions of this subsection shall be evidenced at such time and in such manner as the Commissioner may prescribe.

(e) *Rents and charges.* (1) No charge shall be made by the mortgagor corporation for the accommodations, facilities or services offered by the project in excess of those approved by the Commissioner in writing prior to the opening of the project for rental. In approving such charges and in passing upon applications for changes, consideration will be given the following and similar factors:

(i) Rental income necessary to maintain the economic soundness of the project.

(ii) Rental income necessary to provide reasonable return on the investment consistent with providing reasonable rentals to tenants.

(f) *Methods of operation.* (1) No officer, director, stockholder, agent, or employee of the corporation shall in any manner become indebted to the corporation. The corporation shall not, without prior approval of the Commissioner, incur liabilities (other than the insured mortgage) in excess of an amount agreed upon and specified in the corporate charter.

(2) The corporation shall maintain its project, the grounds, buildings, and equipment appurtenant thereto, in good repair and will promptly complete necessary repairs and maintenance as required by the Commissioner.

(3) A Fund for Replacements shall be accumulated and maintained with the mortgagee so long as the mortgage insurance is in force, and the amount and type of such Fund and the conditions under which it shall be accumulated, replenished and used, shall be specified in the charter.

(4) The corporation, its property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and papers shall be subject to inspection and examination by the Commissioner or his duly authorized agent at all reasonable times.

(5) The mortgagor shall execute and deliver to the Commissioner a certificate that the books and accounts of the corporation will be established and maintained in a manner satisfactory to the Commissioner on the date the certificate is executed. Such certificate shall be to the effect that so long as the mortgage is insured by the Commissioner the mortgagor's books and accounts will be kept in accordance with the requirements of the Commissioner, will be in such form as to permit a speedy and

effective audit and as may otherwise be prescribed by the Commissioner, will be maintained for such periods of time as may be prescribed by the Commissioner and will be available to him for such examination and audits which he may desire to make. The corporation shall file with the Commissioner and mortgagee the following reports verified by the signature of such officers of the corporation as the Commissioner may designate and in such form as prescribed by the Commissioner.

(i) Monthly occupancy reports, when required by the Commissioner;

(ii) Notice of any payment of any dividend or other distribution and a semiannual financial statement within 60 days after the declaration of any semiannual dividends; or other distribution to stockholders;

(iii) Annual reports prepared and certified by a certified public accountant, or such other persons as may be acceptable to the Commissioner, to be filed within 60 days after the end of each fiscal year;

(iv) Specific answers to questions upon which information is desired from time to time relative to the actual cost of construction, the disposition of mortgage funds, the operation and condition of the property and the status of the insured mortgage;

(v) Copies of minutes of stockholders' and directors' meetings certified to by the Secretary of the Corporation.

§ 232.20 *Special certificates and contract to be executed by mortgagor.* (a)

The mortgagor must certify under oath that in selecting tenants for the property covered by the mortgage, the mortgagor will not discriminate against any family by reason of the fact that there are children in the family, and that the mortgagor will not sell the property while the mortgage insurance is in effect unless the purchaser also so certifies, such certifications to be filed with the Commissioner.

(b) The mortgagor must certify under oath that, so long as the mortgage is insured by the Commissioner, the mortgagor will not rent, permit the rental, or permit the offering for rental, of the housing, or any part thereof, covered by such mortgage for transient or hotel purposes. The corporate charter of the mortgagor or a contract with the Commissioner shall provide that so long as the said mortgage is insured or held by the Commissioner it will not rent such housing, or any part thereof for hotel purposes. For the purpose of this certificate, rental for transient or hotel purposes shall mean (1) rental for any period less than 30 days, or (2) any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linen, and bell-boy service.

ELIGIBLE MORTGAGEES

§ 232.21 *Qualification of lenders.* The provisions of 221.1-221.8 of Part 221 of Subchapter C of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this part.

PROPERTY REQUIREMENTS

§ 232.22 *Eligibility of property.* (a)

A mortgage to be eligible for insurance must be on real estate held in fee simple, or in areas designated by the Commissioner, on the interest of the lessee under a lease for not less than ninety-nine years which is renewable or under a lease having a period of not less than seventy-five years to run from the date the mortgage is executed, or under a lease executed by a governmental agency for the maximum term consistent with its legal authority, provided such lease has a period of not less than fifty years to run from the date the mortgage is executed.

(b) The property constituting security for the mortgage must be held by an eligible mortgagor as herein defined and must at the time the mortgage is insured be free and clear of all liens other than that of such mortgage except as otherwise provided in this part.

§ 232.23 *Development of property.*

(a) At the time the mortgage is insured the mortgagor shall be obligated to construct and complete new housing accommodations on the mortgaged property, designed principally for residential use, conforming to standards satisfactory to the Commissioner, and consisting of not less than twelve rental dwelling units on one site and may be detached, semi-detached, or row houses, or multi-family structures; except that the Commissioner may insure a mortgage on a completed project constructed pursuant to a Commitment to Insure upon Completion, or

(b) At the time the mortgage is insured there shall be located on the mortgaged property a building or buildings, which, upon completion of proposed improvements, shall constitute a single project and provide housing accommodations designed principally for residential use, conforming to standards satisfactory to the Commissioner, and containing at least twelve rental dwelling units so located in relation to one another as to effect a substantial improvement of housing standards and conditions in the neighborhood; and in either case such dwelling and other improvement, if any, must not violate any material zoning or deed restrictions applicable to the project site, and must comply with all applicable building and other governmental regulations; and any project may include such commercial and community facilities as the Commissioner deems adequate to serve the occupants.

ADJUSTMENT OF MORTGAGE AMOUNT

§ 232.24 *Certification of cost requirements.* Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and the Commissioner shall enter into an agreement in form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and agree to enter into a construction contract the terms of which shall depend on whether or not there exists an identity of interest between the mortgagor

and the builder. The agreement shall require that upon completion of all physical improvements on the mortgaged property the mortgagor must execute a certificate of actual costs. The agreement shall further require that any excess of mortgage proceeds over statutory limitations based on actual cost shall be applied to reduction of the outstanding balance of the principal of the mortgage.

§ 232.25 *Form of contract.* The form of contract between the mortgagor and builder shall be determined in accordance with the following:

(a) If it is established to the satisfaction of the Commissioner that neither the mortgagor nor any of the officers, directors, or stockholders of the mortgagor have any interest in the builder, contractor, or any subcontractor there may be used a lump sum form of contract providing for payment of a specified amount.

(b) If it is determined by the Commissioner that the mortgagor, its officers, directors or stockholders have any interest, financial or otherwise, in the builder, contractor, or any subcontractor, the form of contract shall provide for payment of a builder's fixed fee in addition to the actual cost of construction, not to exceed an upset price. The builder's fixed fee shall be determined in accordance with customary practices in the area and approved by the Commissioner.

§ 232.26 *Certificate of actual cost.*

The mortgagor's certificate of actual cost shall be submitted upon completion of physical improvements to the satisfaction of the Commissioner and prior to final endorsement. Its content and requirements regarding verification are as follows:

(a) When the work has been completed under a contract as described in § 232.25 (a), the mortgagor's certification shall be on the form prescribed therefor by the Commissioner and shall indicate the amount actually paid under the construction contract after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor corporation, or to any of its officers, directors or stockholders; plus the cost to the mortgagor of architects' fees, off-site public utilities and streets not included in the general contract, organizational and legal work and other items of expense approved by the Commissioner. For verification of these amounts the mortgagor shall keep and maintain adequate records of all costs of any construction or other cost items not representing work under the general contract and shall make available for examination such records including any collateral agreements upon request by the Commissioner.

(b) When the work has been completed under a contract as described in § 232.25 (b), the mortgagor's certification shall be on the form prescribed therefor by the Commissioner and shall indicate all amounts as required in paragraph (a) of this section, plus the amount of the builder's fee. This form of certification shall be accompanied by a certification by the builder on the form prescribed therefor by the Commissioner, indicating all actual costs paid for labor,

materials, and subcontract work under the general contract exclusive of the builder's fee and less any kickbacks, rebates, trade discounts, or other similar payments to the builder or mortgage corporation or any of its officers, directors, or stockholders. The mortgagor shall keep records as required in paragraph (a) of this section and shall in turn require the builder to keep available similar records.

§ 232.27 *Adjustment resulting from cost certification.* Upon receipt of the mortgagor's certification of actual cost there shall be added to the total amount thereof the Commissioner's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee such value being prior to the construction of the improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost provided that in no event such amount is in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements. If the principal obligation of the mortgage exceeds the applicable statutory percentage of this total amount, the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

§ 232.28 *Rehabilitation projects.* (a) In the event the mortgage is to assist the financing of a project involving repair or rehabilitation the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted for new construction in accordance with either § 232.26 (a) or (b) and the applicable cost certification procedure described therein will be required. To such actual cost there shall be added the purchase price of land and existing improvements prior to such repair or rehabilitation if the land and improvements are to be acquired and the purchase price thereof is to be financed with the proceeds of the mortgage: *Provided*, That the cost of the land and improvements shall in no event exceed the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation. As provided in § 232.27 the statutory percentage shall be applied to the total thus obtained and the mortgage reduced accordingly if indicated.

(b) In case the land and existing improvements are owned by the mortgagor on the date the application is filed, and are subject to an outstanding indebtedness to be refinanced with part of the proceeds of the mortgage the procedure set forth in paragraph (a) of this section shall be followed except that the purchase price is excluded and the full amount of the outstanding indebtedness shall be added after the statutory percentage has been applied to the total of the other costs: *Provided, however*, That in no event shall the amount thus obtained exceed the statutory percentage of the cost of repair or rehabilitation plus the Commissioner's estimate of the fair market value of land and improve-

ments prior to the repair or rehabilitation.

§ 232.29 *Requisites of agreement and certification.* Any agreement, undertaking, statement or certification required in this section shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Federal Housing Administration, and of the Federal Housing Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein.

OTHER ELIGIBLE MORTGAGES

§ 232.30 *Eligibility of miscellaneous type mortgages.* (a) A mortgage covering five or more rental units and which meets the requirements of this part, except as modified by this section shall be eligible for insurance under this part.

(b) The mortgage may be in an amount not exceeding 90 percent of the appraised value of the mortgaged property as of the date the mortgage is accepted for insurance if—

(1) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing acquired or constructed under Public Law 849, Seventy-sixth Congress, as amended; Public Law 781, Seventy-sixth Congress, as amended; or Public Laws 9, 73, or 353, Seventy-seventh Congress, as amended (including any additional property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof); or

(2) Executed in connection with the sale by the Public Housing Administration, or by any public housing agency with the approval of the said Administration, of any housing including any additional property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof) owned or financially assisted pursuant to the provisions of Public Law 671, Seventy-sixth Congress; or

(3) Executed in connection with the sale by the Government, or any agency or official thereof, of any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin; developed under the Emergency Relief Appropriation Act of 1935, or of any of the village properties or employee's housing under the jurisdiction of the Tennessee Valley Authority; or

(4) Executed in connection with the sale by a State or municipality or an agency, instrumentality, or political subdivision of either, of a project consisting of any permanent housing (including any additional property acquired, held or constructed in connection therewith or to serve the inhabitants thereof), constructed by or on behalf of such State, municipality, agency, instrumentality, or political subdivision, for the occupancy of veterans of World War II, or Korean veterans, their families, and others; or

(5) Executed in connection with the first resale, within two years from the date of its acquisition from the Government, of any portion (of five or more

units) of a project or property of the character described in subparagraphs (1), (2), and (4) of this paragraph.

(c) Notwithstanding the provisions of paragraph (b) of this section, the mortgage may be in an amount not exceeding 95 percent of the appraised value of the mortgaged property as of the date the mortgage is accepted for insurance if it is of the character described in subparagraphs (1), (2), (3), or (5) of paragraph (b) of this section and if it covers property held by a non-profit cooperative ownership housing corporation, or a non-profit cooperative ownership housing trust, and the permanent occupancy of the dwellings is restricted to members of such corporation or beneficiaries of such trust, and at least 65 percent of such members or beneficiaries are veterans.

§ 232.31 *Eligibility of refinanced mortgages.* (a) Notwithstanding any other provisions of this part, a mortgage bearing interest not in excess of 4¼ percent per annum, to refinance a mortgage insured under section 608 or 908 shall be eligible for insurance under this section, if the principal amount of such refinanced mortgage does not exceed the original principal amount, and the term does not exceed the unexpired term of such existing mortgage; except that in any case in which the Commissioner determines that the insurance of a mortgage for an additional term will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, the refinanced mortgage may have a term of not more than 12 years in excess of unexpired term of the existing insured mortgage.

§ 232.32 *Reinsurance of Commissioner-held mortgages.* Notwithstanding any other provisions of this part, the Commissioner may insure any mortgage assigned to him in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by him of any property acquired under Title II, Title VI, Title VII, Title VIII, or Title IX of the National Housing Act without regard to any limitation upon eligibility contained in this part.

TITLE

§ 232.33 *Eligibility of title.* In order for the mortgaged property to be eligible for insurance, the Commissioner must determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence will be examined by the Commissioner and the original endorsement of the credit instrument for insurance will be evidence of its acceptability.

§ 232.34 *Title evidence.* Upon insurance of the mortgage, the mortgagee, without expense to the Commissioner, shall furnish to the Commissioner a survey satisfactory to him and a policy of title insurance, as provided in paragraph (a) of this section, or, if the mortgagee is unable to furnish such policy for reasons satisfactory to the Commissioner, the mortgagee, without expense to the Commissioner, shall furnish such evidence of title as provided in paragraphs

(b), (c) or (d) of this section, as the Commissioner may require.

(a) A policy of title insurance with respect to such mortgage, issued by a company satisfactory to the Commissioner. Such policy shall comply with the "L. I. C. Standard Mortgagee Form," or the "A. T. A. Standard Mortgagee Form," or such other form as may be approved by the Commissioner; shall be payable to the mortgagee and the Commissioner as their respective interests may appear; and shall become an owner's policy, running to the mortgagee as owner upon the acquisition of the property by the mortgagee in extinguishment of a debt through foreclosure or by other means, and to the Commissioner as owner upon the acquisition of the property by him pursuant to the mortgage insurance contract.

(b) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(c) A Torrens or similar title certificate.

(d) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

EFFECTIVE DATE

§ 232.35 *Effective date.* The provisions of this part shall be effective as to all mortgages with respect to which a commitment to insure shall be issued on or after the date hereof.

Issued at Washington, D. C., this 13th day of August 1954.

PART 233—RENTAL HOUSING INSURANCE; RIGHTS AND OBLIGATIONS OF MORTGAGEE

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AUTHORITY: §§ 233.1 to 233.14 Issued under sec. 211, 52 Stat. 23; 12 U. S. C. 1715b.

§ 233.1 *Definitions.* As used in this part:

(a) The term "Commissioner" means the Federal Housing Commissioner.

(b) The term "act" means the National Housing Act, as amended.

(c) The term "mortgage" means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby.

(d) The term "insured mortgage" means a mortgage which has been insured by the endorsement of the credit instrument by the Commissioner, or his duly authorized representative.

(e) The term "contract of insurance" means the agreement evidenced by such endorsement and includes the terms, conditions and provisions of this part and of the National Housing Act.

(f) The term "mortgagor" means the original borrower under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) The term "mortgagee" means the original lender under a mortgage, its successors and such of its assigns as are approved by the Commissioner, and includes the holders of the credit instruments issued under a trust mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.

PREMIUMS

§ 233.2 *First, second and third premiums.* The mortgagee, upon the initial endorsement of the mortgage for insurance, shall pay to the Commissioner a first mortgage insurance premium equal to one-half of one percent of the original face amount of the mortgage.

(a) If the date of the first principal payment is more than one year following the date of such initial insurance endorsement, the mortgagee, upon the anniversary of such insurance date, shall pay a second premium equal to one-half of one percent of the original face amount of the mortgage. On the date of the first principal payment, the mortgagee shall pay a third premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said three premiums shall equal the sum of (1) one percent of the average outstanding principal obligation of the mortgage for the year following the date of initial insurance endorsement and (2) one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the first anniversary of the date of initial insurance endorsement to one year following the date of the first principal payment.

(b) If the date of the first principal payment is one year, or less than one

year following the date of such initial insurance endorsement, the mortgagee, upon such first principal payment date, shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of (1) one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of initial insurance endorsement to the date of first principal payment and (2) one-half of one percent of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment.

(c) Where the credit instrument is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion, the mortgagee on the date of the first principal payment shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the sum of one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(d) Until the mortgage is paid in full, or until the contract of insurance shall otherwise terminate, the mortgagee, on each anniversary of the date of the first principal payment shall pay an annual mortgage insurance premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following the date on which such premium becomes payable.

(e) The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

(f) Premiums shall be payable in cash or in debentures issued by the Commissioner against the Housing Insurance Fund under Title II of the National Housing Act at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in this part.

§ 233.3 *Adjusted premium charge.*

(a) In the event that the principal obligation of any mortgage accepted for insurance is paid in full prior to maturity, the mortgagee shall, within thirty days thereafter, notify the Commissioner of the date of prepayment and shall pay to the Commissioner in the case of a mortgage prepaid within five years from the date of the initial endorsement for insurance, an adjusted premium charge, in the nature of a prepayment premium, of two percent of the original face amount of the prepaid mortgage, and in the event the mortgage

is prepaid after five years from the date of initial endorsement for insurance, an adjusted premium charge of one percent of the original face amount of the prepaid mortgage, except that if at the time of any such prepayment there is placed on the mortgaged property a new insured mortgage or mortgages in an amount less than the original principal amount of the mortgage, the adjusted premium charge provided above shall be based upon the difference between such amounts.

(b) In no event shall the adjusted premium charge exceed the aggregate amount of premium charges which would have been payable if the mortgage had continued to be insured until maturity.

(c) No adjusted premium charge shall be due the Commissioner in the following cases:

(1) where, at the time of such prepayment, there is placed on the mortgaged property a new insured mortgage or mortgages for an amount equal to or greater than the original principal amount of the prepaid mortgage; or

(2) where the final maturity specified in the mortgage is accelerated solely by reason of partial prepayments made by the mortgagor which do not exceed in any one calendar year 15 percent of the original face amount of the mortgage; or

(3) where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for damage to the mortgaged property, or a release of a part of such property; if approved by the Commissioner; or

(4) where payment in full is made of a delinquent mortgage on which foreclosure proceedings have been commenced, or for the purpose of avoiding foreclosure, if the Commissioner, in his discretion, agrees in writing to waive the payment thereof; or

(5) where, at the time of such prepayment, there is placed on the property a new insured mortgage or mortgages less than the original principal amount of the prepaid mortgage; *Provided*, That the Commissioner finds that the collection of such charge would be inequitable under the particular circumstances of the transaction.

(d) Upon such prepayment the contract of insurance shall terminate.

(e) At the time of prepayment, the Commissioner will refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current annual mortgage insurance premium theretofore paid, which is applicable to the portion of the year subsequent to such prepayment.

INSURANCE ENDORSEMENT

§ 233.4 *Form of endorsement.* (a) Upon compliance satisfactory to the Commissioner with the terms and conditions of his commitment to insure, the Commissioner shall endorse the original credit instrument in form as follows:

No. _____

Insured under section 207 of the National Housing Act and Regulations thereunder of the Federal Housing Commissioner.

In effect on _____ to the extent of advances.

Approved by the Commissioner.

FEDERAL HOUSING COMMISSIONER

By _____
(Authorized agent)

Date _____

(b) The mortgage shall be an insured mortgage from the date of such endorsement. The Commissioner and the mortgagee shall thereafter be bound by this part with the same force and to the same extent as if a separate contract had been executed relating to the insured mortgage, including the provisions of this part and of the National Housing Act.

(c) After all advances under the mortgage have been made with the approval of the Commissioner, the Commissioner shall, upon presentation of original credit instrument, make a notation below the insurance endorsement in form as follows:

A total sum of \$_____ has been approved for insurance hereunder by the Commissioner.

FEDERAL HOUSING COMMISSIONER

By _____
(Authorized agent)

Date _____

RIGHTS AND DUTIES OF MORTGAGEE UNDER THE CONTRACT OF INSURANCE

§ 233.5 *Defaults.* (a) The failure of the mortgagor to make any payments due under or provided to be paid by the terms of a mortgage insured under this part shall be considered a default under such mortgage.

(b) The failure to perform any other covenant under the provisions of a mortgage insured under this part shall be considered a default, provided the mortgagee, because of such default, has exercised its right under the mortgage and accelerated the debt.

(c) If such defaults as defined in paragraphs (a) and (b) of this section continue for a period of 30 days the mortgagee shall be entitled to receive the benefits of the insurance hereinafter provided.

§ 233.6 *Notice.* (a) If the default as defined in § 233.5 is not cured within the 30 day grace period, the mortgagee shall within 30 days thereafter notify the Commissioner in writing of such default.

(b) Notwithstanding the provision of § 233.5 (b), the mortgagee will be required to give notice in writing to the Commissioner of the failure of the mortgagor to comply with such covenant regardless of the fact the mortgagee may not have elected to accelerate the debt.

§ 233.7 *Commissioner's right to require acceleration.* Upon receipt of notice of violation of a covenant, as provided for in § 233.6 (b), or otherwise being apprised thereof, the Commissioner reserves the right to require the mortgagee to accelerate payment of the outstanding principal balance due in order to protect the interests of the Federal Housing Commissioner.

§ 233.8 *Insurance benefits requirement.* (a) When the mortgagee becomes eligible for the benefits of the mortgage insurance, it shall within 45 days thereafter, or within such later time as may be agreed upon by the Commissioner in

writing, notify the Commissioner in writing of its intention to file claim for debentures and of its election to proceed in accordance with subparagraphs (1) or (2) of this paragraph.

(1) At any time within 30 days after the date of such election, or within such further period as may be agreed upon by the Commissioner in writing, the mortgagee shall, in such manner as the Commissioner may require, assign, transfer and deliver to the Commissioner the original credit instrument and the mortgage securing the same, without recourse or warranty, except that the mortgagee must warrant that no act or omission of the mortgagee has impaired the validity and priority of the mortgage, that the mortgage is prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such mortgage regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of such mortgage, except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and owing under the mortgage, that there are no offsets or counterclaims thereto, and that the mortgagee has a good right to assign and will promptly deliver to the Commissioner the mortgage and other items enumerated below:

(i) All rights and interest arising under the mortgage so in default;

(ii) All claims of the mortgagee against mortgagor or others, arising out of the mortgage transaction;

(iii) All policies of title or other insurance or surety bonds or other guaranties, and any and all claims thereunder, including evidence satisfactory to the Commissioner that the original title coverage has been extended to include the assignment of the mortgage to the Commissioner.

(iv) Any balance of the mortgage loan not advanced to the mortgagor;

(v) Any cash or property held by the mortgagee or its agents or to which it is entitled, including deposits made for the account of the mortgagor, and which have not been applied in reduction of the principal of the mortgage indebtedness;

(vi) All funds held by the mortgagee for the account of the mortgagor and which were received pursuant to any other agreement;

(vii) All records, documents, books, papers and accounts relating to the mortgage transaction.

(viii) Any additional information or data which the Commissioner may require.

(2) If the mortgagee does not elect to proceed in accordance with subparagraph (1) of this paragraph, then at any time within a period of thirty days after the date of the notice of election to acquire title or within such later time as may be agreed upon by the Commissioner in writing, the mortgagee shall either—

(i) With and subject to the consent of the Commissioner provide for transfer of title from the mortgagor to the Com-

missioner or shall acquire by means other than foreclosure of the mortgage possession of and title to the mortgaged property; or

(ii) Institute proceedings for the foreclosure of the mortgage and either obtain possession of the mortgaged property and the income therefrom through the voluntary surrender thereof by the mortgagor or institute, and prosecute with reasonable diligence, proceedings for the appointment of a receiver to manage the mortgaged property and collect income therefrom or proceed to exercise such other rights and remedies as may be available to it for the protection and preservation of the mortgaged property and to obtain the income therefrom under the mortgage and the law of the particular jurisdiction: *Provided*, That if the laws of the state in which the mortgaged property is situated do not permit the institution of such proceedings within such period of time, the mortgagee shall institute such proceedings within 30 days after the expiration of the time during which the institution of such proceedings is prohibited by such laws. The mortgagee shall promptly give notice in writing to the Commissioner of the institution of foreclosure proceedings under this subparagraph, shall exercise reasonable diligence in prosecuting such proceedings to completion and shall report promptly to the Commissioner any developments which might delay the consummation of such proceedings. If after default and prior to the completion of foreclosure proceedings the mortgagor shall pay to the mortgagee all payments in default and such expenses as the mortgagee shall have incurred in connection with the foreclosure proceedings, notice thereof shall be given to the Commissioner by the mortgagee, and the insurance shall continue as if such default had not occurred.

(b) Nothing contained in this section shall be so construed as to require the mortgagee to take any action when the necessity therefor has been waived in writing by the Commissioner nor to prevent the mortgagee from taking action at a later date than herein specified if the Commissioner agreed thereto in writing.

§ 233.9 *Insurance benefits.* (a) If the mortgagee elects to and does proceed in accordance with § 233.8 (a) (1) and furnishes evidence satisfactory to the Commissioner that there are no past due and unpaid ground rents, general taxes, or special assessments, and furnishes the warranties described in said subparagraph, the Commissioner shall deliver to the mortgagee—

(1) Debentures of the Housing Insurance Fund as set forth in section 207 of the National Housing Act having a total face value equal to the value of the mortgage as defined in section 207 (g) of the National Housing Act, which value shall be determined by adding to the original principal of the mortgage which was unpaid on the date of default the amount the mortgagee may have paid for taxes, special assessments, and water rates which are liens prior to the mortgage; insurance on the property; and

reasonable expenses for the completion and preservation of the property, and any mortgage insurance premiums paid after default; less the sum of an amount equivalent to one percent of the amount of the mortgage advanced to the mortgagor and not repaid; any amount received on account of the mortgage after such date; and any net income received by the mortgagee from the property after such date. Such debentures shall be issued as of the date the mortgage became in default and shall bear interest from such date at the rate of two and one-half percent per annum, payable semi-annually on the first day of January and the first day of July of each year, shall be registered as to principal and interest and all or any such debentures may be redeemed at the option of the Commissioner with the approval of the Secretary of the Treasury at par and accrued interest on any interest payment date on three months' notice of redemption given in such manner as the Commissioner shall prescribe. Such debentures shall be issued in multiples of \$50.00 and any difference not in excess of \$50.00 between the amount of debentures to which the mortgagee is otherwise entitled hereunder and the aggregate face value of the debentures issued shall be paid in cash by the Commissioner to the mortgagee. Such debentures shall mature 20 years after the date thereof.

(2) A certificate of claim in accordance with section 207 (h) of the National Housing Act which shall become payable, if at all, upon the sale and final liquidation of the interest of the Commissioner in such mortgage or such property. Such certificate shall be for an amount which the Commissioner determines to be sufficient, when added to the face value of the debentures issued and the cash adjustment paid to the mortgagee, to equal the amount which the mortgagee would have received if, on the date of the assignment, transfer and delivery to the Commissioner, the mortgagor had extinguished the mortgage indebtedness by payment in full of all obligations under the mortgage. Such certificate of claim shall provide that there shall accrue to the holder of such certificate with respect to the face amount of such certificate, an increment at the rate of three percent per annum, beginning on the date of the assignment of the mortgage to the Commissioner, but which shall not be compounded. If any excess is realized from the mortgage and all claims in connection therewith so assigned, transferred and delivered, and from the property covered by such mortgage and all claims in connection with such property, after deducting all expenses incurred by the Commissioner in handling, dealing with, acquiring title to, and disposing of such mortgage and property and in collecting such claims, such excess shall be applied in payment of the certificate of claim and any balance thereafter shall be retained by the Commissioner and credited to the Housing Insurance Fund.

(b) If the mortgagee elects to proceed under, and does proceed under and in accordance with, the provisions of

§ 233.8 (a) (2) and at any time within 30 days (or such further time as may be allowed by the Commissioner in writing) tenders or causes to be tendered to the Commissioner possession of the mortgaged property and a deed thereto containing covenants satisfactory to the Commissioner, together with a bill of sale covering any personal property to which the mortgagee is entitled by reason of the mortgage transaction, conveying title to such property satisfactory to the Commissioner, and assigns or causes to be assigned (without recourse or warranty) any and all claims which have been acquired in connection with the mortgage transaction and as a result of any foreclosure proceedings or other means by which it may have acquired such property, including but not limited to any claims on account of title insurance and fire or other hazard insurance, except such claims as may have been released with the prior approval of the Commissioner, the Commissioner shall promptly accept conveyance of such property and such assignments, notwithstanding that the buildings or improvements thereon shall be incomplete or may have been destroyed, damaged, or injured in whole or in part, and shall deliver to the mortgagee debentures as provided in § 233.9 (a), except that the one percent deduction set out therein with respect to the amount of debentures shall not apply, and a certificate of claim as provided in § 233.9 (a) which shall include a reasonable amount for any necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition of the mortgaged property otherwise, and in the conveyance thereof to the Commissioner.

(c) Title satisfactory to the Commissioner will be such title as was vested in the mortgagor as of the date the mortgage was filed for record, but must be free and clear of all mechanics' and materialmen's liens filed of record subsequent to the recording of such mortgage, regardless of whether such liens attached prior to such recording date, and free and clear of all liens and encumbrances which may have attached, or defects which may have arisen subsequent to the recording of such mortgage, except such liens or other matters as may be approved by the Commissioner.

(d) The mortgagee, at the time a deed is tendered shall furnish to the Commissioner without expense to him satisfactory evidence of title. Such title evidence shall be executed as of a date to include the recordation of the deed to the Commissioner and, shall be in the form of an owner's policy of title insurance, or a satisfactory abstract and attorney's opinion covering the period subsequent to the recording of the mortgage, or a satisfactory continuation of the title evidence accepted by the Commissioner at the time the mortgage was insured, depending upon the form of title evidence originally accepted by the Commissioner.

(e) In the event the mortgagee acquires title to the mortgaged property, but does not convey it to the Commissioner, and the Commissioner is given written notice that it will not do so, or in

the event the mortgagor pays the obligation under the mortgage in full, prior to the maturity thereof, and the mortgagee pays any adjusted premium required, and the Commissioner is given written notice by the mortgagee of such payment by the mortgagor, the obligation to pay any subsequent premium charge for insurance shall cease and all rights of the mortgagee, under the contract of insurance shall terminate as of the date of such notice.

§ 233.10 *Protection of mortgage security.* (a) So long as the mortgage is an insured mortgage, the mortgagee shall ascertain the general physical condition of the mortgaged property in each calendar year commencing with the calendar year following completion of the project and shall furnish the Commissioner and the mortgagor with a copy of its inspection report, which shall contain the mortgagee's recommendations for any necessary corrective action. If, at any time, it be determined by the mortgagee that, in addition to ordinary wear and tear, the mortgaged property is being subjected to permanent or substantial injury, through unreasonable use, abuse or neglect, the mortgagee shall, unless adequate provision satisfactory to a prudent lender is made for the prompt restoration of the mortgaged property, forthwith take such action as may be available to it under the mortgage and appropriate to the particular case, for the protection and preservation of the mortgaged property and the income therefrom. In the event claim for debentures is filed, the Commissioner may reduce the amount of debentures to the extent of any loss sustained as a result of failure to comply with the provisions of this section.

(b) The mortgaged premises shall at all times be insured against fire and other hazards as provided in the mortgage. The duty shall be upon the mortgagee to provide such coverage in the event the mortgagor fails to do so. If the mortgagee fails to pay any premiums necessary to keep the mortgaged premises so insured, the contract of insurance may be terminated at the election of the Commissioner. If at the time claim is filed for debentures, the property has been damaged by fire or other hazards and loss has been sustained by reason of failure to keep the property insured as provided in the mortgage, the amount of such loss may be deducted from the amount of the debentures. In the event a loss has occurred to the mortgaged property under any policy of fire or other hazard insurance and the amount of any funds received by the mortgagee in payment of such loss shall be sufficient to pay in full the entire mortgage indebtedness, the mortgagee shall, upon receipt of such funds by the mortgagee, be deemed paid and the contract of mortgage insurance made with the Commissioner shall thereupon terminate. If, however, any funds so received shall be insufficient to pay such mortgage indebtedness in full, the mortgagee shall not exercise its option under the mortgage to use the proceeds of such insurance for the repairing, replacing or

rebuilding of such premises or to apply such proceeds to the mortgage indebtedness without prior written approval of the Commissioner. If the Commissioner shall fail to give his approval to the use or application of such funds for either of said purposes within thirty days after written request by the mortgagee, the mortgagee may use or apply such funds for any of the purposes specified in the mortgage without the approval of the Commissioner.

ASSIGNMENTS

§ 233.11 *Assignment of Insured Mortgages.* (a) Bonds or other obligations issued in connection with an insured mortgage executed in the form of an indenture of trust providing for the issue and sale of such bonds or other obligations and appointing a trustee to act on behalf of the holders of such bonds or other obligations may be transferred as provided in the indenture of trust.

(b) An insured mortgage, other than those described in paragraph (a) of this section, may not be transferred or pledged prior to the full disbursement of the mortgage loan, except with the prior written approval of the Commissioner which approval may be subject to such conditions and qualifications as the Commissioner may prescribe. Subsequent to full disbursement such mortgage may be transferred only to a transferee who is a mortgagee approved by the Commissioner. Upon such transfer and the assumption by the transferee of all obligations under the contract of insurance the transferor shall be released from its obligations under the contract of insurance.

(c) The contract of insurance shall terminate with respect to mortgages described in paragraph (b) of this section upon the happening of either of the following events:

(1) The transfer or pledge of the insured mortgage to any person, firm, or corporation, public or private, other than an approved mortgagee.

(2) The disposal by a mortgagee of any partial interest in the insured mortgage by means of a declaration of trust or by a participation or trust certificate or by any other device, unless with the prior written approval of the Commissioner, which approval may be subject to such conditions and qualifications as the Commissioner in his discretion may prescribe: *Provided*, That this paragraph shall not be applicable to any mortgage so long as it is held in a common trust fund maintained by a bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as a trustee, executor or administrator; and in conformity with the rules and regulations prevailing from time to time of the Board of Governors of the Federal Reserve System, pertaining to the collective investment of trust funds: *Provided further*, That this paragraph shall not be applicable to any mortgage so long as it is held in a common trust estate administered by a bank or trust company which is subject to the inspection and supervision of a governmental agency,

exclusively for the benefit of other banking institutions which are subject to the inspection and supervision of a governmental agency, and which are authorized by law to acquire beneficial interests in such common trust estate, nor to any mortgage transferred to such a bank or trust company as trustee exclusively for the benefit of outstanding owners of undivided interest in the trust estate, under the terms of certificates issued and sold more than three years prior to said transfer, by a corporation which is subject to the inspection and supervision of a governmental agency.

RIGHTS IN HOUSING FUND

§ 233.12 *No vested right.* Neither the mortgagee nor the mortgagor shall have any vested or other right in the Housing Insurance Fund.

AMENDMENTS

§ 233.13 *Amendments not to change contractual rights.* The regulations in this part may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendments shall not affect the contract of insurance on any mortgage already insured or to be insured on which the Commissioner has made a commitment to insure.

EFFECTIVE DATE

§ 233.14 *Effective date.* The regulations in this part shall be effective as to all mortgages with respect to which a commitment to insure is issued on or after the date hereof.

Issued at Washington, D. C., August 13, 1954.

NORMAN P. MASON,
Commissioner.

[F. R. Doc. 54-6444; Filed, Aug. 18, 1954; 8:51 a. m.]

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter I—Office of Defense Mobilization

[Defense Mobilization Order VII-6, Amdt. 7]

DMO VII-6—EXPANSION GOALS

TITANIUM PROCESSING FACILITIES

1. Defense Mobilization Order VII-6, dated December 3, 1953 (18 F. R. 7876), and Amendment I, dated January 29, 1954 (19 F. R. 855), are further amended by adding in proper alphabetical sequence to List III Open, the following new expansion goal:

No.	Goal	Delegate agency
23....	Titanium processing facilities..	Commerce.

2. This amendment shall take effect on August 17, 1954.

OFFICE OF DEFENSE
MOBILIZATION,
ARTHUR S. FLEMMING,
Director.

[F. R. Doc. 54-6476; Filed, Aug. 17, 1954; 2:26 p. m.]

Chapter XIV—General Services Administration

[Revision 1, Amdt. 3]

REG. 2—TUNGSTEN REGULATION: DOMESTIC TUNGSTEN PROGRAM

MISCELLANEOUS AMENDMENTS

Pursuant to the authority vested in me by Executive Order 10480, dated August 14, 1953 (18 F. R. 4939), this regulation, as revised and amended, is hereby further amended as follows:

1. In section 1, delete the following from the first sentence thereof: ", pursuant to delegation of authority from the Defense Materials Procurement Administrator, dated September 14, 1951".

2. In section 2, delete in its entirety paragraph (j) and in lieu thereof substitute the following:

(j) "Synthetic Scheelite" means chemically precipitated scheelite produced from any natural type of ore, and shall be chemically precipitated scheelite produced from any original type of ore.

3. In section 3 (a), delete the date "June 30, 1954" and in lieu thereof substitute the following: "June 30, 1955".

(Sec. 704, 64 Stat. 816, as amended, Pub. Law 95, 83d Cong.; 50 U. S. C. App. Sup. 2154; Pub. Law 206, 83d Cong.)

All other provisions of this regulation shall remain in full force and effect.

This amendment is effective immediately.

Dated: August 16, 1954.

EDMUND F. MANSURE,
Administrator.

[F. R. Doc. 54-6520; Filed, Aug. 18, 1954; 12:29 p. m.]

[Revision 2, Amdt. 1]

REG. 3—MANGANESE REGULATION: PURCHASE PROGRAM FOR DOMESTIC MANGANESE ORE AT DEMING, NEW MEXICO

PARTICIPATION IN PROGRAM

Pursuant to the authority vested in me by Executive Order 10480, dated August 14, 1953 (18 F. R. 4939), this regulation, as revised and amended, is further amended as follows:

In section 3, delete the date "June 30, 1954" and in lieu thereof substitute the following: "June 30, 1955".

(Sec. 704, 64 Stat. 816, as amended, Pub. Law 92, 83d Cong.; 50 U. S. C. App. Sup. 2154; Pub. Law 206, 83d Cong.)

All other provisions of this regulation shall remain in full force and effect.

This amendment is effective immediately.

Dated: August 16, 1954.

EDMUND F. MANSURE,
Administrator.

[F. R. Doc. 54-6518; Filed, Aug. 18, 1954; 12:29 p. m.]

[Revision 2, Amdt. 2]

REG. 4—MANGANESE REGULATION: PURCHASE PROGRAM FOR DOMESTIC MANGANESE ORE AT BUTTE AND PHILIPSBURG, MONTANA

PARTICIPATION IN PROGRAM

Pursuant to the authority vested in me by Executive Order 10480, dated August 14, 1953 (18 F. R. 4939), this regulation, as revised and amended, is further amended as follows:

In section 3, delete the date "June 30, 1954" and in lieu thereof substitute the following: "June 30, 1955".

(Sec. 704, 64 Stat. 816, as amended, Pub. Law 95, 83d Cong.; 50 U. S. C. App. Sup. 2154; Pub. Law 206, 83d Cong.)

All other provisions of this regulation shall remain in full force and effect.

This amendment is effective immediately.

Dated: August 16, 1954.

EDMUND F. MANSURE,
Administrator.

[F. R. Doc. 54-6519; Filed, Aug. 18, 1954; 12:29 p. m.]

[Revision 1, Amdt. 1]

REG. 5—MANGANESE REGULATIONS: PURCHASE PROGRAM FOR DOMESTIC MANGANESE ORE AT WENDEN, ARIZONA

PARTICIPATION IN PROGRAM

Pursuant to the authority vested in me by Executive Order 10480, dated August 14, 1953 (18 F. R. 4939), this regulation, as revised and amended, is further amended as follows:

In section 3, delete the date "June 30, 1954" and in lieu thereof substitute the following: "June 30, 1955".

(Sec. 704, 64 Stat. 816, as amended, Pub. Law 95, 83d Cong.; 50 U. S. C. App. Sup. 2154; Pub. Law 206, 83d Cong.)

All other provisions of this regulation shall remain in full force and effect.

This amendment is effective immediately.

Dated: August 16, 1954.

EDMUND F. MANSURE,
Administrator.

[F. R. Doc. 54-6517; Filed, Aug. 18, 1954; 12:29 p. m.]

[Amdt. 3]

REG. 8—BERYL REGULATION: PURCHASE PROGRAM FOR DOMESTICALLY PRODUCED BERYL ORE

PARTICIPATION IN PROGRAM

Pursuant to the authority vested in me by Executive Order 10480, dated August 14, 1953 (18 F. R. 4939), this regulation, as amended, is further amended as follows:

1. In section 1, delete the second sentence thereof.

2. In section 2, delete the date "June 30, 1954" and in lieu thereof substitute the following: "June 30, 1955".

(Sec. 704, 64 Stat. 816, as amended, Pub. Law 95, 83d Cong.; 50 U. S. C. App. Sup. 2154; Pub. Law 206, 83d Cong.)

All other provisions of this regulation shall remain in full force and effect.

This amendment is effective immediately.

Dated: August 16, 1954.

EDMUND F. MANSURE,
Administrator.

[F. R. Doc. 54-6516; Filed, Aug. 18, 1954; 12:29 p. m.]

[Amdt. 3]

REG. 9—ASBESTOS REGULATION: PURCHASE PROGRAM FOR NONFERROUS CHRYSOTILE ASBESTOS PRODUCED IN ARIZONA

PARTICIPATION IN PROGRAM

Pursuant to the authority vested in me by Executive Order 10480, dated August 14, 1953 (18 F. R. 4939), this regulation, as amended, is further amended as follows:

1. In section 1, delete the second sentence thereof.

2. In section 6, delete the date "June 30, 1954" and in lieu thereof substitute the following: "June 30, 1955".

(Sec. 704, 64 Stat. 816, as amended, Pub. Law 95, 83d Cong.; 50 U. S. C. App. Sup. 2154; Pub. Law 206, 83d Cong.)

All other provisions of this regulation shall remain in full force and effect.

This amendment is effective immediately.

Dated: August 16, 1954.

EDMUND F. MANSURE,
Administrator.

[F. R. Doc. 54-6515; Filed, Aug. 18, 1954; 12:29 p. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Bureau of Narcotics

[21 CFR Ch. II]

4,4-DIPHENYL-6-DIMETHYLAMINO-3-HEXANONE

ADDICTION FORMING OR ADDICTION-SUSTAINING LIABILITY

Notice is hereby given, pursuant to the provisions of section 1 of the act of

March 8, 1946 (60 Stat. 38; 26 U. S. C. 3228), section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U. S. C. 1003), and by virtue of the authority vested in me by the Secretary of the Treasury (12 F. R. 1480), that a determination is proposed to be made that the following-named new drug has an addiction-forming or addiction-sustaining liability similar to morphine and is an opiate: 4,4-diphenyl-6-dimethylamino-3-hexanone.

Consideration will be given to any written data, views, or arguments, pertaining to the addiction-forming or addiction-sustaining liability of the above-named drug, which are received by the Commissioner of Narcotics prior to September 21, 1954. Any person desiring to be heard on the addiction-forming or addiction-sustaining liability of the above-named drug will be accorded the opportunity at a hearing in the office of the Commissioner of Narcotics, 1300 E Street NW., Washington 25, D. C., at 10:00 a. m., September 21, 1954: *Provided*, That such person furnishes written notice of his desire to be heard, to the Commissioner of Narcotics, Washington 25, D. C., not later than 20 days from the publication of this notice in the FEDERAL REGISTER. If no written notice of a desire to be heard shall be received within 20 days from the date of publication of this notice in the FEDERAL REGISTER, no hearing shall be held, but the Commissioner of Narcotics shall proceed to make a recommendation to the Secretary of the Treasury for a finding under section 1 of the act of March 8, 1946.

(60 Stat. 38; 26 U. S. C. 3228)

[SEAL] H. J. ANSLINGER,
Commissioner of Narcotics.

[F. R. Doc. 54-6441; Filed, Aug. 18, 1954;
8:50 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 907]

[Docket No. AO 212-A8]

HANDLING OF MILK IN MILWAUKEE, WISCONSIN, MARKETING AREA

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

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was conducted at Milwaukee, Wisconsin, on July 23, 1954, pursuant to notice thereof which was issued on July 15, 1954 (19 F. R. 4478).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on August 4, 1954, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision with respect to certain issues, and an opportunity to file written exceptions thereto. This recommended decision was published in the FEDERAL REGISTER on August 7, 1954 (19 F. R. 4998).

The material issues, findings and conclusions, and general findings of the recommended decision (F. R. Doc. 54-6094; 19 F. R. 4998) are hereby approved and adopted as the findings and conclusions of this decision as if set forth in full herein.

No. 161—3

Ruling on exceptions. There were no exceptions received to the recommended decision.

Determination of representative period. The month of June 1954 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of an order amending the order, as amended, regulating the handling of milk in the Milwaukee, Wisconsin, marketing area in the manner set forth in the attached amending order is approved or favored by producers who during such period were engaged in the production of milk for sale in the marketing area specified in such marketing order, as amended.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Milwaukee, Wisconsin, Marketing Area," and "Order Amending the Order, as Amended, Regulating the Handling of Milk in the Milwaukee, Wisconsin, Marketing Area," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

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

This decision filed at Washington, D. C., this 16th day of August 1954.

[SEAL] EARL L. BUTZ,
Acting Secretary.

Order¹ Amending the Order, as Amended, Regulating the Handling of Milk in the Milwaukee, Wisconsin, Market- ing Area

§ 907.0 *Findings and determinations.* The findings and determinations herein-after set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of

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

marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Milwaukee, Wisconsin, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

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

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

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

1. In the proviso in § 907.51 (a), delete the word "August" and substitute the word "November."
2. Delete § 907.51 (b) and substitute therefor the following:

(b) The price for Class II milk shall be the basic formula price plus the following amounts as indicated: May and June, \$0.40; July through November, inclusive, \$0.70; all other months, \$0.50: *Provided*, That for the months of September, October and November, 1954, \$0.50 shall be used in lieu of \$0.70 as indicated above: *And provided further*, That such Class II price differentials shall be adjusted by the amount of any adjustment made in the Class I price differential for the same month pursuant to the proviso of paragraph (a) of this section.

[F. R. Doc. 54-6428; Filed, Aug. 18, 1954;
8:49 a. m.]

[7 CFR Part 927]

HANDLING OF MILK IN NEW YORK METRO- POLITAN MILK MARKETING AREA

DETERMINATION THAT A HEARING SHOULD NOT BE HELD

Pursuant to provisions of the order, as amended, regulating the handling of

milk in the New York metropolitan milk marketing area (7 CFR Part 927, and hereinafter referred to as "the order"), it is hereby determined that a public hearing should not be held at this time to consider economic conditions relating to the pricing of Class I-A milk under the provisions of the order.

This determination is occasioned by a provision of the order which requires that whenever there is a difference, for each of 3 consecutive months, of more than 15 points between the index of cost of production and the index of the Class I-A price, a public hearing be called to consider those and other economic conditions, or announcement of a determination that such a hearing should not be held together with reasons for such a determination. The index of the cost of production has now exceeded the index of the Class I-A price by more than 15 points for each of 3 consecutive months.

Such a public hearing would serve no useful or desirable purpose. Prices for Class I-A milk currently prevailing and in prospect for the next several months under the pricing formula now contained in the order are prices which properly reflect the economic conditions affecting the supply of and demand for milk in the New York metropolitan milk marketing area in accordance with the standards of the Agricultural Marketing Agreement Act.

The index of the Class I-A price and the index of cost of production each indicates the percentage change from the level prevailing in 1948. For the most recent month for which both are available (June 1954), the Class I-A price index is 90 and the index of cost of production is 111, thus resulting in a difference of more than 15 points. A similar divergence exists for the months of April and May. While a cost of production index is not yet available for July and August, the Class I-A price index for those months is 90 and 89, respectively.

Such lower level of the Class I-A price (in relation to 1948) is the direct result of existence in the market of a substantially larger (than in 1948) supply of milk in relation to sales of fluid milk. Reserve supplies of pool milk have been running relatively large particularly since October 1952. The average of the monthly percentages of pool milk used for fluid milk was about 49 for the twelve-month period ending with June 1954 compared to 63.6 for the year 1948. The current (May and June) relationship of supply to sales, as used in computation of the Class I-A price for August, is equivalent to an estimated fluid utilization on an annual basis of slightly more than 48 percent. This change in the supply-demand relationship is being properly reflected in the Class I-A prices currently established through operation of the pricing formula now in effect. Likewise, any decline in production during the next few months resulting from drought or other adverse production conditions will also be reflected rather promptly, through operation of the pricing formula now in effect, in higher Class I-A prices in line with such a shift in the supply-demand relationship.

Issued at Washington, D. C., this 16th day of August 1954.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Doc. 54-6448; Filed, Aug. 18, 1954;
8:52 a. m.]

[7 CFR Part 941]

[Docket No. AO-101-A18]

HANDLING OF MILK IN CHICAGO, ILLINOIS, MARKETING AREA

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

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was conducted at Chicago, Illinois, on June 1-4, 7-11, and 14-15, pursuant to notice thereof which was issued on May 20, 1954 (19 F. R. 3028).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on July 28, 1954 (19 F. R. 4730) filed with the Hearing Clerk, United States Department of Agriculture, a recommended decision with respect to certain issues, and an opportunity to file written exception thereto.

The material issues, findings and conclusions, and general findings of the recommended decision (19 F. R. 4730; F. R. Doc. 54-5871) are hereby approved and adopted as the findings and conclusions of this decision as if set forth in full herein.

Rulings on exceptions. In arriving at the findings and conclusions included in this decision each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions herein are at variance with the exceptions, such exceptions are overruled.

Order of the Secretary directing that a referendum be conducted; determination of a representative period; and designation of an agent to conduct such referendum. Pursuant to section 8c (19) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 608c (19)), it is hereby directed that a referendum be conducted among the producers (as defined in the order, as amended, regulating the handling of milk in the Chicago, Illinois, marketing area) who, during the month of April 1954, were engaged in the production of milk for sale in the marketing area specified in the aforesaid order as amended, to determine whether such producers favor the issuance of the order amending the order, as amended, which is filed herewith.

The month of April 1954 is hereby determined to be the representative period for the conduct of such referendum.

J. L. Cook is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders as published in the FEDERAL REGISTER on August 10, 1950 (15 F. R. 5177), such referendum to be completed on or before the 10th day from the date this decision is filed.

Marketing agreements and orders. Annexed hereto and made a part hereof are documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Chicago, Illinois, Marketing Area," and "Order Amending the Order, as Amended, Regulating the Handling of Milk in the Chicago, Illinois, Marketing Area," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

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

This decision filed at Washington, D. C., this 16th day of August 1954.

[SEAL] EARL L. BUTZ,
Acting Secretary.

Order¹ Amending the Order, as Amended, Regulating the Handling of Milk in the Chicago, Illinois, Marketing Area

§ 941.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendment thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Chicago,

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

Illinois, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

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

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

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

1. Insert as § 941.18 the following:

§ 941.18 *Base, base milk, and excess milk*—(a) *Base.* "Base" means a quantity of milk expressed in pounds per day computed pursuant to § 941.69.

(b) *Base milk.* "Base milk" means a quantity of producer milk received by a handler during each of the months of March, April, May and June which is not in excess of such producer's base multiplied by the number of days such milk was produced.

(c) *Excess milk.* "Excess milk" means producer milk received by a handler during each of the months of March, April, May and June which is in excess of the base milk received from such producer.

2. In § 941.30 (a) add subparagraph (3) as follows:

(3) For the delivery periods of March through June, the total amount of base milk and the total amount of excess milk received from producers.

3. In § 941.30 (b) (1) add the following words: "and for the delivery periods of September through November, and March through June, the number of days on which milk was received."

4. In the proviso of § 941.52 (a) (1) delete the word "August" and substitute the word "November."

5. Delete § 941.52 (b) (1) and substitute therefor the following:

(1) The price for Grade A Class II milk, except as set forth in subparagraph (3) of this paragraph, shall be the basic

formula price plus the following amount for the delivery periods indicated: May and June \$0.40; July, August, September, October and November \$0.70; all others \$0.50; *Provided*, That for the delivery periods of September, October, and November 1954, \$0.50 shall be used in lieu of \$0.70 as indicated above; *And provided further*, That such Class II price differential shall be adjusted by the amount of any adjustment made in the Class I price differential for the same delivery period pursuant to the proviso of paragraph (a) (1) of this section.

6. Insert as § 941.69 the following:

§ 941.69 *Computation of base and base rules.* (a) Subject to the conditions set forth in paragraph (b) of this section, the market administrator shall compute for each of the months of March, April, May and June, a base for each producer, as follows:

(1) Divide the total pounds of milk received by a handler from each producer during the months of September, October and November immediately preceding by the number of days such milk was produced (not to be less than 60 days); *Provided*, That any producer for whom a base has been computed may upon written notice to the market administrator postmarked not later than December 31 relinquish his base and be allotted a base computed pursuant to subparagraph (2) of this paragraph.

(2) Any producer who has not established a base or who elects to relinquish his base pursuant to the provisions of subparagraph (1) of this paragraph shall be assigned a base for each of the months of March, April, May and June computed as follows:

(i) From the total quantity of producer milk received by handlers during the same month of the previous year, subtract the total receipts from producers who did not establish bases or who had relinquished their bases.

(ii) Determine the percentage that base milk was of the remaining pounds, and subtract 10, except that for the months of March, April, May and June 1955 the percentages computed pursuant to this subparagraph shall be as follows:

Month:	Percentage
March 1955.....	65
April 1955.....	60
May 1955.....	55
June 1955.....	55

(iii) Multiply the resulting percentage by the total pounds of milk received by a handler from the producer during the applicable month and divide the result by the number of days such milk was produced.

(b) Any base computed pursuant to paragraph (a) (1) of this section shall be subject to following rules:

(1) A base shall be held in the name of the producer and may be transferred only at his option.

(2) The milk to which the transferred base shall apply must be produced on the same farm from which such base was earned, and the transferor must notify the market administrator in writing on or before the last day of the

month that such base is to be transferred indicating the name of the transferee, the amount of base transferred, and the effective date of the transfer; and in the event of a producer's death his base may be so transferred upon written notice to the market administrator from any member of the producer's immediate family.

(3) If a producer operates more than one farm he must establish a base with respect to the milk from each farm, and in the event such producer chooses to relinquish the base earned for one farm he must do so for all farms.

(4) On or before March 1 each year, the market administrator shall notify producers of their bases, and shall notify each handler of the base of each of the producers delivering to the handler's plant(s).

7. In § 941.71 delete paragraphs (d) and (e) and insert the following paragraphs (d) through (g):

(d) For each of the months of March, April, May and June, add an amount computed by multiplying the total pounds of excess milk as reported by handlers pursuant to § 941.30 (a) (3), by 40 cents per hundredweight; and

(e) Divide the result by the total hundredweight of producer milk of all handlers whose net pool obligations are included pursuant to paragraph (a) of this section; and

(f) Subtract not less than 4 cents nor more than 5 cents as a producer-settlement fund reserve. The result shall be the uniform price per hundredweight (for the grade of milk involved) of milk containing 3.5 percent of butterfat received from producers at pool plants located more than 55 miles but not more than 70 miles from the City Hall in Chicago, Illinois, except that for the months of March, April, May and June the price resulting from the computations made pursuant to this section shall be the uniform price for base milk.

(g) For each of the months of March, April, May and June the uniform price for excess milk shall be the uniform price for base milk less 40 cents per hundredweight.

8. Amend § 941.80 (b) by deleting the words "each delivery period" and inserting instead the words "the delivery periods of July through February."

9. In § 941.80 add paragraph (c) as follows:

(c) On or before the 18th day after the end of each of the delivery periods March through June each handler shall pay to each producer per hundredweight of base milk received from him during such delivery period not less than the uniform price for base milk, and for excess milk received from him the handler shall pay not less than the uniform price for excess milk subject in the case of both base milk and excess milk to the location adjustment and butterfat differential provided by § 941.81 and § 941.82 and all of the provisos contained in paragraph (b) of this section.

[7 CFR Part 960]

[Docket No. AO-253]

HANDLING OF MILK IN THE AKRON, OHIO,
MARKETING AREANOTICE OF RECOMMENDED DECISION AND OP-
PORTUNITY TO FILE WRITTEN EXCEPTIONS
WITH RESPECT TO PROPOSED MARKETING
AGREEMENT AND ORDER

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

Preliminary statement. The hearing, on the record of which the proposed marketing agreement and order were formulated, was conducted at Akron, Ohio on March 1-6, 1954, pursuant to notice thereof which was issued on February 10, 1954 (19 F. R. 859).

The material issues of record related to:

(1) Whether the handling of milk in the market is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce in milk or its products;

(2) Whether marketing conditions justify the issuance of a marketing agreement or order;

(3) Extent of the marketing area;

(4) The scope of regulation;

(5) The classification of milk;

(6) Class prices;

(7) Payments to producers;

(8) Administrative provisions.

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

(1) *Character of commerce.* The handling of milk in the Akron, Ohio marketing area is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce in milk and milk products.

The record shows that handlers in this area from time to time receive milk from out-of-state sources.

Although Akron producers supply milk primarily for fluid use, there is necessarily some reserve for variations in sales and production, and accordingly, some of the milk goes into manufactured products, and as such competes with similar products available and received from out-of-state sources. Much of the cottage cheese for the Akron market originates in Detroit, Michigan. The record shows also that Akron handlers have received supplies of supplementary milk

from plants which manufacture dairy products which move in or burden interstate commerce. Milk and milk products were also sold by an Akron handler to the Akron Naval Air Station and some of such milk was used outside the State of Ohio.

Record evidence also shows that milk processed in the proposed marketing area is sold in the Cleveland and Stark County marketing areas, where the handling of milk is regulated under other orders of the Secretary. The production areas of the proposed marketing area overlap the production areas of the Cleveland and Stark County markets, and producers shift or are shifted between the Akron market and these other markets. The Cleveland milkshed includes plants in Indiana and Michigan. Milk from the Stark County marketing area is sold in the proposed Akron marketing area.

(2) *Marketing conditions in relation to purposes of regulation.* The issuance of an order to regulate the handling of milk in the proposed Akron, Ohio marketing area will tend to effectuate the declared policy of the Agricultural Marketing Agreement Act.

During periods prior to World War II and thereafter a pooling arrangement was operated in this market by some of the handlers and the principal producers' association. This pool equalized returns to producers of participating handlers on the basis of utilization. When the pooling operation was resumed after the war, in September 1948, seven handlers participated and five others remained outside the pool. Among the difficulties which caused the dissolution of the pool was failure of a handler to report receipts from other sources and sales to vendors. A representative of the association indicated that attempts have been made to reestablish the pool, but these efforts have been unsuccessful because not all handlers are willing to be in it.

The association complained that lack of a pooling arrangement has caused an uneven distribution of the effect of surplus in the market, with a preponderant part of responsibility for marketing the surplus falling upon the association. At the time of the hearing in February the association was disposing of a large volume of such milk to a cheese plant.

Until December, 1953, this milk was utilized in the market for fluid purposes. It was displaced as result of a change in business arrangements by one of the handlers and prospects are that it will be needed for fluid purposes during any subsequent season of low production. At the cheese factory, the milk brings only a manufacturing rate of return. The difference between the manufacturing price and the going market price of milk for fluid use is being borne only by the membership of the association with the result that member prices are reduced relative to nonmember prices.

Incomplete information on receipts and sales, such as caused the dissolution of the pool, has become a factor hindering producers in the development of an orderly method of marketing their milk since cessation of the pooling operation. There is a lack of a reliable and accurate

system of accounting for milk receipts and utilization. Some handlers buying milk from the Akron Milk Producers report summary data on utilization to the association. Since such reports do not give the detail or product disposition, they do not provide a basis for checking the handlers' accounting. Since reports are not made by all handlers, there is no assurance that producers for the market receive payment for the use value of their milk.

Following dissolution of the pool, the bargaining position of producers has deteriorated, inasmuch as lack of a pooling operation has put more of the burden of surplus on the association. Absence of pooling places a handler at a disadvantage if he carries a greater proportion of milk as a reserve than his competitors, and accordingly, each handler is reluctant to receive any more milk than a very minimum to meet his needs. Refusal by some handlers to have dealings with the association also prevents effective bargaining and development of an orderly system for marketing producer milk.

Payment to producers is on a flat price basis. This is a single price applied to all milk received, regardless of use. In times when supplies are greater than sales in fluid form handlers are sometimes unwilling to accept all of the milk offered for sale by producers because the handlers are not willing to pay the same price for additional quantities of milk which must go into manufacturing uses. This situation results in dropping of some producers during the flush period, or turning milk back to the association.

Although handlers are reported to be paying about the same price to producers as the uniform prices in neighboring markets which have Federal regulation of producer prices, this does not indicate Akron handlers are paying for milk on a comparable basis with these other markets. Data in the record indicate the percentage of utilization in fluid use is generally higher for Akron handlers than in the Cleveland market. On this basis, the Akron handler would have a lower cost of milk than the Cleveland handler if he paid only the Cleveland uniform price. However, the record discloses two important exceptions to the "rule" that the Akron blend is as high as the blend in adjacent Federal order areas. One exception is that Akron prices were below the blend prices which prevailed under the Stark County order in the last few months of 1953. The second exception is the low price received by producers for the milk diverted to a cheese factory in the months immediately preceding the hearing. A fully effective classified price plan would assure producers of the full value of their milk in accordance with its use by handlers, as well as complete information on receipts, utilization, and prices.

A system of check-testing has been established by the Akron Milk Producers Association, but this has been effective only with respect to cooperating handlers. The association is not able to obtain corrections where check tests indicate variation from a handler's reported test. The program in the

market for checking weights is not applicable to all handlers in the market.

A marketing agreement and order program is needed to establish and maintain desirable and orderly marketing conditions in the Akron, Ohio Marketing Area. An order will establish uniformity among the handlers on classification and pricing of milk; provide impartial audit and check-weighing and testing; equalize payments among producers; and provide marketwide information on receipts, sales and other aspects of the milk marketing problem.

(3) *Marketing area.* The marketing area in which the handling of milk would be regulated by the proposed order includes all the territory within the boundaries of Summit County, Ohio, and within the boundaries of Franklin, Ravenna, Brimfield and Suffield Townships in Portage County, Ohio, except those portions of the defined area in those two counties which are already included in the Stark County, Ohio, marketing area, namely sections 25, 26, 27, 34, 35, and 36 in Greene Township of Summit County, and lots 1, 2, 9, 10, 11, 13, 19, 20, 21, 22, 29, 30, 31, 32, 39, and 40 in Suffield Township in Portage County.

The area described is one served almost entirely by handlers with plants in Akron adjoining Barbarton, Ravenna, and Cuyahoga Falls. Other milk distribution within this area may include about 10 percent of the retail distribution of one other handler at Orrville, and includes only minor parts of operations of other distributors. Distribution routes from the plants at Ravenna and Cuyahoga Falls are intermingled with routes out of plants in Akron and Barbarton.

Health and sanitation requirements for the above described area are generally similar so uniform prices may be applied to all milk produced for the area. Milk received at handlers' plants moves freely to any part of the described area. The various handlers compete freely with each other throughout the area, purchasing and distributing milk which is relatively uniform in quality.

It is clear that the entire area described above is affected by similar marketing conditions. Findings and conclusions with respect to need for a more orderly marketing system apply generally to all parts of the area, and all parts of the area are so interrelated as to require regulation of all of the area if effective regulation is to apply in any part.

The only territory proposed in the notice of hearing which is not included in the defined marketing area (or already included in the Stark County, Ohio, Marketing Area) consists of Sharon and Wadsworth Townships in Medina County. Medina County has no formal health inspection requirements for milk. It follows that local dairies doing business solely in the two townships in Medina County would not be required to purchase from producers and distribute milk of comparable standards to those enforced in Summit and Portage Counties, and consequently equal pricing would not be economically feasible. If, on the other hand, any of the handlers who distribute milk in Medina County

also distribute a significant quantity of milk in the marketing area, they will necessarily have met the inspection requirements and will be fully regulated by the order.

A handler also urged extension of the marketing area into parts of Portage and Medina Counties not covered in the notice of hearing. It is not possible to make any conclusion on this record as to areas not covered by the notice of hearing. Also, the Secretary, in a determination issued April 14, 1954 (19 F. R. 2233) found that there was no need to reopen the record of the hearing to consider such extension of the marketing area.

It is concluded that the above described area is a practical unit for the proposed regulation and should be adopted as the marketing area.

(4) *Scope of regulation*—(a) *Milk to be priced.* The type of regulation effected by a milk order is essentially a matter of establishing minimum prices to dairy farmers who produce milk for the market. The scope of such regulation may be made specific by providing appropriate definitions of the terms "producer", "handler", and "pool plant".

The primary factor in determining which dairy farmers are producers for the market is the plant to which they deliver their milk. Marketing conditions described in the record indicate that the most practical method of order regulation would be to establish minimum prices to all farmers delivering milk to plants from which milk is regularly distributed in the marketing area.

Handlers selling milk in the proposed Akron marketing area receive their milk from dairy farmers at the plants where it is packaged for fluid distribution. Virtually all the plant operators who distribute any milk in the area have the preponderant part of their distribution in the defined marketing area, however the record does contain mention of a plant operator who appears to have only a marginal portion of his total sales in the defined area. The order should, therefore, stipulate a level of within-the-area operations for determining whether this plant or others which may currently or subsequently distribute milk in the marketing area are to be fully regulated.

It was proposed by producers at the hearing that plants distributing 10 percent of the Class I milk on routes wholly or partly in the marketing area should be pool plants. This definition of a pool plant contemplated the establishment of a marketwide equalization pool, which it is concluded elsewhere in this decision should be adopted. The figure of 10 percent might be regarded as being large enough part of the handler's business to indicate substantial association with the market and that the handler's operations are likely to affect general marketing conditions. A handler witness suggested that a lower percentage figure might be used. This method of defining a pool plant, however, does not measure the impact on the market of unregulated milk, since a 10 percent distribution from a large plant might represent considerably more significant competition than a 20 percent distribution from a small plant. Instead, it is concluded

that all plants from which distribution of Class I products is made in this area should be included in the pooling operation, excepting only those with less than 300 "points" of Class I disposition daily on routes extending into the area. (A "point" is one quart of milk or a half pint of cream).

The limit of 300 "points" per day, or 600 "points" on every-other-day delivery is designed to represent a normal sized retail route or small to medium combination retail and wholesale route. Such volume is not considered a significant factor in this market and it is, therefore, not necessary that such a handler be subject to the entire reporting and payment provisions of the order.

Accordingly, "pool plant" should be defined as a plant at which milk received from dairy farmers is packaged for distribution as Class I milk and from which milk is distributed as Class I milk on a route(s) wholly or partially within the marketing area, except plants exempted because they have distribution of less than 300 "points" on such routes.

The term "route" is used in the definition of pool plant to cover a number of types of distributing operations in which handlers may engage in the proposed marketing area. "Route" should be defined as a sale or delivery (including a sale from a plant or a store) of Class I milk to a wholesale or retail stop(s). Such definition would include as route distribution a sale to or through a vendor.

The term "producer" should be defined to mean any person, other than a producer-handler, who produces milk which has the approval of the health authorities of any community in the marketing area for consumption as fluid milk in such community and is received at a pool plant. The definition should include a producer whose milk is temporarily diverted to a nonpool plant by the handler for his account. Such a provision will serve to maintain the status of producer for a dairy farmer whose milk temporarily is not needed by the handler and would facilitate interplant movements of milk for the purpose of adjusting to short-term variations in supply and requirements. In order that milk which is diverted would continue to be included in the regular pool computations, it would be treated as if it were received at a pool plant.

There are sanitation requirements applied by local governments within the area with respect to approval of the farms from which milk for fluid consumption may be supplied, and accordingly, such a qualification should be a part of the producer definition. The order provisions would be uneconomic if they had the result that dairy farmers who have met the health standards for the market shared the returns on fluid sales with farmers who have not met such qualifications.

"Handler" should be defined as any person (1) in his capacity as the operator of a plant where milk is processed and packaged for distribution on a route(s) in the marketing area, and (2) any cooperative association with respect to the milk of any producer which such cooperative association causes to be diverted

from producers' farms to a nonpool plant for the account of such cooperative association.

The handler is the person who receives milk from producers and who is responsible for reporting receipts and utilization of milk and payment therefor, with certain exceptions noted below. A cooperative association which markets the milk of its producer members may for short periods of time need to divert producers' milk from pool plants to nonpool plants. If the association is defined as a handler for such milk, even though it has no plant, the producers whose milk is so diverted will continue to receive the uniform price under the order and their milk will be available for fluid use when needed in the fall months or at other times.

The term "producer-handler" would apply to a person who produces milk and operates a plant from which a route(s) is operated wholly or partly in the marketing area, but receives no milk from producers. The order is not intended to establish minimum prices for such operators, but they should be required to make reports to the market administrator, since such reports are necessary to make a determination as to whether the operator is a producer-handler, and such reports facilitate accounting with respect to transfers of milk from other handlers.

A further exception from the minimum price regulation is the handler whose plant is a nonpool plant because his distribution in the area is less than 300 points. Such handlers should also be required to report for reasons similar to those for producer handlers.

(b) *Provisions relating to "other source milk"*. The attached order provides (§ 960.5) for the designation of "pool" plants. The purpose of this designation is to indicate the sources of milk which are fully regulated under the order. Sections 960.46, 960.47, and 960.72 (b) provide for the integration into the regulatory plan of milk other than that which is fully regulated (i. e. "other source" milk). The former sections provide for the allocation, in the classification system, of other source milk while the latter section provides for certain payments to be made into the producer-settlement fund on other source milk which is in excess of that allocated to Class II milk.

Any milk sold in the marketing area must, of course, conform to the sanitary requirements imposed by the local health authorities. However, handlers may meet these requirements without becoming regular and dependable sources of supply for the market since their milk may have been obtained as a supplemental supply during temporary periods of emergency or their sales may be an extremely small portion of a primary distribution in some other area. Clearly, it is not possible to identify the regular and normal supply for the Akron area solely on the basis of sanitation requirements.

Neither is the shipment of milk to the marketing area for Class I utilization a practical basis for identifying the milk which should be fully regulated under the order. If any small, incidental, or accidental shipment of milk into the

marketing area were to bring all of the milk at the plant from whence such shipment was made under total regulation, great hardship could be caused to the operator of such plant and to the farmers delivering milk to such an operator. Small quantities of milk are, in fact, disposed of in the regulated marketing area as Class I from plants which are not normal or regular sources of supply for the marketing area, particularly in the Fall season, when supplies are seasonally lowest. Moreover, the operators of the plants from which such shipments arise may not wish to bring their plants under total regulation. There are many situations in which plant operators may find it economical or desirable to make shipments of small quantities of milk to the marketing area and with respect to which it is neither necessary nor desirable in terms of effective regulation to bring the operators of such plants fully under the regulation. For instance, a plant which is associated with a market outside of the Akron area may find it advantageous to ship milk to a plant regulated by the order in order to have such milk converted into manufactured dairy products. It is quite possible, however, through misunderstanding, or from errors of estimating the utilization of milk, for milk which was intended for utilization in Class II products to be assigned a Class I classification. If through such accident or misunderstanding a plant were placed completely under regulation, considerable hardship, unnecessary to effective regulation, might result. For this reason, it is not practical nor desirable to place a plant totally under regulation merely because a small quantity of milk shipped by it to the market finds its way into a Class I utilization.

The attached order provides for a marketwide pool. Under this pooling plan, handlers whose proportion of utilization in Class I is greater than the market as a whole make payments into an equalization fund and these handlers whose proportion of utilization in Class I is less than the average for the market receive payments out of the equalization fund. This method of payments into and out of the equalization fund is the essential mechanism for providing uniformity of payments to farmers irrespective of the handler to whom they deliver their milk and provision for equalized payments to farmers is necessary to the maintenance of stable and orderly marketing conditions in the Akron area.

Because handlers with less than the market average proportion of milk in Class I may draw payments out of the producer-settlement, or equalization fund, there is an advantage to any plant operator who has less than the marketwide average proportion of milk in Class I to place himself under regulation in order to obtain these payments and, thereby, make it possible for him to pay the uniform price established under the order to his producers. The smaller the plant operator's proportion in Class I, the greater is the advantage of regulation to him. Under these circumstances, plants which are engaged primarily in the manufacture of milk into dairy products rather than as suppliers of Class I milk

to the marketing area, will attempt to place their plants under regulation for the sole purpose of obtaining payments out of the equalization fund. The result of this, however, will be to reduce the returns to those farmers whose milk actually constitutes the regular source of supply of Class I milk for the marketing area.

It is necessary for the reasons stated, therefore, that that milk which in fact constitutes the regular and normal sources of supply for the marketing area be distinguished from other milk which might enter the marketing area. The pool plant definition of the order is designed to identify the regular and normal sources of supply for the Akron marketing area. This section provides that regulated pool plants are those from which a significant quantity of milk (over 300 points per day) is disposed of in the marketing area as Class I. Any plant, no matter where located, may bring itself under regulation by performing in the manner required, and any plant may relieve itself of regulation when it no longer operates in a way that brings it within the scope of the order. Under these circumstances, the decision as to whether a plant will be fully regulated under the order or will not be subject to regulation is determined by the decision of the plant operator himself.

Since the order provides for the identification of that milk which is subject to total regulation under the order, the possibility remains that some milk (i. e. other source milk) will be disposed of in the marketing area as Class I which is not subject to total regulation. In fact it was testified that some quantities of other source milk have been disposed of in each month as Class I milk in the marketing area either by delivery to a plant which would be a pool plant under the order, or by sale by the outside plant operator directly to stores or to other consumption outlets such as hotels, restaurants, or homes.

The attached order provides that whenever total receipts from producers are more than 110 percent of the total Class I sales from pool plants a payment shall be made into the equalization fund on all other source milk classified as Class I at a rate equal to the difference between the Class I price and the Class II price. Payments at this rate are necessary to maintain the integrity of the pricing and pooling provisions of the order.

It appears from the record that essentially all of the other source milk utilized for Class I purposes in the marketing area has been of Grade A quality and, therefore, similar in quality to that regularly disposed of in the marketing area for Class I. It was produced as part of a supply intended primarily to meet the demand for milk for fluid consumption (or the equivalent of Class I milk uses under the order) in some area other than the area specified to be regulated by this order but it was not used for such purposes in the area for which it was produced. It was, instead, milk which became surplus to the needs for milk for fluid disposition in the area for which it was produced. If the plant operator had not found a sale for such milk within the

Akron marketing area, it would have been necessary for him to convert the milk into a manufactured milk product. The most likely surplus disposition of this other source milk would have been to plants engaged in processing milk into such manufactured dairy products as butter, cheese, ice cream, or nonfat dry milk solids.

Its value, therefore, to the plant operator was a surplus milk value. The Class II price for milk under the attached order is based on the value of milk when it is converted into butter and nonfat dry milk solids or the prices paid for milk at a group of midwestern condenseries, and this is the price which regulated handlers are required to pay for milk when they convert it into manufactured products. The Class II price, therefore, represents an accurate and fair representation of the value to the receiving plant operator of surplus milk which is disposed of as other source milk for Class I purposes in the marketing area.

If unregulated plant operators were allowed to dispose of surplus milk for Class I purposes in the regulated marketing area without some compensating, or neutralizing, provision in the order, it is clear that the disposition of such milk, because of its price advantage relative to fully regulated milk, would displace the fully regulated milk in Class I uses in the marketing area. The plan of Congress, as contemplated under the Agricultural Marketing Agreement Act of 1937, of returning minimum uniform prices to the producers for the regulated marketing area, would be defeated. Moreover, inefficiencies in the marketing of milk would be encouraged, for the regulated market would obtain its Class I milk not from the regular and normal sources of supply for the market but from other sources of supply generated solely as a result of the price advantage created for unregulated milk by the regulation itself. Providing for some method of compensating for, or neutralizing the effect of, the advantage created for unregulated milk therefore is an essential and necessary provision of this order. Since the value for Class I milk in a regulated market is established at the level of the Class I price provided for in the order and since the true value of other source milk when disposed of in the marketing area is the Class II value, a payment computed as the difference between the Class I price and the Class II price will remove the advantage which other source milk would have when disposed of for Class I purposes in the marketing area.

A possible alternative method of determining the rate of the compensatory payments was mentioned at the hearing. Such rate would be equal to the difference between the Class I price and the price actually paid by a handler for other source milk of Grade A quality. Under the circumstances which prevail in the Akron marketing area, a handler normally would come into possession of this type of other source milk by purchasing it from an unregulated milk plant. The milk which such a handler receives under these circumstances is at a different stage in the marketing process than is the milk

which would be priced under an order. Order prices apply to milk as received at the first plant from individual farmers. The price paid by a handler for other source milk applies to milk which has already been received at the first plant, weighed, tested, cooled and placed in a transportation conveyance. Obviously, the handler generally will pay more for other source milk under this condition than he would for milk received directly from farmers, for the plant operator who first receives the milk from farmers must necessarily obtain a markup if he is to be recompensed for the services which he has performed on the milk. In some situations, the purchase of other source milk might be made from a plant operated by the same company as the regulated plant. Thus, the transaction would be primarily a matter of book-keeping within the same company and it would be advantageous to the company if the price for the milk were to be stated as the Class I price. For by this means, all compensatory payments into the equalization fund would be avoided. Even between plants controlled by different companies, the advantage of showing that the price at which the milk was exchanged was at least as high as the Class I price would give great impetus to the effectuation of paper transactions showing a price at least equal to the Class I price while undisclosed payments were made in order to avoid the imposition of the compensatory payments into the equalization fund. Under these circumstances, it is impractical from an administrative standpoint to provide for a payment the actual amount of which is within the control of parties to the transaction. It is essential instead that the payment be computed on an objective basis and that it be equal for all handlers for similar transactions. The proposed method of computing the payments conforms with these requirements but this alternative method fails to do so.

Another possible rate of payment would be based on the difference between the price paid by the first receiver to farmers and the Class I price. It is, apparent, however, that this method would be impractical also. The payment plans which are used by unregulated operators include such varying practices as paying uniform prices on a straight utilization basis, paying on a base and excess plan, paying irregular and nonuniform premiums, absorbing transportation charges, and paying on a variety of butterfat and location differentials. This wide variety of payment plans would render impossible an accurate ascertainment of the actual prices paid to farmers by the first receiver. But what is equally as important, as shown above, is that the price actually paid to farmers does not determine the true value of other source milk disposed of in the marketing area. The true value for such milk, irrespective of the price paid for it to farmers, is the Class II value because other source milk disposed of in a marketing area is in fact the surplus of milk produced primarily for sale in an area outside of the regulated marketing area. Hence, although other suggestions for computing the rate of the compensatory

charge have administrative and other difficulties inherent in them, in the final analysis even if they were administratively feasible, they would not be fully effective in removing the advantage which attaches to other source milk when it is used as Class I milk in the regulated marketing area. Only the differential between the Class I price and the Class II price accurately reflects this advantage and consequently only this rate will be fully effective in dealing with the problem of integrating other source milk (when used as Class I) into the regulatory plan.

Producers proposed that pool plants purchasing supplemental other source milk be exempted from compensatory payments whenever they could show to the satisfaction of the market administrator that producer milk was not available either directly or from other handlers, at the Class I price.

There is obvious merit to the proposal that compensatory payments not apply whenever the market as a whole is short of producer milk. At times when total supplies have been short in the Akron area, it was testified that supplies available from other areas have also been so limited and that in such periods other source milk commonly costs more than the local supplies.

However, there are several advantages to measuring the adequacy of supply by comparing total receipts from producers with the total Class I utilization of pool plant handlers, instead of on a definition of "availability". In Akron there appears to be some allocation of milk between these handlers who purchase their milk from the cooperative association. Among these handlers routes could be diverted at the Class I price without involving inter-handler transfer costs. However, other handlers who have built up their own sources of supply and equipped their plants to utilize any seasonal surpluses might be reluctant to exchange milk.

These problems can be avoided by establishing a ratio of producer receipts to Class I sales from pool plants which will, in effect, measure availability but on a thoroughly objective basis. There are no data for the entire market, but it appears from the records furnished by those handlers who report to the association and from general testimony that the market can be considered short of producer milk whenever receipts are less than 110 percent of gross Class I sales. These partial data indicate that compensatory payments would not have applied on other source milk purchased by handlers during January, September, October, November, or December, 1953 because producer milk was less than 110 percent of Class I use in those months.

The percentage standard is similar to the availability proposal in that it is based on marketwide data. No handler can obtain other source milk without an equalizing payment merely by buying short from his own producers. He must either take on sufficient supplies for his own use or depend upon other handlers who have supplies in excess of their own Class I needs.

If it should develop that surplus milk from other areas is made available to Akron even at times of short supply, a reconsideration of the non-application of compensatory payments would be in order.

No compensatory payments should be required on milk classified and priced under another Federal order. The close relationships between the Cleveland, Akron, and Stark County markets has already been described and a modification of the proposed allocation provision has also been described. Since the Class I prices in Akron and Stark County have been specifically aligned with those under the Cleveland order there is no prospect of handlers in any one of the three markets achieving a competitive advantage.

All funds collected from other source milk should be added to the producer-settlement fund. Since the compensation payments apply only when there are adequate supplies of producer milk in the market, the payments will compensate producers for the loss of income represented by the Class I sales of other source milk.

The regulated handler should be obligated to make the compensatory payments. There will be no difference in actual price paid for milk whether the payment is made by the regulated handler or by the operator of the unregulated plant from which the other source milk is obtained. However, the regulated handler makes the actual distribution of milk and reports its utilization to the market administrator, therefore from an administrative viewpoint he is the logical one to make the payment.

(5) *Classification of milk.* All milk and milk products received by a handler should be classified on the basis of the form in which or the purpose for which it is used as either Class I milk or Class II milk. Since skim milk and butterfat are not used in the same proportions in most products as they appear in milk or milk products received by a handler, skim milk and butterfat should be classified separately according to their separate uses. For milk products received or disposed of by a handler which cannot be accurately tested for skim milk and butterfat content and for condensed products from which water has been removed, the amount of skim milk and butterfat which was actually used to produce such products (or, if such information is not available, standard factors of skim milk and butterfat used to produce such products) should be employed to determine the receipts or disposition of skim milk and butterfat in such products.

(a) *Classes.* Class I utilization should be all skim milk (including the skim milk equivalent of concentrated products) and butterfat (1) disposed of for consumption in fluid form as milk, skim milk, buttermilk, flavored milk, flavored milk drinks, concentrated milk for fluid consumption not in hermetically sealed cans, cream, including sour cream or any mixture of cream and milk or skim milk, or (2) not accounted for as Class II utilization.

All of the enumerated forms of fluid milk are required by the Akron health department, and by the other health authorities having jurisdiction in the defined marketing area, to be made from milk produced on farms having permits for fluid use. The plants at which such milk is received from producers, processed, and bottled, must also meet prescribed standards, and be covered by permits. The sanitary standards applicable to the farms and plants are substantially equal throughout the area and the prices applicable to Class I milk sold anywhere in the area should, therefore, be equal.

Concentrated milk has not yet been distributed in the marketing area, but it has been distributed in certain Ohio cities. Proper classification of this product at this time will prevent any problems concerning its classification if at some future date a handler decides to start distributing it. Concentrated milk must be made from milk of similar quality to milk used in other products for fluid consumption which would be classified in Class I. Products commonly known as evaporated milk or condensed milk and which are either packed in hermetically sealed cans or are used in the manufacture of other milk products should not be considered as concentrated milk and should not be classified in Class I unless they are used in the manufacture of milk products which are in Class I.

It is an increasingly common practice to raise the nonfat solids content of skim milk, buttermilk, and flavored milk drinks. Apparently this is most commonly accomplished in the Akron area through the addition of condensed skim milk made from producer milk or milk from other health-approved sources. The skim milk equivalent of these concentrated fluid items, whether obtained by adding solids or by partial condensation, should be in Class I.

All milk, skim milk, and cream which is received and for which the handler cannot establish utilization should be classified as Class I milk except for allowable shrinkage in Class II. Any other classification of such milk, skim milk, or cream could result in (1) some advantage to handlers who fail to keep adequate records of utilization, (2) lack of equality among handlers in the prices they pay for milk for the same use, and (3) failure of producers to receive full value of their milk on the basis of its use. A handler can avoid classification on this basis by maintaining complete records of utilization.

All skim milk and butterfat used to produce products other than the enumerated forms of Class I fluid milk should be Class II. The more common Class II dairy products manufactured by Akron handlers include cottage cheese, eggnog, yoghurt, aerated cream, ice cream and other frozen desserts or mixes, butter, cheese, condensed milk, and nonfat dry milk solids.

Some of the cream obtained from producer milk during the flush months is frozen and used during the short months, primarily in ice cream. Such cream should be accounted for as Class

II when frozen and stored. If any of it is subsequently used for Class I purposes, it will be subject to reclassification at that time.

Route returns and other milk disposed of for livestock feeding should be Class II, provided that verifiable evidence of such disposal is available. Also, any skim milk which may need to be dumped should be in Class II. However, this can be verified only by witnessing the action, since no independently verifiable record is available for audit purpose. Accordingly, the handler is required to give advance notice to the market administrator in order that he can have opportunity to have the dumping witnessed.

Shrinkage at a plant should be determined by subtracting from the total receipts of skim milk and butterfat at such plant the total disposition of skim milk and butterfat, respectively, from such plant. If the receipts at the plant include both producer milk and other source milk, the total shrinkage should be prorated between producer milk and other source milk. None of the shrinkage should be assigned to milk received from another pool plant because the shrinkage on such milk should be allowed to the handler operating such other pool plant. Shrinkage on milk diverted from farms to a pool plant other than the plant to which such milk is usually delivered should be allowed at the plant at which it is actually first received. No shrinkage should be allowed on milk diverted from a pool plant to a nonpool plant.

A plant which is operated in a reasonably efficient manner and for which complete and accurate records of receipts and utilization are maintained should have a total shrinkage of well under two percent of its total receipts. It is concluded that any shrinkage assigned to producer milk which is not more than two percent of total receipts of producer milk should be classified as Class II milk, and any shrinkage which is in excess of two percent of such receipts should be classified as Class I milk. All shrinkage assigned to other source milk should be classified as Class II milk.

(b) *Transfers.* Provision is made for classification of milk transferred between pool plants and between pool plants and non-pool plants. In the case of transfers between pool plants, transfer is permitted in any agreed class in which the transferee plant has utilization in an amount equal to or greater than the amount so transferred, after allocating any other source milk, since under a marketwide pool the classification of milk transferred between pool plants may represent any agreed producer milk use without affecting the payment to producers. Both handlers are required to report the transferred milk in the agreed classification; otherwise milk and cream transfers are classified as Class I.

In the case of transfers from a pool plant to a non-pool plant, a requirement that producer milk be allocated to the higher value uses in the transferee plant might make it difficult for pool plant operators to dispose of surplus milk. It is concluded that transfers from a pool

plant to a non-pool plant in the form of milk, skim milk or cream should be in Class I, but that such transfers may be classified as Class II if so reported by the pool plan operator and if the transferee or another plant to which the product may be moved by the transferee has an equivalent use in Class II and keeps books and records which make it possible for the market administrator to verify such use.

(c) *Allocation.* Since some handlers combine operations which utilize other source milk in the same plants as those which handle producer milk for the fluid market, it is necessary to provide a method for allocating such other source milk to the classes of utilization in order to determine the classification of the producer milk. Since producer milk is the milk which is regularly available for fluid consumption in the marketing area, the method of allocation provides that producer milk shall be allocated to Class I to the extent that such use is available.

Handlers proposed that if during any month receipts of milk from producers are less than 120 percent of the total volume of Class I milk during such month, then other source milk should be allocated to Class I and Class II milk in the same ratio as receipts from producers. Such allocation procedure should not be adopted. The possibility exists that handlers may be able to obtain other source milk for use in Class I at a price below the Class I price. In view of this possibility, the allocation procedure proposed by handlers allocates other source milk to Class I while some producer milk is being allocated to Class II. This would offer an incentive to handlers to maintain only nominal supplies of producer milk and to rely on supplemental supplies of other source milk.

At the hearing it was pointed out by the proponents that their original proposal for the allocation of milk from other Federal areas as other source receipts under the Akron order would create serious problems. The original proposal provided that all other source milk (whether from unregulated or other Federal sources) be allocated first to any Class II utilization by each Akron handler. This provision would have had no effect on these handlers who distribute milk in Akron from plants subject to the Cleveland or other Federal order, since they have no producers under the Akron order. Also it would not affect an Akron handler in a position similar to that of another dairy which was having its entire supply of milk bottled by a firm subject to the Stark County order. The proposal would, however, have affected those handlers who supply part of their sales with milk from local producers and part with milk bottled in two-quart containers at the Stark County plant. In this case the seasonal and daily excess of producer milk under the Akron order, which would otherwise be assigned to Class II use, would be allocated instead to Class I to the extent of the receipts of the other Federal order milk. Clearly, the seasonal and daily reserves of milk necessary to supply the exact quantities of two-quart milk bottled at the Stark

County plant was carried by Stark County producers. Yet under the original proposal, the producers at the Akron plant would get Class I credit for milk which should properly be considered as reserve supply for the quantities of milk actually bottled at the Akron plant for fluid distribution.

In addition to these recognized inadequacies, it was brought out at the hearing that other types of intermarket movements of milk are growing rapidly. The most notable current instance is the direct distribution of milk by one of the Akron handlers in the Cleveland and Stark County marketing areas. However, Cleveland handlers also distribute milk in the Akron area, and firms with plants in each of two or more areas have already consolidated their manufacturing operations or removed them entirely from their regulated plants, and other consolidations might conceivably occur which would affect intermarket classification and pricing.

A suggested solution advanced by the Akron producers would apply only to such cases as that of the Akron handler who gets a portion of his milk from a Stark County handler. It was suggested that a portion of the Class I milk bottled by the Stark County handler for the Akron distributors be credited to the Akron producers. This suggestion is based upon the premise that the Akron handler formerly obtained all of his milk locally and that the change in his operations deprives Akron producers of part of their Class I sales.

It must be recognized, however, that all types of changes in the location of handlers' plants and in their areas of distribution may involve changes in their procurement of milk. Such changes have not been controlled within any of the Federally regulated marketing areas and should not be subject to allocation between such closely interrelated areas as Cleveland, Akron and Stark County.

It is concluded that milk in bottled form classified and priced under another Federal order should be assigned to the same utilization under the Akron order as under the other order, as well as being exempt from the pricing provisions of the Akron order. However, bulk milk from other Federal areas which might be expected to be purchased to supplement an Akron handler's local supplies should be allocated first to Class II, in the same fashion as other source milk from unregulated plants. Such allocation will encourage handlers to purchase other source milk only when producer milk is not available. At such times, of course, there would be little or no producer milk in Class II to be affected by allocation.

If the total of all Class I and Class II milk in producer milk so computed exceeds the amount of producer milk reported to have been received at the plant for which the computation is being made, such excess (commonly referred to as "overrun") should be assigned first to any Class II utilization remaining after the foregoing allocation, and any remainder to Class I. Any overrun at a pool plant should be paid for by the handler operating the plant at the price

for the class to which such overrun was allocated. Payment for such overrun could be a result of underweighing or under-testing producers' milk or of failing to maintain complete and accurate records of the receipts and utilization of producer milk.

(6) *Class prices.* The Class I products are those in which the fluid milk producers are primarily interested. It is this Class of products which requires extra effort and expense to meet the strict sanitation requirements, provide a year-around supply, and undertake the extra hauling which is commonly involved. Handlers must be charged a sufficiently high price for the milk used in Class I to attract an adequate supply of milk for the market. The seasonal and daily excess of Class II milk, on the other hand, must either be disposed of to manufacturing plants or manufactured into products made from milk which can be produced under less stringent conditions.

(a) *Class I price.* For the first 24 months of the operation of an order for the Akron area, the minimum Class I price per hundredweight of milk of 3.5 percent butterfat content should be 5 cents less than that prevailing under Order No. 75 regulating the handling of milk in the Cleveland, Ohio, marketing area for milk delivered to plants located in the marketing area.

Some time after the order has been in operation a full year, a hearing can be called to consider more permanent Class I price provisions. At such time considerable marketwide data on all aspects of the problem will have become available, and variations in the price-making method which might then seem to provide a more satisfactory price for the Akron marketing area may be given thorough consideration.

There are several reasons for adopting the Cleveland Class I price of milk, less 5 cents, as being the most appropriate price available for the first several months of operation of the Akron order. One is that the supply of milk for Akron is obtained from farms located comparatively close to the market. The milk is hauled directly from the farms to the bottling plants from which it is distributed in the marketing area; none of the bottling plants obtain regular supplies from country supply plants. In order to maintain this supply of milk, the prices paid farmers must be closely in line with those paid to Cleveland shippers, since the Cleveland milkshed completely envelope the Akron territory. The prices must also be in line with those established under the Stark County order, since Akron and Stark County producers are intermingled in the area south of Akron.

If the procurement of milk was the only price problem involved, the class prices under the Akron order could be established at such levels as to result in blend prices relative to those paid under the Cleveland and Stark County orders which would discourage the Akron shippers from shifting to the other markets. In the absence of any order price regulation, the smaller secondary markets like Akron which are located within

the milkshed of a large primary market like Cleveland tend to obtain their supplies from the closest farms. The handlers in the large primary market, either individually or in aggregate, tend to bypass the secondary markets and develop country plant sources of supplies in more distant areas from which the milk is hauled in tank load lots. This practice by the secondary markets of obtaining their comparatively small supplies locally, while the primary market relies upon country plant sources from which tank load shipments are feasible, should not be hindered by the order.

However, the procurement of the supply of milk is not the only aspect of intermarket competition which must be considered in establishing the Class I price in Akron. Sales competition between Akron handlers and those regulated under the Cleveland and Stark County orders is exceptionally keen. Some phases of the competition have already been described under the topic "Marketing Area". The one milk company has extensive sales in the Cleveland and Stark County areas from its plant at Stow, Ohio. This company also is a major handler in the Akron territory, which is supplied from this firm's large plant at Cuyahoga Falls. There are substantial sales by several Cleveland handlers in the Akron marketing area and direct competition exists between Cleveland and Akron handlers in the territory between the two marketing areas. Relations between Stark County and Akron handlers are even more direct; one of the Stark County handlers bottles the entire supply of milk for one Akron area handler and bottles milk in 2-quart paper containers for three other handlers whose principal distribution is in the Akron area. The Cleveland handlers whose plants are located in that city must, of course, pay at least the f. o. b. market Class I price for all milk distributed from such plants. However, Cleveland handlers whose plants are located not more than 60 miles from the Cleveland city hall must also pay the f. o. b. prices for all milk distributed from such plant for Class I purposes even though the minimum price to producers in the 30-60 mile zone is 13 cents less than the market price. The Stow, Ohio, plant of the Lawson Milk Company and the Wooster Farm Dairy, at Wooster, are within the 60-mile zone. Sales by Stark County handlers and the milk bottled for Akron distributors by a Stark County handler are paid for at the Stark County Class I price. The Class I price for milk received at plants holding health permits from Canton, Alliance, or Massillon is 5 cents less than the Cleveland Class I price for milk delivered to city plants.

The Class I price under the Cleveland order is determined by adding a Class I differential to the value of manufactured milk. The value of manufactured milk is the higher of two basic formula prices, one being the average price reported paid to farmers by a list of midwest condenseries, and the other being a formula which measured the value of milk used for manufacturing butter and nonfat dry milk solids. The Class I differen-

tial is 90 cents per hundredweight during April, May and June, the months of flush production; \$1.90 during August through January, the months of lowest production; and \$1.45 during the intermediate months of February, March and July. These stated Class I differentials are further subject to a supply-demand adjustment which raises the Class I differential whenever supplies are below normal in relation to sales, and lowers it whenever supplies are excessive in relation to sales. The supply-demand adjustment is limited to plus or minus 25 cents. It is concluded that this same system of pricing is as appropriate to the conditions of supply and demand of milk in Akron as in Cleveland, and that the two markets are so closely competitive both in the procurement and distribution of milk approximately the same Class I price should prevail in both markets.

Adopting a Class I price which is the same as that under the Stark County order, and only 5 cents below that of the Cleveland order would assure substantial equality between the cost of Class I milk to all handlers in the three markets. This similarity of prices would prevent the substantial changes in sales territories, location of plants, and procurement policies which would be virtually certain to result if there were any substantial differences in the Class I prices in these markets. It appears probable that this similarity of Class I prices will result in a higher blend price to the Akron producers than is paid under the Cleveland order. The data reported by those handlers who purchase milk from the cooperative associations indicate a substantially higher percentage of Class I utilization than occurs under the Cleveland order. Although data were not available for the other Akron handlers, experience in other markets where there is no marketwide pool indicates that their utilization may also be comparatively high. If such a difference in blend prices materializes, Cleveland shippers may wish to switch to the Akron market. However, even if such switch occurs, it will have only minor effect upon Cleveland supplies, since a shift by a comparatively small proportion would equalize the Akron and Cleveland blend prices.

The conclusion that the Akron Class I price be 5 cents below the Cleveland price instead of fully equal to it reflects the discount on fluid cream contained in the Cleveland order. In the Akron order the butterfat and skim milk content of fluid cream is in Class I, at the same price as the components of fluid milk and other Class I items. Under the Cleveland order the prices of the butterfat and skim milk components of fluid cream are determined by deducting 45 cents per hundredweight from the price of fluid milk of 3.5 percent butterfat content and allocating 70 percent of the resultant price as the value of the 3.5 pounds of fat and 30 percent as the value of the 96.5 pounds of skim milk. At the prices which prevailed during the calendar year 1953 the quantities of fluid cream sold under the Cleveland order reduced the total Class I price 5.5 cents per hundredweight of milk below the

price which would have prevailed if there had been no discount on fluid cream. This computation is based upon the announcements of minimum Class prices to handlers and minimum blend prices payable to producers, as issued by the Cleveland market administrator. Official notice of such data is hereby taken. In order to assure equality in the level of the Class I prices paid by Akron handlers with those under the Cleveland and Stark County orders, the Akron Class I price should be 5 cents less than the Cleveland Class I price applicable to fluid milk.

(b) *Class II price.* The Class II price should be equal to the average paid for milk of 3.5 percent butterfat content at 15 midwest condenseries or a formula based on market prices of butter and nonfat dry milk solids, whichever is higher.

The butter-powder formula should be the same as that used for the pricing of Class II milk under the Stark County order and as a basic formula under both the Stark County and Cleveland orders. This formula uses the market prices of butter and powder to measure the value of milk used for their manufacture. Three cents is deducted from the price of 92-score butter at Chicago, the result is multiplied by an overrun factor of 1.2, and this result in turn is multiplied by the basic fat test (3.5) as a measure of the value of the butterfat content. To this butterfat value is added the skim milk value computed by deducting 5.5 cents from the average of the market prices for spray and roller process nonfat dry milk solids, f. o. b. cars or trucks at manufacturing plants in the Chicago area, and multiplying the result by a yield factor of 8.2, the quantity of solids obtainable from 96.5 pounds of skim milk.

Data on the quantities of Class II milk were not made available for all of the Akron area distributors at the hearing. However, a compilation submitted by the producers shows the percentage of producer milk used in each of three categories as reported by the six firms which purchased milk from the association in 1953. These data disclosed that in the calendar year 1953 only 11 percent of milk received from the producers was utilized for purposes other than fluid milk and cream. No milk was reported so used in the months of October and November, and the maximum percentage in excess of fluid needs occurred in May when the percentage reached 25. These data demonstrated that a remarkably high percentage of milk received from producers at these plants is utilized for fluid milk and cream.

It was testified that several handlers have equipped their plants to manufacture cottage cheese and ice cream as a means of making the most efficient and profitable use of the seasonal excess of milk delivered by producers. Two of the larger handlers have minimized the handling of flush season receipts by developing health-inspected sources of milk which were drawn upon only during the fall and winter season of low production. Such measures as these have greatly reduced the necessity of physi-

cally transporting much of the seasonally excess milk from the bottling plants to manufacturing plants. Even in those instances when supplies from producers are in excess of those which can be accommodated in the handlers' plants, it is frequently possible to divert the milk from farm pickup routes directly to manufacturing plants, thereby avoiding the extra expense of receiving such milk at the bottling plants and transporting it back to a manufacturing outlet.

It is difficult to place a precise valuation on the excess milk. Its value is comparatively low on such quantities as must be received at bottling plants and transported considerable distances for manufacture; on the other hand its value is comparatively high in terms of the alternative cost for milk suitable for use in the manufacture of cottage cheese or ice cream delivered to Akron handlers' plants from other sources. When the excess of supplies of producer milk can be utilized in handlers' plants, it should command an appreciable premium over the basic formula prices which refer to strictly manufacturing grade milk. Such premium reflects the higher quality of producer milk and the absence of transportation or container costs.

It is concluded that the Class II price will permit the orderly and efficient disposal of milk not needed for fluid use without encouraging handlers to add producers in excess of those needed to supply their needs for fluid milk and cream in the months of lowest production.

(c) *Handler butterfat differentials.* The Class I and Class II prices under the order should be stated in terms of the price per hundredweight of milk containing 3.5 percent of butterfat. The price applicable to milk of a butterfat content other than 3.5 percent should be stated in terms of a butterfat differential, i. e., the amount by which the price at basic test is raised or lowered for each one tenth of one percent that the test differs from 3.5 percent. The Class I butterfat differential should be 0.13 times the price per pound of 92 score butter at Chicago, and the Class II butterfat differential should be 0.115 times the butter price.

The butterfat and skim milk utilized in each class is accounted for separately under most of the Federal orders, including all those in Ohio. The price per hundredweight of milk must, of course, be allocated to the skim milk and butterfat components. In most orders throughout the United States this is accomplished by specifying a basic butterfat test and a butterfat differential, which is the amount to be added or subtracted from the announced price for each one tenth of one percent variation in butterfat content. However, under the Cleveland, Stark County, and Lima orders the 3.5 percent price is only an intermediate computation; official class prices are then computed and announced separately per hundredweight of butterfat and per hundredweight of skim milk. There is no substantive difference between the two methods of computing and announcing class prices. The butterfat price differential is more simply stated, focuses attention on the 3.5 price, and is

used in the great majority of orders which utilize a butterfat and skim milk accounting system. It should, therefore, be used in Akron.

In the original Notice of Hearing, it was proposed by producers that the Class I price for 3.5 milk be allocated to butterfat and skim milk in the same ratio as the basic butter-powder formula, which is the price comprised of the values of butterfat and skim milk in milk used for manufacturing purposes. At the hearing they modified this proposal to provide that the value of a hundred pounds of Class I butterfat be set at a fixed ratio of 130 times the price per pound of 92 score butter at Chicago and that skim milk be assigned the residual value obtained by deducting the value of 3.5 pounds of butterfat from the 3.5 price per hundredweight of Class I milk. The modification would reduce the value of Class I butterfat and keep it at a fixed relationship to butter in all months of the year. Skim milk values, of course, would be correspondingly increased. The modification reflects an increasing consumer demand for skim milk and skimmed or partly skimmed milk drinks, and a decreasing consumer demand for cream and other high-butterfat products.

Producers proposed that the Class II price be allocated to butterfat and skim milk in the same ratio as contained in the basic formula butter-powder price. In the basic formula butterfat is valued at the price per pound of 92-score butter in Chicago less 3 cents, multiplied by an overrun factor of 120. If the local plant price is above the Class II butter-powder formula price, the Class II butterfat value will be correspondingly higher. On balance, it appears that a Class II butterfat differential equal to 0.115 times the market price of butter will achieve substantially the same allocation between butterfat and skim milk as was proposed.

(7) *Payments to producers—(a) Type of pool.* It is concluded that the sales proceeds from all pool plants should be combined on a market-wide basis for distribution to the producers.

A market-wide form of pooling was proposed by producers and was not opposed by any of the handlers. The alternative is a system of individual-handler pooling whereby the producers supplying each of the regulated handlers is paid a blend price based upon the proportionate Class I and Class II sales of that particular handler. For many years the cooperative association of producers in the Akron market sold the milk of its members to handlers under a classified price plan, and distributed the proceeds through a market-wide pool. Under such a pool all producers received the same minimum price for milk at 3.5 percent butterfat content delivered to pool plants. (This uniform price is, of course, subject to adjustment for varying percentages of butterfat content and producers may also be charged different rates for hauling this milk from farm to plant.) An important advantage of a market-wide pool is that the uniformity of payments to producers allows handlers either to equip their plants to manufacture the seasonal and daily surpluses of

milk, or to minimize their handling of such milk, without affecting the blend price paid to the particular shippers who deliver regularly to their plants. Some of the Akron handlers are equipped to utilize seasonally surplus milk from their own producers and from other handlers in the market, while some handlers have virtually no facilities in their plants for the manufacture of dairy products. One further reason for preferring a market-wide pool in Akron to individual-handler pooling is that both the Cleveland and Stark County orders provide for market-wide pools. Having a similar pool in Akron will facilitate shifts of producers in response to changes in local demands and patterns of distribution or other factors which may affect one market more than the others. This follows from the fact that individual handlers can add shippers without appreciably lowering the prices payable to their own producers, thereby jeopardizing the returns to their previous regular shippers.

(b) *Payments to individual producers and to members of cooperative associations.* Handlers should make payments to each producer for milk delivered by such producer at the appropriate uniform price. 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 payments and if the 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 agree to indemnify the handler for any loss incurred because of an improper claim. 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 to the cooperative association, 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 it collects to producers for whom it collects.

Unless a cooperative association can receive payment for the milk marketed on behalf of its producer members, it cannot re-blend the sales proceeds from milk sold in various outlets. Such re-blending may be desirable in connection with profits or losses on milk diverted by an association to nonpool plants or on milk sold for fluid use in other marketing areas.

(c) *Producer-settlement fund.* Since all producers are to receive the same price for milk (except for butterfat differentials), and 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; and 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 off uniform prices. In order to permit this rounding off 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.

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

(d) *Producer butterfat differential.* The uniform prices should be computed for milk containing 3.5 percent of butterfat. This follows past market practice. In distributing proceeds to producers a differential should be established for milk containing more or less than 3.5 percent of butterfat.

Such differential should correspond to the weighted average values of the butterfat and skim milk in producer milk utilized by handlers in Class I and Class II. This follows the same principle as the payment of a uniform price to all producers. Each producer shares equally in the total value of the handlers' Class I and Class II utilization, at the basic test of 3.5 percent butterfat. It is equally appropriate that each should receive the average utilization value of the butterfat and skim milk components for milk testing above or below 3.5 percent. A weighted average will give butterfat a somewhat higher value and skim milk a proportionately lower value than those proposed by producers; the Class I butterfat differential is 1.3 times the butter price and the Class II factor is 1.15 whereas producers proposed a differential just fractionally over the butter price without allowing for a yield factor.

(8) *Administrative provisions.* The remaining provisions of the order are of a general administrative nature, are incidental to the other provisions of the order, and are necessary for the proper and efficient administration of the order. 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 by the order. 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 its suspension or termination. They are similar to like provisions of other orders, and except as set forth below require no comment.

(a) *Expenses of administration.* As his share of the expenses of administering this order each handler should pay not in excess of 3 cents per hundredweight with respect to all producer milk received, and all other source milk received at a pool plant which was classified at Class I milk. The market administrator must verify receipts and utilization of all such milk; therefore all such milk should be subject to the expenses of administration. Experience in other markets indicates that 3 cents per hundredweight with respect to all such milk should yield sufficient money to cover expenses of administration. If payment of expenses of administration at the rate of 3 cents per hundredweight yields more money than is needed, provision is made for the Secretary to prescribe a lesser rate of payment from time to time.

(b) *Marketing services.* It was pointed out earlier in this decision that market-wide information concerning market supply and requirements would be useful to producers and cooperative associations in helping them maintain their production in line with market requirements. Costs involved in distributing information to producers and cooperative associations should be borne by the producers or their associations.

The cooperative association in the market has been providing marketing services to its members which include the verification of weights and tests of milk delivered by each member. The provision for such services to be rendered to producers for whom a cooperative association does not perform such services will assure each producer that he is receiving his just proportion of the total proceeds of the market. Costs of these services should also be borne by producers.

On the basis of the costs of providing these services in other markets, it is concluded that a deduction of 6 cents per hundredweight of milk delivered by each producer should be adequate to cover these costs. Provision is made that the Secretary may reduce this deduction if experience indicates a lesser deduction will provide adequate funds. If a cooperative association is actually performing these services for producers, then in lieu of the 6 cent deduction such deduction as is authorized by such producers should be made from the amounts due producers for whom the cooperative as-

sociation is performing such services and should be paid to the cooperative association.

(c) *Records and reports.* Reports are required from handlers on receipts and utilization so that the market administrator may make the computations necessary to the marketwide pooling operation and compute the uniform price to producers. Handlers would also be 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 net amount paid to the producer.

The order should provide 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 the period of time in 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, and the Secretary's decision of January 26, 1949 (14 P. R. 444), covering the retention of records and limitation of claims is equally applicable in this situation and is adopted as a part of the decision.

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

Day of the month and function

- 5th—Announcement of class prices by market administrator.
- 8th—Submission of monthly report of receipts and utilization by handlers.
- 13th—Announcement of uniform price and names of handlers who received producer milk and notification to handlers of the value of their producer milk by market administrator.
- 14th—Payment by handlers of amounts due to producer-settlement fund and for expenses of administration.
- 16th—Payments by handlers to cooperative associations and by market administrator out of producer-settlement fund.
- 18th—Payments by handlers to producers.

(f) *Milk subject to other Federal orders.* A handler who operates a plant at which minimum prices to dairy farmers are established under another order issued pursuant to the act, but nevertheless supplies milk for distribution in the Akron marketing area should be exempt from the provisions of this order, except for reporting his volume of Class I sales in the marketing area. It would be impracticable to attempt to regulate a handler under two separate orders with respect to the same milk. The effective regulation should be subject to determination by the Secretary of Agriculture. A proposal that the Class I sales by such a handler in the Akron marketing area be prorated between Akron producers and the producers for the other market is discussed elsewhere in this decision.

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

Rulings on proposed findings and conclusions. Briefs were filed on behalf of a producer cooperative association and milk distributors in the area. The briefs contained statements of facts, proposed findings and conclusions, and arguments with respect to the provisions of the proposed order. Every point covered in the briefs was carefully considered along with the evidence in the record in making the findings and reaching the conclusions hereinbefore set forth. To the extent that the findings and conclusions proposed in the briefs are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of the facts found and stated in connection with the conclusions in this recommended decision.

Recommended marketing agreement and order. The following order is recommended as the appropriate means whereby the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be identical with those contained in the order.

DEFINITIONS

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

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

§ 960.3 *Marketing Area.* The Akron, Ohio, Marketing Area, hereinafter referred to as "marketing area" means all territory, including but not limited to all municipal corporations within the boundaries of: Summit County excepting sections 25, 26, 27, 34, 35, and 36 in Greene Township; and including Franklin, Ravenna, Brimfield, and Suffield Townships in Portage County (excepting lots 1, 2, 9, 10, 11, 12, 19, 20, 21, 22, 29, 30, 31, 32, 39, and 40 in Suffield Township.

§ 960.4 *Handler.* "Handler" means any person (a) in his capacity as the operator of a plant where milk is processed and packaged for distribution on a route(s) in the marketing area, and (b) any cooperative association with respect to the milk of any producer which such cooperative association causes to be diverted from producers' farms to a non-pool plant for the account of such cooperative association.

§ 960.5 *Pool plant.* "Pool plant" means any plant at which milk received from dairy farmers is packaged and distributed as Class I milk on a route(s) wholly or partially within the marketing area, except plants exempted pursuant to § 960.80.

§ 960.6 *Nonpool plant.* "Nonpool plant" means a plant other than a plant operated by a producer-handler, during such months as it is not a pool plant.

§ 960.7 *Producer.* "Producer" means any person other than a producer-handler who produces milk which has approval of the health authorities of any community in the marketing area for consumption as fluid milk in such community and is received at a pool plant. This definition shall include any such person who is regularly designated as a producer but whose milk is caused to be diverted to a plant, other than a pool plant, by a handler for his account. Milk so diverted shall be deemed to have been received at a pool plant by the handler or cooperative association which caused it to be diverted.

§ 960.8 *Producer milk.* "Producer milk" means skim milk and butterfat contained in milk received from producers.

§ 960.9 *Other source milk.* "Other source milk" means all skim milk and butterfat contained in milk, skim milk, or cream, used to produce all other milk products, received from all sources other than producers and pool plants.

§ 960.10 *Producer-handler.* "Producer-handler" means any person who (a) produces milk; (b) receives no milk from producers or from other sources; and (c) operates a plant from which a route(s) is operated wholly or partially within the marketing area.

§ 960.11 *Route.* "Route" means a sale or delivery (including a sale from a plant or store) of Class I milk to a wholesale or retail stop(s).

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

§ 960.13 *Department of Agriculture.* "Department of Agriculture" means the United States Department of Agriculture.

§ 960.14 *Cooperative association.* "Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association; (a) to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; (b) to have full authority in the sale of milk of its members

and to be engaged in making collective sales or marketing milk or its products for its members; and (c) to have all of its activities under the control of its members.

MARKET ADMINISTRATOR

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

§ 960.21 *Powers.* The market administrator shall have the power to:

(a) Administer all of the terms and provisions of this subpart;

(b) Make rules and regulations to effectuate the terms and provisions of this subpart;

(c) Receive, investigate, and report to the Secretary complaints of violations of this subpart; and

(d) Recommend to the Secretary amendments to this subpart.

§ 960.22 *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this subpart, including but not limited to the following:

(a) Within 30 days following the date on which he enters upon his duties or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties as market administrator and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

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

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

(d) Pay out of the funds provided by § 960.75, (1) the costs of his bond and of the bonds of those of his employees who handle funds entrusted to the market administrator, (2) his own compensation, and (3) all other expenses (except those incurred under § 960.76) necessarily incurred by him in the maintenance and functioning of his office in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this subpart and upon request by the Secretary surrender the same to his successor or to such other person as the Secretary may designate.

(f) Publicly announce unless otherwise directed by the Secretary by posting in a conspicuous place in his office and by such other means as he deems appropriate the name of any person who, within 8 days after the day upon which he is required to perform such acts, has not made reports pursuant to § 960.30 or § 960.31 or payments pursuant to §§ 960.70, 960.72, 960.74, 960.75, 960.76, or 960.77;

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

(h) Audit all reports and payments by each handler by inspection of such handler's records and of the records of any other person upon whose utilization the classification of skim milk and butterfat for such handler depends; and

(i) Publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate;

(1) On or before the 5th day of each month the minimum class prices for the preceding month for milk of 3.5 percent butterfat content and for skim milk and butterfat, as computed pursuant to §§ 960.50 and 960.51.

(2) On or before the 13th day of each month the uniform prices for the preceding month computed pursuant to § 960.61, the butterfat differential for the preceding month computed pursuant to § 960.74, and the name of each handler who received producer milk during the preceding month and the percentages of such milk which was classified as Class I milk and as Class II milk.

(j) Prepare and disseminate, for the benefit of producers, consumers, and handlers, such information concerning the operation of this subpart as does not reveal confidential information.

REPORTS, RECORDS AND FACILITIES

§ 960.30 *Monthly reports of receipts and utilization.* On or before the 8th day of each month, each handler who operates a pool plant shall, with respect to milk or milk products which were received or produced by such handler during such month, report to the market administrator in the detail and form prescribed by the market administrator, as follows:

(a) The quantities of butterfat and skim milk contained in milk received from producers, or produced by the handler;

(b) The quantities of butterfat and skim milk contained in or used to produce receipts of milk and milk products from other handlers;

(c) The quantities of butterfat and skim milk contained in or used to produce receipts of other source milk (except Class II products disposed of in the form in which received without further processing or packaging by the handler);

(d) The utilization of all butterfat and skim milk the receipt of which is required to be reported pursuant to this section;

(e) The pounds of butterfat and skim milk contained in all milk, skim milk, and cream and other Class I products on hand at the beginning and at the end of the month;

(f) Such other information with respect to the use of milk as the market administrator may request.

§ 960.31 *Other reports.* Other reports shall be submitted to the market administrator as follows:

(a) Each producer-handler, and each handler who does not operate a pool plant, shall make reports at such time

and in such manner as the market administrator may request.

(b) On or before the 20th day of each month each handler who operated a pool plant at which producer milk was received in the preceding month shall submit such handler's producer payroll for the preceding month which shall show (1) the total pounds and the butterfat content of milk received from each producer, (2) the amount and date of payment to each producer or cooperative association pursuant to § 960.70, and (3) the nature and amount of each deduction or charge made by the handler.

§ 960.32 *Records and facilities.* Each handler and producer-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 any of his operations and such facilities as in the opinion of the market administrator are necessary to verify or to establish the correct data with respect to: (a) The receipts and utilization or disposition of all skim milk and butterfat received, including all milk products received and disposed of in the same form; (b) the weights and tests for butterfat, skim milk and other contents of all milk and milk products handled; and (c) all payments required to be made by such handler pursuant to §§ 960.70, 960.72, 960.74, 960.75, 960.76, and 960.77.

§ 960.33 *Retention of records.* All books and records required under this subpart to be made available to the market administrator shall be retained by the handler or producer-handler for a period of three years to begin at the end of the calendar month to which such books and records pertain: *Provided*, That if within such three-year period the market administrator notifies the handler or producer-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 or producer-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 or producer-handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 960.40 *Skim milk and butterfat to be classified.* All skim milk and butterfat received at a pool plant from any source shall be classified pursuant to §§ 960.41 through 960.44.

§ 960.41 *Classes of utilization.* Subject to the conditions set forth in §§ 960.43 and 960.44, the classes of utilization shall be:

(a) Class I utilization shall be all skim milk (including the skim milk equivalent of concentrated products) and butterfat (1) disposed of for consumption in fluid form as milk, skim milk, buttermilk, flavored milk; flavored milk drinks, concentrated milk not in hermetically sealed

cans, cream, including sour cream or any mixture of cream and milk or skim milk, or (2) not accounted for as Class II utilization.

(b) Class II utilization shall be all skim milk and butterfat (1) used to produce any product other than those specified in paragraph (a) of this section; (2) disposed of for livestock feed or skim milk dumped subject to prior notification to and inspection (at his discretion) by the market administrator; (3) in shrinkage of producer milk up to 2 percent of receipts from producers; or (4) in shrinkage of other source milk.

§ 960.42 *Shrinkage.* (a) If producer milk is utilized in conjunction with other source milk, the shrinkage shall be allocated pro rata between the receipts of skim milk and butterfat in producer milk and other source milk.

(b) Producer milk transferred or diverted by a handler from his pool plant to another pool plant without first having been received for purposes of weighing in the transferring or diverting handler's pool plant shall be included in the receipts at the pool plant to which such milk was transferred or diverted for the purpose of computing shrinkage and shall be excluded from the receipts at the transferring or diverting handler's pool plant for such purpose.

§ 960.43 *Responsibility of handlers and reclassification of milk.* All skim milk and butterfat contained in producer milk and in other source milk received by a handler shall be classified as Class I milk unless the handler proves to the market administrator that such skim milk and butterfat or a portion thereof should be classified as Class II milk. Any skim milk or butterfat which is classified in Class II shall be reclassified to Class I if subsequent to the original classification such skim milk or butterfat is handled in such a manner as to justify its reclassification.

§ 960.44 *Transfers.* (a) Skim milk and butterfat disposed of from a pool plant to another pool plant in the form of milk, skim milk or cream shall be Class I utilization unless Class II utilization is indicated by the operators of both plants in their reports submitted pursuant to § 960.30: *Provided*, That in no event shall the amount so classified as Class II be greater than the amount of producer milk used in such class in the pool plant of the transferee handler after allocating other source milk in such plant in series beginning with the lowest priced utilization.

(b) Skim milk and butterfat moved in the form of milk, skim milk or cream from a pool plant to a handler described in § 960.80 or to a nonpool plant shall be Class I utilization unless all of the following conditions are met:

(1) Class II utilization is indicated by the operator of the pool plant in his report submitted pursuant to § 960.30.

(2) The operator of such nonpool plant in the month of such movement had actually used an equivalent amount of skim milk and butterfat in Class II, or moved such amount to another nonpool plant which meets the requirements of subparagraph (3) of this paragraph and

utilized in the month an equivalent amount of skim milk and butterfat in Class II.

(3) The operator of the nonpool plant maintains books and records which are made available for examination upon request by the market administrator and which are adequate for the verification of such Class II utilization.

(c) Skim milk and butterfat transferred in the form of milk, skim milk, or cream to a producer-handler shall be classified as Class I milk.

§ 960.45 *Computation of skim milk and butterfat in each class.* For each month the market administrator shall correct for mathematical and for other obvious errors the report submitted by each handler pursuant to § 960.30 and shall compute separately the pounds of skim milk and butterfat in each class.

§ 960.46 *Allocation of butterfat.* The pounds of butterfat remaining after making the following computations shall be the pounds in each class allocated to milk received from producers:

(a) Subtract from the total pounds of butterfat in Class II utilization, the pounds of butterfat shrinkage allowed pursuant to § 960.41 (b) (3);

(b) Subtract from the total pounds of butterfat in each class, in series beginning with the lowest priced utilization, the pounds of butterfat in other source milk;

(c) Subtract from the pounds of butterfat in each class the pounds of butterfat contained in milk or milk products received in packaged form which were classified and priced under another Federal order and disposed of in the same form as received;

(d) Subtract from the pounds of butterfat remaining in each class the pounds of butterfat received from other handlers in such classes pursuant to § 960.44 (a); and

(e) Add to the remaining pounds of butterfat in Class II utilization the pounds subtracted pursuant to paragraph (a) of this section.

(f) If the remaining pounds of butterfat in both classes exceed the pounds of butterfat in milk received from producers, subtract such excess from the remaining pounds of butterfat in each class in series, beginning with the lowest-priced utilization.

§ 960.47 *Allocation of skim milk.* Allocate the pounds of skim milk in each class to milk received from producers in a manner similar to that prescribed for butterfat in § 960.46.

MINIMUM PRICES

§ 960.50 *Class I price.* During the two year period following the effective date of this subpart, the minimum price per hundredweight to be paid by each handler, f. o. b. his pool plant, for milk of 3.5 percent butterfat content received from producers or from cooperative associations during the month, which is classified as Class I utilization shall be 5 cents less than the Class I price as determined pursuant to § 975.61 (a) of this chapter, exclusive of the proviso contained therein, of the order, as amended, regulating the handling of

milk in the Cleveland, Ohio, marketing area (Order No. 75, Part 975 of this chapter).

§ 960.51 *Class II price.* The minimum price per hundredweight to be paid by each handler, f. o. b. his pool plant, for milk of 3.5 percent butterfat content received from producers or from cooperative associations during the month, which is classified as Class II utilization shall be the higher of the prices computed by the market administrator pursuant to paragraphs (a) or (b) of this section.

(a) The average of the basic (or field) prices ascertained to have been 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 to the Department of Agriculture by the companies indicated below:

Present Operator and Location

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

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

(1) From the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the month, subtract 3 cents, add 20 percent of the resulting amount, and then multiply by 3.5.

(2) From the simple average, as computed by the market administrator, of the weighted averages of the carlot prices per pound for nonfat dry milk solids, spray and roller process, respectively, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the month for which prices are being computed by the Department of Agriculture, deduct 5.5 cents, and multiply by 8.2.

§ 960.52 *Handler butterfat differentials.* If the average butterfat content of the milk of any handler allocated to any class is more or less than 3.5 percent, there shall be added to the prices of milk for each class as computed pursuant to §§ 960.50 and 960.51 for each one-tenth of one percent that the average butterfat content of such milk is above 3.5 percent, or subtracted for one-tenth of one percent that such average butterfat content is below 3.5 percent, an amount equal to the average

daily wholesale price per pound of Grade A (92 score) bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the month, multiplied by the following factors:

(a) *Class I milk.* Multiply by 1.3, and divide the result by 10.

(b) *Class II milk.* Multiply by 1.15, and divide the result by 10.

DETERMINATION OF UNIFORM PRICE

§ 960.60 *Value of producer milk for each handler.* The value of producer milk received or delivered during the month by each handler who operates a pool plant shall be a sum of money computed by the market administrator by multiplying by the applicable class price, adjusted pursuant to § 960.52, the total combined hundredweight of skim milk and butterfat received from producers allocated to each class pursuant to §§ 960.46 and 960.47, adding together the resulting amounts, and if such handler has a utilization greater than has been accounted for as received from all sources, add an amount computed by multiplying any such excess utilization classified pursuant to § 960.46 (f) and § 960.47 by the applicable class prices.

§ 960.61 *Computation of uniform price.* For each month the market administrator shall compute a uniform price per hundredweight of milk containing 3.5 percent of butterfat to be paid to producers delivering milk to any pool plant as follows:

(a) Combine into one total the value of producer milk for each handler as computed pursuant to § 960.60 for all handlers who reported pursuant to § 960.30 for such month, except those in default in payments required pursuant to § 960.72 for the preceding month.

(b) Add the total amount of all payments made pursuant to § 960.72 (b);

(c) Add any amounts paid into the producer-settlement fund and subtract any amounts paid out of the producer-settlement fund pursuant to § 960.77;

(d) Add an amount representing not less than one-half of the unobligated balance in the producer-settlement fund exclusive of the amounts added or subtracted pursuant to paragraphs (b) and (c) of this section;

(e) Subtract, if the weighted average butterfat test of all producer milk represented by the amounts included under paragraph (a) of this section is greater than 3.5 percent, or add, if the weighted average butterfat test of such milk is less than 3.5 percent, an amount computed by multiplying the total pounds of butterfat represented by the difference of such weighted average butterfat test from 3.5 percent by the butterfat differential computed pursuant to § 960.74 multiplied by 10;

(f) Divide the resulting amount by the total hundredweight of producer milk received by all handlers during the month for which uniform prices are being computed;

(g) Subtract not less than 4 cents nor more than 5 cents, and the result shall be the uniform price to be paid per hundredweight of milk containing 3.5 percent of butterfat to producers who

delivered milk during the month for which uniform prices are being computed.

§ 960.62 *Notification.* On or before the 13th day of each month the market administrator shall notify each handler who submitted a report for the preceding month pursuant to § 960.30 of:

(a) The classification pursuant to §§ 960.46 and 960.47 of skim milk and butterfat contained in producer milk received by such handler during the preceding month and the value of such milk computed pursuant to § 960.60;

(b) The uniform prices for the preceding month computed pursuant to § 960.61; and

(c) The amount due such handler pursuant to § 960.73 and the amount to be paid by such handler pursuant to §§ 960.72, 960.75, and 960.76.

PAYMENTS

§ 960.70 *Time and method of payment.* (a) Except as provided by paragraph (b) of this section, on or before the 18th day after the end of each delivery period, each handler (except a cooperative association) shall pay each producer for milk received from him within such delivery period, not less than an amount of money computed by multiplying the total pounds of such milk by the uniform price, adjusted by the butterfat differential pursuant to § 960.74: *Provided*, That if by such date such handler has not received full payment for such delivery period pursuant to § 960.73 he may reduce such payments uniformly per hundredweight for all producers, by an amount not in excess of the per hundredweight reduction in payment from the market administrator; however, the handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator.

(b) (1) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, each handler shall (i) pay to the cooperative association on or before the 16th day of each month, in lieu of payments pursuant to paragraph (a) of this section an amount equal to the gross sum due for all milk received from certified members, less amounts owing by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer and submit to the cooperative association written information which shows for each such member-producer (a) the total pounds of milk received from him during the preceding month, (b) the total pounds of butterfat contained in such milk, (c) the number of days on which milk was received, and (d) the amounts withheld by the handler in payment for supplies sold. The foregoing payment and submission of infor-

mation shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler shall be made by written notice to the market administrator, and shall be subject to his determination.

§ 960.71 *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 pursuant to §§ 960.72 and 960.77 and out of which he shall make all payments pursuant to §§ 960.73 and 960.77.

§ 960.72 *Payments to the producer-settlement fund.* On or before the 14th day of each month handlers shall make payments to the market administrator as follows:

(a) If the value of producer milk received by a handler in the preceding month as computed pursuant to § 960.60 exceeds the amount which such handler is required to pay all producers pursuant to § 960.70, such handler shall pay the difference between the two amounts.

(b) If, during the preceding month, the total receipts from all producers was 110 percent or more of the total Class I utilization at pool plants, any handler who received other source milk during the preceding month which was allocated to Class I pursuant to § 960.46 (b) or § 960.47 shall pay an amount equal to the value of such milk at the Class I price less the value of such milk at the Class II price.

§ 960.73 *Payments out of the producer-settlement fund.* On or before the 16th day of each month, the market administrator shall pay to each handler any amount by which the sum required to be paid by such handler for the preceding month pursuant to § 960.70 is greater than the total value of the milk of such handler computed pursuant to § 960.60 for such preceding month less any unpaid obligations of the handler to the market administrator pursuant to §§ 960.72, 960.75, 960.76 (a), and 960.77 (a): *Provided*, That if the balance in the producer-settlement fund is insufficient to make payments to all handlers pursuant to this paragraph, the market administrator shall reduce such payments by a uniform amount per hundredweight of milk and shall complete such payments as soon as the necessary funds become available.

§ 960.74 *Producer butterfat differential.* In making payments pursuant to

§ 960.70 the uniform prices shall be adjusted for each one-tenth of one percent of butterfat content in the milk of each producer above or below 3.5 percent, as the case may be, by a butterfat differential computed as follows: Divide the total value of all butterfat, computed pursuant to § 960.60 by the total pounds of butterfat used in such computation and divide the result by 10.

§ 960.75 *Expense of administration.* As his pro rata share of the expense incurred pursuant to § 960.22 (c), each handler shall pay the market administrator on or before the 16th day of each month 3 cents per hundredweight or such lesser amount as the Secretary may from time to time prescribe with respect to (a) all receipts within the preceding month of producer milk (including such handler's own production), and (b) all other source milk on which payment is made pursuant to § 960.72 (b).

§ 960.76 *Marketing services.* In making payments to producers or cooperative associations pursuant to § 960.70 a handler shall make deductions and dispose of amounts so deducted as follows:

(a) Except as set forth in paragraph (b) of this section a handler shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, with respect to all producer milk for which payment is being made pursuant to § 960.70 and shall pay the total amount of such deductions to the market administrator on or before the 16th day after the end of the month in which such producer milk was received. Such amount shall be expended by the market administrator to verify weights and tests of milk of producers and to provide producers with market information, such service to be performed by the market administrator or by an agent engaged by and responsible to him.

(b) Each association of producers which is actually performing the services described in paragraph (a) of this section, as determined by the Secretary, may file with a handler a claim for authorized deductions from the payments otherwise due to its producer members for milk delivered to such handler. Such claim shall contain a list of the producers for which such deductions apply, an agreement to indemnify the handler for the amount of any loss sustained by him because of any improper claim on the part of the association, and a certification that the association has an unexpired membership contract with each producer, which contract authorizes the claim deduction. In making payments to producers for milk received during the month, each handler shall make deductions in accordance with the association's claim and shall pay the amount deducted within 16 days after the end of the month.

§ 960.77 *Errors in payments.* Whenever audit by the market administrator of any handler's reports, books, records or accounts discloses errors or whenever skim milk or butterfat is reclassified pursuant to § 960.43 resulting in monies due (a) the market administrator from such

handler, or such handler from the market administrator or (b) any producer or cooperative association from such handler pursuant to § 960.70 the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice. In computing amounts due pursuant to this section the class prices, the appropriate uniform price, the butterfat differential, the rate of administrative assessment pursuant to § 960.75, and the rate of marketing service deduction pursuant to § 960.76 which were applicable in the month for which the original calculation of amounts due were made shall be used.

§ 960.78 *Termination of obligation.* (a) The obligation of any handler to pay money required to be paid under the terms of this subpart shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator received the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notified 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 a cooperative association the name of such producers or association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this subpart, to make available to the market administrator or his representatives all books or records required by this subpart 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 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 subpart to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this subpart shall terminate two years after the

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

APPLICATION OF PROVISIONS

§ 960.80 *Handler exemption.* A handler who operates a plant located outside the marketing area from which an average of less than 300 points (one point being defined as one-half pint of cream or one quart of any other Class I product) of Class I milk per day is disposed of during the delivery period on a route(s) operating wholly or partly within the marketing area, or a handler whom the Secretary finds is subject, during the delivery period, to another Federal order shall be exempted for such delivery period from all provisions of this subpart except §§ 960.31, 960.32, and 960.33.

§ 960.81 *Producer-handler.* A producer-handler shall be exempt from all provisions of this subpart except that he shall make reports to the market administrator at such time and in such manner as the market administrator may request.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 960.90 *Effective time.* The provisions of this subpart, or any amendment to this subpart, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated. The provisions of this section shall apply to any obligation under this subpart for the payment of money.

§ 960.91 *Suspension or termination.* Whenever the Secretary finds the subpart or any provision of this subpart obstructs or does not tend to effectuate the declared policy of the act, he shall terminate or suspend the operation of this order or any such provision of this subpart.

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

§ 960.93 *Liquidation.* Upon the suspension of the provisions of the subpart, except this section, the market administrator, or such other liquidation agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable and execute and deliver all assignments or other instrument necessary or appropriate to effectuate any

such disposition. If a liquidating agent is so designated all assets, books, and records of the market administrator shall be transferred promptly to such liquidation agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 960.100 *Agent.* 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 subpart.

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

Issued at Washington, D. C., this 16th day of August 1954.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Doc. 54-6449; Filed, Aug. 18, 1954; 8:52 a. m.]

[7 CFR Part 967]

[Docket No. AO 170-A8]

HANDLING OF MILK IN SOUTH BEND-LA PORTE, INDIANA, MARKETING AREA

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

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was conducted at South Bend, Indiana, on July 6-7, 1954, pursuant to notice thereof which was issued on June 29, 1954 (19 F. R. 4040).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on August 4, 1954, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision and opportunity to file written exceptions thereto. This recommended decision was published in the FEDERAL REGISTER on August 7, 1954 (19 F. R. 4999).

The material issues, findings and conclusions, and general findings of the recommended decision (19 F. R. 4999; F. R. Doc. 54-6067) are hereby approved and adopted as the findings and conclusions of this decision as if set forth in full herein.

Rulings on exceptions. There were no exceptions received to the recommended decision.

Determination of representative period. The month of June 1954 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of an order amending the order, as amended, regulating the handling of milk in the South Bend-La Porte, Indiana, marketing area in the manner set forth in the attached amending order is approved or favored by producers who during such period were engaged in the production of milk for sale in the marketing area specified in such marketing order, as amended.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the South Bend-La Porte, Indiana, Marketing Area," and "Order Amending the Order, as Amended, Regulating the Handling of Milk in the South Bend-La Porte, Indiana, Marketing Area," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

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

This decision filed at Washington, D. C., this 16th day of August 1954.

[SEAL] EARL L. BUTZ,
Acting Secretary.

Order¹ Amending the Order, as Amended, Regulating the Handling of Milk in the South Bend-La Porte, Indiana, Marketing Area

§ 967.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of

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

marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the South Bend-La Porte, Indiana, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act.

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

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

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the South Bend-La Porte, Indiana, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, and the aforesaid order, as amended, is hereby further amended as follows:

1. Insert as § 967.15 the following:

§ 967.15 *Base, base milk and excess milk—(a) Base.* "Base" means a quantity of milk expressed in pounds per day computed pursuant to § 967.63.

(b) *Base milk.* "Base milk" means a quantity of producer milk received by a handler during each of the months of April, May, June and July which is not in excess of such producer's base multiplied by the number of days such milk was produced.

(c) *Excess milk.* "Excess milk" means producer milk received by a handler during each of the months of April, May, June and July which is in excess of the base milk received from such producer.

2. In § 967.30 (a) add the following: "and (4) for the delivery periods of April through July, the total amount of base milk and the total amount of excess milk received from producers;"

3. In § 967.31 (b) change the period at the end of the sentence to a semi-colon and add the following: "and (4) for the delivery periods of September through December, the number of days on which milk was received from each producer, and for the delivery periods of April through July, for each producer the number of days on which milk was re-

ceived and the amount of base milk and excess milk."

4. In the proviso of § 967.51 (a) delete the word "August" and substitute the word "November".

5. Insert as § 967.63 the following:

§ 967.63 *Computation of base.* Subject to the conditions set forth in § 967.64, the market administrator shall compute for each of the months of April, May, June, and July a base for each producer, as follows:

(a) Divide the total pounds of milk received by a handler from each producer during the months of September, October, November and December immediately preceding, by the number of days' such milk was produced (not to be less than 90 days): *Provided*, That any producer for whom a base has been computed, may, upon written notice to the market administrator postmarked not later than January 31 preceding relinquish his base and be allotted a base computed pursuant to paragraph (b) of this section.

(b) Any producer who has not established a base or who elects to relinquish his base pursuant to the provisions of paragraph (a) of this section shall be assigned a base for each of the months of April, May, June, and July computed as follows:

(1) From the total quantity of producer milk received by handlers during the same month of the previous year, subtract the total receipts from producers who did not establish bases or who had relinquished their bases.

(2) Determine the percentage that base milk was of the remaining pounds, and subtract 10, except that for the months of April, May, June and July 1955 the percentages computed pursuant to this subparagraph shall be as follows:

Month:	Percentage
April 1955.....	70
May 1955.....	60
June 1955.....	60
July 1955.....	65

(3) Multiply the resulting percentage by the total pounds of milk received by a handler from the producer during the applicable month and divide the result by the number of days such milk was produced.

6. Insert as § 967.64 the following:

§ 967.64 *Base rules.* Any base computed pursuant to § 967.63 (a) shall be subject to the following rules:

(a) A base shall be held in the name of the producer and may be transferred only at his option.

(b) The milk to which the transferred base shall apply must be produced on the same farm from which such base was earned, and the transferor must notify the market administrator in writing on or before the last day of the month that such base is to be transferred indicating the name of the transferee, the amount of base transferred, and the effective date of the transfer; and in the event of a producer's death his base may be so transferred upon written notice to the market administrator from any member of the producer's immediate family.

(c) If a producer operates more than one farm he must establish a base with respect to the milk from each farm, and in the event such producer chooses to relinquish the base earned for one farm he must do so for all farms.

7. In § 967.22 delete the last word, "and" from paragraph (i) (2); change the period at the end of paragraph (j) to a semi-colon, and add the word "and"; and paragraph (k) as follows:

(k) On or before April 1 each year notify each producer of the amount of his base, and notify each handler of the amount of the base of each producer delivering milk to any of the handler's plants.

8. In § 967.71 delete paragraphs (d) and (e) and insert a new paragraph (d) as follows:

(d) For the delivery periods of August through March compute the uniform price by dividing the result computed pursuant to paragraph (c) of this section by the hundredweight of producer milk included in the computations pursuant to paragraph (a) of this section and subtract not less than 4 cents nor more than 5 cents (adjusting to the nearest one-tenth cent).

9. In § 967.71 insert a new paragraph (e) as follows:

(e) For each of the delivery periods of April through July the market administrator shall compute uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, received from producers as follows:

(1) Compute the total value on a 3.5 percent butterfat basis of excess milk included in the computations pursuant to paragraph (a) of this section by multiplying the hundredweight of such excess milk not in excess of the total quantity of Class II milk included in these computations by the price for Class II milk of 3.5 percent butterfat content, and multiplying the hundredweight of such excess milk in excess of such Class II milk by the price for Class I milk of 3.5 percent butterfat content, and adding together the resulting amounts.

(2) Compute the uniform price for excess milk of 3.5 percent butterfat content by dividing the total value of excess milk obtained in subparagraph (1) of this paragraph by the total hundredweight of such milk, and adjusting to the nearest cent;

(3) Multiply the hundredweight of excess milk included in the computations pursuant to subparagraph (2) of this paragraph by the uniform price for excess milk computed pursuant to subparagraph (2) of this paragraph;

(4) Subtract the value computed pursuant to subparagraph (3) of this paragraph from the value computed pursuant to paragraph (c) of this section and divide the result by the total hundredweight of base milk included in these computations;

(5) Compute the uniform price for base milk of 3.5 percent butterfat content by subtracting not less than 4 cents nor more than 5 cents from the result computed pursuant to subparagraph (4) of this paragraph.

10. Delete § 967.80 (a) and substitute:

(a) On or before the 18th day after the end of each delivery period, to each producer, except producers for whom payment is made to a cooperative association pursuant to paragraph (b) of this section, at not less than the uniform price for the delivery periods of August through March the uniform prices for base and excess milk for the delivery periods of April through July calculated pursuant to § 967.71 and adjusted by the producer butterfat differential pursuant to § 967.81 for all milk received from such producer during such delivery period and less payment to such producer made pursuant to paragraph (c) of this section: *Provided*, That if by such date such handler has not received full payment for such delivery period pursuant to § 967.84, he may reduce such payments uniformly per hundredweight for all producers by an amount not in excess of the per hundredweight reduction in payment from the market administrator: *And provided further*, That such handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator.

11. Delete § 967.80 (c) and substitute the following:

(c) On or before the 4th day after the end of each delivery period, each handler shall pay to each producer, or to a cooperative association authorized to collect payment, a payment which for the delivery periods of September through April shall be at not less than the uniform price announced by the market administrator for the preceding delivery period, and for the delivery periods of May through August at not less than the uniform price announced by the market administrator for base milk for the preceding delivery period such payment to be for milk received from such producer or caused to be delivered to such handler by such cooperative association during the first 15 days of such delivery period: *Provided*, That in the event any producer or cooperative association discontinues shipping to such handler during any delivery period, such partial payments shall not be made and full payment for all milk received from such producer or cooperative association during such delivery period shall be made on the 18th day after the end of such delivery period pursuant to paragraphs (a) and (b) of this section.

[F. R. Doc. 54-6427; Filed, Aug. 18, 1954; 8:48 a. m.]

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Part 522]

EMPLOYMENT OF LEARNERS

NOTICE OF PROPOSED REVISION OF GENERAL LEARNER REGULATIONS

Notice is hereby given pursuant to the requirements of the Administrative Procedure Act (60 Stat. 237; 5 U. S. C. 1001) that the Administrator of the Wage and

Hour Division, United States Department of Labor, intends to revise the regulations governing the employment of learners at subminimum wage rates under the Fair Labor Standards Act (29 CFR Part 522).

The purpose underlying such revision is to simplify and clarify these regulations and to include operating policies and procedures which have been adopted in the administration of the regulations. It is likewise considered desirable to incorporate and standardize in these regulations the provisions of the various special regulations providing for the employment of learners at subminimum wage rates in specific industries, which have been issued since 1940 pursuant to these regulations.

Interested persons may submit data, views, or arguments, either in support of or in opposition to the proposed revision, to the Administrator, Wage and Hour Division, United States Department of Labor, Washington, D. C., within 30 days from the date of the publication of this notice in the FEDERAL REGISTER. Prior to the final adoption of this revision careful consideration will be given to any such material which may be submitted in writing.

Therefore, pursuant to authority vested in me by section 14 of the Fair Labor Standards Act (52 Stat. 1060, as amended, 29 U. S. C. 201 et seq.), Reorganization Plan No. 6 of 1950 (64 Stat. 1263, 5 U. S. C. 611, 15 F. R. 3174), and General Order No. 49A, dated May 24, 1950 (15 F. R. 3290), notice is hereby given that I propose to revise the General Learner Regulations contained in Title 29, Code of Federal Regulations, Part 522, as follows:

Sec.	
522.1	Applicability of regulations contained in this part.
522.2	Definitions.
522.3	Application for a learner certificate.
522.4	Procedure for action upon an application.
522.5	Conditions governing issuance of learner certificates.
522.6	Terms and conditions of employment under learner certificates.
522.7	Employment records to be kept.
522.8	Amendment or replacement of a learner certificate.
522.9	Cancellation of a learner certificate.
522.10	Reconsideration and review.
522.11	Supplemental industry regulations.
522.12	Amendment or revocation of the regulations contained in this part.

AUTHORITY: §§ 522.1 to 522.12 issued under sec. 14, 52 Stat. 1068, as amended; 29 U. S. C. 214.

§ 522.1 *Applicability of regulations contained in this part.* (a) The regulations contained in this part are issued in accordance with section 14 of the Fair Labor Standards Act of 1938, as amended, to provide for the employment under special certificates of learners at wages lower than the minimum wage applicable under section 6 of the act. That section, in pertinent part, reads:

The Administrator, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for (1) the employment of learners * * *, under special certificates issued pursuant to the regulations of the Administrator, at such wages lower than the minimum wage applicable

under section 6 and subject to such limitations as to time, number, proportion, and length of service as the Administrator shall prescribe * * *

(b) Such certificates shall be subject to the provisions hereinafter set forth and to such additional terms and conditions as may be established in supplemental regulations applicable to the employment of learners in particular industries issued pursuant to § 522.11.

§ 522.2 *Definitions.* As used in the regulations in this part:

(a) A "learner" is a worker whose total experience in an authorized learner occupation in the industry within the past three years, except as otherwise provided in applicable supplemental regulations for a particular industry, is less than the period of time allowed as a learning period for that occupation in a learner certificate issued pursuant to the regulations in this part.

(b) An "experienced worker" is a worker whose total experience in an authorized learner occupation in the industry within the past three years, except as otherwise provided in applicable supplemental regulations for a particular industry, is at least equal to the period of time allowed as a learning period for that occupation in a learner certificate issued pursuant to the regulations in this part.

(c) "Experienced worker available for employment" means an experienced worker residing within the area from which the plant customarily draws its labor supply or within a reasonable commuting distance of such area, and who is willing and able to accept employment in the plant; or an experienced worker residing outside of the area from which the plant customarily draws its labor supply, who has in fact made himself available for employment at the plant. A former experienced worker of a plant which has closed and moved its operations to another locality, who has expressed a willingness to accept employment at the new establishment, shall also be considered an experienced worker available for employment.

(d) A "new plant" is a plant which has been in operation in a given industry for less than eight months subsequent either to its initial establishment in that industry or to its reopening after being out of operation for a period of more than eight months.

(e) An "expanding plant" is a plant whose labor force is being substantially increased by reason of an expansion program (1) through the installation of additional production equipment; (2) through again placing into operation machinery which has been idle for a period in excess of 8 months; or (3) through adding an additional shift.

§ 522.3 *Application for a learner certificate.* (a) Whenever the employment of learners at wages lower than the minimum wage applicable under section 6 of the Fair Labor Standards Act of 1938, as amended, is believed necessary to prevent curtailment of opportunities for employment in a specified plant, an application for a certificate authorizing the employment of such learners at subminimum wage rates may be filed by the

employer with the Administrator of the Wage and Hour and Public Contracts Divisions, U. S. Department of Labor, Washington 25, D. C. A copy of such application shall be filed simultaneously with the appropriate Regional Office of these Divisions. With respect to employees working in Puerto Rico or in the Virgin Islands, application shall be filed with the Territorial Director of the Wage and Hour and Public Contracts Divisions, U. S. Department of Labor, Santurce, San Juan, Puerto Rico.

(b) Application must be made on the official form furnished by these Divisions and must contain all information required by such form, including among other things, information concerning efforts made by the applicant to obtain experienced workers, the occupations in which learners are to be employed, the number of learners previously hired, the number of learners requested, their proposed hourly rates and learning periods in number of hours, the number of experienced workers in such occupations and their straight-time average hourly earnings during the last payroll period, the number of plant workers employed during previous periods, and the type of equipment to be used by learners. Any applicant may also submit such additional information as may be pertinent.

(c) Any application which fails to present the information required by the forms may be returned to the applicant with a notation of deficiencies and without prejudice against submission of a new or revised application.

(d) Separate application must be made with respect to each plant in which the applicant desires to employ learners at subminimum wage rates. Where an establishment occupies several buildings in the same community and the workers in those buildings are engaged in the various processes necessary to the manufacture of primary products of the establishment, the workers shall be regarded as employees of the same plant for the purposes of the regulations in this part.

(e) When an application is filed for a learner certificate for a new or expanding plant and the applicant is moving from a plant of the same company or of a closely related company in another location, or is transferring production from such plant, or has recently so moved or transferred production, the applicant shall attach to the application a signed statement giving the following information: (1) Name, location and products of the plant from which the applicant is moving or is transferring production; (2) average and minimum wage rates paid at such plant; and (3) reasons for removal or transfer of production.

(f) Application for a renewal of a learner certificate shall be made on the same form as described in this section. No effective learner certificate shall expire until action on an application for renewal shall have been finally determined, provided that such application has been properly executed in accordance with the requirements, and filed with and received by the Administrator of the Wage and Hour and Public Contracts Divisions not less than fifteen nor more than thirty days prior to the ex-

piration date. "Final determination" means either the granting of or initial denial of the application for renewal of a learner certificate, or withdrawal of the application. A "properly executed application" is one which contains the complete information required on the form, and the required certification by a responsible official of the applicant company.

(g) Upon making application for a learner certificate or for renewal thereof, an employer shall post a notice of filing of application on a form supplied by these Divisions in a conspicuous place in each department of the plant where he proposes to employ learners at subminimum wage rates. Such notice shall remain posted until such time as the application shall have been acted upon by the Administrator or his authorized representative. The notice must set forth, among other things, the number of learners that the employer has requested permission to employ; the occupations in which the learners will be employed; and a representation by a responsible official that experienced workers are not available, and that the employment of learners at subminimum wage rates is necessary in order to prevent a curtailment of opportunities for employment.

§ 522.4 *Procedure for action upon an application.* (a) Upon receipt of an application, the Administrator or his authorized representative shall issue or deny a learner certificate or, in appropriate circumstances, provide an opportunity to interested parties to present their views on the application prior to granting or denying a learner certificate.

(b) If a learner certificate is issued, there shall be published in the FEDERAL REGISTER a statement of the terms of such certificate together with a notice that, pursuant to § 522.10, for fifteen (15) days following such publication any interested persons may file written requests for reconsideration or review.

(c) If a learner certificate is denied, notice of such denial shall be sent to the employer and such denial shall be without prejudice to the filing of any subsequent application.

§ 522.5 *Conditions governing issuance of a learner certificate.* The following conditions shall govern the issuance of a special certificate authorizing the employment of learners at subminimum wage rates:

(a) An adequate supply of qualified experienced workers is not available for employment, and the experienced workers presently employed in the plant in occupations in which learners are requested are afforded an opportunity, to the fullest extent possible, for full-time employment.

(b) The issuance of a learner certificate will not tend to create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage or working standards established for experienced workers for work of a like or comparable character in the industry.

(c) Abnormal labor conditions such as a strike, lock-out, or other similar condition, do not exist at the plant for which a learner certificate is requested.

(d) There are no serious outstanding violations of the provisions of a learner certificate previously issued to the company, nor have there been any serious violations of the act which provide reasonable grounds to conclude that the terms of a certificate may not be complied with, if issued.

(e) Learners are actually available for employment at subminimum wage rates.

(f) The occupation or occupations in which learners are to receive training involve a sufficient degree of skill to necessitate an appreciable training period.

(g) Learners shall be afforded every reasonable opportunity for continued employment upon completion of the learning period.

§ 522.6 *Terms and conditions of employment under learner certificates.* (a) A learner certificate, if issued, shall specify, among other things: (1) The number or proportion of learners authorized to be employed on any one day; (2) the occupations in which learners may be employed; (3) the subminimum wage rates permitted during the authorized learning period; (4) the learning period for each authorized learner occupation; and (5) the effective and expiration dates of the certificate.

(b) A learner certificate for normal labor turnover purposes may be issued for a period not longer than one year. A learner certificate for a new or expanding plant may be issued for a period not longer than six months. A renewal expansion certificate will not be issued unless there is a clear showing that there has been a substantial increase in the labor force during the period when a previous expansion certificate was in effect, except for individual cases where the plant expansion program has been postponed due to exceptional circumstances.

(c) Learners properly hired prior to the date on which a learner certificate expires may be continued in employment at subminimum wage rates for the duration of their authorized learning period under the terms of the certificate, even though the certificate expired before the learning period is completed.

(d) A copy of the learner certificate shall be posted during its effective period in a conspicuous place in the plant where it may be readily observed by the employees.

(e) No learner certificate may be issued retroactively.

(f) No learner shall be hired under a learner certificate if at the time such employment begins experienced workers capable of equaling the performance of a worker of minimum acceptable skill are available for employment.

(g) No learner shall be hired under a learner certificate while abnormal labor conditions such as a strike, lock-out, or other similar condition, exist in the plant.

(h) Except as otherwise specified in applicable supplemental industry regulations, the number of hours of previous employment must be deducted from the authorized learning period if within the past three years a learner has been employed in a given occupation and industry for less than the total number of

hours authorized as a learning period. There shall also be deducted from the authorized learning period all such hours of employment or training on rags or scrap, or pertinent training in vocational training schools or similar training facilities.

(i) Learners may not be employed at subminimum wage rates as homeworkers, or in maintenance occupations such as watchman or porter, or in operations of a temporary or sporadic nature.

(j) If experienced workers are paid on a piece rate basis, learners shall be paid at least the same piece rates as experienced workers employed on similar work in the plant and shall receive earnings based on such piece rates whenever such earnings exceed the subminimum wage rates permitted in the certificate.

(k) No provision of any learner certificate shall excuse noncompliance with higher standards applicable to learners which may be established under any other Federal law, or any State law, or trade-union agreement.

§ 522.7 *Employment records to be kept.* In addition to other records required under the record-keeping regulations (Part 516 of this chapter), the employer shall keep the following records specifically relating to learners employed at subminimum wage rates:

(a) Each worker employed as a learner under a learner certificate shall be designated as such on the payroll records kept by the employer. All such learners shall be listed together as a separate group on the payroll records, with each learner's occupation being shown.

(b) The employer shall also obtain and keep in his records a statement signed by each such learner showing all applicable experience which the learner may have had in the industry in which he is employed during the preceding three years, or as otherwise required in the applicable supplemental industry regulations. The statement shall contain the dates of such previous employment, names and addresses of employers, the occupation or occupations in which the learner was engaged and the types of products upon which the learner worked. The statement shall also contain information concerning pertinent training in vocational training schools or similar training facilities, including the dates of such training and the identity of the vocational school or training facility. If the learner has had no applicable experience or pertinent training, a statement to that effect signed by the learner should likewise be kept in the employer's records.

(c) The records required in this section, including a copy of any special certificate issued, shall be kept and made available for inspection at all times for at least three years from the last effective date of the certificate.

§ 522.8 *Amendment or replacement of a learner certificate.* The Administrator upon his own motion may amend the provisions of a learner certificate when it is necessary by reason of the amendment of these or any supplemental industry learner regulation, or may with-

draw a learner certificate and issue a replacement certificate when necessary to correct omissions or apparent defects in the original certificate.

§ 522.9 *Cancellation of a learner certificate.* (a) The Administrator or his authorized representative may cancel any learner certificate for cause. Except in cases of willfulness or those in which the public interest requires otherwise, before any learner certificate is cancelled, facts or conduct which may warrant such action shall be called to the attention of the employer and he shall be afforded an opportunity to achieve or demonstrate compliance.

(b) A certificate may be canceled: (1) As of the date of issuance, if it is found that the applicant set forth any fact or facts in the application which he knew or had reasonable cause to believe to be false; (2) as of the date of violation, if it is found that any of its terms have been violated; or (3) prospectively, if it is found that the conditions of employment of learners have changed or that the purposes for which the certificate was originally issued no longer obtain.

(c) No order canceling a certificate shall take effect until the expiration of the time allowed for requesting reconsideration or review under § 522.10, and, if a petition for reconsideration or review is filed, the effective date of the cancellation order shall be postponed until action is taken thereon: *Provided, however,* That if the cancellation order is affirmed, the employer shall reimburse any person employed under a certificate which has been cancelled in an amount equal to the difference between the minimum wage applicable under section 6 of the act and any lower wage paid such person subsequent to the cancellation date indicated in the original cancellation notice addressed to the employer.

§ 522.10 *Reconsideration and review.* (a) Any person aggrieved by the action of an authorized representative of the Administrator denying, granting, or cancelling a learner certificate may, within 15 days after such action, (1) file a written request for reconsideration thereof by the authorized representative of the Administrator who made the decision in the first instance, or (2) file a written request for review of the decision by the Administrator or an authorized representative who has taken no part in the action which is the subject of review.

(b) A request for reconsideration shall be granted where the applicant shows that there is additional evidence which may materially affect the decision and that there were reasonable grounds for failure to present such evidence in the original proceedings.

(c) Any person aggrieved by the action of an authorized representative of the Administrator in denying a request for reconsideration may, within 15 days thereafter, file with the Administrator a written request for review.

(d) Any person aggrieved by the reconsidered determination of an authorized representative of the Administrator may within 15 days after such determination, file with the Administrator a written request for review.

(e) A request for review shall be granted where reasonable grounds for the review are set forth in the request.

(f) If a request for reconsideration or review is granted, all interested persons shall be afforded an opportunity to present their views.

§ 522.11 *Supplemental industry regulations.* (a) Upon application of any person or persons, representing an industry or branch thereof, or upon his own motion, the Administrator, if he deems it advisable, may, after appropriate and timely notice to interested parties, cause a hearing to be held to determine the need for the employment of learners at wages lower than the minimum wage applicable under section 6 of the act in order to prevent curtailment of opportunities for employment in an industry or branch thereof; and if such need is found to exist, to determine the occupation or occupations which require a learning period and the limitations as to wages, time, number, proportion, and

length of service pursuant to which learner certificates authorizing the employment of learners at such subminimum wage rates may be issued to employers. Such hearing shall be held before the Administrator or his duly authorized representative. Following such hearing the Administrator shall, by supplemental regulations, prescribe the conditions under which special certificates shall be issued for the employment of learners in such industry or branch thereof, if he determines that there is a need therefor to prevent curtailment of opportunities for employment.

(b) The Administrator may issue a subpoena for attendance at such hearings to any party upon request and upon a showing of general relevance and reasonable scope of the evidence sought. The Administrator may, on his own motion, or that of his authorized representative, cause to be brought before him or his authorized representative any witness whose testimony he deems material to the matter in issue.

(c) Such supplemental regulations as are issued shall not apply to the employment of learners at subminimum wage rates in Puerto Rico or the Virgin Islands, unless they so provide.

§ 522.12 *Amendment or revocation of the regulations contained in this part.* The Administrator may at any time upon his own motion or upon written request of any interested person or persons setting forth reasonable grounds therefor, and after opportunity has been given to interested persons to present their views, amend or revoke any of the terms of these regulations or of the supplemental regulations applicable to the employment of learners in particular industries.

Signed at Washington, D. C., this 13th day of August 1954.

F. GRANVILLE GRIMES, Jr.,
Acting Administrator,
Wage and Hour Division.

[F. R. Doc. 54-6421; Filed, Aug. 18, 1954;
8:47 a. m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Office of the Secretary

ALABAMA

DESIGNATION OF AREA FOR PRODUCTION EMERGENCY LOANS

For the purpose of making loans pursuant to section 2 (a) of Public Law 38, 81st Congress, 12 U. S. C. 1148a-2 (a), it is found that in the following named counties in the State of Alabama, a production disaster has caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

ALABAMA

Baldwin.	Geneva.
Barbour.	Henry.
Bullock.	Houston.
Butler.	Lee.
Choctaw.	Lowndes.
Clarke.	Macon.
Coffee.	Mobile.
Conecuh.	Monroe.
Covington.	Montgomery.
Crenshaw.	Pike.
Dale.	Russell.
Elmore.	Washington.
Escambia.	Wilcox.

After December 31, 1955, such loans will not be made in the above named counties except to borrowers who previously received such assistance.

The period for making initial production emergency loans authorized on February 3, 1954, in all of the other counties in Alabama (19 F. R. 734) is hereby extended to December 31, 1955.

Done at Washington, D. C., this 13th day of August 1954.

[SEAL]

TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 54-6430; Filed, Aug. 18, 1954;
8:49 a. m.]

DEPARTMENT OF COMMERCE

Bureau of Foreign Commerce

[Case 186]

AETNA CONVERTING CO. ET AL.

ORDER REVOKING EXPORT LICENSES AND DENYING EXPORT PRIVILEGES

In the matter of Aetna Converting Corporation, Herman P. Goldberg, Burton L. Goldberg, principals, 171 Madison Avenue, New York, New York; Atlas Converting Company, Burton L. Goldberg, Pres. and Treas., 17 Randall Street, Providence, Rhode Island; Sol I. Smithline, 225 Central Park West, New York, New York; Herman P. Goldberg, 1112 Coddington Place, Charlotte, North Carolina; Burton L. Goldberg, 17 Randall Street, Providence, Rhode Island; respondents.

The above-named respondents were charged on October 7, 1953, by the Office of International Trade, predecessor of the Bureau of Foreign Commerce, with having violated the Export Control Act of 1949, as amended, and the regulations thereunder by using a validated license authorizing the exportation of nylon yarn to a named consignee in France, to sell and deliver the yarn to an unauthorized consignee in that country; by filing six (6) license applications to export nylon yarn without having any export orders therefor; and by failing to keep the prescribed records, and to produce them on demand of the Office of International Trade, with respect to seventeen (17) other license applications to export nylon yarn to other consignees in various countries.

Hearings on said charges were held on due notice before a Compliance Commissioner of the Bureau of Foreign Commerce. All named respondents, except Sol I. Smithline, appeared at the hear-

ings held at Washington, D. C., on January 7 and 8, 1954, in person and by counsel; said Sol I. Smithline appeared thereat only by counsel. At the extended hearings held at New York City on June 23 and 24, 1954, respondent Smithline appeared in person and by counsel, while the other named respondents failed to appear or to be represented by counsel.

On the basis of the pleadings, the evidence received at the hearings, the testimony of said respondents, and upon the entire record, the Compliance Commissioner filed a report containing findings of fact, and recommendations.

From said report the following are the facts:

Aetna Converting Corporation ("Aetna") and Atlas Converting Company ("Atlas") were at the time of the violations charged, and are, domestic corporations in which Herman P. Goldberg and his son, Burton L. Goldberg, are the principals. Sol I. Smithline was a former officer of, and stockholder in, Aetna, but at the time of the violations herein had resigned his officership, and relinquished his stock to the Goldbergs, although remaining with the company as an employee.

Both corporations engage in the purchase and sale of nylon yarn for domestic use and for export. Atlas also converts the yarn for use in the manufacture of hosiery and other articles.

In July 1951, Aetna held an order to ship nylon yarn to a customer in Paris, France. A validated export license was held by Aetna authorizing the exportation of 2,000 pounds of nylon yarn to such customer. Part of said order, some 220 pounds of yarn, was shipped to the customer in September, after the customer opened payment for this quantity by letter of credit. The balance of the order, some 1,776 pounds of yarn, was shipped by Aetna, in October, to a bonded ware-

house in Paris, France, to be held there for its account for release to such customer only upon payment therefor in United States dollars.

Without notifying the Office of International Trade that such customer thereafter refused to pay for the yarn in the Paris warehouse and would not accept delivery thereof, Aetna, through Smithline, offered the yarn to other customers in France and, in November, sold it to a company in Paris, without obtaining, or seeking, an amendment of the license authorizing the sale and delivery to such company.

The Compliance Commissioner held that the shipment of the yarn to the Paris warehouse was apparently consonant with the terms and provisions of the license as long as it was intended for sole delivery to the consignee named therein, and could be returned to the United States if such consignee refused to accept the goods. When the circumstances changed because of the customer's refusal to take the yarn, Aetna was obliged to reship the goods to the United States or to obtain an amendment to the license, although neither measure was adopted.

Moreover, Aetna tried to conceal the sale to the new customer by giving the appearance of having delivered the yarn to the original customer, who ostensibly resold it to the new customer, although the fact is that the original customer acted as a commission agent in the transaction and the sale was actually made by Aetna to the new customer.

The Compliance Commissioner made the finding that the sale of the yarn to the new customer in France was contrary to the terms and provisions of the export license after Aetna became aware of the refusal of the original purchaser to take the yarn; and that the terms of the bill of lading relating to the export, which named the original customer as the ultimate consignee, had also been violated.

With respect to the six license applications filed by Aetna with the Office of International Trade between September 10 and October 12, 1951, Aetna made, or caused to be made thereon, representations that it held firm orders, when in fact it did not hold firm orders, at least as to four of them, and the statements executed by the respective French buyers at the instance of Aetna, acting by Smithline, and attached to the applications, were known to it to be mere ultimate consignee statements. Only two of the French firms submitted firm orders.

Aetna, through Smithline, solicited and obtained such statements intending thereby to put Aetna in a position to apply for and obtain validated export licenses to ship nylon yarn to such customers in France, and, at the same time, intending to circumvent the yarn quota allocation established by the Office of International Trade, and thus obtain a larger share of the quota allocation to France than it was entitled to.

In making the aforesaid representations and by attaching such documents to the several license applications, Aetna pretended that such applications were

in conformance with the Office of International Trade regulations requiring the existence of a firm order to support a license application. The fact is that four of the alleged consignees were then unable to give firm orders because of import license difficulties and inability to obtain United States dollars to pay for yarn, and relied upon Smithline's oral and written statements that the execution of the aforementioned documents implied no firm commitments on their part, but simply put Aetna in a position to get United States export licenses and have them ready against anticipated orders from them.

The final charge of failing to keep prescribed records and to produce them for the examination of the Office of International Trade involves the Goldbergs and the corporate respondents, but does not include Smithline. Here Aetna was unable to produce the firm orders represented to be in existence in connection with the four applications mentioned above, or to supply adequate records in support thereof. And neither Aetna nor Atlas was able to show the existence of supporting orders, as required by the regulations, with regard to seventeen (17) license applications filed with the Office of International Trade between September 10, 1951, and March 7, 1952, to export quantities of nylon yarn to consignees in various foreign countries.

In his report the Compliance Commissioner made a finding of violation against the named respondents as charged in the charging letter of October 7, 1953. He rejected the defenses of respondents of alleged inexperience with export transactions and of unfamiliarity with the export regulations. He also found as without weight the contention put forward by the Goldbergs that the ultimate-consignee statements had been obtained by Smithline without their knowledge or consent, and that they believed such statements were bona fide orders. He concluded further that Smithline's claim of having accepted the ultimate consignee statements in the belief that such were firm orders was equally without substance.

In making his recommendations the Compliance Commissioner took into consideration the several mitigating circumstances claimed by respondents. He gave weight to such additional factors as the absence of any record of prior export violations by these respondents; their apparent good reputation in the business community; and the (unconfirmed) report that Aetna is no longer in business and that Atlas is in the hands of receivers.

The Compliance Commissioner nevertheless concluded that respondents had participated in violations of a serious nature, and under circumstances showing that such participation was knowing and deliberate.

In view of the finding that Smithline is not as culpable as the other respondents in that he was not involved in the record-keeping charge; that Aetna and Atlas appear no longer to be in business whereas Smithline is now employed by a firm in the export business and a denial of export privileges would conse-

quently fall more heavily upon him and the innocent company by which he is employed than it would upon such respondent firms, the Compliance Commissioner made the recommendations which appear below.

The findings and recommendations of the Compliance Commissioner have been carefully considered, together with the charging letter, respondents' written answers thereto, the evidentiary material, and the entire record. It appears therefrom that the Compliance Commissioner's findings are in accordance with the evidence, and that his recommendations are fair and reasonable and should be adopted.

Now, therefore, it is ordered as follows: I. Except as to respondent Sol I. Smithline, all outstanding validated export licenses which are held by or issued in the name of any of the respondents, or of any person, firm, corporation or other business organization with which they, or any of them, are related by ownership, control, position of responsibility, or other connection in the conduct of trade involving exports from the United States or services connected therewith, are hereby revoked and shall be returned forthwith to the Bureau of Foreign Commerce for cancellation.

II. Respondents, their associates, partners, representatives, agents, successors, assigns, nominees, directors, officers, and employees are hereby denied all privileges of participating, directly or indirectly in any manner or capacity, in an exportation of any commodity from the United States to any foreign destination, including Canada. Without limiting the generality of the foregoing denial of export privileges, participation in an exportation is deemed to include and prohibit respondents' participation (a) in the preparation or filing of any validated export license application as a party, or as the representative of a party, (b) in the obtaining or using of any validated or general export license or other export control document, (c) in the receiving in any foreign country of any commodities exported from the United States, and (d) in the financing, forwarding, transporting, storing, or other servicing of exports from the United States.

III. Such denial of export privileges shall apply not only to said respondents and the persons and firms intended to be covered in Part II above, but also to any person, firm, corporation or business organization with which they, or any of them, may be now or hereafter related by ownership, control, position of responsibility, or other connection, in the conduct of trade involving exports from the United States or services connected therewith.

IV. This order shall extend for a period of six (6) months from the date hereof: *Provided, however,* That during the last three (3) months of said period the export privileges which are denied to respondent Sol I. Smithline by the terms hereof shall be restored to him without further order of the Bureau of Foreign Commerce. In the event, however, that said respondent Sol I. Smithline or the persons and companies in Parts II and III above related to him, shall knowingly

violate the terms of this order or any of the laws or regulations related to export control during the entire period of the order, the Bureau of Foreign Commerce may summarily and without notice to the person or company responsible for such violation, at such time as it shall determine that such violation has occurred, issue a supplemental order which shall deny to such person or company all export privileges for the said period of the order which has been held in abeyance with respect to him or it, and shall revoke all validated export licenses then outstanding and as to which said person or company may be a party, without thereby limiting the Bureau of Foreign Commerce from taking such other and further action based on such violation as it shall deem warranted.

V. No person, firm, corporation, or other business organization, whether in the United States or elsewhere, and whether or not engaged in trade relating to exports from the United States, shall without prior disclosure of the facts to, and specific authorization from, the Bureau of Foreign Commerce, directly or indirectly in any manner or capacity, (a) apply for, obtain, transfer, or use any license, shipper's export declaration, bill of lading, or other export control document relating to an exportation of commodities from the United States, or, (b) order, receive, buy, use, dispose of, finance, transport, forward, store, or otherwise service, or participate in, any exportation from the United States, or in a re-exportation of any commodity exported from the United States to any foreign destination, with respect to which any of the persons or firms within the scope of Parts I-III hereof have any interest of any kind or nature, direct or indirect.

Dated: August 16, 1954.

WALLACE S. THOMAS,
Acting Director,
Office of Export Supply.

[F. R. Doc. 54-6442; Filed, Aug. 18, 1954;
8:50 a. m.]

Federal Maritime Board

MEMBER LINES OF THE PACIFIC WESTBOUND
CONFERENCE ET AL.

NOTICE OF AGREEMENTS FILED FOR APPROVAL

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to § 15 of the Shipping Act, 1916, as amended; 39 Stat. 733, 46 U. S. C. § 814.

(1) Agreement No. 57-49, between the member lines of the Pacific Westbound Conference, modifies the appendix to the basic agreement of that conference (No. 57) by deleting the reference to ports of China and North China now included in the Classification of Discharge Ports and Rates to Differential Ports and by adding Takao, Formosa, as a differential port, and by changing the name of Cargo Protection and Inspection Bureau to Pacific Cargo Inspection Bureau.

(2) Agreement No. 90-8, between the member lines of the Java New York Rate Agreement, modifies the basic agreement of that conference (No. 90) to include a new provision prohibiting the divulgence to any one except to another member and to the Federal Maritime Board of information concerning matters coming before the conference and providing that non-compliance therewith shall subject the offending member to a fine to be determined by the other members.

(3) Agreement No. 5680-A, between the carriers comprising the Fern-Ville Far East Lines joint service and the member lines of the Pacific Straits Conference, covers the admission of the joint service to associate membership in that conference. As associate member, the joint service will be obligated to abide by all the rates, rules, regulations and decisions of the conference; will have no vote in conference affairs; and will be permitted to participate in conference contracts with shippers.

Interested parties may inspect these agreements and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to any of the agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: August 16, 1954.

By order of the Federal Maritime Board.

[SEAL] A. J. WILLIAMS,
Secretary.

[F. R. Doc. 54-6451; Filed, Aug. 18, 1954;
8:53 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

ALASKA PUBLIC SALE ACT; CLASSIFICATION
NO. 16

AUGUST 13, 1954.

Pursuant to the authority delegated to me under section 2.21 of Order No. 1, Bureau of Land Management, Area 4, approved by the Acting Secretary of the Interior August 20, 1951 (16 F. R. 8625, 8627), the following described land is classified for disposal under the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679; 43 U. S. C. 364a-364e) for commercial and industrial purposes:

U. S. Survey 2946; Lot 2
Containing approximately 0.93 acre.

The above land will be offered for sale in accordance with regulations contained in 43 CFR 75.23 to 75.40. If no bid at the minimum acceptable price or above is made, the land may be held for future offering or the classification may be rescinded.

FRED J. WEILER,
Area Lands and Minerals Officer.

[F. R. Doc. 54-6416; Filed, Aug. 18, 1954;
8:46 a. m.]

COLORADO

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

AUGUST 12, 1954.

An application, serial number Colorado 09006, for the withdrawal from all forms of appropriation under the public land laws of the lands described below, subject to valid existing rights was filed July 27, 1954 by the Department of the Air Force.

The purposes of the proposed withdrawal: For use in the establishment of the Air Force Academy authorized by Public Law 325, 83d Congress.

For a period of thirty days from the date of publication of this notice, persons having cause to object to the proposed withdrawal may present their objections in writing to the State Supervisor for Colorado, Bureau of Land Management, 429 Post Office Building, Denver, Colorado. In case any objection is filed and the nature of the opposition is such as to warrant it, a public hearing will be held at a convenient time and place, which will be announced, where opponents to the order may state their views and where proponents of the order can explain its purpose.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER, either in the form of a public land order or in the form of a notice of determination if the application is rejected. In either case, a separate notice will be sent to each interested party of record.

The lands involved in the application are:

Sixth Principal Meridian—Colorado

T. 12 S., R. 67 W.,
Sec. 5—W $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$;
Sec. 21—NW $\frac{1}{4}$;
Sec. 28—NW $\frac{1}{4}$.
Total area: 440 acres.

MAX CAPLAN,
State Supervisor.

[F. R. Doc. 54-6417; Filed, Aug. 18, 1954;
8:46 a. m.]

Fish and Wildlife Service

CERTAIN LANDS AND WATERS ADJACENT TO
PRESQUILLE NATIONAL WILDLIFE REFUGE,
VIRGINIA

ORDER DESIGNATING AS CLOSED AREA UNDER
THE MIGRATORY BIRD TREATY ACT

By virtue of and pursuant to the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755), and Reorganization Plan II (53 Stat. 1431), and in accordance with the provisions of the Administrative Procedure Act of June 11, 1946 (60 Stat. 238), I, Orme Lewis, Assistant Secretary of the Interior, having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of migratory birds included in the terms of the convention between the United States and Great Britain for the protection of migratory birds, concluded August 16, 1916,

and the convention between the United States and the United Mexican States for the protection of migratory birds and game mammals, concluded February 7, 1936, do hereby designate as closed area in or on which pursuing, hunting, taking, capturing, or killing of migratory birds, or attempting to take, capture, or kill migratory birds is not permitted, said area identified and described as follows:

All the area of the bed of the James River, submerged or exposed, including the waters thereof, in Charles City and Henrico Counties, Virginia, immediately contiguous to and abutting upon lands of the United States (Presquile National Wildlife Refuge) and more particularly described as follows:

Beginning at a point in the Chesterfield-Charles City County Line, near the southern point of Turkey Island and at the lower end of the Turkey Island Cutoff, from which point a 1" iron pipe projecting 16" above the ground bears North, 0.58 chain distant; thence with the line of ordinary low water upstream in part with the Chesterfield-Charles City County Line and in part with the Chesterfield-Henrico County Line, approximately five and one-half miles to the southwest point of Turkey Island at the upper end of Turkey Island Cutoff, a 1 1/2" iron pipe projecting 36" above the ground from which pipe the U. S. C. & G. S. triangulation station "Turkey" bears S. 57° 36' E., 27.92 chains distant; thence N. 23° 30' W., approximately one-eighth mile across the James River to the line of ordinary low water on the left shore, approximately one and one-half miles above the mouth of Curles Neck Creek; thence downstream with the line of ordinary low water on the left shore of the James River, passing Curles Neck Creek and Turkey Island Creek, approximately seven miles to a point near Shirley, approximately one-half mile downstream from the boat landing or dock at upper Shirley; thence N. 60° 30' W., approximately three-eighths mile to the place of beginning.

The order of the Secretary of the Interior, dated April 22, 1954 (19 F. R. 2502), designating as a closed area under the Migratory Bird Treaty Act certain lands and waters adjacent to the Presquile National Wildlife Refuge, Virginia, is revoked upon publication of this order in the FEDERAL REGISTER.

Since this order diminishes the area closed to the hunting of migratory birds and thus is a relaxation of restrictions on such hunting, notice and public procedure thereon are unnecessary and this designation shall become effective upon publication in the FEDERAL REGISTER.

Issued at Washington, D. C. this 13th day of August 1954.

ORME LEWIS,
Assistant Secretary of the Interior.

[F. R. Doc. 54-6415; Filed, Aug. 18, 1954; 8:45 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 1102 et al.]

BRANIFF AIRWAYS, INC., ET AL.; REOPENED SOUTHERN SERVICE TO THE WEST CASE

NOTICE OF ORAL ARGUMENT

In the matter of the application of Braniff Airways, Inc., and other applicants for certificates or amendments of

certificates of public convenience and necessity and a proceeding to determine whether the public convenience and necessity require the establishment of certain through air transportation service.

Notice is hereby given, pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended, that oral argument in the above-entitled proceeding is assigned to be held on September 16, 1954, at 10 a. m., e. d. t., in Room 5042, Commerce Building, Constitution Avenue between Fourteenth and Fifteenth Streets NW., Washington, D. C., before the Board.

Dated at Washington, D. C., August 13, 1954.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 54-6447; Filed, Aug. 18, 1954; 8:52 a. m.]

FEDERAL POWER COMMISSION

[Project No. 2162]

WASHINGTON STATE POWER COMMISSION

NOTICE OF APPLICATION FOR PRELIMINARY PERMIT

AUGUST 12, 1954.

Public notice is hereby given that application has been filed by Washington State Power Commission, Seattle, Washington, for preliminary permit under the Federal Power Act (16 U. S. C. 791a-825r) for proposed Project No. 2162 to be located on the Columbia River, in the region of Yakima, Ellensburg, Wenatchee, Ephrata, Moses Lake, Richland, Pasco, and Kennewick, all in the State of Washington. The proposed project would consist of a dam about 13,500 feet long across the Columbia River at approximately mile 397 upstream from its mouth forming a reservoir with normal full pool elevation at 550 feet extending upstream about 56 miles to the tailwater of the Rock Island development; a spillway occupying the present channel with the crest at elevation 532; a stilling pool; provisions for future navigation locks; suitable fish ladders; a powerhouse with initial installation of 23-turbine-generator units of 1,219,000 kw. total capacity and an ultimate installation of 30 units aggregating 1,590,000 kw. in capacity; and appurtenant hydraulic, mechanical and electrical facilities and miscellaneous project works.

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 of the Commission (18 CFR 1.8 or 1.10), the time within which such petitions must be filed being specified in the rules. The last date upon which protests may be filed is September 30, 1954. The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 54-6422; Filed, Aug. 18, 1954; 8:47 a. m.]

[Docket No. G-2409]

**NORTHERN NATURAL GAS CO.
ORDER FIXING DATE OF HEARING**

Northern Natural Gas Company (Applicant), a Delaware corporation with its principal office at Omaha, Nebraska, filed, on April 19, 1954, an application, pursuant to section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing it to construct and operate a certain branch line with measuring and regulating facilities to enable it to provide natural gas service to the Black Dog Lake Power Generating Station of Northern States Power Company located near St. Paul, Minnesota, or as more fully described in the application on file with the Commission and open to public inspection.

The Commission finds: It is appropriate and in the public interest in carrying out the provisions of the Natural Gas Act, and good cause exists, to hold a public hearing in the above-entitled proceeding, as hereinafter provided and ordered.

The Commission orders:

(A) Pursuant to authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7, 15, and 16 of the Natural Gas Act, and the Commission's rules and regulations, including rules of practice and procedure (18 CFR Chapter I), a public hearing be held, commencing on September 13, 1954, at 10:00 a. m., e. d. 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 herein.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Adopted: August 10, 1954.

Issued: August 12, 1954.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 54-6423; Filed, Aug. 18, 1954; 8:47 a. m.]

[Docket No. G-2467]

**EL PASO NATURAL GAS CO.
ORDER FIXING DATE OF HEARING**

This proceeding is a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure. Applicant having requested that its application, filed June 25, 1954, pursuant to section 7 of the Natural Gas Act, for authorization to construct and operate certain facilities as described in said application, be heard under the shortened procedure provided by the aforesaid rule for noncontested proceedings, provided that no request to be heard, protest or petition is filed subsequent to the giving of due notice of the filing of the application including publication in the FEDERAL REGISTER on July 15, 1954 (19 F. R. 4368).

Good cause exists and it is in the public interest to fix the date of hearing in this proceeding less than 15 days after publication of this order in the FEDERAL REGISTER.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing be held on August 23, 1954, at 9:30 a. m., e. d. s. t., in the Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved and the issues presented by the application: *Provided, however*, That the Commission may, after a noncontested hearing, forthwith dispose of the proceedings pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Adopted: August 10, 1954.

Issued: August 12, 1954.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 54-6424; Filed, Aug. 18, 1954;
8:47 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3284]

UTAH POWER & LIGHT CO.

NOTICE OF PROPOSED BANK BORROWINGS

AUGUST 13, 1954.

Notice is hereby given that Utah Power & Light Company ("Company"), a registered holding company which is also a public-utility operating company, has filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("act"), designating sections 6 (a) and 7 thereof as applicable to the proposed transactions, which are summarized as follows:

Pursuant to a Credit Agreement to be made with seventeen lending banks, the Company proposes to borrow not to exceed \$20,000,000 during the period ending August 31, 1955. Under the terms of the Agreement, the Company will borrow from said banks from time to time during the period as its construction program requires, such borrowings to be evidenced by notes payable on October 1, 1955, with the right of prepayment in whole or in part at any time. The notes will bear interest at the prime commercial rate of The Chase National Bank of the City of New York (now 3 percent) at the time each loan is made.

The proceeds from these bank loans, together with other available cash, will be used to carry on (but will not be sufficient to complete) the 1954-1955 construction program of the Company and its wholly owned subsidiary The Western Colorado Power Company; which program will require, according to present

estimates, approximately \$25,300,000 in 1954 and \$21,900,000 in 1955. It is the Company's intention to issue and sell, during the second half of 1955, such additional securities as may be required to provide funds for paying the bank loans and financing in part the remainder of the 1955 program, maintaining approximately the present debt-equity ratio.

No finder's fee or other remuneration will be paid in connection with the proposed bank loans. The Company estimates that its expenses in connection with said loans will be approximately \$1,000.

The Company has also filed an application with the Idaho Public Utilities Commission for its authorization of the proposed borrowings. In the opinion of the Company's counsel, no other State commission nor any Federal commission other than this Commission has jurisdiction in the premises.

It is requested that the Commission's order be made effective upon issuance.

Notice is further given that any interested person may, not later than September 7, 1954, at 5:30 p. m., request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law, if any, raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date said declaration, as filed or as amended, may be permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transactions as provided in Rule U-20 (a) and Rule U-100 thereof.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F. R. Doc. 54-6425; Filed, Aug. 18, 1954;
8:48 a. m.]

INTERSTATE COMMERCE COMMISSION

[4th Sec. Application 29573]

MOTOR-RAIL RATES IN THE EAST;
SUBSTITUTED SERVICE

APPLICATION FOR RELIEF

AUGUST 13, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: The New York, New Haven and Hartford Railroad Company and Merchants Service Trucking, Inc.

Commodities involved: Semi-trailers, loaded or empty, on flat cars.

Between: Boston, Mass., Hartford, Conn., New London, Conn., and Providence, R. I., on the one hand, and Harlem River, N. Y., Elizabeth, N. J., and Edgewater, N. J., on the other, also between Boston, Mass., and New London, Conn.

Grounds for relief: Competition with motor carriers.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-6382; Filed, Aug. 17, 1954;
8:48 a. m.]

[4th Sec. Application 29573]

MOTOR-RAIL RATES IN THE EAST;
SUBSTITUTED SERVICE

APPLICATION FOR RELIEF

AUGUST 13, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: The New York, New Haven and Hartford Railroad Company and Wilson Freight Forwarding Company.

Commodities involved: Semi-trailers, loaded or empty, on flat cars.

Between: Boston, Mass., Hartford and New Haven, Conn., on the one hand, and Harlem River, N. Y., Elizabeth and Edgewater, N. J., on the other, also between Boston, Mass., and New Haven, Conn.

Grounds for relief: Competition with motor carriers.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-6383; Filed, Aug. 17, 1954;
8:48 a. m.]

[4th Sec. Application 29575]

**SPEIGEL-EISEN FROM HOUSTON, TEX., TO
VARIOUS STATES**

APPLICATION FOR RELIEF

AUGUST 16, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for carriers parties to schedule listed below.

Commodities involved: Speigel-eisen (speigel-iron), carloads.

From: Houston, Tex.

To: Points in Arkansas, Louisiana, Oklahoma, Kansas, Missouri, Illinois, Tennessee, and Mississippi.

Grounds for relief: Rail competition, circuitry, rates constructed on the basis of the short line distance formula.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, I. C. C. No. 3960, supp. 36.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-6431; Filed, Aug. 18, 1954;
8:49 a. m.]

[4th Sec. Application 29579]

**PULPBOARD FROM WISCONSIN TO FORT
WORTH, TEX.**

APPLICATION FOR RELIEF

AUGUST 16, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for carriers parties to schedule listed below.

Commodities involved: Pulpboard, carloads.

From: Specified points in Wisconsin.
To: Fort Worth, Tex.

Grounds for relief: Rail competition, circuitry, grouping, and additional destination.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, I. C. C. No. 3928, supp. 25.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-6432; Filed, Aug. 18, 1954;
8:50 a. m.]

[4th Sec. Application 29580]

**PULPBOARD OR FIBREBOARD FROM DALLAS,
TEX., TO NEW ORLEANS, LA.**

APPLICATION FOR RELIEF

AUGUST 16, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for carriers parties to schedule listed below.

Commodities involved: Pulpboard or fibreboard, carloads.

From: Dallas, Tex.

To: New Orleans, La.

Grounds for relief: Competition with rail carriers, circuitry, and additional routes.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, I. C. C. No. 4063, supp. 53.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved

in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-6433; Filed, Aug. 18, 1954;
8:50 a. m.]

[4th Sec. Application 29581]

**CRUSHED STONE FROM LINWOOD, IOWA TO
KEWANEE, ILL.**

APPLICATION FOR RELIEF

AUGUST 16, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. G. Raasch, Agent, for the Chicago, Rock Island and Pacific Railroad Company, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and Chicago, Burlington & Quincy Railroad Company.

Commodities involved: Crushed stone, carloads.

From: Linwood, Iowa.

To: Kewanee, Ill.

Grounds for relief: Wayside pit competition.

Schedules filed containing proposed rates: Chicago, Milwaukee, St. Paul and Pacific Railroad Tariff I. C. C. No. B-7595, supp. No. 67; Chicago, Rock Island and Pacific Railroad Tariff I. C. C. No. C-13434, supp. No. 35.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-6434; Filed, Aug. 18, 1954;
8:50 a. m.]

