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TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 29—RETIREMENT

EXCLUSIONS FROM RETIREMENT COVERAGE

Effective October 1, 1956, § 29.17 is added.

§ 29.17 *Exclusions from retirement coverage.* (a) The following groups of employees in the executive branch of the Government are excluded from the Civil Service Retirement Act:

(1) Employees serving under appointments limited to one year or less.

(2) Part-time, when actually employed, or intermittent employees having no regular tour of duty.

(3) Employees whose salary, pay or compensation on an annual basis is $12 a year or less.

(4) Member or patient employees in Government hospitals or homes.

(5) Employees paid on a contract or fee basis.

(6) Employees paid on a piecework basis, except those whose work schedule provides for regular or full-time service.

(7) Intermittent alien employees engaged on work outside the continental limits of the United States.

(8) Employees serving under temporary appointments pending establishment of registers, or pending final determination of eligibility for permanent appointment.

(9) Acting postmasters, clerks in fourth-class post offices, substitute rural carriers, and special-delivery messengers at second-, third-, and fourth-class post offices.

(10) Consular agents appointed under authority of section 551 of the Foreign Service Act of 1946, approved August 13, 1946 (Public Law 724, 79th Congress).

(11) Employees serving under emergency-indefinite appointments not exceeding 5 years.

(12) United States citizens given "overseas limited appointments."

(13) Employees serving under nonpermanent appointments made pursuant to section 1 of Executive Order 10180 of November 13, 1950.

(14) Employees serving under nonpermanent appointments, designated as indefinite, made after January 23, 1955, the effective date of the repeal of Executive Order 10180.

(b) The exclusions in paragraph (a) of this section do not operate to deny retirement coverage in any case in which (1) employment in an excluded category follows employment subject to the act without a break in service or after a separation from service of three days or less, (2) the employee is granted competitive civil service status under legislation, Executive order, or the Civil Service Rules and Regulations, while he is serving in a position in the competitive service, or (3) the employee previously had a competitive civil service status and such status is restored to him by action of reinstatement.

(Sec. 17, 46 Stat. 478, as amended; 5 U. S. C. 709. Interprets or applies sec. 2, 70 Stat. 745)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 56-7793; Filed, Sept. 26, 1956; 8:49 a. m.]

TITLE 7—AGRICULTURE

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

PART 923—MILK IN APPALACHIAN MARKETING AREA

ORDER AMENDING ORDER, AS AMENDED, REGULATING HANDLING

§ 923.0 *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, as amended, and all 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

(Continued on next page)

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FEDERAL REGISTER

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CODIFICATION GUIDE

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

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 Appalachian 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 price of milk produced for sale in the said marketing area 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 such milk, 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.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order, as amended, effective not later than October 1, 1956. Any delay beyond that date in the effective date of this order would tend to disrupt the orderly marketing of milk in the aforesaid marketing area and would defeat the purpose of the amendment. The amendment action of this order

amending the order, as amended, is known to handlers. The public hearing was held February 6–10, 1956, and the recommended decision was issued August 1, 1956 (21 F. R. 5824). The final decision was issued by the Assistant Secretary on August 31, 1956 (21 F. R. 6767). Reasonable time under the circumstances has been afforded persons affected to prepare for its effective date. In view of the foregoing, it is hereby found and determined that good cause exists for not delaying the effective date of this order for 30 days after its publication in the FEDERAL REGISTER (section 4 (c); Administrative Procedure Act, 5 U. S. C. 1001 et seq.).

(c) *Determination.* It is hereby determined that handlers (excluding cooperative associations of producers who are not engaged in processing, distributing or shipping milk covered by this order, amending the order, as amended, which is marketed within the Appalachian marketing area) of more than 50 percent of the milk which is marketed within said marketing area, refused or failed to sign the proposed marketing agreement regulating the handling of milk in the said marketing area, and it is hereby further determined that:

(1) The refusal or failure of such handlers to sign said proposed marketing agreement tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of this order, amending the order, as amended, is the only practical means pursuant to the declared policy of the act, of advancing the interests of producers of milk which is produced for sale in the marketing area; and

(3) The issuance of this order amending the order, as amended, is approved or favored by at least two-thirds of the producers who participated in a referendum thereon, and who, during the determined representative period (June 1956), were engaged in the production of milk for sale in the said marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Appalachian 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, as follows:

1. Delete § 923.6 and substitute therefor the following:

§ 923.6 *Appalachian marketing area.* "Appalachian marketing area", hereinafter called the "marketing area", means all the territory geographically located within the perimeters of the counties of Sullivan, Washington and Greene in Tennessee; Washington and Wise in Virginia; and Harlan in Kentucky.

2. Delete § 923.7 (b) and substitute therefor the following:

(b) Any plant which ships (1) any milk or skim milk during the months of February through July, or (2) an amount of milk, skim milk, or cream in fluid form in excess of 70,000 pounds for the month during the months of August through January, to a plant qualified pursuant to paragraph (a) of this section, and

3. At the end of § 923.7 substitute a colon for the period and add the following proviso: "*And provided further*, That this definition shall not be deemed to include any building, premises or facilities the primary function of which is to hold or store bottled milk or milk products in finished form in transit for wholesale or retail route distribution."

4. In § 923.17, delete the word "August" and substitute therefor the word "July."

5. In § 923.18, delete the word "August" and substitute therefor the word "July."

6. In § 923.31 (b) (1) delete the word "August" and substitute therefor the word "July."

7. Delete § 923.41 (b) and substitute therefor the following:

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce any product other than those designated as Class I milk pursuant to paragraph (a) of this section; (2) contained in (skim milk only) any product disposed of for livestock feed; (3) dumped (skim milk only) during the months of April, May, June or July: *Provided*, That the market administrator is given not less than 6 hours' notice of the handler's intention to make such disposition; (4) contained in inventory of products designated as Class I milk pursuant to paragraph (a) of this section on hand at the end of the month; and (5) in shrinkage assigned to Class II pursuant to § 923.42.

8. In § 923.44 (c), delete the figure "50" and substitute therefor the figure "150". In the same paragraph delete the phrase "nearest point in the marketing area" and substitute therefor "city limits of Kingsport, Tennessee."

9. Delete § 923.46 (a) (3) and substitute therefor the following:

(3) Subtract from the remaining pounds of skim milk in Class II milk, the pounds of skim milk in other source milk (that derived from milk priced under another Federal order to be subtracted last): *Provided*, That if the receipts of skim milk in other source milk are greater than the remaining pounds of skim milk in Class II milk, an amount equal to the difference shall be subtracted from the pounds of skim milk in Class I milk;

10. Delete from § 923.50 (b) the phrase "during the delivery period" and substitute therefor the phrase "for the period from the 26th day of the immediately preceding month to the 25th day of the current month."

11. Delete § 923.51 (b) (2) (i) and substitute therefor the following:

(i) Multiply the Chicago butter price by 4.8.

12. Delete § 923.52 (b) and substitute therefor the following:

(b) *Class II price.* Multiply the Chicago butter price by 0.11, and round to the nearest one-tenth cent.

13. In § 923.71, delete the word "September" and substitute therefor the word "August."

14. In § 923.72, delete the word "August" and substitute therefor the word "July."

15. Delete the proviso in § 923.72 (e) and substitute therefor the following: "*Provided*, That if such resulting value is greater than an amount computed by mutiplying the pounds of such base milk by the Class I price, such value in excess thereof shall be added to the value computed pursuant to paragraph (d) of this section to the extent that the excess price shall not exceed the base price as calculated herein. Any additional value remaining shall be prorated to the respective volumes of base milk and excess milk."

16. Add to § 923.72 (g) after the word "section," the following phrase "and in the proviso of paragraph (e) of this section."

17. In § 923.81, delete the word "August" and substitute therefor the word "July."

18. In § 923.90 (a), delete the words "September through March" and substitute therefor the words "August through March" and in the same paragraph delete the words "April through August" and substitute therefor the words "April through July."

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

Issued at Washington, D. C., this 24th day of September 1956 to be effective on and after October 1, 1956.

[SEAL] EARL L. BUTZ,
Assistant Secretary.

[F. R. Doc. 56-7797; Filed, Sept. 26, 1956; 8:50 a. m.]

PART 939—BEURRE D'ANJOU, BEURRE BOSC, WINTER NELIS, DOYENNE DU COMICE, BEURRE EASTER, AND BEURRE CLAIRGEAU PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

DETERMINATION RELATIVE TO EXPENSES AND RATE OF ASSESSMENT FOR 1956–57 FISCAL PERIOD

Notice was published in the August 29, 1956, daily issue of the FEDERAL REGISTER (21 F. R. 6517) that consideration was being given to proposals regarding the expenses and the fixing of the rate of assessment for the 1956–57 season under the marketing agreement, as amended and Order No. 39, as amended (7 CFR Part 939), regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau pears grown in Oregon, Washington, and California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice which were submitted by the Control Committee (established pursuant to said amended marketing agreement and order), it is hereby found and determined that:

§ 939.209 *Expenses and rate of assessment for the 1956–57 fiscal period*—(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Control Committee, established pursuant to the

provisions of the aforesaid amended marketing agreement and order, to enable such committee to perform its functions, in accordance with the provisions thereof, during the fiscal period beginning July 1, 1956, and ending June 30, 1957, both dates inclusive, will amount to $28,657.50.

(b) *Rate of assessment.* The rate of assessment, which each handler who first handles pears shall pay as his pro rata share of the aforesaid expenses in accordance with the applicable provisions of said amended marketing agreement and order, is hereby fixed at 6 mills ($0.006) per standard western pear box of pears, or its equivalent of pears in other containers or in bulk, shipped by such handler during said fiscal period.

It is hereby further found that it is impracticable and contrary to the public interest to postpone the effective time hereof until 30 days after publication in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) in that (1) in accordance with the provisions of said amended marketing agreement and order, the rate of assessment is applicable to all pears shipped during the 1956–57 fiscal period; (2) shipments of such pears are now being made; and (3) it is essential that the specification of the assessment rate be issued immediately so that the aforesaid assessments may be collected and thereby enable said Control Committee to perform its duties and functions in accordance with said amended marketing agreement and order.

As used herein, terms shall have the same meaning as when used in said amended marketing agreement and order.

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

Issued this 24th day of September 1956, to become effective on the date of publication hereof in the FEDERAL REGISTER.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Doc. 56-7795; Filed, Sept. 26, 1956; 8:49 a. m.]

PART 969—AVOCADOS GROWN IN SOUTH FLORIDA

MISCELLANEOUS AMENDMENTS

Notice was published in the FEDERAL REGISTER issue of September 8, 1956 (21 F. R. 6831), that the Department was giving consideration to the proposed amendment of the supplementing rules and regulations (7 CFR 969.110 et seq.; Subpart—Rules and Regulations; 21 F. R. 78; 2409; 6695) currently in effect pursuant to the marketing agreement, as amended, and Order No. 69, as amended (7 CFR Part 969), regulating the handling of avocados grown in South Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047).

After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice which were submitted by the Avocado Administrative Committee (established pursuant to said amended marketing agreement and order as the agency to administer the provisions thereof), it is hereby found that the amendment, as hereinafter set forth, of the said rules and regulations is in accordance with the provisions of the said amended marketing agreement and order and will tend to effectuate the declared purposes of the Agricultural Marketing Agreement Act of 1937, as amended. Such amendment is hereby approved; and the said rules and regulations are amended as follows:

1. Revise paragraph (a) § 969.140 *Avocados not subject to regulation* to read as follows:

(a) Any handler may handle avocados totaling not more than one bushel to any one person during any one day exempt from the provisions of §§ 969.41, 969.51, and 969.54: *Provided*, That the total quantity of avocados so handled by a handler shall not exceed 10 bushels during any week.

2. Amend § 969.150 *Reports* as follows: Immediately following the period after the title (§ 969.150 *Reports.*) insert the paragraph designation "(a)"; and add therein, after said paragraph (a), two new paragraphs reading as follows:

(b) Each handler registered with the Avocado Administrative Committee shall render a report to the committee of the disposition of each lot of noncertified avocados removed from the premises of his handling facilities during each week in which any avocados are handled subject to the provisions of §§ 969.41, 969.51, and 969.54, or exemptions therefrom pursuant to § 969.53. Such report shall be on forms prescribed by the committee and shall include (1) the quantity; (2) purpose for which removed; (3) date of removal; and (4) the name of the person or firm to which the avocados were delivered or consigned. Each such report shall be signed by the handler or his authorized representative, shall cover the period Sunday through Saturday, and shall be placed in the mail not later than one week after the close of business of the Saturday ending the period covered by the report.

(c) Each handler shall render a report to the Avocado Administrative Committee of each lot of noncertified avocados received from a district other than that in which his handling facilities are located. Such report shall be on forms prescribed by the committee and shall include: (1) The name of the handler; (2) the quantity of avocados received; (3) date received; (4) name and address of the person from whom the avocados were purchased; (5) the district from which the avocados were transferred; and (6) the district to which the avocados were transferred. Each such report shall cover the period Sunday through Saturday and shall be placed in the mail not later than one week after the close of business of the Saturday ending the period covered by the report.

It is hereby further found that it is impracticable and contrary to the public interest to postpone the effective date and good cause exists for making the provisions hereof effective not later than the date of publication of this document in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) in that (1) shipment of the current crop of avocados is now in progress, and varieties of avocados are currently subject to maturity regulation under Avocado Order 12, as amended (21 F. R. 3307; 5469; 6329); (2) this amendment revises the provisions of the section which permits the handling of avocados not subject to regulation, and should be made effective as soon as possible to enable the Avocado Administrative Committee to effectively carry out its regulatory functions; (3) producers and handlers have been notified of the proposed adoption, and recommendation to the Secretary, by the committee of the said amendment to the rules and regulations; (4) notice that the department was considering such amendment was published in the FEDERAL REGISTER and interested parties afforded opportunity to file written data, views, or arguments in connection therewith; and (5) the new procedure established by such amendment of the rules and regulations will not require any preparation which cannot be completed by the effective time hereof.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c. Interpret or apply 68 Stat. 906, 1047)

Issued this 24th day of September to be effective upon publication in the FEDERAL REGISTER.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Doc. 56-7794; Filed, Sept. 26, 1956; 8:49 a. m.]

[Docket No. AO-184-A15]

PART 978—MILK IN NASHVILLE, TENN., MARKETING AREA

ORDER AMENDING ORDER, AS AMENDED, REGULATING HANDLING

§ 978.0 *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 marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and certain proposed amendments to the order, as amended, regulating the handling of milk in the Nashville, Tennessee, 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 of said order, as amended, and as hereby further amended, 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 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 hearings have been held;

(b) *Additional findings.* It is hereby found and determined that good cause exists for making this order amending the order, as amended, effective October 1, 1956. Such action is necessary in the public interest in order to reflect current marketing conditions and to insure the production of an adequate supply of milk for the Nashville marketing area. Any delay beyond October 1 in the effective date of this order will tend to affect adversely the production of an adequate supply of milk for the Nashville marketing area.

The changes effected by this order amending the order, as amended, no not require of persons affected substantial or extensive changes prior to the effective date. The provisions of the said order are well known to handlers, the public hearing having been held on July 24, 1956, the recommended decision having been issued on August 23, 1956 (21 F. R. 6489) and the final decision having been isued on September 17, 1956. Therefore, reasonable time, under the circumstances, has been afforded persons affected to prepare for its effective date and it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER.

In view of the foregoing, it is hereby found that good cause exists for making this order amending the order, as amended, effective October 1, 1956 (sec. 4(c), Administrative Procedure Act, 5 U. S. C. 1003(c)).

(c) *Determinations.* It is hereby determined that handlers (excluding cooperative associations of producers who are not engaged in processing, distributing or shipping milk covered by this order amending the order, as amended) of more than 50 percent of the volume of milk covered by this order, amending the order, as amended, which is marketed within the said marketing area, refused or failed to sign the proposed marketing agreement regulating the handling of milk in the said marketing area, and it is hereby further determined that:

1. The refusal or failure of such handlers to sign said marketing agreement tends to prevent the effectuation of the declared policy of the act;

2. This issuance of this order amending the order, as amended, is the only practical means, pursuant to the declared policy of the act, of advancing the interests of producers of milk which is produced for sale in the said marketing area; and

3. The issuance of this order amending the order, as amended, is approved or favored by at least two-thirds of the producers who, during the representative period (July 1956), were engaged in the production of milk for sale in the said marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof the handling of milk in the Nashville, Tennessee, 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 § 978.51 (a) (1) (ii), add the following words: "except that such amount shall not be added or subtracted in computing prices for the months of October 1956 through January 1957, inclusive, and".

2. § 978.51 (a), delete subparagraph (2) and substitute the following:

(2) For each percentage by which the utilization ratio calculated for the month pursuant to subparagraph (1) of this paragraph exceeds 130, subtract from, or for each percentage by which it is less than 125, add to, the Class I price, two cents.

3. In § 978.51 (a), delete subparagraph (3).

4. In § 978.51 (a), delete the language before the proviso, and substitute the following:

(a) *Class I milk price.* The Class I milk price shall be basic formula price for the preceding month, plus $1.40 during the months of August through January, except that for the year 1957, the month of February shall be included; and plus $1.10 during all other months, plus or minus a supply-demand adjustment calculated for each month as follows:

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

Issued at Washington, D. C., this 24th day of September, 1956, to be effective on and after the 1st day of October 1956.

[SEAL] EARL L. BUTZ,
Assistant Secretary.

[F. R. Doc. 56-7799; Filed, Sept. 26, 1956; 8:51 a. m.]

PART 987—MILK IN CENTRAL MISSISSIPPI MARKETING AREA

TERMINATION ORDER

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), hereinafter referred to as the "act", and of the order, as amended (7 CFR Part 987), regulating the handling of milk in the Central Mississippi marketing area, hereinafter referred to as the "Order", it is hereby found and determined that:

(a) The provision, "Brookhaven Creamery, Brookhaven, Mississippi", contained in § 987.50 (c) does not tend to effectuate the declared policy of the act.

Section 987.50 (c) of the Federal Order No. 87, as amended, regulating the handling of milk in the Central Mississippi marketing area contains a list of five milk plants located in the State of Mississippi. Each month, the market administrator of Federal Order No. 87, computes a Class II milk price, pursuant to § 987.51 (b) of the order, on the basis of reports received from the operators of milk plants listed under § 987.50 (c) of the order. From the inception of the order the prices reported pursuant to § 987.50 (c) have exclusively reflected the value of "manufacturing grade" milk used in the production of dairy products. By including these milk plants in the list contained in § 987.50 (c) of the order, the Department intended that such value be used as the basis for computing the Class II milk price pursuant to § 987.51 (b) of the order.

The Department has been advised that effective September 1, 1956, the Brookhaven Creamery, Brookhaven, Mississippi, discontinued receiving "manufacturing grade" milk. Only "Grade A" milk is being received. It is understood that this "Grade A" milk must be paid for under the classification system provided by the Mississippi State Milk Audit Law. Therefore, effective September 1, 1956, the only price quoted by said Creamery will be a "blend" price reflecting the value of milk utilized for fluid purposes, and milk utilized for manufacturing purposes.

A "blend" price of this type does not reflect the value of milk for manufacturing purposes only; consequently it is deemed necessary that the Brookhaven Creamery, Brookhaven, Mississippi, be deleted from the list contained in § 987.50 (c) of the Federal order, as amended, regulating the handling of milk in the Central Mississippi marketing area.

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of the effective date hereof, are impracticable, unnecessary, and contrary to the public interest for reason stated under (a) above and in that:

1. The information upon which this action is based did not become available in time for such compliance.

2. This termination order does not require persons affected substantial or extensive preparation prior to its effective date.

Therefore, good cause exists for making this order effective immediately.

It is therefore ordered, That the provision, "Brookhaven Creamery, Brookhaven, Mississippi", contained in § 987.50 (c) of the order, as amended, regulating the handling of milk in the Central Mississippi marketing area is hereby terminated effective immediately.

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

Done at Washington, D. C., this 24th day of September 1956.

[SEAL] EARL L. BUTZ,
Assistant Secretary.

[F. R. Doc. 56-7798; Filed, Sept. 26, 1956; 8:50 a. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

Subchapter A—Civil Air Regulations

[Supp. 2]

PART 21—AIRLINE TRANSPORT PILOT RATING

RULES, POLICIES, AND INTERPRETATIONS

This supplement provides an applicant for an airline transport pilot rating with the following rules, policies, and interpretations of the Administrator pertaining to the application for, and issuance of, an airline transport pilot rating:

1. The method of substantiating aeronautical experience (§ 21.16–2); and the crediting of copilot time (§ 21.16–3);

2. The contents of the written examination (§ 21.15–1), and the maneuvers required for the demonstration of aeronautical skill for various type and class ratings (§§ 21.17–1, 21.20–1);

3. The form and procedure for an application, or an amendment to the application (§§ 21.21–1 and 21.21–2);

4. The manner in which temporary or permanent certificates are issued (§ 21.22–1);

5. Procedure for reexamination after failure of an examination, and the persons qualified to give additional instructions (§§ 21.28–1 and 21.28–2);

6. The aircraft to be used in the flight test (§ 21.33–1); and

7. The retention of existing pilot ratings (§ 21.40–1).

The rule prescribed in § 21.16–1 specifies those persons having aeronautical experience equivalent to a commercial pilot certificate for the purpose of issuing an airline transport pilot rating. This rule was published as a notice of proposed rule making on June 16, 1956, in 21 F. R. 4259. Interested persons have been afforded an opportunity to submit written views, data, or comments. Consideration has been given to all relevant data presented concerning this rule.

1. The following new section is added to read:

§ 21.15–1 *Written examination (CAA policies which apply to § 21.15)*—(a) *Eligibility.* The airline transport pilot rating written examination will be given to any person who meets the eligibility requirements of §§ 21.9 through 21.14 and 21.16.

(b) *Contents.* The examination consists of four sections: (1) Civil Air Regulations, (2) meteorology, (3) radio navigation, and (4) radio operations and procedures; each of which is graded separately. A minimum grade of 70 percent is required to pass each section.

(c) *Substitution of credit.* An applicant may be credited with the successful completion of the meteorology section of the airline transport pilot rating written examination if he possesses a currently valid flight navigator's certificate or an instrument rating or if, within the last 2 years he has successfully completed the meteorology section of either the flight navigator or instrument rating examination. An applicant may be credited with successful completion of the radio navigation section of the airline transport pilot examination if he possesses a currently valid flight navigator's certificate or if, within the last 2 years, he has successfully completed the air navigation section of the flight navigator examination. If, however, the applicant has previously taken the airline transport pilot examination and failed to pass these sections, he may not substitute such credit for the written examination.

(d) *Examination procedures.* The examination consisting of the four sections mentioned in paragraph (b) of this section should be completed within one 6-hour session, except that the supervising agent may, at his discretion, allow extra time in special circumstances. No examination may be started unless sufficient time remains to complete the examination before the end of regular office hours.

(e) *Report of grades.* A report of grades received, Form ACA–578A, will be mailed direct to the applicant. Form ACA–578A will be accepted within a period of 24 months from the date of the examination as evidence of the applicant's having successfully completed the knowledge requirements for an airline transport pilot rating. A Form ACA–578A, acceptable on September 1, 1956, will be accepted by the Administrator until September 1, 1958.

EXCEPTION: Form ACA–578A will be accepted by the Administrator from an applicant during the applicant's period of employment with an air carrier or operator, provided the applicant has been continuously employed since taking the examination, as a pilot with an air carrier or operator, and during this period of employment actively participates in a pilot training program conducted by the air carrier or operator.

2. The following sections are revised to read:

§ 21.16–1 *Aeronautical experience (CAA rules which apply to § 21.16).* (a) The following shall be considered to hold the equivalent of a United States Commercial Pilot Rating Certificate:

(1) Pilots of the U. S. armed services whose military experience qualifies them for commercial certificates under § 20.55 (b) of this subchapter.

(2) Holders of foreign airline transport pilot or commercial pilot licenses without limitations issued by member states of ICAO.

(b) The holding of the equivalent of a commercial pilot rating shall permit the holder thereof to meet the requirements of § § 21.17 (a) (1) through (7) and 21.18 (b)

§ 21.16–2 *Evidence of flight experience (CAA policies which apply to § 21.16).* (a) Flight experience required by § 21.16 should be substantiated by a logbook maintained in accordance with the requirements of § 43.43 of this subchapter.

3. The following new sections are added to read:

§ 21.16–3 *Copilot experience (CAA policies which apply to § 21.16 (a)).* A copilot employed by a certificated air carrier may credit "as copilot actually performing the duties and functions of a pilot-in-command under the surveillance of the pilot-in-command" that time during which he perfoms all the functions of the pilot-in-command [1] including landings and takeoffs, en route flying, low approaches, and ground functions.

(a) Flight time credited in this manner is subject to the provisions of § 43.44 (b) (2) of this subchapter.

(b) The actual flight time should be recorded and certified by the pilot-in-command under whose supervision the functions were accomplished.

§ 21.17–1 *Aeronautical skill (CAA policies which apply to § 21.17).* (a) An applicant will satisfactorily demonstrate the following maneuvers to an Aviation Safety Agent or a designated airline transport pilot examiner by means of a flight check.[2] This flight check may not be taken until the written examination has been satisfactorily completed and the applicant has complied with the requirements of § 21.31.

(b) The following list of maneuvers will be specifically required for airline transport rating in multiengine aircraft:

Equipment examination (oral).
Preflight check.
Taxiing, or sailing and docking.
Runups.
Takeoffs.
Climbs and climbing turns.[3]
Maneuvering at slow speed.
Approaches to stalls.
Airport traffic pattern.
Landing technique.
Cross-wind takeoff and landing.
Traffic control procedure.
Steep turns (instruments only).
Timed turns.[3]
Recovery from unusual attitudes.
Use of radio equipment.
Orientation.
Beam bracketing.
Cone (station) identification.
Instrument approach procedures.
Missed approach procedures.
Use of directional radio.
Rapid descent and pull-up.
Engine(s) out procedure.
Maneuvering with engine(s) out.
Maneuvering for landing at weather minimums.
Takeoff and landing with engine(s) failure.
Emergencies.
Smoothness and coordination.
Judgment.

(c) The following list of maneuvers will be specifically required for airline

[1] An air carrier should determine that a copilot has had sufficient time and experience and has demonstrated his ability to perform efficiently the duties of a copilot before permitting him to perform the functions of a pilot-in-command for the purpose of logging "pilot-in-command time".

[2] The examiner or agent will determine the order in which the maneuvers are to be accomplished. See Appendix A for detailed information relating to the required maneuvers. Appendix A not filed with Federal Register Division.

[3] Not required if applicant holds instrument rating.

transport pilot rating in single-engine aircraft:

Equipment examination (oral).
Preflight check.
Taxiing, or sailing and docking.
Runup.
Takeoffs.
Climbs and climbing turns.[3]
Maneuvering at slow speed.
Stalls.
Airport traffic pattern.
Accuracy approaches and spot landings.
Landing technique.
Cross-wind takeoff and landing.
Traffic control procedures.
Steep turns (instrument only).
Timed turns.[3]
Recovery from unusual attitudes.
Use of radio equipment.
Orientation.
Beam bracketing.
Cone (station) identification.
Instrument approach procedures.
Missed approach procedures.
Use of directional radio.
Rapid descent and pull-up.
Maneuvering for landing at weather minimums.
Emergencies.
Smoothness and coordination.
Judgment.

(d) The following list of maneuvers will be specifically required of ATR multiengine pilots who apply for additional type ratings:

Equipment examination (oral).
Preflight check.
Taxiing, or sailing and docking.
Runups.
Takeoffs.
Maneuvering at slow speed.
Approaches to stalls.
Airport traffic pattern.
Landing technique.
Cross-wind takeoff and landing.
Traffic control procedures.
Steep turns (instrument only).
Recovery from unusual attitudes.
Use of radio equipment.
Instrument approach procedures.
Missed approach procedures.
Rapid descent and pull-up.
Engine(s) out procedure.
Maneuvering with engine(s) out.
Maneuvering for landing at weather minimums.
Takeoff and landing with engine(s) failure.
Emergencies.
Smoothness and coordination.
Judgment.

§ 21.20–1 *Aircraft rating (CAA policies which apply to § 21.20 (a)).* Flight test maneuvers as outlined in § 21.17–1 (d) will be used in determining competency of airline transport pilots for aircraft ratings sought by them in accordance with this section.[4]

§ 21.21–1 *Application (CAA policies which apply to §21.21).* Application for an Airline Transport Pilot Rating Certificate will be made on Form ACA–342a. This form can be obtained from a representative of the Administrator at any regional, district, or field office. Application must be presented in person to an Aviation Safety Agent or a designated airline transport pilot examiner.

§ 21.21–2 *Application to amend (CAA polices which apply to § 21.21 (a)).* (a) Application for an amendment to the Airline Transport Pilot Rating Certificate will be made in accordance with procedures set forth in § 21.21–1.

§ 21.22–1 *Issuance (CAA policies which apply to § 21.22 (a)).* After the applicant has satisfactorily completed both the written examination and flight test, he will be issued a temporary certificate, Form ACA–1710T. This certificate may be issued by an Aviation Safety Agent only. Hence, if the flight test has been given by a designated examiner, the applicant must obtain a properly endorsed Form ACA–342A from him for presentation to an Aviation Safety Agent who will issue the Form ACA–1710T. Permanent certificates will be issued from Washington, D. C.

§ 21.28–1 *Reexamination (CAA policies which apply to § 21.28 (b)).* (a) An applicant who has failed any maneuver (or maneuvers) will be issued a Form ACA–666 which will list specifically the maneuvers which he failed. In a reexamination only the maneuvers failed[5] need be repeated.

(b) Form ACA–666 must be submitted to the agent or examiner prior to reexamination, together with satisfactory evidence that the additional flight time requirements required in § 21.28 (b) have been met.

§ 21.28–2 *Instrument flight instruction (CAA policies which apply to § 21.28 (a) (3)).* An instructor employed by an air carrier or by a certificated flying school to instruct in courses pertinent to the theory of instrument flight will be considered to qualify under this section.

§ 21.33–1 *Aircraft used in tests (CAA interpretations which apply to § 21.33).* (a) Aircraft used to accomplish flight tests for airline transport pilot ratings may be (1) properly certificated aircraft of U. S. registry; or (2) at the discretion of the agent or examiner, aircraft of foreign registry properly certificated by the authorities of the country in which it is registered; or (3) at the discretion of the agent or examiner, military aircraft on operational status if permission of the appropriate military authority is obtained.

(b) A suitable hood must be provided by the applicant for the aircraft used. The hood must completely exclude from the applicant all outside forward visual reference and yet not unduly restrict the vision of the agent or examiner.

§ 21.40–1 *Retention of existing ratings upon issuance of a pilot certificate of a higher rating (CAA policies which apply to § 21.40).* (a) The holder of a commercial pilot certificate who qualifies for an airline transport pilot certificate may retain all of his commercial pilot certificate ratings. However, when such ratings are endorsed on his airline transport pilot certificate, he may exercise only the privileges of a commercial pilot in respect to such ratings. In order to exercise such privileges, he must hold a first class medical certificate issued within the past 12 calendar months.

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply secs. 601, 602, 52 Stat. 1007, 1008, as amended; 49 U. S. C. 551, 552)

This supplement shall become effective October 15, 1956.

[SEAL] JAMES T. PYLE,
Acting Administrator of Civil Aeronautics.

[F. R. Doc. 56–7772; Filed, Sept. 26, 1956; 8:45 a. m.]

[3] Not required if applicant holds instrument rating.

[4] See Appendix B for various type ratings. Appendix B not filed with Federal Register Division.

[5] The number and relative importance of the maneuvers specified in § 21.17–1 which have been failed will be used as a guide in determining how many hours of flight time are required prior to reexamination.

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 6271]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

AMERICAN BROADLOOM CARPET CO., ET AL.

Subpart—*Advertising falsely or misleadingly:*

§ 13.15 *Business status, advantages, or connections:* Producer status of dealer or seller; retailer as wholesaler, jobber or factory distributor; § 13.155 *Prices:* Exaggerated as regular and customary. Subpart—*Using misleading name*—Vendor; § 13.2460 *Retailer as wholesaler, jobber or distributor.*

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45) [Cease and desist order, Jacob Hauptman t. a. American Broadloom Carpet Company, etc., Philadelphia, Pa., Docket 6271, September 10, 1956]

In the Matter of Jacob Hauptman, an Individual Trading as American Broadloom Carpet Company, American Floor Covering Company, and American Mills Outlet Co.

This proceeding was heard by a hearing examiner on the complaint of the Commission—charging an individual, engaged under several trade names in the retail sale of rugs and carpets in Philadelphia, with representing falsely in advertisements in newspapers, periodicals, and other advertising media that certain carpetings had been "Woven to sell for $19.95" or were "Orig. $12.95" or other prices which were greatly in excess of the usual price he charged for the merchandise offered; that such advertised prices provided a substantial saving to purchasers; and through use of the words "Mills Outlet" in one of his trade names and otherwise in his said advertisements, that he had been especially selected by manufacturers to dispose of their rugs and carpets at greatly reduced prices—and hearings in due course.

On this basis, the hearing examiner made his initial decision and order to cease and desist, from which respondent appealed. The Commission, having heard the matter upon briefs of counsel, on September 10 issued its opinion denying the appeal and modifying the order, and adopting the initial decision as modified as the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That the respondent Jacob Hauptman, an individual, trading as American Broadloom Carpet Company, American Floor Covering Company, or American Mills Outlet Co., or trading under any other name, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of carpets, rugs, or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as the customary and usual prices of said products any price which is in fact in excess of the price at which such products are customarily offered for sale and sold by respondent in the usual course of business.

2. Misrepresenting in any manner the amount of savings available to purchasers of respondent's products.

3. Using the words "mills outlet," or any other word or words of similar import or meaning, as a part of a trade name, or in any other manner; or otherwise representing that respondent has been especially designated or selected by any manufacturer of rugs and carpets to dispose, sell or distribute in any manner the products of said manufacturer.

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

It is further ordered, That respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the initial decision as modified.

Issued: September 10, 1956.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F. R. Doc. 56-7780; Filed, Sept. 26, 1956; 8:47 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter V—Department of the Army

Subchapter F—Personnel

PART 577—MEDICAL AND DENTAL ATTENDANCE

DENTAL ATTENDANCE

Sections 577.40 to 577.46 are revoked and the following substituted therefor:

Sec.
577.40 General.
577.41 For whom authorized.
577.42 Dental care by civilian dentists.

AUTHORITY: §§ 577.40 to 577.42 issued under R. S. 161; 5 U. S. C. 22.

SOURCE: AR 40-180, Aug. 8, 1956.

§ 577.40 *General*—(a) *Definition.* The term "dental care" as used in §§ 577.40 to 577.42 embraces the science of dentistry as commonly practiced by the dental profession.

(b) *Precedence in treatment.* Persons requiring emergency treatment will receive first consideration. Persons on active military duty will have precedence over others authorized treatment under § 577.2.

(c) *Maintenance of professional standards.* Dental treatment rendered in Army facilities will conform to the highest professional and ethical standards. All practical means for maintaining such standards will be encouraged, including the following:

(1) Membership of dental officers in appropriate professional societies and the fostering of contracts with the civilian profession where such is practical.

(2) Regular professional staff meetings, the organization of study groups, or other means for the mutual stimulation of professional improvement when the size of the dental facility warrants such action.

(3) Maintenance of adequate reference libraries.

(4) Utilization of training aids available from the Department of the Army or other sources.

(5) Rotation of general duty dental officers among different sections of dental services, or other means for increasing their experience and knowledge in all aspects of dentistry.

(6) Improvement in the qualifications of auxiliary personnel through planned and supervised on-the-job training and attendance at appropriate school courses.

§ 577.41 *For whom authorized.* Dental care is authorized for the same persons and under the same conditions as medical care (§§ 577.1, 577.2, 577.5 and 577.15), except as provided in § 577.40 to 577.42.

§ 577.42 *Dental care by civilian dentists*—(a) *For whom authorized.* Subject to the conditions and limitations specified herein, dental care by civilian dentists at the expense of Army Medical Service funds is authorized for the following personnel and none other when the required care cannot be procured from available dental facilities of the Department of Defense or other Federal agencies outside the Department of Defense: *Provided*, That this authorization will not apply to personnel who obtain elective dentistry from civilian dentists:

(1) Officers, warrant officers, and enlisted personnel of the Regular Army and cadets of the United States Military Academy when on a duty status or when absent on any authorized leave or pass. Charges incurred for civilian dental care when absent without leave are the sole responsibility of the individual concerned.

(2) Officers, warrant officers, and enlisted personnel of the Army Reserve; the federally recognized National Guard of the several States, Territories, and the District of Columbia; the National Guard of the United States; and the Army without specification as to component when ordered or called into active Federal service, when ordered to active duty for training, or while performing reserve duty training.

(3) Members of the Reserve Officers' Training Corps en route to, or from, or during their attendance at camps of instruction under section 47a, National Defense Act.

(4) Applicants for enlistment or reenlistment and registrants under the Universal Military Training and Service Act (62 Stat. 604) as amended (50 U. S. C. App. 451 et seq.) (limited to necessary dental examination except as provided in subparagraphs (5) and (6) of this paragraph).

(5) Applicants for enlistment or registrants whose physical fitness for military service cannot be determined without hospital study.

(6) Applicants for enlistment who suffer acute illnesses and injuries while awaiting or undergoing enlistment processing at recruiting main stations or at Armed Forces Examining Stations (limited to emergency dental care, including hospitalization).

(7) Prisoners.

(8) Prisoners of war, persons interned by the Army, and other persons in military custody or confinement.

(9) Civilian seamen in the service of vessels operated by the Department of the Army.

(b) *Emergency dental care.* Prior approval of higher authority is not required for the employment of a civilian dentist for emergency dental treatment, which is defined as dental treatment for the relief of pain, or acute conditions, or of dental injuries caused by direct violence. Such care will be confined to the relief of the immediate emergency.

(c) *Routine dental care.* Routine dental care will include all preventive, therapeutic, restorative and oral surgical measures, other than those of an emergency nature which are necessary to maintain dental health and function, but will not include those measures required primarily for cosmetic reasons or for correction of minor nonprogressive defects. Civilian dentists may not be employed at public expense for the treatment of chronic lesions, filling operations, prosthetic replacements, and other prolonged or extensive procedures, such as those required following the relief of an immediate emergency, until specific approval for such employment has been received from the approving authority: *Provided*, That in the case of military personnel on detail without troops in foreign countries, dental service of this character which is urgently necessary may be procured at reasonable rates without prior approval of higher authority.

[SEAL] JOHN A. KLEIN, *Major General, U. S. Army, The Adjutant General.*

[F. R. Doc. 56-7770; Filed, Sept. 26, 1956; 8:45 a. m.]

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter I—Office of Defense Mobilization

[Defense Mobilization Order VII-6, Supp. 1]

DMO VII-6—EXPANSION GOALS

COPPER

1. Defense Mobilization Order-VII-6, dated December 3, 1953 (18 F. R. 7876) is supplemented by transferring the following expansion goal from List III, Open to List I, Closed.

Goal No., Title, and Delegate Agency
56; copper; Interior.

2. This supplement shall be effective on September 24, 1956.

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

[F. R. Doc. 56-7783; Filed, Sept. 26, 1956; 8:48 a. m.]

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 203—BRIDGE REGULATIONS

CHRISTINA RIVER, DELAWARE

Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U. S. C. 499), § 203.235 governing the operation of drawbridges across Christina River is hereby amended to prescribe closed periods for the Delaware State Highway Department bridges at Third Street and Market Street, Wilmington, Delaware, and other minor changes, as follows:

§ 203.235 *Christina River, Del.; bridges.* * * *

(b) Except as otherwise provided in paragraphs (g) and (h) of this section, the bridge tender upon hearing or perceiving the prescribed call signal shall immediately clear the drawspan and open the draw to its full extent for the passage of the vessel or other craft: *Provided*, That the draw of a railroad bridge need not be opened when there is a train in the bridge block approaching the bridge with the intention of crossing, nor within 5 minutes of the known time of passage of a scheduled passenger, mail, or express train; but in no event, except in case of breakdown of the operating machinery, shall the opening of the draw be delayed more than 5 minutes in the case of a highway bridge, nor more than 10 minutes in the case of a railroad bridge.

* * * * *

(f) The foregoing general regulations contained in paragraphs (a) to (e), inclusive, of this section shall apply to all bridges except as modified by the special regulations contained in paragraphs (g) and (h), of this section, prescribed to provide for closed or open periods when land or water traffic predominates and for the operation of a particular bridge on advance notice.

* * * * *

(h) *Closed periods.* The Third Street and Market Street bridges shall not be required to open for the passage of vessels between 7 a. m. and 8 a. m. and between 4:30 p. m. and 5:30 p. m., except on Sundays and legal holidays: *Provided*, That any vessel which has passed through either bridge immediately prior to a closed period and will require passage through the other bridge in order to continue to its destination shall be passed through the draw without delay. *Provided further*, That in time of flood or other emergency the closed periods may be suspended or modified by the District Engineer, Corps of Engineers.

[Regs., September 13, 1956, 823.01 (Christina River, Del.)-ENGWO] (Sec. 5, 28 Stat. 362; 33 U. S. C. 499)

[SEAL] JOHN A. KLEIN,
Major General, U. S. Army,
The Adjutant General.

[F. R. Doc. 56-7771; Filed, Sept. 26, 1956; 8:45 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 941]

[Docket No. AO-101-22]

MILK IN CHICAGO, ILL., MARKETING AREA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED AMENDMENT TO TENTATIVE MARKETING AGREEMENT, AND TO ORDER, AS AMENDED

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to a proposed amendment to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Chicago, Illinois, 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 10th 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 amendment to the tentative marketing agreement and to the order, as amended, was formulated, was conducted at Chicago, Illinois, on June 4, 6, and 7, 1956, pursuant to notice thereof which was issued on May 16, 1956 (21 F. R. 3327).

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

1. The price level for Class I milk, including the supply-demand adjustment.
2. Revision of the definition of "pool plant" with respect to performance of plants and other qualifications; and accounting and payments for nonpool milk received at a pool plant.
3. Elimination of the special price applied in September, October and November to Class I and Class II milk moved in bulk to points outside the surplus milk manufacturing area.
4. Revision of price differentials to producers in nearby zones.
5. Changes in the method of accounting for milk, including use of a skim milk and butterfat system of accounting, and a special classification and accounting plan for skim milk and butterfat used in ice cream.
6. Expansion of the surplus milk manufacturing area.
7. Classification of malted milk.
8. "Reload point" as a type of pool plant.

In addition to the issues here listed, certain other matters were referred to in proposals included in the hearing notice, but were either abandoned or not specifically mentioned at the hearing. These matters included the price level for Class II milk, expansion of the marketing area to include all of Lake County, Illinois, advance payments to producers, new producer bases, and accounting for own-farm production. It is concluded that no action with respect to these matters should be taken on this record.

This decision deals only with issues Nos. 1, 4, 5, 6, 7 and 8. The other issues, No. 2 and No. 3, have been dealt with in a previous decision.

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

1. *Class I price.* No change should be made in the Class I price differential or supply-demand adjustor.

Several producer organizations requested that the Class I price differential, which is added to the basic formula price, be changed to $1.10 per hundredweight for each month of the year. One producer group requested that the supply-demand adjustment be deleted from the order.

The Class I price differentials now provided in the order are $1.10 for the months of August through November, 90 cents for December, January, February and July, and 70 cents in other months. The annual average of these differentials is 90 cents.

The testimony in favor of making the Class I differential $1.10 for every month was based on the following reasons: (1) Increased costs of milk production; (2) loss of producers from the market; (3) low level of price compared with prices in other markets; and (4) a long-term upward trend in sales in the past ten years.

A representative of the largest producer organization in the market explained that his request for a price increase was not based on a need for more milk in the market, or to effect less seasonal variation in pricing, but rather to increase returns to producers on the present volume of milk.

A witness for handlers opposed the price increase and the elimination of seasonal pricing, as proposed by producers, on the basis that these would be harmful to the competitive position of handlers, particularly with respect to out-of-market sales, which are a substantial part of the Chicago handlers' business.

Record data do not show there is as yet any substantial reduction in seasonal variation in total producer deliveries from the range of variation for years prior to operation of the base plan. When the base plan was made effective in September 1954, seasonal price changes were retained in the order as an additional incentive to producers to even out production. Moreover, substantial amounts of milk approved for Chicago distribution are sold in packaged form as Class I milk in a number of markets outside the defined marketing area. Some of this milk is sold at resale prices which vary from those which prevail in the marketing area and in markets where seasonal adjustments of producer prices take place in the flush production season. To eliminate seasonal pricing under present conditions could result in competitive disadvantage to handlers which, if it proved substantial, would mitigate the presumed gain to producers from elimination of seasonal pricing.

In view of the lack of substantial evidence of a basis for eliminating seasonal pricing, it is concluded that no change should be made in the order in this respect.

The proposal to increase the annual average of the Class I price should be examined in the light of price levels in recent years, and of changing supply and demand conditions. The proposed price increase of 20 cents per hundredweight is substantial in relation to the present level of the differentials, and is greater than the total increase in the differentials since 1951. At the time when the Chicago and suburban orders were combined on July 1, 1951, the annual average of the Class I differentials was 75 cents per hundredweight. Effective July 1, 1952, an amendment to the order increased the average of the differentials to 89.2 cents. The average of the differentials included in the December 1, 1954, amendment was 90 cents.

Since July 1, 1952, the Class I price has also been subject to a supply-demand adjustment based on the relationship of the volume of producer milk to utilization in Class I and Class II in the most recent 12-month period. This automatic price adjustment has served to keep the level of order prices in line with changing market conditions.

Data in the record for the years 1951 to date show a fairly steady increase in Class I sales, with the largest increases occurring after mid-1953. Sales of Class II milk in 1955 were slightly less than in 1951. The combined increase in both classes of milk was about 9 percent. Milk supplies from producers, on the other hand, increased about 20 percent in this period. Although producer numbers declined from an average of 23,005 in 1951 to 22,050 in 1955, this was compensated by a 25 percent increase in production per dairy.

For the first four months of 1956, production was about 5.1 percent higher than a year previous. Increased sales of Class I and Class II milk resulted in about the same level of utilization as in the same months of 1955.

The fall months are normally the critical period as to whether the market is adequately supplied. The percentage of producer milk used in Class I and Class II in the shortest production month of 1955, which was September, was 86.8 percent. In August, the percentage was 82.2 percent; in October, 80.2 percent; in November, 78.3 percent; and in December, 72.0 percent. Some testimony given in support of a proposal to change the requirements for pool plant status stressed the need to make milk available to the market in the fall months of short production. An amendment to the order on the basis of this record and effective September 1, 1956, makes modifications in pool plant requirements similar to those proposed.

It is concluded, on the basis of the preceding considerations, that the market supply in recent periods has been adequate, but not excessive, and that the price levels in the order since 1951 have resulted in an adequate response of supply to meet the needs of the market.

The testimony with respect to the proposal to eliminate the supply-demand adjustment contended that this factor has reduced prices in periods when surplus utilization in the market is not excessive. The testimony cited the situations in the fall months of 1954 and 1955, when the supply-demand formula reduced the price for milk in these classes although utilization in Class I and Class II ranged from 79 to 84 percent in the former, and from 78 to 87 percent in the latter instance. The witness pointed out that when utilization in fall months of 1952 was at a similar level, the supply-demand adjustment was adding 12 to 15 cents per hundredweight to the Class I price.

Official notice is taken here of the decision of the Secretary dated June 16, 1952 (17 F. R. 5526), in which it was decided that the supply-demand adjustment should be based on a twelve-month moving average of utilization. This type of adjustor was made effective July 1, 1952. Prior to that time the adjustment had been based on a six-month moving average of utilization. The latter type of adjustor had proved unsatisfactory in that it had resulted in some price variation contrary to the current supply-demand situation. At the hearing on which the June 16, 1952, decision was based, testimony generally indicated a preference for a type of adjustment which would reflect secular trend rather than a forecast of conditions immediately ahead.

Inasmuch as a twelve-month moving average is generally indicative of the secular trend of market utilization, and obscures variations of utilization in individual months, it is possible for negative price adjustments to continue through periods of a few months when the market is no more than adequately supplied. Furthermore, in periods covering several months when there is a general change in the level of utilization, it must be expected that the 12-month average will move more slowly than changes in recent months. However, effective August 1, 1955, the supply-demand adjustment was modified to reflect any change of the most recent twelve-month utilization figure from the similar utilization figure calculated three months previously. This change made the supply-demand adjustment more responsive to the situation in recent months. No proposal was made on the record as to how the supply-demand adjustor could be further revised to forecast with greater precision the prospective supply-demand situation. There is no basis in this record for the conclusion that deletion of an automatic price adjustor would result in a pricing system more adequately reflective of changing supply and demand conditions.

4. *Revision of price differentials to producers in nearby zones.* Location adjustments to producers with farms located near the marketing area should be revised so that location payments from the pool are made according to the location of the producer's farm rather than on the basis of the location of the plant where his milk is received. The rate of payment should be adjusted.

The order provides that uniform prices to producers are subject to location adjustments. The monthly announced uniform price per hundredweight applies to milk of 3.5 percent butterfat content received at pool plants located in the 55–70 mileage zone from the City Hall in Chicago. The price to producers for milk delivered at plants beyond this zone is reduced by 2 cents per hundredweight for each 15 miles, or fraction thereof that the plant location exceeds 70 miles. Milk delivered to plants located between the outer perimeter of the marketing area and a distance of 55 miles from Chicago City Hall, and milk delivered to plants located within the marketing area, is priced at the announced 55–70 mile zone uniform price plus 2 cents and 10 cents, respectively. The handler who receives the milk from producers pays the 2 cents additional for milk received at plants located between the marketing area and 55 miles, and 4 cents of the payment applicable at plants located in the marketing area, with the remaining 6 cents being paid out of the pool as a handler credit.

A major producer group proposed that the payment out of the pool be made on the basis of the location of the farm, rather than the present basis, which is the location of the plant where milk is received. According to this proposal, producers whose farms are in the townships within a radius of approximately 70 miles of the Chicago City Hall would be eligible for the nearby differentials. The townships would be grouped into two zones, which for convenience in this connection are designated as "Zone A" and "Zone B." Zone A would include all townships located within a radius of approximately 55 miles from the Chicago City Hall, and the Zone B would include all remaining townships located within the area encompassed by the approximate 70-mile radius. As a corollary to the zoning of nearby producer farms, it was proposed to change the rate of credit

out of the pool from 6 cents per hundredweight on all milk received at a marketing area pool plant, to 4 cents per hundredweight on all milk received from producers with farms located in Zone A, and 2 cents per hundredweight on milk received from producers with farms located in Zone B. A handler would be given the pool credit on all milk received from these two groups of producers regardless of the receiving plant's location.

The 6-cent pool payment for milk received at plants located in the marketing area was incorporated in Order 41, July 1, 1951, when Orders 41 and 69 were combined. In this connection official notice is taken of the decision of the Secretary issued June 12, 1951 (16 F. R. 5777). Under Order 69, which regulated the handling of milk in suburban Chicago, uniform prices were computed on an individual-handler basis, and a wide variation in uniform prices existed between different handlers. In addition, the Order 69 uniform prices were generally higher than the Order 41 uniform prices for the same month. For all milk received by Order 69 handlers, the uniform prices had averaged about 17 cents per hundredweight higher than the Order 41 uniform prices. Since many Order 41 and Order 69 producers were interspersed, differences in prices tended to disrupt the orderly marketing of milk. Although most Order 41 producers with farms located near the marketing area had been receiving premiums above the announced uniform price, these were not uniform and were disturbing to the orderly marketing of milk produced on farms in or near the marketing area. It was proposed by the sponsors of the consolidation of Orders 41 and 69 that all those producers shipping milk to marketing area plants should share in the high utilization value contributed to the combined pool by the suburban handlers in the consolidation. In the decision of June 12, 1951, it was concluded that this amounted to about 6 cents per hundredweight on all milk shipped directly to plants located in the enlarged marketing area, and handlers who have received such milk have been given a pool credit at this rate from July 1, 1951, to date.

It was contended at this hearing, and at hearings on proposed amendments to Order 41 in April 1952, June 1954 and July 1955, that this pool credit has resulted in problems to certain handlers in the procurement of milk, and that handlers with plants located in the marketing area had a 6-cent per hundredweight price advantage over those with plants located outside the marketing area. This allegedly resulted in the unnecessary shifting of producers among plants, additional costs to some handlers in purchasing milk, and instability in the procurement of milk.

As the handling of milk in farm tanks became more prevalent the effect of the 6-cent pool credit extended further into the milkshed. Milk which had formerly been received at country plants was hauled directly from farms to the marketing area in tank trucks. In many instances milk was transferred from a bulk tank pickup truck to a larger truck, and then hauled to a city plant. As a result, the amount of money taken out of the pool to pay farmers shipping to marketing area plants increased.

Proposals to amend Order 41 to wholly or partially eliminate some of the effects of the 6-cent pool payment were considered at the previously mentioned hearings held in 1952, 1954 and 1955. Included in these proposals were extensions of the marketing area to include adjacent townships so that additional handlers would receive the 6-cent credit, elimination of the credit entirely, and proposed changes in the pricing points for some bulk tank milk. The last mentioned of these proposed amendments was adopted. Effective March 1, 1956, bulk tank milk transferred from one truck to another was priced at the point of transfer, with a consequent reduction of credit payments out of the pool. However, many people in the industry consider that the 6-cent pool credit results in substantial inequities between producers and handlers.

The major producer and handler groups contended at the hearing that changing the basis of the pool credit to handlers from the location of the plant to the location of the farms where milk was produced, would eliminate the procurement advantages of handlers with plants located in the marketing area. Under the proposal, each plant, regardless of location, would be given the same pool credit for milk received from farms located in Zone A, and similarly for farms located in Zone B. To illustrate, a plant located in the 55–70 mile zone would be given the same pool credit of 2 cents per hundredweight of milk received from a farm located in Zone B as would be given to a plant located in the marketing area and receiving milk from a farm in the same zone. At the present time, no credit would be given the plant in the 55–70 mile zone whereas a plant in the marketing area would receive a 6-cent credit. Under the proposal, the uniform prices to producers would continue to reflect the location of the plant to the extent of 2 cents per hundredweight per zone, and these amounts would be paid by the handlers operating the plants. These differences in prices would be paid to any producer regardless of farm location. The differences approximate the cost of hauling milk from different locations.

There was no testimony in opposition to the proposal.

The proposed revision of the basis of payment for nearby differentials may be expected to result in about the same total amount of money to producers for such differentials as has been paid in recent years. The proposed zoning and change in rates would result in approximately the same area distribution of the money as was the case when the orders for Chicago and the suburban area were combined. The zoning of farms in two groups also has the advantage of providing a gradation in prices according to distance from a central location. Further, the payments out of the pool to producers would be limited to those whose milk supplies have historically commanded premiums over more distant milk by more than the actual difference in transportation cost on the principal grounds that such supplies are better adjusted to the requirements of the fluid milk market, are more readily accessible, and are less subject to weather and transportation hazards.

The proposed zone arrangement of the nearby area and the rates of payment are reasonable in view of the past market practices and should be adopted.

5. *Changes in accounting for milk.* No change should be made in the method of accounting for milk utilization, except as provided under Issue No. 7.

Two proposals were made to change the method of accounting for utilization of milk by handlers. One proposal was to adopt a method of accounting for utilization of all skim milk and butterfat. This is the same proposal as was made at hearings held in June 1954, and July 1955. The other proposal at this hearing with respect to accounting for utilization would call for separate accounting for skim milk and butterfat used for ice cream, ice cream mix and frozen desserts. Substantially the same proposal was considered at the July 1955 hearing. In this connection official notice is taken of decisions of the Secretary issued November 26, 1954 (19 F. R. 7693), and February 13, 1956 (21 F. R. 1070).

The testimony at this hearing on these proposals did not present any substantial new evidence which would require a different conclusion than on the basis of the previous hearings. In fact, much of the evidence with respect to one of the proposals was given principally by reference to testimony at the pervious hearings.

It is concluded that this record does not provide a basis for conclusions different from conclusions made on these issues on records of the previous hearings, and that the proposals should be denied.

6. *Expansion of surplus milk manufacturing area.* No change should be made in the surplus milk manufacturing area.

A handler proposed that Dubuque County, Iowa, be included in the surplus milk manufacturing area. The reason given for this request was to change the classification of milk moving from a plant regulated under this order to a plant in Dubuque, Iowa, which is outside the surplus milk manufacturing area.

Under the Federal order regulating the handling of milk in the Dubuque marketing area, such movements of milk are treated as other source milk and allocated to the lowest class. Under this order, such shipments of milk to plants regulated under another order are classified as Class I milk pursuant to § 941.40 (a) to the extent of Class I utilization in the plant to which transferred.

It was the contention of the proponent that extension of the surplus milk manufacturing area would allow classification of such milk under this order in the same class to which it is assigned under the Dubuque order. This is not in conformance with order provisions, since §941.40 (a) states the basis for classification of milk moving to plants regulated under other orders, wherever located, and takes precedence over paragraphs (c) and (d) of such section which deal with classification of milk moved to

plants within the surplus milk manufacturing area.

The surplus milk manufacturing area has been established under the order as an area in which handlers may economically dispose of surplus milk for manufacturing uses. The reasons given for this proposal to enlarge the area are not consistent with this purpose. It is concluded the proposal should be denied.

7. *Classification of malted milk.* Malted milk should be classified as a Class III (a) milk product.

Under the present provisions of Order 41, any milk the butterfat from which is used in the production of a product not specifically named in the Class I, Class II or Class IV milk definitions, is classified as Class III milk. The Class III milk definition, in turn, specifies that the butterfat in milk used in condensed milk disposed of to commercial food processors located within the surplus milk manufacturing area, and sweetened condensed milk in hermetically sealed cans, evaporated milk, whole milk powder, nonfat dry milk solids and condensed skim milk, shall be referred to as Class III (a) milk. The price for Class III (a) milk is at all times the condensery pay-price, whereas the price for the balance of the Class III milk is the condensery pay-price or the Class IV price, whichever is the higher.

It was proposed that malted milk be included as a Class III (a) product. Malted milk production, nationally, represents a large proportion of the dry whole milk solids production. Malted milk is processed in essentially the same manner as other Class III (a) milk products, and its composition is similar except for added ingredients. Competing unregulated plants base their prices to farmers on the midwest condensery price. In view of the close similarity in form and use between malted milk and other Class III (a) products, it should be included in that classification.

8. *Reload points.* The order should be amended to clarify the definition of "reload point."

In the recommended decision on this record issued by the Deputy Administrator July 20, 1956 (21 F. R. 5590), and the decision of the Secretary issued August 13, 1956 (21 F. R. 6136), the matter of "reload points" as a type of pool plant was inadvertently listed as part of Issue No. 2. No findings or conclusions were made with respect to reload points in those decisions. This matter should be considered as a separate issue as provided in this decision.

Effective March 1, 1956, Order 41 was amended to include as a "pool plant" any location at which milk moved from the farm in a tank truck is reloaded into another truck before entering a plant. Such a location is designated as a "reload point." This amendment was made in an effort to deal with certain problems that arise in the pooling and pricing of milk because of the increasing use of bulk tank milk assembly. These problems center around the question as to the point at which such milk should become subject to regulation and where it should be priced. Prior to this March 1, 1956 amendment, all milk was regulated and priced under Order 41 upon receipt at a plant.

Three proposals were made at this hearing to eliminate the reload point concept from the order. In support of two of these proposals, it was pointed out that the milk of some can shippers is reloaded from one truck to another in the country and shipped to the plant in the marketing area, so that the shipper receives the marketing area price. It was contended that the bulk shippers should be treated in the same manner, and that prices received by some bulk tank producers had been adversely affected by the March 1, 1956 amendment. The third proposal to eliminate reload points was offered as a corollary to the proposed change in the method of applying location differentials to producers located near or in the marketing area. This proposal was based on the assumption that the designation of reload points as pool plants served only to prevent handlers from receiving substantial amounts of money as pool credits to pay to some producers located considerable distances from the market whose milk was being picked up in tank trucks for movement directly to marketing area plants. It was contended that the proposed change in the basis of payments to nearby producers would accomplish such a purpose equally well, and that therefore the concept of reload points could be eliminated from the order.

The complaint against establishing prices at reload points is that farmers in zones well beyond the 70-mile zone do not receive prices established for delivery to the marketing area. Reload points were made the point of pricing under the order, by amendment March 1, 1956, for milk handled at such facilities, so that the price would be established for reloaded milk at country points in a manner similar to the pricing of other milk received at plants in the same locality. This record does not show that such a system of pricing at reload points is unsound or inequitable, and it is unnecessary here to repeat in detail the basis for establishing reload points. In this connection the order should be clarified, however, with respect to reloading performed at plant locations. By administrative practice such operations have been treated as part of the plant's operations, and this should continue to be so. No purpose is served with respect to pricing or administration by separation of these operations, and it would be impractical to consider the operations as separate. In the attached amending language the definition of reload point is modified to indicate that reloading on plant premises is considered part of the plant's operations.

General findings. (a) The tentative marketing agreement and the order, as amended and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

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

(c) The tentative marketing agreement and the order, as amended, and as hereby proposed to be further amended, will regulate the handling of milk in the same manner as, and 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. Briefs were filed on behalf of interested persons. The briefs contained suggested findings of facts, conclusions, and arguments with respect to the proposals considered at the hearing. Every point covered in the briefs was carefully examined along with the evidence in the record in making the findings and reaching the conclusions hereinbefore set forth. To the extent that the suggested findings and conclusions are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied.

Recommended marketing agreement and amendment to the order, as amended. The following amendments to the order, as amended, regulating the handling of milk in the Chicago, Illinois, marketing area, are recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be identical with those contained in the order, as amended, and as hereby proposed to be further amended.

1. Delete § 941.6 and substitute therefor the following:

§ 941.6 *Reload point.* "Reload point" means any location at which milk moved from the farm in a tank truck is commingled with other milk before entering a plant, except that reloading operations on the premises of a plant shall be considered a part of the plant's operations.

2. Delete § 941.41 (c) (1) and substitute therefor the following:

(1) Condensed milk (sweetened or unsweetened) disposed of to commercial food processors located within the surplus milk manufacturing area, sweetened condensed milk in hermetically sealed cans, evaporated milk, whole milk powder, nonfat dry milk, malted milk, and condensed skim milk (the products specified in this subparagraph are referred to hereinafter as Class III (a) milk);

3. Delete § 941.70 (d) and substitute therefor the following:

(d) Subtract the amount of any location adjustment to producers allowable pursuant to paragraphs (d) and (e) of § 941.81.

4. Delete § 941.71 (b) and substitute therefor the following:

(b) Add the aggregate of location adjustments to producers allowable pursuant to § 941.81 (a).

5. Delete § 941.80 and substitute therefor the following:

§ 941.80 *Time and method of payment for producer milk.* (a) On or before the 15th day after the end of each delivery period each handler shall pay to each cooperative association which is also a handler for milk received from it during the delivery period not less than the total value of such milk computed by multiplying the pounds of such milk in each class by the applicable class price subject to the location adjustment credit pursuant to § 941.53, or to the location adjustments to producers allowable pursuant to paragraphs (b) and (c) of § 941.81, whichever is applicable at the plant where the milk is received by the cooperative association and to a butterfat differential computed pursuant to § 941.82.

(b) On or before the 18th day after the end of each of the delivery periods of July through February each handler shall pay to each producer per hundredweight of milk received from him during such delivery period, respectively, not less than the uniform price, for such delivery period, subject to the location adjustments and butterfat differential provided by §§ 941.81 and 941.82.

(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, respectively, not less than the uniform price for base milk, and for excess milk received from such producer 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 adjustments and butterfat differential provided by §§ 941.81 and 941.82.

6. Delete § 941.81 and substitute therefor the following:

§ 941.81 *Location adjustments to producers.* In making payments to producers pursuant to § 941.80 (b) and (c), each handler shall:

(a) Deduct per hundredweight of milk received from producers at a pool plant located more than 70 miles from the City Hall in Chicago, 2 cents for each 15 miles, or fraction thereof, greater than 70 miles;

(b) Add 2 cents per hundredweight of milk received from producers at a pool plant located outside the marketing area but not more than 55 miles from the City Hall in Chicago;

(c) Add 4 cents per hundredweight of milk received from producers at a pool plant located within the marketing area;

(d) Add 4 cents per hundredweight of milk received from producers whose farms are located in the territory lying within the City of Kenosha, the townships of Pleasant Prairie, Bristol and Salem in Kenosha County, all in the State of Wisconsin; the townships of Richmond, Burton, Greenwood, McHenry, Seneca, Dorr, Nunda, Coral, Grafton and Algonquin in McHenry County, Lake County, Kane County, Cook County, Du Page County, Kendall County, Will County; the townships of Saratoga, Aux Sable, Goose Lake and Felix in Grundy County; and the townships of Rockville, Manteno, Sumner, Yellowhead, Bourbonnais, Ganeer and Momence in Kankakee County, all in the State of Illinois; and Lake County, and Porter County, except Pleasant Township all in the State of Indiana, which territory shall be known as Zone A; and

(e) Add 2 cents per hundredweight of milk received from producers whose farms are located in the territory lying within the City of Racine, the townships of Raymond, Caledonia, Burlington, Dover, Yorkville and Mount Pleasant in Racine County; the townships of Brighton, Paris, Somers, Wheatland and Randell in Kenosha County; the townships of Lyons, Linn and Bloomfield, of Walworth County, all in the State of Wisconsin; the townships of Chemung, Alden, Hebron, Dunham, Hartland, Marengo and Riley in McHenry County; the townships of Boone, Bonus and Spring in Boone County, DeKalb County, the townships of Earl, Adams, Northville, Serena, Mission, Dayton, Rutland, Miller and Manlius, in LaSalle County; the townships of Nettle Creek, Erienna, Norman, Morris, Wauponsee, Vienna, Mazon, Maine, Braceville, Good Farm, Garfield and Greenfield in Grundy County; the townships of Essex, Salina, Limestone, Kankakee, Norton, Pilot, Otto, Aroma, St. Anne, and Pembroke, in Kankakee County; the townships of Chebanse, Papineau and Beaverville in Iroquois County, all in the State of Illinois; the townships of Lake, Lincoln, McClellan, Colfax, Beaver and Jackson in Newton County; the townships of Keener, Union, Wheatfield, Walker and Kankakee in Jasper County; Pleasant township in Porter County; the townships of Dewey, Prairie, Cass, Hanna, Clinton, Noble, New Durham, Scipio, Coolspring, Center, Kankakee, Michigan, Springfield and Galena in LaPorte County, all in the State of Indiana; and the townships of New Buffalo, Three Oaks and Chikaming in Berrien County in the State of Michigan, which territory shall be known as Zone B.

Filed at Washington, D. C., this 24th day of September 1956.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Doc. 56-7800; Filed, Sept. 26, 1956; 8:51 a. m.]

[7 CFR Part 946]

[Docket No. AO-123-A18]

MILK IN LOUISVILLE, KY., MARKETING AREA

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

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was conducted at Louisville, Kentucky, on February 27-28, 1956, pursuant to notice thereof which was published in the FEDERAL REGISTER (21 F. R. 955), upon proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Louisville, Kentucky, marketing area.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Deputy Administrator, Agricultural Marketing Service, on August 3, 1956, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision. Said decision containing notice of opportunity to file written exceptions thereto was published in the FEDERAL REGISTER on August 8, 1956 (21 F. R. 5932).

Within the period reserved therefor, interested parties filed exceptions to certain of the findings, conclusions and actions recommended by the Acting Deputy Administrator. In arriving at the findings, conclusions, and regulatory provisions of this decision, each of such exceptions was carefully and fully considered in conjunction with the record evidence pertaning thereto. To the extent that findings, conclusions and actions decided upon herein are at variance with any of the exceptions, such exceptions are overruled.

To the extent that suggested findings and conclusions proposed by interested persons are inconsistent with the findings and conclusions contained herein, the specific or implied requests to make such findings and reach such conclusions are denied on the basis of the facts found and stated in connection with the conclusions herein set forth.

The material issues relate to:

1. A change in the classification and pricing of skim milk and butterfat used for cottage cheese, aerated cream, ice cream, ice cream mix, frozen desserts, in fluid milk products disposed of to soda fountains, restaurants and food manufacturing establishments and in inventory of fluid milk products at the end of the month.

2. A change in the time of announcement of basic and Class I milk prices, and the Class I butterfat differential and in the list of condenseries used in computing the basic formula price.

3. Revision of the dates for filing reports by handlers, payments, and for announcement of the uniform price by the market administrator.

4. A provision for partial payments to producers for milk delivered during the first 15 days of the month.

5. Provision for written authorization by producer relative to hauling deductions.

6. Revision and clarification of certain definitions and of other provisions relating to the classification, reporting and accounting for milk.

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

1. The provisions of the order relative to the classification and pricing of milk should be revised.

Producers proposed to change the classification from Class II milk to Class I milk all skim milk and butterfat used to produce cottage cheese, aerated cream and cream mixtures and fluid milk products disposed of to soda fountains, restaurants, bakeries, candy and soup manufacturers. They also proposed that skim milk and butterfat used to produce ice cream and ice cream mix be priced on a year-round basis by the butter-nonfat solids pricing formula which now determines prices for Class II milk during the months of September through December. Handlers on the other hand, argued that no change should be made in the present classification scheme and proposed that the Class II price be lowered by determining such price on the basis of the average paying price of seven local manufacturing plants each month of the year.

It is concluded that the pricing of skim milk and butterfat used to produce products presently included in the Class II milk classification should be refined. This should be accomplished by providing for Class II and Class III milk. Class II milk should include skim milk and butterfat (1) used to produce cottage cheese, aerated cream, ice cream, ice cream mix, frozen desserts, and eggnog; and (2) contained in inventory of fluid milk products on hand at the end of the month. Class III milk should include all skim milk and butterfat (1) used to produce any dairy product not specified in Class I or Class II milk; (2) disposed of in bulk to food manufacturing establishments which do not dispose of fluid milk products; (3) disposed of for livestock feed and (4) plant shrinkage. No change should be made in the present Class I definition, however; the proposed change in the other classes will result in classifying as Class I milk all fluid milk products disposed of by handlers to soda fountains, restaurants and other food establishments which use or dispose of fluid milk products for fluid consumption.

The method of pricing skim milk and butterfat in the new Class II milk (cottage cheese, aerated cream, ice cream, eggnog and frozen desserts) should be based on butter-spray process nonfat dry milk for human consumption on a year-round basis with butterfat differentials equal to the Chicago butter price times .118 for the months of January through August and .120 for the months of September through December. The present method of pricing skim milk and butterfat in other manufacturing uses, for livestock feed and shrinkage should continue to apply to such uses (redefined as Class III milk).

All fluid milk products disposed of by handlers to soda fountains, restaurants and other food establishments which dispose of fluid milk products to consumers should be priced at the Class I price the same as other fluid products disposed of on retail or wholesale routes. Such milk for fluid consumption must meet the "Grade A" health requirements. It is not administratively feasible to verify classification of milk in accordance with the use of particular lots of milk at such establishments which may be permitted by health regulations to use both Grade A and ungraded milk. Milk disposed of to food processing establishments which are permitted to use ungraded milk in their operations and from which no milk is disposed of for fluid consumption, should be classified as Class III milk.

Class II milk as herein proposed is comprised of milk and milk products which have common characteristics from the standpoint of perishability and competitive factors, which are somewhat different from the products included in either Class I milk or Class III milk. Most of the Class II milk products may be stored somewhat longer than the items which constitute Class I milk but are more perishable than the products included in Class III milk. The products included in this class provide a preferred, or higher-valued outlet for milk as compared with products included in Class III milk. A high quality raw milk or milk product is necessary for all Class II uses.

The Jefferson County, Kentucky Health Department requires (beginning with July 1956) cottage cheese and aerated cream mixtures to be made from inspected milk. Effective January 1957, this will also be true for cottage cheese for sale in the New Albany and Jeffersonville, Indiana, communities of the marketing area. Therefore, those Class II milk products should contribute with other fluid milk products, to the extent that competitive conditions will permit, to the increased coast of getting the year-round supply of inspected milk produced for the market.

A Class I classification and pricing, as proposed by producers, for milk used for cottage cheese, however, is not justified on the basis of the record evidence. Although inspected milk generally is being used for this product and will be required to be used, it has to compete with nonfat dry milk or cheese curd from more distant Grade A sources. Because of the concentrated nature of cottage cheese as compared with milk supplied for fluid use, outlying plants that are qualified from a health standpoint to supply inspected milk to the marketing area can ship cottage cheese into the market at a considerable saving under the cost of shipping whole milk which would be required for the processing of such product. The classification and pricing of milk used in cottage cheese as Class I milk would increase the price appreciably above the level at which it can be, and sometimes is, obtained elsewhere in processed form. To do so would place an undue burden upon the marketing of producer milk at this time with possible disruptive effects upon the market.

Handlers need a reserve supply of Grade A milk to meet day to day fluctuations in receipts of milk and sales of fluid milk products. This necessary reserve supply which normally must be transported to the market is used by handlers in their city plants in products requiring high quality milk, primarily cottage cheese and ice cream.

Except for the inspected milk requirement applying to skim milk and butterfat used for cottage cheese and aerated cream for disposition within certain parts of the marketing area, similar factors relating to competitive conditions, requirement of high quality milk, and a preferred, or high-valued outlet, for milk on a year-round basis, also applies to skim milk and butterfat used for ice cream, eggnog and frozen desserts.

For the foregoing reasons, it is concluded that producer milk used in these products should be priced somewhat higher than the seasonal reserve and distress milk disposed of to outlets for other manufacturing uses (Class III). Review of exceptions filed, in conjunction with the record evidence, shows, however, that considerable weight should be given to the fact that substantial sales of items previously recommended to be included in Class II milk and Class III–A milk are made by handlers in areas outside of the Louisville marketing area. Sales of such products in a number of these areas must compete with products made from ungraded milk. Such minute differentiation in the prices for skim milk and butterfat for these various uses, as might be made, would have little significance insofar as the cost of milk to handlers and returns to producers are concerned. Also, in the interest of keeping the number of classes of milk to a minimum, it is concluded that all products previously recommended to comprise Class II and Class III–A milk should be combined in a single class as Class II milk. It is further concluded that Class II milk should be priced at the order basic formula price modified by the application of price quotations for spray process dry milk in the alternate "butter-powder" formula. Butterfat differentials of .120 during the months of September through December and .118 during the months of January through August should be applied. The application of prices for spray process dry milk rather than the average of prices for spray and roller process will be more nearly representative of the competitive prices for the nonfat solids used in cottage cheese, ice cream and other Class II items. The seasonal butterfat differential decided upon conforms with the present seasonal aspects of the differential provided for Class III milk and will provide reasonable prices to handlers for skim milk and butterfat in Class II uses in view of competitive sales conditions and cost of products or ingredients delivered to Louisville plants from alternative sources. The proposed pricing for Class II milk will reflect to producers the competitive value for their milk in such uses. Producers will receive slightly higher returns for their reserve supplies of milk than at present and such milk will contribute somewhat to the additional cost of getting inspected milk produced and delivered to the market.

Based upon prices in the record for the year 1955, the change in pricing of producer milk used in Class II milk products will result in an increase of about 34 cents per hundredweight for milk of 3.8 percent butterfat during the period January through August. Since the butterfat differential is increased from 1.15 to 1.18 during this period, the proposed change will result in increasing the price for skim milk in such uses

approximately 27 cents per hundredweight and butterfat .18 cents per point as the average test of Class II milk varies from 3.8 percent. During the period September through December, there will be an increase of between 7 and 8 cents per hundredweight in the price of 3.8 percent milk and skim milk and no change in the price of butterfat.

2. The time for announcement of the Class I milk price and butterfat differential should be advanced one month and the list of condenseries used in computing the basic formula price should be revised.

Handlers proposed that Class I milk prices should be based on the basic formula price for the preceding month. This would permit the announcement of the minimum Class I milk price early in the month and handlers would know what their Class I milk would cost a month earlier than under the current order provision. Producers, likewise, would have advance information on Class I milk prices. This procedure of announcing Class I prices is followed in a large number of the markets under Federal orders. It is concluded, therefore, that the price for Class I milk per hundredweight should be the basic formula price for the preceding month plus the present differential of $1.25.

The list of condenseries used in determining the basic formula price should be revised to include prices reported for those plants currently operating. Since the order was last amended, operations at two of the plants previously listed have been terminated. The following plants, therefore, should be eliminated from the list in § 946.50 (c): Carnation Company, Berlin, Wisconsin and Carnation Company, Chilton, Wisconsin.

3. The date for filing reports by handlers and the dates for announcement of the uniform price and for notifying handlers of their pool obligations should be delayed two days.

Handlers proposed changing the dates for the filing of reports from the "5th" to the "7th" of the month. Corresponding changes were also proposed in the dates for announcement of the uniform price by the market administrator, for notification to handlers of their pool obligations and for the payment of handler obligations under the order. Handlers now have difficulty in completing and filing their reports with the market administrator by the 5th of the month, particularly for those months when the last day falls on a week-end. The market administrator likewise has difficulty in computing the pool and announcing the uniform price and in notifying handlers of their pool obligations by the 10th and 11th of the month, respectively. It is concluded that handlers' suggestions with respect to reports, announcement of the uniform price, and notification of pool obligations be adopted. These changes are necessary to accommodate the problems which now are being encountered. The other changes proposed and adopted herein are primarily conforming changes, and are necessary to provide a workable schedule for price announcements, reports and payments under the order.

4. Provision should be made for partial payment to producers for their deliveries of milk during the first 15 days of the month. Producers proposed that handlers be required to make partial payments by the end of the month for milk received from producers during the first 15 days of the month. At present, many producers do not get paid for their deliveries of milk until as much as six weeks later. One handler opposed the proposal for partial payments on the basis that more capital would be required to conduct his business. His testimony showed that other suppliers of goods and services such as his labor force are paid weekly. A number of his producers are presently advanced money prior to the final payment for their milk. Producers of ungraded milk in the Louisville area generally are paid for their milk twice a month. It is not unreasonable to expect handlers to pay producers of Grade A milk twice a month. Dairying is becoming more specialized in the Louisville area. The average production per farm has continued upward for a number of years. This trend calls for the use of additional capital in financing production and marketing operations. A provision for partial payments would provide uniform payment methods for all producers and would assist producers in meeting their current obligations.

It is concluded, therefore, that handlers should make partial payments by the end of the month for receipts of producer milk during the first 15 days of the month. To provide a relatively simple and efficient method of payment, such partial payments should be made at the Class III price for the preceding month with no adjustment for butterfat differentials or for the cost of hauling the milk. Partial payments should not be required on milk received from producers who discontinue shipments during the month. Such accounts should be determined at the time of final payment.

5. Specific provision should be made for written authorization in the case of deductions for hauling.

Hauling costs properly chargeable to a producer include only the cost of transporting the producer's milk from his farm to the pool plant of the handler at which the minimum class prices apply. It has been a common practice for handlers to deduct such charges from amounts otherwise payable to the producer and to remit amounts so deducted to the hauler for the account of the producer. This is a voluntary service done by the handler irrespective of whether it is done because the producer so requests or whether he acquiesces in the practice. Since the obligation is that of the individual producer and the payment when made to the hauler is for the account of the producer and not of the handler, this practice, to the extent that it continues, should be strictly in accord with authorization of the person having the obligation, i. e., the producer. And if there should be a disagreement as to the amount to be paid for hauling or whether the hauler will continue to haul the milk, it is a matter to be worked out between the producer or his agent, and the hauler.

A necessary corollary to the sanction of such a practice under a milk order is that the obligation of the handler to the producer in the amount of any and all deductions made from payments at the uniform price pursuant to a producer's authorization is that the sums so deducted are actually paid over to the person in whose favor the authorization is made. A deduction made without proper remittance to the assignee would constitute an underpayment by the handler.

Producers proposed that the rate per hundredweight, or other method of computing hauling charges, should be authorized in writing by each producer, and all other charges should be supported by records in such form as to permit proper verification thereof. Producers testified that changes in hauling rates of deduction had been made to which producers had never agreed. They stated that provision for a signed authorization by each producer would eliminate changes in the hauling rate without prior approval of the producer. It also would assist the market administrator in verifying authorized hauling deductions in connection with payments to producers under the terms of the order.

It is concluded that to facilitate verification of authorized hauling deductions and assure proper payments to producers, provision should be made to require each handler to have, and make available to the market administrator for audit purposes, written authorizations from his producers regarding the rate per hundredweight or other method for computing hauling charges on such producer milk.

6. In view of the proposed changes heretofore discussed and the need for a number of additional definitions and other changes in order language to set forth more explicitly the reporting and accounting techniques of the order, it is concluded that the entire order should be redrafted and reissued. This will involve the inclusion of a new definition of "fluid milk product", and "route", and changes in the definitions of "producer", "producer milk" and "other source milk".

"Fluid milk product" should be defined to mean milk, skim milk, buttermilk, milk drinks (plain or flavored), cream, or any mixture in fluid form of skim milk and cream (except eggnog, storage cream, aerated cream products, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers). Such definition is useful in defining other categories of milk and is a short, convenient term for referring to a category of milk in drafting other definitions and the classification, allocation, and transfer provisions of the order.

The definition of "producer" and "producer milk" should be clarified to set forth explicitly the intent of these definitions to exclude the milk of a producer-handler and to limit the term "producer milk", only to milk received directly from a producer at a pool plant or diverted by the operator of a pool plant or a cooperative association for their own accounts.

A "route" definition should be included in the order to facilitate the drafting of other definitions and to make it clear that the term refers not only to disposition of milk from fluid milk plants,

directly through retail and wholesale outlets, but also includes sales by milk distributors through vendors.

"Other source milk" should be defined as all skim milk and butterfat contained in fluid milk products utilized by the handler in his pool plant operation, except producer milk and fluid milk products and Class II milk products received from other pool plants. Thus, other source milk as such would represent skim milk and butterfat which is not subject to the pricing provisions of the order. It will include all fluid milk products and all manufactured dairy products from plants other than pool plants which are repackaged, reprocessed or converted into another product during the month. It will include also those Class III manufactured products from another pool plant or from the pool plant's own production which are made and are reprocessed or converted into another product in the plant during the same or a later month. It will not include transfers of fluid milk products or Class II milk and milk products between pool plants. The proposed change in the definition of other source milk is necessary to set forth more specifically in the order the milk products which handlers are required to report each month and enters into the accounting and classification of current receipts of producer milk. This method of defining other source milk will clarify the application of the transfer and allocation provisions of the order so as to insure the intent of the order to allocate current receipts of producer milk to the highest valued class usage available at the pool plant(s) of the handler during the month.

By incorporating the above definitions and some minor changes in the reporting sections of the order, the order will be clear in providing categories of milk which are required to be reported and handled separately to arrive at the classification and pricing of current receipts of producer milk. Thus, milk will be dealt with in the following four categories: producer milk, other source milk, milk from other handlers, and inventories of fluid milk products.

Inventories of fluid milk products must be taken into account in establishing the classification of producer milk. The present order makes no reference to inventories in the classification provisions. Inventories on hand at the end of the month should be classified in Class II milk as heretofore stated. It would make no difference in costs to handlers or returns to producers under the provisions of the proposed order if inventory were handled in some other class; however, the accounting and reclassification procedure will be simplified by accounting for inventory in Class II milk. Inventory should be limited to stocks on hand of fluid milk products such as bulk milk, skim milk and cream, and bottled milk and other fluid milk products which are finally disposed of as Class I milk. Processed products in Class II and Class III milk should not be included in inventory since the milk used to produce such products will have been accounted for in the proper class when such products were made. Handlers, however, will need to maintain adequate records on the stocks of such products and make such reports as are required by the market administrator to verify their use by the handler and to facilitate the market administrator's auditing program.

Because inventories of fluid items are to be accounted for in Class II, as a temporary classification, it is necessary to provide a method for handling milk from inventory which is utilized in the current month for Class I purposes, but which the handler accounted for in Class II at the end of the preceding month. Handlers frequently use other source milk in their operations. The procedure for accounting for inventories should provide that producer milk from inventory should have prior claim on Class I milk over receipts of other source milk in the same manner as current receipts of producer milk. This should be accomplished through the accounting procedure by considering the opening inventory of a month as a receipt in the same month and subtracting such receipt (under allocation procedure), in series, starting with Class II milk, following the subtraction of other source milk. To the extent that the opening inventory is allocated to Class I and there was an equivalent amount of skim milk and butterfat in producer milk classified in Class II milk in the previous month (after allocating other source milk) a reclassification charge should be made at the difference between the Class II price in the previous month and the Class I price in the current month. Handled in this manner, milk from inventory will be priced to handlers identically with milk derived from current receipts of producer milk during the month. Other source milk from inventory allocated to Class I milk should be subject to the reclassification charge at the same rate as the compensatory payment on current receipts of other source milk allocated to Class I milk. These inventory provisions will result in equality of cost of milk among handlers and returns to producers irrespective of whether or not such milk is from opening inventory or is a current receipt.

Producers proposed that classification of shrinkage on other source milk in the lowest priced class be limited to two percent. They contended that the present provisions of the order result in an unjustified amount of shrinkage in the lowest priced class and is inconsistent with the method of determining allowable shrinkage on producer milk. To allow unlimited shrinkage on other source milk and limit shrinkage on producer milk, provides a basis for inequality in the cost of milk among handlers who use other source milk and those who do not. Under the present accounting procedure, the use of other source milk may result in a lower classification of some producer milk under circumstances where substantial amounts of milk are unaccounted for and the handler has received other source milk. For these reasons, the provisions for shrinkage and unaccounted for skim milk and butterfat should be revised to limit shrinkage on other source milk that may be classified as Class III milk to two percent of receipts of other source fluid milk products consistent with that pertaining to producer milk. The entire unaccounted for milk provision also should be rewritten to clarify and simplify the order language.

The present order, under § 946.22 (j), provides authorization for the market administrator to report to each cooperative association the percentage in each class of the producer milk caused to be delivered by the cooperative association or by its members to each handler during the month. To accomplish such reports, provision is made for assigning such milk in each class in the same ratio as milk received from all producers by such handler during the month. The producers proposed that the present report provisions be expanded to include the relationship of total producer receipts in each handler's plant(s) to his total Class I sales, excluding transfers or diversions of milk to other pool plants and to nonpool plants.

Handlers stated on the record that they had no objections to the inclusion of such additional information.

It is concluded that § 946.22 (j) should be revised to provide for the additional information requested by the producers' association. Such a provision is needed to provide the producers' association more information on the utilization of producer milk in particular plants and will assist the association in supplying producer milk to the plants which are in need of additional milk to supply the Class I needs of the market. This will promote the orderly marketing of producer milk.

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

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

(c) The proposed order amending the order, as amended, 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.

Determination of representative period. The month of August 1956 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order amending the order, as amended, regulating the handling of milk in the Louisville, Kentucky, marketing area, in the manner set forth in the attached amending order, is approved or favored by producers, as defined in the order, as amended, and as proposed hereby to be further amended, who during such

representative period were engaged in the production of milk for sale in the marketing area as defined in the order, as amended, and as proposed hereby to be further amended.

Marketing agreement and order, as amended. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreements regulating the handling of milk in the Louisville, Kentucky, marketing area," and "Order amending the Order, as amended, regulating the handling of milk in the Louisville, Kentucky, 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 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 proposed to be hereby further amended.

This decision filed at Washington, D. C., this 24th day of September 1956.

[SEAL] EARL L. BUTZ,
Assistant Secretary.

Order[1] Amending the Order, as Amended, Regulating the Handling of Milk in the Louisville, Kentucky, Marketing Area

§ 946.0 *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 all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

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

DEFINITIONS

§ 946.1. *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.).

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

§ 946.3 *Department.* "Department" means the United States Department of Agriculture or other Federal agency authorized to perform the price reporting functions specified in this part.

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

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

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

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

§ 946.6 *Louisville, Kentucky, marketing area.* "Louisville, Kentucky marketing area," hereinafter called the "marketing area," means the territory within Jefferson County, Kentucky, including but not being limited to the City of Louisville, the Fort Knox Military Reservation; the territory within Floyd County, Indiana, including but not being limited to all municipal corporations in said county; and the territory within the townships of Jeffersonville, Utica, Silver Creek, Union, and Charlestown, in Clark County, Indiana.

§ 946.7 *City plant.* "City plant" means the building and facilities, except those of a producer-handler, which are used during the month in the processing and packaging of producer milk and from which not less than 10 percent of such milk is distributed in the container in which packaged from delivery routes or plant stores as Class I milk in the marketing area: *Provided*, That such building and facilities shall include any portion thereof which is used during the month in the processing of producer milk for any use.

§ 946.8 *Country plant.* "Country plant" means the building and facilities, except those of a city plant, which are used during the month in the receipt of milk from dairy farmers who held dairy farm inspection permits issued by the appropriate health authority having jurisdiction in the marketing area and which are approved by such health authority to furnish milk to a city plant for use as Class I milk: *Provided*, That such building and facilities shall include any portion thereof which is used during the month in the processing of producer milk for any use.

§ 946.9 *Pool plant.* "Pool plant" means:

(a) A city plant;

(b) A country plant during the period of October through March for each month in which not less than 10 percent of its receipts from dairy farmers who hold dairy farm inspection permits issued by the appropriate health authority having jurisdiction in the marketing area is delivered to a city plant in the form of milk, skim milk, or cream; or

(c) A country plant during the months of April through September from which more than 50 percent of its combined receipts from dairy farmers, who held dairy farm inspection permits issued by the appropriate health authority having jurisdiction in the marketing area, during the preceding period of October through February were delivered to one or more city plants in the form of milk, skim milk or cream, unless the operator of such plant notifies the market administrator in writing on or before March 15th of withdrawal of the plan from the pool for the months of April through September next following.

§ 946.10 *Nonpool plant.* "Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

§ 946.11 *Handler.* "Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A producer-handler;

(c) Any cooperative association with respect to milk of producers which it causes to be diverted to a nonpool plant for the account of such cooperative association; or

(d) Any person, other than a producer-handler, in his capacity as operator of a nonpool plant used during the month for the processing and packaging of milk any portion of which is disposed of in the marketing area as Class I milk from delivery routes or plant stores.

[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.

§ 946.12 *Producer.* "Producer" means any person, except a producer-handler, who produces, under a dairy farm inspection permit issued to such person by the appropriate health authority having jurisdiction in the marketing area (as used in this subpart, "dairy farm inspection permit" shall include approval of milk by the authority to administer regulations governing the quality of milk acceptable to agencies of the United States Government for fluid consumption in its institutions or bases located in the marketing area, which is received at a plant from which any portion of such milk is disposed of to such institutions or bases in the container in which packaged as Class I milk), milk which is:

(a) Delivered from his farm to a pool plant;

(b) Diverted from a pool plant to another pool plant or a nonpool plant: *Provided,* That such milk so diverted shall be deemed to have been received at the pool plant from which it was diverted: *And provided further,* That this definition shall not include during any of the months of October through February, any person whose milk was diverted to a nonpool plant for more than one-half of the days of such month; or

(c) Diverted by a cooperative association to a nonpool plant for the account of the cooperative association: *Provided,* That any such milk so diverted shall be deemed to have been received by the cooperative association.

§ 946.13 *Producer milk.* "Producer milk" means all skim milk and butterfat contained in milk (a) received at the pool plant directly from producers, or (b) diverted from a pool plant in accordance with the conditions set forth in § 946.12.

§ 946.14 *Other source milk.* "Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of fluid milk products except (1) fluid milk products received from pool plants, or (2) producer milk; and

(b) Products other than fluid milk products from any source (including those produced at the plant) except Class II products from pool plants, which are repackaged, reprocessed or converted to another product in the plant during the month.

§ 946.15 *Producer-handler.* "Producer-handler" means any person who processes and packages milk from his own farm production, distributing any portion of such milk within the marketing area as Class I milk and who receives no milk from producers.

§ 946.16 *Chicago butter price.* "Chicago butter price" means 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) per pound of Grade A (92-score) bulk creamy butter at Chicago as reported by the Department of Agriculture during the month.

§ 946.17 *Fluid milk product.* "Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), cream, or any mixture in fluid form of skim milk and cream (except storage cream, aerated cream products, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers).

§ 946.18 *Route.* "Route" means the operation of a plant store or a vehicle (including that operated by a vendor) through the means of which fluid milk products are disposed of to retail or wholesale stops in the marketing area other than to a milk plant.

MARKET ADMINISTRATOR

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

§ 946.21 *Powers.* The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

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

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

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

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

(d) Pay out of the funds provided by § 946.88 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 946.87) necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

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

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

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

(h) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information;

(i) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 5 days after the date upon which he is required to perform such acts has not made reports pursuant to §§ 946.30 through 946.32, or payments pursuant to §§ 946.80 through 946.86;

(j) On or before the 15th day after the end of each month, report to each cooperative association, which so requests, with respect to producer milk caused to be delivered by such association or by its members to each handler during the month: (1) the percentage of such receipts classified in each class; and (2) the percentage relationship of such receipts to the total pounds of Class I milk available to assign to such receipts exclusive of the Class I milk disposed of by such handler to the pool plant(s) of other handlers and to nonpool plants. For the purpose of these reports, the milk received from such association shall be treated on a pro rata basis of the total producer milk received by such handler during the month;

(k) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, and notify each handler in writing the prices and butterfat differentials determined for each month as follows:

(1) On or before the 12th day after the end of each month, the minimum prices for each class of milk computed pursuant to § 946.51, and the butterfat differentials for each class computed pursuant to § 946.52; and

(2) On or before the 12th day after the end of each month, the uniform price computed pursuant to § 946.71, and the butterfat differential computed pursuant to § 946.81;

(l) On or before the 13th day after the end of each month, the market administrator shall mail to each handler, at his last known address, a statement showing:

(1) The net obligation computed for such handler pursuant to § 946.70; and

(2) The amounts to be paid by such handler pursuant to §§ 946.61, 946.84, 946.87, and 946.88.

REPORTS, RECORDS, AND FACILITIES

§ 946.30 *Reports of receipts and utilization.* On or before the 7th day after the end of each month, each handler, except a producer handler, shall report for such month to the market administrator for each of his pool plants in the detail and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat contained in receipts of producer milk (including such handler's own farm production);

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

(c) The quantities of skim milk and butterfat contained in other source milk;

(d) Inventories of fluid milk products on hand at the beginning and end of the month;

(e) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the disposition of Class I milk other than on routes operated wholly or partially within the marketing area; and

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

§ 946.31 *Payroll reports.* On or before the 20th day after the end of each month, each handler shall submit to the market administrator his producer payroll for deliveries during the month which shall show (a) the total pounds of milk received from each producer and the average butterfat content of such milk, (b) the prices paid and the amount of payment to each producer, and (c) the nature and amount of any credits, deductions, or charges involved in such payments.

§ 946.32 *Other reports.* (a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler shall report to the market administrator, as soon as possible after first receiving milk from any producer, the name and address of such producer, the date upon which such milk was first received, and the plant at which such milk was received: *Provided*, That milk diverted to a pool plant as described in § 946.12 (b) need not be reported pursuant to this paragraph.

(c) On or before the 10th day after the request of the market administrator, such handler shall submit a schedule of rates which are charged and paid for the transportation of milk from the farm of each producer to such handler's plant. Changes in such schedule of rates and the effective dates thereof shall be reported to the market administrator within 10 days.

§ 946.33 *Records and facilities.* Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts, records, and reports of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts and utilization of producer milk and other source milk;

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

(c) Payments to producers, including supporting records of all deductions and written authorization from each producer of the rate per hundredweight or other method for computing hauling charges on such producer milk; and

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and other milk products on hand at the beginning and end of each month.

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

CLASSIFICATION

§ 946.40 *Skim milk and butterfat to be classified.* All skim milk and butterfat which is required to be reported pursuant to §§ 946.30 and 946.61 shall be classified by the market administrator pursuant to the provisions of §§ 946.41 through 946.46.

§ 946.41 *Classes of utilization.* Subject to the conditions set forth in §§ 946.42 through 946.44, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including concentrated or reconstituted skim milk solids) and butterfat (1) disposed of in fluid form as milk, skim milk, cream (including sour cream), buttermilk, milk drinks (plain or flavored), except skim milk and butterfat disposed of in fluid form for livestock feed; (2) disposed of as any fluid milk product which is required by the appropriate health authority in the marketing area to be made from milk, skim milk, or cream from sources approved by such authority; and (3) not accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat the utilization of which is established as used to produce (1) cottage cheese, ice cream, ice cream mix, eggnog, frozen desserts, and milk (or skim milk) and cream mixtures containing 8.0 percent or more butterfat disposed of in containers or dispensers under pressure for the purpose of dispensing a whipped or aerated product, and (2) in inventories of fluid milk products.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat, the utilization of which is established: (1) As used to produce any product other than those specified in paragraphs (a) or (b) of this section, (2) as disposed of for livestock feed, (3) as disposed of in bulk to bakeries, candy or soup manufacturers, and other commercial food manufacturing establishments which do not dispose of fluid milk products, and (4) in plant shrinkage of skim milk and butterfat in receipts of producer milk and in other source milk computed pursuant to § 946.42.

§ 946.42 *Unaccounted for skim milk and butterfat and plant shrinkage.* Skim milk and butterfat received at a handler's pool plant(s) in excess of such handler's established utilization of skim milk and butterfat pursuant to § 946.41, except paragraphs (a) (3) and (c) (4) shall be known as unaccounted for skim milk and butterfat and classified as follows:

(a) Adjust such handler's receipts of producer milk by (1) deducting the pounds of skim milk and butterfat in producer milk diverted by such handler to a nonpool plant or to the pool plant of another handler without having been received for purposes of weighing and testing in the diverting handler's plant, (2) adding the skim milk and butterfat in producer milk received at the pool plant of such handler which was diverted from the pool plant of another handler;

(b) Prorate the quantities of unaccounted for skim milk and butterfat, respectively, between such handler's receipts of skim milk and butterfat, respectively, in producer milk as computed pursuant to paragraph (a) of this section and in other source milk received in the form of fluid milk products in bulk;

(c) That portion of the quantities of unaccounted skim milk not to exceed five percent during the months of April through July and two percent during other months, and the quantities of butterfat not to exceed two percent in each month, of the skim milk and butterfat, respectively, in receipts of producer milk and other source milk applied pursuant to paragraph (b) of this section shall be known as "shrinkage" and classified as Class III milk: *Provided*, That if the quantities of skim milk and butterfat utilized and disposed of in milk and all milk products are not established by such handler all unaccounted for skim milk and butterfat prorated to receipts of producer milk pursuant to paragraph (b) of this section shall be classified as Class I milk;

(d) That portion of the quantities of unaccounted for skim milk and butterfat which is in excess of the quantities of skim milk and butterfat, respectively, classified pursuant to paragraph (c) of this section shall be classified as Class I milk.

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

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

§ 946.44 *Transfers.* Skim milk or butterfat disposed of by a handler from a pool plant either by transfer or diversion shall be classified as follows:

(a) As Class I milk if transferred or diverted in the form of a fluid milk product to a pool plant of another handler, unless utilization in another class is mutually indicated in the reports submitted

to the market administrator by both handlers pursuant to § 946.30 on or before the 7th day after the end of the month: *Provided*, That if upon inspection of the records of the transferee-handler it is found that an equivalent amount of skim milk or butterfat, respectively, was not actually used in such indicated use the remaining quantity shall be classified as Class I milk: *And provided further*, That if either or both handlers received other source milk, the skim milk or butterfat so transferred or diverted shall be classified at both plants so as to allocate the highest-priced possible class utilization to the producer milk of both handlers;

(b) As Class I milk if transferred or diverted to a producer-handler in the form of a fluid milk product;

(c) As Class I milk if transferred or diverted in the form of milk or skim milk in bulk to a nonpool plant located less than 185 miles from the City Hall at Louisville, Kentucky, by the shortest hard surface highway distance as determined by the market administrator, and as Class I milk if transferred in the form of fluid cream to such a plant, wherever located, unless the following conditions are met:

(1) The handler claims classification in another class on the basis of a utilization indicated in his report submitted to the market administrator pursuant to § 946.30 on or before the 7th day after the end of the month;

(2) The market administrator is permitted to audit the books and records showing the utilization of all skim milk and butterfat received at such nonpool plant; and

(3) An amount of skim milk or butterfat, respectively, not less than that so transferred or diverted was used in the indicated use: *Provided*, That if upon inspection of the records of the nonpool plant it is found that an equivalent amount of skim milk or butterfat, respectively, was not actually used in such indicated use the remainder shall be classified in the highest valued use classification (as described in § 946.41) in the nonpool plant; and

(d) As Class I milk if transferred or diverted in the form of milk or skim milk in bulk to a nonpool plant located 185 miles or more from the City Hall at Louisville, Kentucky, by shortest hard surface highway distance as determined by the market administrator.

§ 946.45 *Computation of the skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical and for other obvious errors the report of receipts and utilization submitted by each handler and shall compute the pounds of skim milk and butterfat in each class for such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before such product is disposed of by a handler, the hundredweight of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat solids contained in such product, plus all of the water originally associated with such solids.

§ 946.46 *Allocation of skim milk and butterfat classified.* After making the computations pursuant to § 946.45 the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler each month as follows:

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

(1) Subtract from the total pounds of skim milk in Class III milk the pounds of skim milk assigned to producer milk shrinkage pursuant to § 946.42 (c);

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class III milk, the pounds of skim milk in other source milk which are not subject to the Class I pricing provisions of an order issued pursuant to the act;

(3) Subtract from the remaining pounds of skim milk in Class III milk an amount equal to such remainder, or the product obtained by multiplying the pounds of skim milk in producer milk by 0.05, whichever is less;

(4) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class III milk, the pounds of skim milk in other source milk which are subject to the Class I pricing provisions of another order issued pursuant to the act;

(5) Add to the pounds of skim milk remaining in Class III milk the pounds of skim milk subtracted pursuant to subparagraphs (1) and (3) of this paragraph;

(6) Subtract from the remaining pounds of skim milk in Class II and Class I milk, in series beginning with Class II milk, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(7) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from the pool plants of other handlers according to the classification of such products as determined pursuant to § 946.44 (a);

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

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

(c) Determine the weighted average butterfat content of producer milk remaining in each class computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 946.50 *Basic formula price.* The basic formula price to be used in determining the price per hundredweight of Class I milk shall be the highest of the prices computed pursuant to paragraphs (a), (b), and (c) of this section and subparagraph (1) of § 946.51 (c).

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

(1) Add 20 percent to the Chicago butter price for the month and multiply by 3.8.

(2) From the simple average as computed by the market administrator of the weighted averages of carlot prices per pound 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 preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, and multiply by 8.2.

(b) The price per hundredweight resulting from the following formula:

(1) Multiply by 8.53 the average of the daily prices per pound of cheese at Wisconsin Primary Markets ("cheddars," f. o. b. Wisconsin assembling points, cars or truckloads) as reported by the Department during the month;

(2) Add 0.902 times the Chicago butter price for the month;

(3) Subtract 34.3 cents; and

(4) Add an amount computed by multiplying the Chicago butter price for the month by 0.12 and then by 3.

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

Companies and Location

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

Add an amount computed by multiplying the Chicago butter price for the month by 0.12 and then by 3.

§ 946.51 *Class prices.* Subject to the provisions of §§ 946.52 and 946.53, the minimum prices per hundredweight to be paid by each handler for milk of 3.8 percent butterfat content received at his pool plant(s) from producers during the month shall be as follows:

(a) *Class I milk.* The price of Class I milk per hundredweight shall be the basic formula price for the preceding month rounded to the nearest tenth of a cent plus $1.25.

(b) *Class II milk.* The price for Class II milk shall be the higher of the basic formula price pursuant to § 946.50 or that computed pursuant to subparagraphs (1) and (2) of this paragraph, rounded to the nearest tenth of a cent:

(1) Multiply the Chicago butter price by 4.56;

(2) Add an amount computed as follows: from the simple average, as computed by the market administrator, of the weighted averages of carlot prices per pound for nonfat dry milk solids, spray process for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the cur-

rent month by the Department, deduct 5.5 cents, and multiply by 8.2.

(c) *Class III milk.* The price of Class III milk for the months of September through December shall be the price per hundredweight computed pursuant to § 946.50 (a), or that pursuant to subparagraph (1) of this paragraph, whichever is higher; and for the months of January through August the higher of the prices computed pursuant to subparagraphs (1) and (2) of this paragraph, rounded to the nearest tenth of a cent.

(1) From the average of the basic or field prices per hundredweight reported to the market administrator to have been paid or to be paid for ungraded milk of 4.0 percent butterfat content received from farmers during the month at plants at the following locations:

Operator and Location
Armour Creameries, Elizabethtown, Ky.
Armour Creameries, Springfield, Ky.
Kraft Foods Co., Lawrenceburg, Ky.
Kraft Foods Co., Paoli, Ind.
Salem Cheese and Milk Co., Salem, Ind.
Red 73 Creameries, Madison, Ind.
Producers Dairy Marketing Association, Orleans, Ind.

Subtract the amount computed by multiplying the Chicago butter price for the month by 0.12 and then by 2.

(2) The price per hundredweight computed by adding together the plus values pursuant to subdivisions (i) and (ii) of this subparagraph:

(i) Add 15 percent to the Chicago butter price for the month and multiply by 3.8.

(ii) From the simple average as computed by the market administrator of the weighted averages of carlot prices per pound for nonfat dry milk solids, roller process, for human consumption, f. o. b. manufacturing plants in Chicago area as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department deduct 6.5 cents and multiply by 8.2.

§ 946.52 *Price adjustments to handlers*—(a) *Butter differentials.* If the weighted average butterfat content of milk received from producers allocated to Class I, Class II, or Class III, respectively, pursuant to § 946.46, for a handler is more or less than 3.8 percent, there shall be added to or subtracted from, as the case may be, the price for such class, for each one-tenth of one percent that such weighted average butterfat test is above or below 3.8 percent, a butterfat differential (computed to the nearest tenth of a cent), calculated for each class as follows:

(1) *Class I milk.* Multiply by 0.125 the Chicago butter price for the preceding month.

(2) *Class II milk.* For the months of September through December, multiply the Chicago butter price by 0.120, and for the months of January through August, multiply by 0.118.

(3) *Class III milk.* For the months of September through December, multiply the Chicago butter price for the month by 0.12, and for the months of January through August, multiply the Chicago butter price for the month by 0.115.

§ 946.53 *Transportation differential.* With respect to milk received from producers at a country plant, which is moved as milk from such plant directly to a plant in the marketing area or which is disposed of as milk for Class I use outside the marketing area, the class prices per hundredweight shall be reduced at the rates set forth in the following schedule based on the shortest distance via hard surfaced highway, as determined by the market administrator, from the plant where the milk is first received from producers to City Hall in Louisville.

Mileage zone:	Rate (cents per cwt.)
Not more than 25 miles	0
More than 25 but not more than 35 miles	13
More than 35 but not more than 45 miles	15
More than 45 but not more than 55 miles	17
For each additional 10 miles or fraction thereof an additional	1

APPLICATION OF PROVISIONS

§ 946.60 *Producer-handlers.* Sections 946.40 through 946.46, 946.50 through 946.53, 946.61, 946.70, 946.71, and 946.80 through 946.89 shall not apply to a producer-handler.

§ 946.61 *Handlers operating nonpool plants.* Sections 946.30 through 946.32, 946.50 through 946.53, 946.70, 946.71, 946.80 through 946.85, 946.87, and 946.88 shall not apply to a handler in his capacity as the operator of a nonpool plant described in § 946.11 (d), except that such handler shall:

(a) On or before the 7th day after the end of the month, make reports to the market administrator in such manner as he may request with respect to such handler's total receipts and utilization of skim milk and butterfat;

(b) On or before the 15th day after the end of each month, pay to the market administrator for deposit in the producer-settlement fund an amount of money computed by multiplying the quantity of Class I milk disposed of in the manner described in § 946.11 (d) by the price arrived at by subtracting from the Class I price adjusted by the Class I butterfat and transportation differentials:

(1) For the months of January through September, the Class III price adjusted by the Class III butterfat differentials; or

(2) For the months of October through December, the uniform price computed pursuant to § 946.71 adjusted by the Class I transportation differential and by a butterfat differential calculated by multiplying the total volume of producer butterfat in each class during the month by the butterfat differential for each class, dividing the resulting figure by the total butterfat in producer milk and rounding the resultant figure to the nearest one-tenth cent.

(c) On or before the 15th day after the end of the month, pay to the market administrator, as such handler's pro rata share of the expense of administration of this part, 3.0 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all Class I milk and all milk, skim milk, and cream used to produce Class II and Class III products disposed of during the month in the marketing area in the manner described in § 946.11 (d).

§ 946.62 *Plants subject to other orders.* In the case of any plant from which a greater volume of Class I milk is disposed of in another marketing area regulated by another order or a marketing agreement issued pursuant to the act, than in the Louisville marketing area, the provisions of this part shall not apply except the handler operating such plant shall, with respect to his total receipts of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

DETERMINATION OF UNIFORM PRICE

§ 946.70 *Net obligation of each handler.* The net obligation of each handler for milk received during each month from producers shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 946.46 by the applicable class price;

(b) Add together the resulting amounts;

(c) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 946.46 by the applicable class prices;

(d) Add the amount computed by multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of producer milk classified as Class II milk during the preceding month or the hundredweight of milk subtracted from Class I milk pursuant to § 946.46 (a) (6) and the corresponding step of § 946.46 (b), whichever is less; and

(e) Add the amount computed by multiplying the pounds of skim milk and butterfat subtracted from Class I milk pursuant to § 946.46 (a) (2) and the corresponding step of § 946.46 (b) and pursuant to § 946.46 (a) (6) and the corresponding step of § 946.46 (b) which is in excess of the skim milk and butterfat applied pursuant to paragraph (d) of this section by the price arrived at by subtracting from the Class I price adjusted by the Class I butterfat and transportation differentials;

(1) For the months of January through September, the Class III price adjusted by the Class III butterfat differential; and

(2) For the months of October through December the uniform price computed pursuant to § 946.71 adjusted by the Class I transportation differential and by a butterfat differential calculated by multiplying the total volume of producer butterfat in each class during the month by the butterfat differential for each class, dividing the resultant figure by the total butterfat in producer milk and

rounding the resultant figure to the nearest one-tenth cent.

§ 946.71 *Computation of uniform price.* For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.8 percent butterfat content received from producers as follows:

(a) Combine into one total the net obligations computed for all handlers who made the reports prescribed in § 946.30 for the month and who are not in default of payments pursuant to § 946.84 for the preceding month;

(b) Subtract, if the average butterfat content of the producer milk included in these computations is greater than 3.8 percent, or add, if such average butterfat content is less than 3.8 percent an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.8 percent by the butterfat differential computed pursuant to § 946.81 and multiply the resulting figure by the total hundredweight of such milk;

(c) Add an amount computed by multiplying the hundredweight of milk received from producers at each country plant by the appropriate zone differential provided in § 946.53.

(d) Subtract for each of the months of April, May, June, and July an amount computed by multiplying the total hundredweight of producer milk included in these computations by 12 percent of the simple average of the basic formula prices, computed to the nearest cent, for the 12 months of the preceding calendar year;

(e) Add an amount representing the cash balance on hand in the producer-settlement fund, less the total amount of contingent obligations to handlers pursuant to § 946.85 (a), and less the aggregate of the amounts held pursuant to paragraph (d) of this section for payment pursuant to § 946.85 (b);

(f) Divide the resulting total by the total hundredweight of producer milk included in these computations; and

(g) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (f) of this section. The resulting figure shall be the uniform price for milk of 3.8 percent butterfat content received from producers at a handler's pool plant.

PAYMENTS

§ 946.80 *Time and method of payment for producer milk.* Each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the last day of each month, for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler at not less than the Class III price for 3.8 percent milk for the preceding month without deduction for hauling;

(b) On or before the 17th day after the end of each month for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 946.71 subject to the butterfat differential computed pursuant to § 946.81 plus or minus adjustments for errors made in previous payments to such producer; and less (1) payment made pursuant to paragraph (a) of this section, (2) location differential deductions pursuant to § 946.82, (3) marketing service deductions pursuant to § 946.87 and (4) proper deductions authorized by such producer which, in the case of a deduction for hauling, shall be in writing and signed either by such producer or by the cooperative association marketing the producer's milk: *Provided*, That if such handler has not received full payment for such month pursuant to § 946.85 he may reduce uniformly per hundredweight for all producers his payments pursuant to this paragraph by an amount not in excess of the per hundredweight reduction in payment from the market administrator. 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;

(c) In making the payments to producers pursuant to paragraph (b) of this section, each handler shall furnish each producer from whom he has received milk with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month and identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to the producer is required pursuant to the order;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount of the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

§ 946.81 *Producer butterfat differential.* In making payment to producers pursuant to § 946.80 (b) each handler shall add to the uniform price not less than, or subtract from the uniform price not more than, as the case may be, for each one-tenth of one percent that the average butterfat content of the milk received from the producer is above or below 3.8 percent, the amount set forth in the following schedule for the price range in which falls the Chicago butter price for the month during which such milk was received.

Butter price range (cents):	*Butterfat differential (cents)*
17.499 or less	2
17.50 to 22.499	2½
22.50 to 27.499	3
27.50 to 32.499	3½
32.50 to 37.499	4
37.50 to 42.499	4½
42.50 to 47.499	5
47.50 to 52.499	5½
52.50 to 57.499	6
57.50 to 62.499	6½
62.50 to 67.499	7
67.50 to 72.499	7½
72.50 to 77.499	8
77.50 to 82.499	8½
82.50 to 87.499	9
87.50 to 92.499	9½
92.50 and over	10

§ 946.82 *Location differential.* In making payments to producers pursuant to § 946.80 (b) a handler shall deduct from the uniform price, with respect to all milk received from producers at a country plant, not more than the appropriate zone differential provided in § 946.53.

§ 946.83 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to § 946.61, 946.84, and 946.86 and out of which he shall make all payments pursuant to §§ 946.85 and 946.86: *Provided*, That payments due any handler shall be offset by payments due from such handler.

§ 946.84 *Payments to the producer-settlement fund.* On or before the 15th day after the end of each month, each handler shall pay to the market administrator any amount by which the net obligation of such handler for the month is greater than an amount computed by multiplying the hundredweight of milk received by him from producers during the month by the uniform price adjusted for the producer butterfat and location differentials.

§ 946.85 *Payments out of the producer-settlement fund.* (a) On or before the 16th day after the end of each month, the market administrator shall pay to each handler for payment to producers any amount by which the net obligation of such handler for the month is less than an amount computed by multiplying the hundredweight of milk received by him from producers during the month by the uniform price adjusted for the producer butterfat differential: *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

(b) On or before the 16th day after the end of each of the months of September, October, November, and December, the market administrator shall pay out of the producer-settlement fund to each producer from whom milk was received by all handlers during the month an amount computed as follows: Divide one-fourth of the aggregate amount held pursuant to § 946.71 (d) by the hundredweight of milk received from producers by all handlers during the month and multiply the resulting amount (computed to the nearest cent per hundredweight) by the milk received from such producers during the month: *Provided*, That payment under this paragraph to any producer who has given authority to a cooperative association to receive payment for his milk shall be distributed to such cooperative association if the cooperative association requests receipt of such payments.

§ 946.86 *Adjustment of accounts.* Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund, the market

administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever such verification discloses that payment is due from the market administrator to any handler, pursuant to § 946.85, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer for milk received by such handler discloses payment of less than is required by § 946.80, the handler shall pay any amount so due not later than the time of making payment to producers next following such disclosure.

§ 946.87 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 946.80, shall deduct 5 cents per hundredweight, or such amount not in excess thereof as the Secretary may prescribe with respect to all milk received by such handler from producers (other than such handler's own farm production) during the month and shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom the Secretary determines a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made directly to such producers pursuant to § 946.80 as are authorized by such producers and on or before the 15th day after the end of each month, pay such deductions to the cooperative association rendering such services.

§ 946.88 *Expense of administration.* As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator, on or before the 15th day after the end of the month, 3.0 cents per hundredweight, or such amount to be not in excess thereof as the Secretary may prescribe with respect to all receipts by such handler during the month of (a) milk from producers (including such handler's own farm production), and (b) other source milk classified as Class I milk pursuant to § 946.46. Each cooperative association which is a handler shall pay such pro rata share of expense on only that milk of producers caused to be diverted by such cooperative association to a nonpool plant and milk received from producers at a pool plant of such cooperative association.

§ 946.89 *Termination of obligations.* The provisions of this section shall apply to any obligation under this part for the payment of money irrespective of when such obligation arose.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. 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 producer(s) or cooperative 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 part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

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

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

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

§ 946.90 *Effective time.* The provisions of this part, or any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to § 946.91.

§ 946.91 *Suspension or termination.* Any or all provisions of this part, or any amendment to this part, shall be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give and shall in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

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

(b) The market administrator, or such other person as the Secretary may designate, shall (1) continue in such capacity until discharged, (2) from time to time account for all receipts and disbursements and, if so directed by the Secretary, deliver all funds or property on hand, together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct, and (3) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant to this part.

§ 946.93 *Liquidation after suspension or termination.* Upon the suspension or termination of any or all provisions of this part, except §§ 946.34, 946.89, 946.91 through 946.93, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid and owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

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

§ 946.101 *Separability of provisions.* If any provision of this part, or its application to any person, or circumstances, is held invalid, the application

of such provision and of the remaining provisions of this part to other persons or circumstances shall not be affected thereby.

[F. R. Doc. 56-7796; Filed, Sept. 28, 1956; 8:50 a. m.]

[7 CFR Part 971]

[Docket No. AO-175-A14]

MILK IN DAYTON-SPRINGFIELD, OHIO, MARKETING AREA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND 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 the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of the recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to a proposed marketing agreement and order amending the order, as amended, regulating the handling of milk in the Dayton-Springfield, 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 on the 10th 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 findings and conclusions and the proposed marketing agreement and order hereinafter set forth were formulated, was conducted at Dayton, Ohio, on June 19-20, 1956, pursuant to notice thereof issued on June 4, 1956 and published in the FEDERAL REGISTER on June 7, 1956 (21 F. R. 3902).

The material issues relate to:

(1) A change in the classification of skim milk and butterfat disposed of in fluid cream;

(2) A change in the Class I price differential, revision of the supply-demand adjustment provision and advancing the date for announcing Class I prices;

(3) A change in the computation of class prices to provide prices on a hundredweight basis for milk of 3.5 percent butterfat content with appropriate butterfat differentials;

(4) A change in the provisions for the classification of milk transferred or diverted to nonpool plants;

(5) Revision in the months and amount of payments under the fall incentive payment plan; and

(6) A revision and reissuance of the entire order to add a number of new definitions, provide more specific provisions with respect to the accounting for milk and to incorporate a number of conforming and clarifying changes in the order language.

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

(1) The provisions relating to classification of milk should be revised.

Producers proposed inclusion of skim milk and butterfat disposed of in sweet or sour cream in Class I milk and the redesignation of the present Class III milk classification as Class II milk. No testimony was presented in opposition to this proposal.

Fluid cream, sweet or sour, which is disposed of for fluid consumption in the marketing area must be made from milk which must meet the same inspection requirements as milk for fluid disposition. Fluid cream and cream mixtures provide a regular year-round market outlet for inspected milk similar to other Class I products. It is important and economically sound that they should contribute equally with other fluid milk products to the increased cost of obtaining the year-round supply of inspected milk for the market. In most neighboring markets under Federal orders, skim milk and butterfat disposed of as fluid cream is priced the same as other fluid milk products which must be made from inspected milk. Skim milk and butterfat used in mixtures which are not required to be made from inspected milk, such as, eggnog and aerated cream should be included in Class II milk.

It is concluded that skim milk and butterfat disposed of in products included in the present Class II classification should be included in Class I milk and the present Class III classification should be redesignated as Class II milk. Other changes should be made in the language in the class definitions so as to incorporate the terms provided by new definitions hereinafter discussed.

The references in the class definitions with respect to milk dumped or disposed of for livestock feeding should be clarified. Handlers, at times, have small quantities of milk, such as unusable returns from routes, which may be disposed of for livestock feed. Also, handlers at times, find is uneconomical to process or transport to processing plants small quantities of reserve supplies of skim milk and this milk may be disposed of by dumping down the sewer. Butterfat in such milk may be separated from the skim milk prior to dumping. The present dumpage provisions should specifically apply to skim milk only.

2. The supply-demand provisions of the order should be revised to reflect changes in the seasonal relationship of producer milk receipts to Class I sales. The Class I price in each month should be based on the basic formula price for the preceding month. No change should be made in the Class I price differential added to the basic formula price.

Producers proposed that the Class I price differential which is added to the basic formula price be increased from $1.20 to $1.30 per hundredweight. They also proposed changing the base period ratios applied in the supply-demand adjuster to reflect 1955 seasonality relationships and levels and the elimination of supply-demand adjustments of less than 20 cents per hundredweight.

In support of the 10-cent increase in the Class I differential, producers argued that Dayton-Springfield blend prices were lower than those in surrounding Federal order markets and that producers were shifting to other markets, particularly to the Cincinnati, Ohio, market. The regulated Columbus, Ohio and Fort Wayne, Indiana markets also draw milk from the Dayton-Springfield milkshed.

The additional value above basic or manufacturing milk prices which must be paid to producers in the form of a blend or uniform price to get inspected milk produced and delivered to the market must be contributed primarily by that portion of the producer milk which is sold as fluid milk products for fluid consumption (Class I milk). Reserve supplies of milk over and above the fluid milk requirements must be priced at levels which reflect competitive prices for manufacturing milk or costs of alternative milk products for manufactured milk products such as ice cream, cottage cheese, condensed, evaporated milk and the like. Prices for milk in such usage as does not require inspected milk are at manufacturing levels in all the markets. Consequently, increases in blend or uniform prices to producers in a particular market with a given pattern of utilization must be derived from an increase in the Class I price. Because of the competitive relationship of the Dayton-Springfield market with these other regulated markets both in the procurement of milk and in the sales of fluid milk products, there must be a reasonable and "normal" alignment of Class I prices over a period of time among these markets which are affected by common or similar economic influences. It is not economically sound or appropriate under the standards of the act to approach the problem of price alignment from the viewpoint of blend prices paid to producers. To do so would mean that as more milk is attracted to a particular market and the proportion of producer milk used for fluid disposition decreases, further increases in Class I prices would be necessary to maintain the same blend price. It is apparent therefore, that proper price alignment between neighboring markets must be achieved by establishing the proper Class I differentials over the basic formula prices in each market. The resulting sales and production responses afford the tools for appraising the appropriateness of such alignment.

Given the goal of attracting an adequate supply of inspected milk to meet market sales including the necessary reserve, changes in sales-supply relationships in an individual market require adjustments in the basic or longer term alignment of prices to reflect these changed local conditions. It is only through such adjustments of Class I prices in the individual markets that available supplies of milk will be attracted through the orders to the various markets in accordance with their needs.

The basic formula price in the Dayton-Springfield order and those in orders in neighboring markets are very similar. The Class I differential which is added to basic formula prices is $1.20 per hundredweight as compared with $1.30 for the Cincinnati market and $1.10 for the Columbus market. This or similar differences in the annual level of the Class I price differentials have been maintained for several years and upon the basis of the evidence contained in this record, there is no reason to change this establishment relationship.

In each of these markets, a supply-demand adjustment factor has been incorporated in the orders to immediately and automatically reflect in Class I prices, changes in the supply-demand relationships in the local market. During 1955, the supply-demand adjuster reduced Class I prices under the Dayton-Springfield order an average of 5 cents per hundredweight while the adjuster in the Cincinnati order increased Class I prices about 10 cents per hundredweight. In Columbus, Class I prices were increased slightly more than 5 cents per hundredweight. For the first five months of 1956, Class I prices in Dayton-Springfield were reduced by approximately 12 cents per hundredweight as compared with an addition of about 23 cents in Cincinnati and a reduction of 4 cents for Columbus. The differences in adjustments between the Cincinnati and Dayton-Springfield order prices has encouraged no doubt the shifting of some producers from supplying the Dayton-Springfield market to supplying the Cincinnati market. The resulting distribution of available supplies of milk among the markets, through the operation of the supply-demand adjusters, operates to improve supply-demand relationships in each market. The issue at this hearing is whether or not the Dayton-Springfield adjuster is operating effectively in forecasting the longer run conditions in the Dayton-Springfield marketing area.

Over the past several years, receipts of producer milk in the Dayton-Springfield marketing area have kept pace with increases in sales of fluid milk products. From 1952 to 1955 average monthly producer receipts increased 33 percent as compared with an increase of 28 percent in fluid milk sales. From 1953 to 1955 both receipts and sales increased 17.7 percent and from 1954 to 1955 both increased 10.6 percent. Average monthly producer receipts in 1955 were about 34 percent in excess of the milk disposed of in fluid milk products compared with about 27 percent in 1952 when receipts of producer milk were hardly adequate to fulfill such sales during the short production season. During the short production months of September through November in both 1954 and 1955 producer receipts were approximately 21 percent above Class I sales. During September of 1955, receipts were only 18 percent in excess of Class I sales (as redefined). These quantities of reserve supplies of milk are necessary in the market to equalize day to day and month to month variations between producer receipts and handlers' needs of milk for fluid milk products and the current annual level of producer receipts to sales should be maintained.

There has been a shift seasonally in deliveries of the annual supply of milk for this market. A relatively greater increase in production has occurred in the fall months than in the spring months which, in turn, has improved the month to month relationship of receipts to sales. The present base ratios contained in the supply-demand adjuster were incorporated in the order on the basis of a hearing held in January 1954 and necessarily were developed on the basis of marketwide data prior to that time. With the decided trend toward more even production and the tendency for the peak and low production periods to occur earlier in the year, the base ratios in the supply-demand adjuster have become obsolete.

During the first five months of 1956 Class I sales increased 10 percent above the corresponding period a year ago while receipts of milk from producers increased only 7 percent. Some part of the relatively smaller increase in producer receipts can be attributed to the trend toward more even production. However, the action of the present supply-demand adjustment which resulted in decreasing Class I prices an average of 10 cents per hundredweight during the first six months of this year, at the same time that fluid milk sales increased relatively faster than producer milk receipts, raises a further question as to the reliability of the base period ratios to reflect supply-demand conditions in the market.

The present base ratios in the supply-demand adjuster resulted in minus Class I adjustment in six spring and summer months and plus adjustments in three fall months of 1955 and minus adjustments in the first six months of 1956. The effect of a minus 10-cent adjustment in January and February of 1956 based on receipts-sales ratios during October through December conflicts with the fall incentive program of the order to encourage increased production during this latter period.

Based upon the above stated considerations, the base period ratios contained in a revised supply-demand adjuster should be established at the same average level as the ratios contained in the present order (between 75 and 76 percent). The seasonal pattern of base period ratios should be changed to reflect the more recent improved seasonal supply-demand relationships as set forth in the schedule below:

Month for which price is being computed	Months used to compute ratio	Base period ratio (percent)
January	October and November	83
February	November and December	81
March	December and January	79
April	January and February	77
May	February and March	76
June	March and April	74
July	April and May	69
August	May and June	64
September	June and July	69
October	July and August	74
November	August and September	80
December	September and October	81

Producers also proposed that the supply-demand adjustment provisions be modified to eliminate price adjustments of less than 20 cents per hundredweight. This would be accomplished by providing no adjustment until the current supply-demand ratio varied from the base ratio by at least 6 percentage points. This would have the effect of doubling the present tolerance which is provided before prices are adjusted. The purpose of the supply-demand adjuster is to provide automatically, timely changes in Class I prices in accordance with indications of a change in the trend in the relationship of sales of fluid milk products to producer receipts without entailing the delay and expense associated with the public hearing procedure. It is essential that price changes be reflected as quickly as possible to bring about appropriate sales and production responses in accordance with changes in the market situation. The widening of the brackets to provide no price adjustment until the current ratio varies by 6 points from the base ratio would slow down and partly nullify the effectiveness of the supply-demand adjustment factor and therefore is denied.

Handlers proposed advancing the date for announcing the Class I price and butterfat differential by basing them on the previous month's basic formula price information. Similar changes have been made in recent revisions of several Federal orders. Class I prices would be known by both producers and handlers in advance of the delivery and sale of their milk. The total amount of money charged handlers and paid producers for milk over a period of a year would not be changed. Producers opposed a change on the basis that seasonal variations in basic formula prices would tend to cause discrepancies between the Dayton-Springfield uniform prices and the uniform prices for competing markets.

During the past two years, as the result of the price support program for dairy products, little change occurred from month to month in basic formula prices. Changes in uniform prices resulting from other factors, such as differences in the fall production incentive payment plans and supply-demand adjusters have been more important in causing such differences. For example, in 1955 between March and April the basic formula price varied 1 cent per hundredweight as compared with a variation of 10 cents in the "set aside" under the fall incentive program between the Dayton-Springfield and Cincinnati market. Likewise, from August to November 1955, the basic formula price changed about 1 cent while the supply-demand adjuster under the two orders accounted for a change of approximately 15 cents. Handlers' proposal should be adopted.

The list of condenseries used in determining the basic formula price should be revised to include only those plants currently operating. Since the order was last drafted, operations have been terminated at five of the plants previously listed. The names of the plants listed for the following locations should be eliminated: Black Creek, Wisconsin;

Berlin, Wisconsin; Jefferson, Wisconsin; Clifton, Wisconsin, and Greenville, Wisconsin.

3. Class prices for milk should be determined and announced by the market administrator on the basis of a hundredweight of milk containing 3.5 percent butterfat.

Changes were proposed in the order to provide for the application and announcement of class prices on a per hundredweight basis for milk of 3.5 percent butterfat content with appropriate adjustments of prices for milk of other tests by a butterfat differential. Under the present order, separate hundredweight prices are established for skim milk and butterfat in each class. In most markets, milk is priced on a hundredweight basis of a specified butterfat content. The proposed method of establishing prices would simplify the determination of prices for milk of a specified butterfat test and would facilitate comparisons of prices over a period of time and with other markets. The intent of the proposed change was not to alter the cost of milk to handlers as compared with the present method of computing prices.

In order to adopt this pricing method, prices should be announced for milk containing 3.5 percent butterfat with appropriate butterfat differentials. The average test of milk utilized in Class I, representing approximately three-fourths of the total market utilization, is only slightly above 3.5 percent. The present method of pricing Class I milk has the effect of applying a butterfat differential to Class I milk for each tenth of a percentage variation in the test of such milk equivalent to the Class I price per hundredweight for butterfat less the Class I price per hundredweight for skim milk, divided by 1000. During 1955, this was equal to .127 times the price of 92-score butter on the Chicago market. Handlers did not oppose producers' proposal for this change in the method of computing and announcing Class I prices for 3.5 percent milk; however, they proposed a butterfat differential of 0.130 times the price of butter. It is concluded that the ratio of 0.127 should be used.

There are wide differences in the butterfat and nonfat solids content among the various products included in Class II milk. Also, there is a more direct relationship between the open market prices of most of such manufactured products to prices either for butter or for nonfat dry milk, as the case may be, than is the case of most Class I milk products. It is concluded therefore, that the butterfat differential for Class II milk should result in maintining the same relative prices between butterfat and skim milk regardless of the butterfat test of the finished product. This can be accomplished through a butterfat differential determined by subtracting the value of a pound of skim milk from the value of a pound of butterfat computed under the butter-nonfat dry milk formula used in determining Class II prices for 3.5 percent milk, and dividing the remainder by 10.

The present order provides a lower price for butterfat used in the production of butter than for other proposed Class II uses. In order to eliminate mechanical difficulties in the application of the allocation provisions of the order, the lower price to handlers on such butterfat may be accomplished in the computation of value of milk for each handler as a credit entry. The rate of the credit per hundredweight of butterfat should be the same as the difference in prices provided by the present order.

The lower price for butterfat should be limited to butterfat used to produce butter in the pool plant of the handler and to butterfat transferred in the form of bulk fluid cream to other pool plants and nonpool plants and used in the production of butter. This latter provision is necessary to safeguard the classified-pricing plant of the order. Butterfat moved in the form of whole milk can readily be used in the manufacture of the higher-valued regular Class II uses and producers should receive a return for such butterfat accordingly.

4. The provisions with respect to the transfer and diversions of milk from pool plants should be modified.

Transfer provisions are provided in the order to supplement the class definitions in the classification of milk disposed of from pool plants. The primary function of the provisions relating to the transfer of fluid milk products between pool plants is to remove any impediments to the movement of milk between such plants and at the same time assure that the producer milk in such plants is assigned to the available Class I utilization to the fullest extent possible. It is customary to transfer or divert bulk and packaged products between regulated plants in the Dayton-Springfield market. It is possible to carry out the intent of the classification procedure by providing for the transfer of such fluid milk products on an agreed-upon basis so long as producer milk is not displaced by other source milk in Class I in either handler's plant(s). It is concluded that the provisions for the classification of milk transferred or diverted between pool plants should be continued in the present form and in addition provision should be made that, if either or both handlers receive other source milk, the skim milk or butterfat so transferred or diverted shall be classified at both plants so as to allocate the highest priced utilization possible to producer milk in both plants.

The primary function of transfer and diversion provisions applying to milk transferred from pool plants to nonpool plants is to facilitate the disposal of reserve supplies of milk and at the same time return to producers a value for the milk in accordance with its usage. If transfer provisions are properly drawn, they will also serve to afford a degree of protection to the market against shortages caused by withdrawals of milk by other fluid milk markets and at the same time remove any price incentive for the handler to dump reserve supplies of milk on other markets for fluid disposition at surplus milk prices. The classification of milk transferred or diverted between fluid milk markets also affects the amount of necessary reserve supplies of milk associated with each market and, consequently, the method used for such classification affects relative returns among producers serving the markets.

Several proposals were made at the hearing to modify the transfer provision applying to milk moved to nonpool plants. One proposal would prohibit the diversion of milk directly from the producer's farm by the handler to a nonpool plant. Another proposal would change the method of classifying milk which is transferred or diverted to a nonpool plant. The question of diversion is dealt with under issue No. 6.

Under the present order, milk transferred or diverted to a nonpool plant is classified at the plant in the highest priced use remaining after subtracting in series, beginning with Class I milk, receipts of milk at the plant directly from dairy farmers who, the market administrator determines, constitute the regular source of supply for such plant.

In the Dayton-Springfield market, substantial quantities of milk are, at times, transferred or diverted to nonpool plants. A substantial portion of such diversions are to plants located in or near the milkshed. Some of these plants are combination plants wherein both Grade A and ungraded milk are received and processed. At least one of these plants engages in substantial disposition of fluid milk to retail and wholesale outlets along with the production of manufactured products. All bottled milk and some bulk milk is disposed of from this plant as Grade A milk. A substantial portion of the total receipts at this plant is received from producers of ungraded milk. In the case of combination plants of this type, it is necessary for the market administrator to determine the total receipts and classification of all of the milk received in the plant. Under the provisions of the current order, the total receipts of milk received directly from dairy farmers (both Grade A and ungraded) are given prior claim on Class I disposition over the Dayton-Springfield milk transferred or diverted to such plant. This leaves the way open for receipts of ungraded milk from dairy farmers to be allocated to the Class I sales at such plant prior to the allocation of Grade A producer milk from the Dayton-Springfield market. Thus, the present order provisions permit the classification of Grade A milk from this market in the manufacturing classes even though such milk is disposed of as Grade A milk for fluid consumption. It is concluded, therefore, that the Class I sales, determined pursuant to the classification provisions of the order applied at the nonpool plant, which are assigned to the local dairy farmers at such plant should be limited to the receipts of milk from those farmers who hold permits to supply Grade A milk. Any additional Class I sales should be credited to the Grade A producer milk which is received from the regulated market.

In order to preclude undue administrative problems and expense in the application of the transfer provisions of the order, provision should be made that skim milk and butterfat transferred in the form of milk or skim milk in bulk to a nonpool plant located more than 100

miles from either Dayton or Springfield, whichever is nearest, should be Class I milk. More than adequate facilities for handling reserve supplies of milk are located within this designated area. Milk which is moved greater distances is used for fluid disposition (Class I).

At least one nonpool plant to which milk is transferred or diverted from the Dayton-Springfield market, milk is received from other markets which are regulated by other orders issued pursuant to the act. Milk also may be transferred to the same plant by more than one handler under the Dayton-Springfield order. The "net" Class I sales (the amount over and above the receipts of skim milk and butterfat in Grade A milk received from local dairy farmers at such plant) should not be used as a basis for duplicating the Class I classification of milk received from plants regulated by this and other orders. In the classification of milk transferred from the Dayton-Springfield pool plants, consideration should be given, therefore, to milk received at the nonpool plant which is classified as Class I milk for other handlers under this order and under the other orders. It is economically sound and reasonable that the amount of milk at such plant classified as Class I milk for any one regulated market be not less than that market's pro rata share of the "net" Class I sales in such nonpool plant. It is concluded, therefore, that milk which is transferred or diverted by Dayton-Springfield handlers to a nonpool plant should be classified as Class I milk to the extent of the "net" Class I disposition of such plant less receipts of milk at such plant classified as Class I milk during the month pursuant to another Federal order issued under the act; but, in no event should the amount of such milk classified as Class I milk pursuant to the Dayton-Springfield order be less than its pro rata share of such "net" Class I sales at the plant. The pro rata share should be based on the total receipts of milk at such nonpool plant during the month from all plants subject to the pricing and payment provisions of an order issued pursuant to the act. The adoption of this method of classifying milk will not conflict with the transfer provisions of the other orders presently involved, namely Fort Wayne, Indiana, and Lima and Columbus, Ohio. This method of classification will safeguard the primary functions of the transfer provisions of the Dayton-Springfield order. It will assure that transfers of milk to nonpool plants will be classified in accordance with the utilization of the milk. It will provide a degree of protection to the market against shortages caused by withdrawals of milk and at the same time remove any undue price incentive for the handler to dump reserve supplies of milk on other markets for fluid disposition at less than the order Class I prices. The proposed provision provides for equality of treatment of handlers both within the Dayton-Springfield market and in other nearby regulated markets in the classification of milk transferred to the same nonpool plant. Because under the present order all packaged fluid milk products disposed of to nonpool plants are classified as Class I milk, the same as such milk disposed of on a route, pursuant to the Class I milk definition, the transfer provisions need to apply only to fluid milk products in bulk transferred to nonpool plants. All transfers of fluid milk products to producer-handlers are Class I milk as provided by the present order.

5. The schedule for payments to producers under the fall production incentive payment plan should be modified.

Producers proposed adding the month of September to the months of October through December as the period for payments out of the producer-settlement fund to effectuate the fall production incentive program. They also proposed changing the distribution of these funds, set aside each year during the April–July period, from the present plan for equal amounts for each of the months of October, November and December, to 20 percent of the fund in September, 30 percent in each of the months of October and November, and 20 percent in December.

Distribution of the funds under the fall production incentive payment plan should provide encouragement for seasonal production more in accord with market needs than is provided at present. September has become one of the months when producer receipts are relatively short in relation to fluid milk sales. An inducement should be given to producers to produce more of their milk during September. The proposed change has been discussed widely among producers and has their support. September 1, 1957 was proposed as the effective date for the proposed change. All producers supplying the market would be given ample opportunity thereby to adjust their production in accordance with the proposed new payment period. Producers proposal should be adopted.

6. The entire order should be redrafted to add a number of new definitions, provide more specific provisions with respect to accounting for milk, and to incorporate a number of conforming and clarifying changes in the order language.

A number of changes should be made in the order to designate more clearly what milk and what persons would be subject to regulation and the application of the order provisions to them. This can best be done by providing a number of new definitions which set forth the categories of persons, plants, and milk products for the purpose of applying the other order provisions. New definitions should be added for "fluid milk plant", "pool plant", "nonpool plant", "route", "fluid milk product", "producer-handler", "producer milk" and the definitions of "producer", "handler", and "other source milk" should be modified accordingly.

The term "fluid milk plant" should include a bottling or distributing plant which is approved by the appropriate health authority for the processing or packaging of Grade A milk and other fluid products which are disposed of on routes in the marketing area. It should include also plants which supply milk to a distributing plant and the producers of such milk who hold dairy farm inspection permits or equivalent certification issued by the appropriate health authority in the marketing area to supply milk for fluid distribution.

The "pool plant" definition should include all fluid milk plants which are to be fully subject to regulation under the order and whose producer milk will participate in the marketwide pool. Provision should be made for the exclusion of fluid milk plants which would be subject to the classification and pricing provisions of another order issued pursuant to the act, if a lesser volume of fluid milk products classified as Class I milk is furnished from such plant for disposition in the Dayton-Springfield marketing area than in the marketing area regulated pursuant to such other order. Plants which dispose of fluid milk products in more than one marketing area should not be subject to duplicate regulation. It is reasonable and economically sound to regulate such a plant under the order in the market where the largest proportion of Class I sales are made.

"Producer-handler" should be defined to include any person who operates a dairy farm and a fluid milk plant from which milk is distributed on routes in the marketing area, but who receives no milk from other dairy farmers. Under the present provisions of the order, plants operated by producer-handlers are not subject to regulation and are not included under the marketwide pool. Producer-handlers, therefore, should continue to be exempt from all but the reporting provisions of the order. The operators of all fluid milk plants which are not pool plants, producer-handlers and operators of plants subject to another order, should be defined as a "handler" and should be required to file reports, as requested by the market administrator, in order to determine their status under the order.

A "nonpool plant" should be defined to include any milk manufacturing, processing or bottling plant other than a pool plant.

The inclusion of the foregoing definitions is necessary to clarify the order language and will assist in drafting other provisions of the order. The proposed new definitions will not extend the regulation to milk, persons or plants not now subject to the order.

The essential features of the present producer definition should not be changed. The term "producer" should include any person, except a producer-handler, who produces milk, under a dairy farm inspection permit issued by the appropriate health authority in the marketing area, which is received at a pool plant or is diverted by the operator of a pool plant or a cooperative association to a nonpool plant on not more than one-third of the days of delivery during any month. The question of diversion is discussed later in this decision.

"Producer milk" should include that skim milk and butterfat contained in milk received from producers at a pool plant or diverted from a pool plant to another pool plant or a nonpool plant. In case of diversion to a nonpool plant, milk will lose its identity as producer milk after being diverted for more than one-third of the days of delivery during any month. It was proposed by the producers' association that the present pro-

ducer definition be modified to exclude the deliveries of milk by a producer which are diverted by operators of pool plants to nonpool plants and to provide for such diversion by a cooperative association only in the case of an emergency.

Proponents allege that the advent of the farm bulk tank method of assembling milk and the consequent case of transferring milk to other markets and outlets make it extremely difficult for the cooperative association to maintain control over its members' milk supply for the market. It was alleged that milk may be temporarily transferred to other markets during periods of shortages or more favorable prices in competing markets and disrupt the orderly marketing of milk for the Dayton-Springfield market. It was further alleged that some handlers are abusing the privilege of diversion under the order. Producer milk is being diverted on a continuous basis to nonpool plants and it was alleged that this was being done at the expense of the market-wide pool. Considerable discussion on the record was had also on problems associated with bulk tank assembling of milk in connection with testing, weighing, accounting and fixing the responsibility for the receipt of such milk.

It was argued by proponents that it had been customary prior to bulk tank pickup, for handlers to receive all milk at their plants in the marketing area and such method of handling milk if continued would eliminate many of the problems with which they are concerned. As one means of encouraging this, producers supported the elimination of the privilege of diversion of milk directly from the farm to nonpool plants.

In this market, it has been customary to divert milk between pool plants. Such practice promotes efficiency in receiving and handling milk in the market and should be continued.

Efficiency in the marketing of milk can be accomplished also by permitting the diversion of reserve supplies of milk temporarily not needed in the market directly from the farm to manufacturing plants located in or near the production area. The privilege of diverting milk by operators of pool plants and the cooperative association to nonpool plants will tend to promote the orderly marketing of market reserves, particularly during the flush production months. It is concluded, therefore, that the provision of the order with respect to diversion to nonpool plants should be continued. The provisions with respect to the classification of milk which is transferred or diverted to nonpool plants should be modified as heretofore discussed. Also, some limitation should be placed on the length of time that milk may be delivered to nonpool plants and remain as producer milk in the marketwide pool. It is reasonable to permit the diversion of a producer's milk to a nonpool plant on not more than one-third of the days of delivery during any month and have such milk remain in the pool. Based on the receipts—Class I sales relationships in this market, it is concluded that if milk of a producer is moved to a nonpool plant more than one-third of the days of delivery, such producer's milk is not sufficiently associated with the market to participate under the regulation. The order should be clarified with respect to the responsibility for the receipt of milk in the case of farm tank pick-up trucks which deliver milk to more than one plant. This should be accomplished by considering that all the milk on a truck is received at the first pool plant where any of the milk is withdrawn.

The record evidence is not sufficient to form an adequate basis for formulating formal provisions to deal with the other problems discussed in connection with farm bulk tank delivery of milk. Some of these concern the control of the milk of producer members by the cooperative association. Several are of such nature that they can be more appropriately handled by the industry itself through cooperation of the producers' association, handlers and haulers of milk. In those cases dealing with administrative matters in the application of the order, such determinations can be formulated more appropriately by the market administrator based on particular circumstances after soliciting, when necessary, views of the industry.

The definition of "other source milk" should be modified to clarify its meaning and to extend the definition to include all skim milk and butterfat utilized by the handler in his operations except milk received from producers, fluid milk products received from other pool plants and inventory of fluid milk products on hand at the beginning of the month. Thus, other source milk would represent skim milk and butterfat which is not subject to the pricing provisions of the order during the month. It will include all milk products from plants other than pool plants and all manufactured dairy products from any source which are reprocessed or converted into another product during the month. It will include those manufactured products from a regulated plant's own production which are reprocessed or converted into another product during the same or a later month. By incorporating this definition of other source milk, the method of accounting for such milk by all handlers will follow identical accounting procedures whether or not the manufactured products which are reused in a handler's plant were converted from producer milk or purchased from outside sources. The skim milk and butterfat used to produce manufactured (Class II) products should be considered as disposed of when so utilized and therefore will not enter into the classification procedure again unless reused. Records of sales and stocks of manufactured products, however, must be maintained by the handler to facilitate the auditing program of the market administrator and substantiate current usage of such products. This change in the definition of other source milk will assure uniformity among handlers in the application of the allocation and pricing procedure of the order. Any other source milk, including that derived from manufactured products, will continue to be allocated first to the available Class II utilization. The new definition will continue to provide for the allocation of producer milk to Class I to the extent that such milk is available from current receipts or beginning inventory.

By incorporating the proposed new definitions and by making conforming changes in other order provisions, receipts of milk under the order will fall within four categories as follows:

(1) Producer milk;
(2) Milk from pool plants;
(3) Inventory of fluid milk products; and
(4) Other source milk.

The reporting and accounting provisions of the order should be changed to incorporate these terms.

Some handlers in the market produce condensed milk, nonfat dry milk and other manufactured milk products. Some of these products are reused in the pool plant where produced or are disposed of to other handlers. Operators of other pool plants may purchase some solids from outside sources. Condensed solids or nonfat dry milk may be used for reconstituting certain fluid milk products or to fortify skim milk drinks. Such solids are required by the health regulations to be made from Grade A milk and should be calssified as Class I milk when disposed of in a fluid milk product the same as all other skim milk in Class I milk. There appears to be no reason why one portion of the solids nonfat contained in Class I products should be classified differently from another portion in this market. The pounds of skim milk disposed of in any reconstituted or fortified fluid milk product, therefore, should be considered as an amount equal to the nonfat milk solids contained in such product plus the water content reasonably associated with such solids in the form of whole milk. To promote uniformity in the cost of milk among handlers and to effectuate the established principle of allocating current receipts of producer milk to Class I utilization to the fullest extent, the skim milk in other source milk in the form of a manufactured product must likewise be accounted for on the basis of the nonfat solids plus the water reasonably associated with such solids in the form of whole milk. The effect of this accounting procedure in conjunction with the change in the definition of other source milk will have no effect on the net classification of other source milk used in Class II milk. The marketwide effect of this change will be minor because it has been the practice under the present order to account for such solids allocated to Class I milk on a skim milk equivalent basis. It is desirable, however, that specific language be provided in the order for accounting for such products.

Handlers have inventories of milk and milk products on hand at the beginning and end of each month which must enter into the accounting for current receipts and utilization of producer milk. Inventory variations are now classified in Class II milk but the order is silent in this respect. Month-end inventories of fluid milk products whether in bulk or packaged form should continue to be classified as Class II milk.

Manufactured milk products (Class II) will not be included in the fluid milk inventory accounting because the skim milk and butterfat used in such products are accounted for in the month that such products are manufactured.

Handlers frequently use other source milk in their operations. The inventory accounting procedure should provide for producer milk from inventory to have prior claim on Class I utilization over receipts of other source milk in the same manner as current receipts of producer milk. Because inventories of fluid milk items are to be accounted for at the end of the month in Class II milk, as a temporary classification, it is necessary, therefore, to provide a method for handling milk from inventory which is allocated to Class I milk in the current month but which the handler accounted for in Class II milk at the end of the preceding month. The higher use value of any fluid milk product from beginning inventory of producer milk which is used in Class I milk should be reflected in returns to producers. Such milk should be priced the same as a current receipt of producer milk. These goals may be accomplished through the accounting procedure by considering the opening inventory as a receipt in that month and subtracting such receipts, under the allocation procedure, in series, starting with Class II milk, following the subtraction of other source milk and receipts from other pool plants. To the extent that the opening inventory is allocated to Class I milk and there was an equivalent amount of skim milk and butterfat in producer milk classified in Class II milk in the previous month (after allocating allowable producer milk shrinkage and other source milk) a reclassification charge should be made at the difference between the Class II price in the previous month and the Class I price in the current month. Handled in this manner, milk from inventory will be priced to handlers identically with milk derived from current receipts of producer milk during the month. This method of accounting for inventory will result in equality in the cost per hundredweight of milk among handlers and returns to producers irrespective of whether or not such milk is from opening inventory or is a current receipt.

To incorporate the additions and changes recommended herein, it is necessary to make clarifying and conforming changes in nearly every section of the order. The entire order, therefore, should be redrafted and reissued.

Rulings on proposed findings and conclusions. Briefs were filed which contained statements of fact, proposed findings and conclusions, and arguments with respect to the provisions of the proposed amendments. Every point covered by 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 the recommended decision.

General findings. (a) The proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

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

(c) The proposed order, as amended, and as hereby proposed to be further amended, 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.

Recommended marketing agreement and order, amending the order, as amended. The following order regulating the handling of milk in the Dayton-Springfield, Ohio, marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be identical with those contained in the proposed amended order.

DEFINITIONS

§ 971.1 *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.).

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

§ 971.3 *Department.* "Department" means the United States Department of Agriculture or any other Federal agency authorized to perform the price reporting functions of the United States Department of Agriculture.

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

§ 971.5 *Cooperative association.* "Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

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

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

§ 971.6 *Dayton-Springfield, Ohio, marketing area.* "Dayton-Springfield, Ohio, marketing area" hereinafter called the "marketing area," means the cities of Dayton, Oakwood, and Springfield; the townships of Bath and Miami, in Greene County; the townships of Miami, Jefferson, Madison, Van Buren, Harrison, Butler, Mad River, and Washington, in Montgomery County; and German township in Clark County; all in the State of Ohio.

§ 971.7 *Fluid milk product.* "Fluid milk product" means milk, including reconstituted milk, skim milk, buttermilk, milk drinks (plain or flavored), concentrated milk, cream, or any mixture in fluid form of skim milk and cream (except storage cream, aerated cream products, eggnog, ice cream mix, evaporated or condensed milk and sterilized products in hermetically sealed containers).

§ 971.8 *Route.* "Route" means the operation of a plant store or a vehicle (including that operated by a vendor) through the means of which fluid milk products are disposed of to retail or wholesale stops in the marketing area other than to a plant which processes milk.

§ 971.9 *Fluid milk plant.* "Fluid milk plant" means: (a) A plant approved by the appropriate health authority for the processing or packaging of Grade A milk and from which a fluid milk product is disposed of during the month on a route(s) in the marketing area or (b) a plant from which milk is shipped during the month to a plant described in paragraph (a) of this section and which milk is produced under a dairy farm inspection permit or equivalent certification issued by the appropriate health authority in the marketing area for distribution as Grade A milk.

§ 971.10 *Pool plant.* "Pool plant" means a fluid milk plant other than: (a) A fluid milk plant which would be subject to the clasification and pricing provisions of another order issued pursuant to the act and a lesser volume of fluid milk products is disposed of from such plant as Class I milk in the Dayton-Springfield marketing area than in the marketing area regulated pursuant to such other order; and (b) a fluid milk plant operated by a producer-handler.

§ 971.11 *Nonpool plant.* "Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

§ 971.12 *Producer.* "Producer" means any person, except producer-handler, who produces, under a dairy farm inspection permit or equivalent certification issued by the appropriate health authority in the marketing area, milk which is (a) received at a pool plant, or (b) diverted from a pool plant to a nonpool plant for the account of either the operator of the pool plant or a cooperative association or not more than one-third of the days of delivery during any month: *Provided*, That milk diverted pursuant to this section shall be deemed to have been received at a pool plant.

§ 971.13 *Handler.* "Handler" means any person in his capacity as the operator of one or more fluid milk plants or pool plants and any cooperative association with respect to producer milk diverted to a nonpool plant pursuant to § 971.12.

§ 971.14 *Producer-handler.* "Producer-handler" means any person who operates a dairy farm and a fluid milk plant pursuant to § 971.9 (a) but who receives no milk from other dairy farmers.

§ 971.15 *Producer milk.* "Producer milk" means only that skim milk or butterfat contained in milk (a) received at a pool plant directly from producers, or (b) diverted from a pool plant to another pool plant, or from a pool plant to a nonpool plant in accordance with the conditions set forth in § 971.12. With respect to milk caused by the operator of a pool plant to be delivered directly from the producer's farm to the pool plant of another handler, the handler to be considered as receiving such milk shall be determined by written agreement between the two handlers filed with the market administrator on or before the 5th day after the end of the first month during which it becomes effective, or in the absence of such an agreement, shall be determined by the market administrator. Milk delivered in a farm tank pick-up truck to more than one milk plant shall be deemed to have been received at the first pool plant where any of the milk is withdrawn from the tank truck.

§ 971.16 *Other source milk.* "Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of fluid milk products except (1) fluid milk products received from a pool plant, (2) inventory at the beginning of the month, or (3) producer milk; and

(b) Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month.

§ 971.17 *Chicago butter price.* "Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department.

MARKET ADMINISTRATOR

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

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

(a) To administer this part in accordance with its terms and provisions;

(b) To receive, investigate and report to the Secretary complaints of violations of the provisions of this part;

(c) To make rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 971.22 *Duties.* The market administrator, in addition to the duties hereinafter described, shall:

(a) Within 45 days following the date on which he enters upon his duties 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 part;

(c) Pay, out of the funds provided by § 971.77, (1) the cost 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 § 971.78, which will necessarily be incurred by him in the maintenance and functioning of his office and in the performance of his duties;

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

(e) Publicly disclosed to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within two days after the day upon which he is required to perform such acts, has not made (1) reports pursuant to § 971.30, or (2) payments pursuant to §§ 971.70, 971.71, 971.74 and 971.76;

(f) Furnish such information and verified reports as the Secretary may request, and submit his books and records to examination by the Secretary at any and all times;

(g) Audit all reports and payments by each handler by inspection of such handler's records and of the records of any person upon whose utilization the classification of milk depends.

(h) On or before the 6th day of each month notify all handlers and publicly announce the minimum price for Class I milk pursuant to § 971.51 and the Class I butterfat differential pursuant to § 971.53 (a) both for the current month and the minimum price for Class II milk pursuant to § 971.52 and the Class II butterfat differential pursuant to § 971.53 (b) both for the preceding month.

(i) On or before the 12th day after the end of each month notify all handlers and publicly announce the uniform price computed pursuant to § 971.62 and the butterfat differentials computed to § 971.72 for such month.

(j) On or before the 12th day after the end of each month report to each cooperative association for such month with respect to each pool plant, the utilization on a pro rata basis of producer milk, payment for which is to be made to such cooperative association pursuant to § 971.70.

REPORTS, RECORDS AND FACILITIES

§ 971.30 *Reports of receipts and utilization.* On or before the 7th day after the end of each month, each handler, shall report for such month to the market administrator in the detail and on forms prescribed by the market administrator for his pool plant(s):

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

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

(c) The quantities of skim milk and butterfat contained in or represented by other source milk;

(d) The quantities of skim milk and butterfat contained in or represented by inventories of fluid milk products on hand at the beginning of the month;

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

(f) Such other information with respect to receipts and utilization as the market administrator may request.

§ 971.31 *Other reports.* (a) Each producer-handler and each handler who operates a fluid milk plant not a pool plant shall make reports to the market administrator at such time and in such manner as the market administrator may request.

(b) On or before the 22nd day after the end of each month each handler shall submit to the market administrator such handler's producer payroll for such month, which shall show (1) the total pounds of milk received from each producer and cooperative association and the total pounds of butterfat contained in such milk, (2) the amount of payment to each producer and cooperative association, and (3) the nature and amount of the deductions and charges involved in the payments referred to in subparagraph (2) of this paragraph.

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

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

(b) The weights and butterfat and other content of all milk, skim milk, cream and other milk products handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products on hand at the beginning and end of each month; and

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

§ 971.33 *Retention of records.* All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which

such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice the handler shall retain such books and records, or specified books and records until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 971.40 *Basis of classification.* The skim milk and butterfat which are required to be reported pursuant to § 971.30 shall be classified each month by the market administrator in the classes set forth in § 971.41, subject to the provisions of §§ 971.42 through 971.46.

§ 971.41 *Classes of utilization.* Subject to the conditions set forth in § 971.43 the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including concentrated and reconstituted skim milk) and butterfat (1) disposed of in the form of a fluid milk product (except that disposed of and used for livestock feed and skim milk dumped) and (2) not accounted for as Class II milk;

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce any product other than a fluid milk product; (2) disposed of and used for livestock feed; and skim milk dumped; (3) contained in inventory of fluid milk products on hand at the end of the month; and (4) plant shrinkage as computed pursuant to § 971.45.

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

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

§ 971.43 *Transfers.* Skim milk or butterfat disposed of by a handler from a pool plant, including transfers or diversions made by a cooperative association shall be classified:

(a) As Class I milk if transferred or diverted in the form of fluid milk products to the pool plant of another handler except as:

(1) Utilization in Class II milk is claimed by the operators of both plants in their reports submitted pursuant to § 971.30;

(2) The receiving handler has utilization in Class II of an equivalent amount of skim milk and butterfat, respectively; and

(3) The classification of the skim milk or butterfat so transferred results in the classification at both plants of the maximum Class I utilization to the producer milk at both plants, if either or both handlers have other source milk during the month;

(b) As Class I milk, if transferred to a producer-handler in the form of bulk fluid milk products;

(c) As Class I milk, if transferred or diverted in the form of milk or skim milk in bulk to a nonpool plant located 100 miles or more from the City Hall of Dayton or Springfield, Ohio, whichever is nearest;

(d) As Class I milk if transferred or diverted to a nonpool plant in the form of cream in bulk or in the form of milk or skim milk in bulk to a nonpool plant located less than 100 miles from the City Hall of Dayton or Springfield, Ohio, whichever is nearest, unless:

(1) The handler claims classification as Class II milk in his report submitted pursuant to § 971.30 and submits a statement which is signed by the handler and the buyer that such skim milk and butterfat was used in a product in Class II milk;

(2) The operator of the nonpool plant maintains books and records showing the receipts and utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification;

(3) The classification reported by the handler results in an amount of Class I skim milk and butterfat claimed by all handlers transferring or diverting milk to such plant of not less than the amount of assignable Class I milk remaining after the following computation;

(i) From the total skim milk and butterfat, respectively, in fluid milk products disposed of from such nonpool plant and classified as Class I milk pursuant to the classification provisions of this order applied to such nonpool plant, subtract the skim milk and butterfat received at such plant directly from dairy farmers who hold permits to supply "Grade A" milk and who the market administrator determines constitute the regular source of supply for such fluid milk products for such nonpool plant;

(ii) From the remainder, subtract the skim milk and butterfat, respectively, in fluid milk products received from another market and which is classified and priced as Class I milk pursuant to another order issued pursuant to the act: *Provided*, That the amount subtracted pursuant to this subdivision shall be limited to such market's pro rata share of such remainder based on the total receipts of skim milk and butterfat, respectively, at such nonpool plant which are subject to the pricing provisions of an order issued pursuant to the act;

(4) If the skim milk and butterfat transferred by all handlers to such a nonpool plant and reported as Class I milk pursuant to this paragraph is less than the skim milk and butterfat assignable to Class I milk pursuant to subparagraph (3) of this paragraph, an equivalent amount of skim milk and butterfat shall be reclassified as Class I milk pro rata in accordance with the claimed Class II classification reported by each of such handlers;

(e) Other source milk caused by a cooperative association to be delivered from the plant of a person not a handler to the pool plant of a handler other than such cooperative association shall be considered as a transfer from the cooperative association to the handler if the cooperative association and the handler operating the pool plant to which such other source milk was caused by the cooperative association to be delivered both so indicate in their reports filed pursuant to § 971.30.

§ 971.44 *Computation of the skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the pool plant(s) of each handler and shall compute the pounds of butterfat and skim milk in Class I milk and Class II milk for such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water reasonably associated with such solids in the form of whole milk.

§ 971.45 *Shrinkage.* Subject to paragraph (a) of this section, the quantities of skim milk and butterfat, respectively, at each pool plant to be classified as Class II milk pursuant to § 971.41 (b) (4) shall be computed as follows:

(a) If the sum of the quantities of skim milk and butterfat, respectively, classified as Class I and Class II milk pursuant to § 971.41 (a) and (b) (1), (2), and (3) equals or exceeds the receipts of skim milk and butterfat, respectively, required to be reported pursuant to § 971.30, no skim milk or butterfat, respectively, shall be classified as Class II milk pursuant to § 971.41 (b) (4);

(b) Determine gross shrinkage of skim milk and butterfat, respectively, by subtracting the skim milk and butterfat, respectively, classified as Class I milk pursuant to § 971.41 (a) and (b) (1), (2), and (3) from the receipts of skim milk and butterfat, respectively, required to be reported pursuant to § 971.30;

(c) Prorate the quantities of gross shrinkage of skim milk and butterfat, respectively, which are not in excess of 2.5 percent of the sum of the quantities of skim milk and butterfat, respectively, used in the following computation, between:

(1) The skim milk and butterfat, respectively, contained in producer milk at such pool plant less the skim milk and butterfat, respectively, in fluid milk products transferred in bulk form to other pool plants;

(2) The skim milk and butterfat, respectively, in fluid milk products transferred in bulk to other pool plants, multiplied by .6;

(3) The skim milk and butterfat, respectively, in fluid milk products received in bulk from other pool plants, multiplied by .4; and

(4) The skim milk and butterfat, respectively, in other source milk received in the form of fluid milk products.

(d) The sum of the quantities of skim milk and butterfat, respectively, com-

puted pursuant to paragraph (c) of this section shall be classified as Class II milk.

§ 971.46 *Allocation of skim milk and butterfat classified.* After making the computations pursuant to § 971.44 the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler each month as follows:

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

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk assigned to producer milk pursuant to § 971.45 (c) (1) (2) and (3);

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

(3) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from the pool plants of other handlers according to the classification of such products as determined pursuant to § 971.43 (a);

(4) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

(5) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph and if the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class II. Any amount of excess so subtracted shall be called "overage."

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

(c) Determine the weighted average butterfat content of producer milk remaining in each class computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 971.50 *Basic formula price.* The basic formula price shall be the highest of the prices per hundredweight as determined by the market administrator pursuant to paragraph (a), (b), or (c) of this section, rounded to the nearest tenth of a cent:

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

Company and Location

Borden Co., Mount Pleasant, Mich.
Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., Hudson, Mich.
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 as follows:

(1) Multiply the Chicago butter price by 6;

(2) Add 2.4 times the arithmetical average of the prices determined per pound of "Cheddars" on the Wisconsin Cheese Exchange at Plymouth, Wisconsin, for the trading days that fall within such month as published by the Department;

(3) Divide by 7 and to the resulting amount add 30 percent; and

(4) Multiply the amount computed in subparagraph (3) of this paragraph by 3.5.

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

(1) Multiply the Chicago butter price by 4.2; and

(2) From the simple average, of the weighted average of 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 by the Department for the period from the 26th day of the immediately preceding month through the 25th day of the current month, deduct 5.5 cents and multiply the result by 8.2.

§ 971.51 *Class I milk prices.* Subject to the provisions of § 971.53, the price to be paid by each handler f. o. b. his pool plant for producer milk which is classified as Class I milk during the month shall be computed by the market administrator as follows:

(a) Add $1.20 to the basic formula price for the month immediately preceding, and add or subtract a "supply-demand adjustment" computed as follows:

(1) Divide the total gross volume of Class I milk (less Class I transfers of fluid milk products between pool plants and less bulk sales of Class I milk in excess of 1,000 pounds during each month by each handler to nonpool plants) in the second and third months preceding by total receipts of producer milk for the same months, multiply the result by 100, and round to the nearest whole number. The result shall be known as the current supply-demand percentage.

(2) Compute a net deviation percentage by subtracting from the current supply-demand percentage computed pursuant to subparagraph (1) of this paragraph, the base period ratio shown below:

Month for which price is being computed	Months used to compute ratio	Base period ratio (percent)
January	October and November	81
February	November and December	81
March	December and January	79
April	January and February	77
May	February and March	76
June	March and April	74
July	April and May	69
August	May and June	64
September	June and July	69
October	July and August	74
November	August and September	80
December	September and October	81

(3) Determine the amount of the supply-demand adjustment from the following schedule:

If net deviation percentage is—	*Supply-demand adjustment is—*
+12 or over	+38
+9 or +10	+28
+6 or +7	+20
+3 or +4	+10
+1 or −1	0
−3 or −4	−10
−6 or −7	−20
−9 or −10	−28
−12 or under	−38

When the difference from the base period Class I utilization percentage does not fall within the tabulated brackets, the adjustment shall be determined by the adjacent bracket which is the same as or nearest to the bracket used in the previous month.

§ 971.52 *Class II milk prices.* Subject to the provisions of § 971.53, the price to be paid by each handler f. o. b. his plant for producer milk which is classified as Class II milk during the month shall be computed by the market administrator as follows:

(a) Multiply the Chicago butter price by 4.2 for each of the months of March through August and by 4.27 for each of the other months of the year.

(b) Add the value of skim milk computed as follows: (1) Subtract 5.5 cents, from the arithmetic average of the carlot prices per pound of roller process nonfat dry milk solids for human consumption, at Chicago, as reported by the Department for the weeks ending within such month, (2) multiply the result by 8.2, and (3) subtract therefrom 20 cents for each of the months of March through August.

§ 971.53 *Butterfat differentials to handlers.* For milk containing more or less than 3.5 percent butterfat, the class prices for the month calculated pursuant to §§ 971.51 and 971.52 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the Chicago butter price for the preceding month by 0.127.

(b) *Class II price.* (1) Divide the value computed for butterfat pursuant to § 971.52 (a) by 3.5, (2) subtract the value computed for skim milk pursuant to § 971.52 (b), divided by 96.5, and (3) divide the remainder by 10.

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

§ 971.60 *Computation of value of milk for each handler.* The value of producer milk received during each month by each handler shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of producer milk in each class by the applicable class price and add together the resulting amounts;

(b) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 971.46 (a) (5) and the corresponding step of (b) by the applicable class prices;

(c) Subtract, for each hundredweight of butterfat contained in producer milk which was classified in Class II milk pursuant to § 971.46 and which was used to produce butter during the month in a pool plant or transferred in the form of bulk fluid cream to a pool plant or a nonpool plant and used to produce butter in such plant, the difference between the value computed for butterfat pursuant to § 971.52 (a) divided by .035 and the Chicago butter price multiplied by 120, less $5.00 for each of the months of March through August and less $3.60 for each of the other months of the year;

(d) Add the amount obtained in multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of producer milk classified in Class II less shrinkage during the preceding month, or the hundredweight of milk subtracted from Class I pursuant to § 971.46 (a) (4) and the corresponding step of § 971.46 (b), whichever is less; and

(e) Add or subtract, as the case may be, any amount necessary to correct any errors discovered by the market administrator in the verification of reports or payments of such handler for any previous month which result in payments due the producer-settlement fund or the handler.

§ 971.61 *Notification.* On or before the 12th day after the end of each month the market administrator shall notify each handler of the value of his milk for such month as computed in accordance with § 971.60 and of the amount by which such value is greater or less than the total amount required to be paid by such handler pursuant to § 971.70.

§ 971.62 *Computation of uniform prices.* For each month the market administrator shall compute the uniform price per hundredweight for producer milk, of 3.5 percent butterfat content, at pool plants as follows:

(a) Combine into one total the values computed pursuant to § 971.60 for all handlers, except those of handlers who failed to make payments required pursuant to §§ 971.70 through 971.74 for the preceding month;

(b) Subtract for each of the months of April, May, June and July an amount computed by multiplying the total hundredweight of producer milk for such month by 20 cents in April, 35 cents in May and June, and 30 cents in July;

(c) Add for the month of September 20 percent of the obligated balance in the producer-settlement fund pursuant to § 971.73 (b) on August 31, immediately preceding, add for each of the months of October and November 30 percent of the fund and add for the month of December the remaining 20 percent of the fund, except in 1956, add for each of the months of October, November and December an amount computed by dividing the total amount of the obligated balance in the producer-settlement fund pursuant to § 971.73 (b) on September 20, 1956 by three;

(d) Add an amount representing not less than one-half the unobligated balance in the producer-settlement fund;

(e) Substract, if the weighted average butterfat test of all producer milk 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 difference between such weighted average butterfat test and 3.5 by the butterfat differential computed pursuant to § 971.72;

(f) Divide by the hundredweight of pooled milk; and

(g) Subtract not less than 4 cents nor more than 5 cents.

PAYMENTS

§ 971.70 *Time and method of final payment.* Each handler shall pay on or before the 17th day after the end of each month to each producer for all milk received from such producer during such month at not less than the uniform price computed pursuant to § 971.62, subject to the butterfat differential computed pursuant to § 971.72 and less the amount of the payment made pursuant to § 971.71: *Provided,* That a total amount not less than the sum of the amounts payable to individual producers from which a cooperative association has received written authorization to collect payment shall be paid to such association on or before the 16th day after the end of such month.

§ 971.71 *Partial payments.* On or before the 27th day of each month each handler shall make payment to each producer, except as set forth in paragraph (b) of this section, for all milk received from such producer during the first 15 days of such month. Prices at which such payment shall be made shall be computed quarterly to be applicable to payments to be made in January through March, April through June, July through September, and October through December on the basis of the uniform price for the month immediately preceding the beginning of the quarter as follows:

If the uniform price for the preceding month is—	*Partial payment per hundredweight shall be—*
Under $1.00	$0.00
$1.00–$1.99	.50
$2.00–$2.99	1.00
$3.00–$3.99	2.00
$4.00–$4.99	3.00
$5.00–$5.99	4.00
$6.00–$6.99	5.00
$7.00 or over	6.00

Provided, That a total amount not less than the sum of the amounts payable to individual producers from which a cooperative association has received written authorization to collect payment shall be paid to such association on or before the 26th day of such month.

§ 971.72 *Butterfat differential.* For each month the market administrator shall compute to the nearest one-tenth cent a butterfat differential by multiplying the Chicago butter price by 0.12.

§ 971.73 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" which shall function as follows:

(a) All payments made by handlers pursuant to § 971.74 shall be deposited in this fund, and all payments made to handlers pursuant to § 971.75 shall be made out of this fund: *Provided,* That the market administrator shall offset any such payment due any handler against payments due from such handler;

(b) All amounts subtracted pursuant to § 971.62 (b) shall be deposited in this fund and shall remain therein as an obligated balance until it is withdrawn for the purpose of effectuating § 971.62 (c); and

(c) The difference between the amount added pursuant to § 971.62 (d) and the total amounts resulting from the subtraction pursuant to § 971.62 (g) shall be deposited in, or withdrawn from, this fund, as the case may be to effectuate § 971.62 (d) and (g).

§ 971.74 *Payments to the producer-settlement fund.* On or before the 14th day after the end of each month, each handler shall pay to the market administrator the amount by which the total value of his milk for such month is greater than the sum required to be paid by such handler pursuant to § 971.70.

§ 971.75 *Payments out of the producer-settlement fund.* On or before the 16th day after the end of each month the market administrator shall pay to each handler the amount by which the sum required to be paid producers by such handler pursuant to § 971.70 is greater than the total value of the milk of such handler for such month: *Provided,* That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. No handler who, on the 16th day after the end of any month, has not received full payment for such month from the market administrator pursuant to this section shall be deemed to be in violation of § 971.70 if he reduces his payments per hundredweight thereunder by not more than the amount of the reduction in payment from the market administrator.

§ 971.76 *Adjustment of errors.* Whenever verification by the market administrator of the payment by a handler to a producer or to an association of producers, pursuant to § 971.70 or § 971.71, discloses payment of less than is required, the handler shall make up such payment not later than the time for making payment pursuant to § 971.70 or § 971.71 next following such disclosure.

§ 971.77 *Expense of administration.* As his pro rata share of the expense incurred pursuant to § 971.22 (c), each handler shall pay to the market administrator, on or before the 14th day after the end of each month, 2 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, with respect to receipts during such month of:

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

(b) Other source milk allocated to Class I milk pursuant to § 971.46 (a) (2).

§ 971.78 *Marketing services*—(a) *Deductions.* Except as set forth in paragraph (b) of this section, each handler shall deduct an amount not exceeding 6 cents per hundredweight, or such lesser amount as the Secretary from time to time may prescribe, from the payments made pursuant to § 971.70, with respect to all milk received by such handler during each month from producers (not including such handler's own production) and from associations of producers, and shall pay such deductions to the market administrator on or before the 14th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples, and tests of such milk received by handlers and to provide such producers and associations of producers with market information, such services to be performed in whole or in part by the market administrator or by an agent engaged by him and responsible to him.

(b) *By cooperative associations.* In the case of producers for whom a cooperative association is actually performing as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may have been authorized by such producers and, on or before the 16th day after the end of the month, pay over such deductions to the cooperative association rendering such services.

MISCELLANEOUS PROVISIONS

§ 971.90 *Application of provisions.* Sections 971.50 through 971.94 shall not apply to a producer-handler.

§ 971.91 *Effective time.* The provisions of this part, or any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to § 971.92.

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

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

(b) The market administrator, or such other person as the Secretary may designate, shall (1) continue in such capacity until discharged by the Secretary, (2) from time to time account for all receipts and disbursements, and when so directed by the Secretary, deliver all funds or property on hand, together with the books and records of the market administrator, or such person, to such person as the Secretary may direct, and (3) if so directed by the Secretary, execute such assignments or other instruments nceessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant hereto.

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

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

§ 971.96 *Separability of provisions.* If any provision of this part, or the application thereof to any person or circumstances, is held invalid, the remainder of the part, and the application of such provision to other persons or circumstances, shall not be affected thereby.

§ 971.97 *Termination of obligations.* The provisions of this section shall apply to any obligation under this part for the payment of money irrespective of when such obligation arose, except an obligation involved in an action instituted before August 1, 1949, under section 8c (15) (A) of the act or before a court.

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

(1) The amount of the obligation;

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

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

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

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

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

Filed at Washington, D. C. on this 24th day of September 1956.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Doc. 56-7801; Filed, Sept. 26, 1956; 8:51 a. m.]

[7 CFR Part 980]

[Docket No. AO-182-A6]

MILK IN TOPEKA, KANS., MARKETING AREA

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

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was conducted at Topeka, Kansas, on July 10 and 11, 1956, pursuant to notice thereof which was issued on June 20, 1956 (21 F. R. 4517).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on September 12, 1956, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding. The notice of filing such recommended decision and opportunity to file written exceptions thereto was published in the FEDERAL REGISTER on September 15, 1956 (21 F. R. 6973).

Issues considered. The material issues considered at the hearing were concerned with the following:

1. Extension of the marketing area;
2. Definition of pool plants;
3. Location adjustments;
4. Base-rating provisions; and
5. The Class II price.

Findings and conclusions. The following findings and conclusions are based on the evidence received at the hearing and the record thereof:

1. *Marketing area.* The Topeka, Kansas, marketing area should be extended to include all of Lyon County, in which Emporia is the county seat and largest city.

There is very extensive competition between Topeka and Emporia handlers in the sale of milk. Two of the three handlers whose plants are located at Emporia have been the successful bidders on contracts within the Topeka marketing area. During the period July 1954 through March 1955, this contract business was so extensive that at each of the plants it accounted for more than 25 percent of their total receipts of Grade A milk (more than 20 percent in March 1955), thus qualifying them as Topeka pool plants during the 9-month period. During the months of April through December 1955, the operators of these two plants still retained sufficient contract business to qualify as handlers under the Topeka order but not as pool plants.

Some Topeka handlers also have extensive sales in Emporia and Lyons Counties. One of them maintains a distributing point in Emporia from which wholesale and retail routes are operated throughout the county and into such additional territory as can more conveniently be served from the Emporia distributing point than from the bottling plant at Topeka.

The two groups of handlers also compete extensively with each other in sales territory outside of Shawnee or Lyon Counties including competitive bidding on the large contracts for Fort Riley, near Manhattan, Kansas.

In view of such extensive direct competition, the two groups of handlers should be on a strictly comparable basis in their purchase of milk from producers. Their supplies of milk should be classified in accordance with use and priced uniformly. A great majority of the producers shipping Grade A milk to the three distributors in Emporia are members of an unincorporated cooperative association. This association actively supported expansion of the order to include Lyon County. The Topeka procurement area almost entirely overlaps the Emporia milkshed and extension of the order would assure producers of the same uniform price regardless of the particular handlers to which they deliver their milk. The producers delivering to Emporia plants would also participate in the same seasonal incentive (the base and excess plan), have the same services of checking weights and tests, and have the same access to complete market information as provided under the present order to producers delivering to Topeka plants.

A proposal that Morris County, Kansas, be included in the marketing area was not supported at the hearing and that county should not be included in the marketing area.

2. *Pool plants.* Under the present Topeka order, only distributing plants are defined as pool plants. Distributing plants are those at which milk is received from producers, pasteurized, and bottled and from which the bottled milk is distributed to wholesale and retail customers. In most of the medium-sized cities of the country these are the only types of milk plants involved in the distribution of fluid milk.

In the larger metropolitan areas, however, the milksheds have become too extensive for farmers to deliver their milk directly to city plants. Instead, it is more economical for the milk to be assembled at country points, cooled, and shipped to the distributing plants in tank truck lots. It is also common for these country supply plants to be equipped with manufacturing facilities. The daily and seasonal surpluses of milk not needed for bottling can then be processed at the country plants instead of being transported into the distributing plants.

There is now such a supply plant serving the Topeka market. It supplies milk to a distributing plant whose supply of direct-delivered milk is far short of its bottling needs. The country supply plant furnishes milk to the distributor whenever it is needed. Commonly, of course, the supply plant milk is called upon most extensively during the late summer and fall months when production is seasonably low. If a substantial volume of such plant's supply of milk is called in by the distributing plant during the fall months, the supply plant should be considered as a regular part of the market supply. Those producers should participate in the equalization pool throughout the year. At the hearing extensive consideration was given to providing objective standards in the order for determining whether a supply plant was sufficiently associated with the market through its performance to become fully regulated under the order and to participate in the marketwide pool. The experience of the supply plant which is already serving the market was described in some detail and furnishes a valuable guide to the development of standards. However, it is essential that the standards accommodate any other supply plant operations which may become closely associated with the market in the future.

A supply plant should qualify as a year-round pool plant if 50 percent of its available supply is shipped to distributing plants in each of the months of August through December. These are the months of shortest supply in the Topeka market and are, therefore, the months in which distributing plants would be most likely to require milk from supply plants. Producers proposed that July be included as one of the qualifying months. It has been a shortage period in recent years, but is still a base-operating month and producers testified that, in their judgment, it should remain in that category. Accordingly, it should not be included in the supply plant qualification period. Since the hearing was not held early enough to permit an amendment to be effective throughout the 1956 shipping period, the requirement should apply only from the effective date of the order through December 31 of 1956 and to the entire August-December period in subsequent years. It was testified that the supply plant presently serving the market would probably ship 70 percent or more of its available supply in each of the specified months. However, the increasingly common practice of bottling milk only 5 or 6 days per week and unforeseeable fluctuations in Class I sales and, more particularly, in receipts from producers would make it exceedingly difficult for a country plant to average so high a rate of shipment in each of the specified months. A 50 percent standard will assure the market that any supply plant which qualifies thereunder will, in fact, be a major supplier to distributing plants.

Any supply plant should qualify as a pool plant in the first month in which it ships 50 percent of its available supply. Commonly, any new supply plant would become associated with the market during one of the fall months, but it is entirely conceivable that rearrangement of receiving facilities could occur even during the months of flush production. It is, therefore, provided that the supply plant qualify for the first and each succeeding month that it ships the 50 percent, but that it would not stay qualified without making shipments during the flush months unless it had been part of the market supply during the preceding short months.

The shipping percentages are computed on the basis of the "available" supply. The operator of the supply plant currently serving the Topeka market with bulk milk also has a sizeable bottling and distribution operation in local areas outside of the Topeka marketing area. The volume of such sales is, of course, fairly constant throughout the year and the quantity of milk so disposed of is not, as a practical matter, available to Topeka distributors. The bottling of milk for local sale is a rather common operation at supply plants. These sales would be reported as Class I utilization and would be fully subject to the order. Such sales should be deducted from the total receipts of milk at a supply plant to determine the total quantity which is available for the Topeka market. The quantities shipped to Topeka distributors should then be divided by the available supply rather than by the total supply to determine whether the 50 percent requirement has been met.

On the other hand, this particular supply plant has also sold bulk supplemental

milk to distributors at plants in Texas and other markets outside of Topeka. The purpose of the supply plant definition is to determine whether any given operation is primarily associated with Topeka or with some other market. Obviously, any plant which ships more of its available bulk supply of milk to Texas or other markets than to Topeka cannot logically be considered a part of the Topeka supply and should not be carried in the Topeka pool during the succeeding flush period.

It was further proposed that supply plant shipments be directly related to the need for Class I milk at the distributing plant through an allocation procedure. It appears, however, that the present standards for distributing plants provide a degree of Class I identification. The order now requires that a distributing plant must keep 50 percent of its total receipts in Class I during the months of July through February and 40 percent during the months of March, April, May and June in order to qualify as a pool plant. This requirement should be broadened to include not only the milk received at the distributing plant directly from producers' farms but also that shipped in from supply plants. Another safeguard against the possibility that country plants will ship milk without regard to Class I needs, merely to participate in the marketwide pool, is provided by denying a location adjustment on milk shipped in excess of Class I use.

The addition of a supply plant definition does not significantly affect those provisions of the order relating to unpriced milk. These now provide that if other source milk is received at a pool plant and allocated to Class I, there will be compensatory payments except in circumstances when producer milk is not available. In the past, during the months when supplemental milk has been obtained by handlers, producer milk has not been available, and compensatory payments have not been assessed. The nearby plant which has performed a supply plant function has furnished milk to a distributing plant under these circumstances. If this plant, or others performing similar functions, qualify as pool plants, their total supply of milk will be priced.

Review of the order provisions relating to pool plant definitions and unpriced milk disclose that if supplemental milk was received from a plant regulated under another Federal order and allocated to Class I, it would be subject to any compensatory payments which might apply. Apparently such a situation has not arisen, but it should be provided for. Since such milk would already have been priced under the original order in accordance with use, no further payment should be assessed. This can be accomplished by providing a separate step in the allocation provisions for milk from sources regulated under another order and by specifically exempting from compensatory payments any of such milk as may be classified as Class I under the Topeka order.

At present, the definitions of "approved dairy farmer" and "approved plant" refer both to health standards and to physical operations in the distribution of milk in the marketing area. Further operational requirements are then specified in the "pool plant" and "handler" definitions. In revising these latter definitions, it appears administratively desirable to confine the approved definition to health standards and to cover the standards for physical operations in the handler and pool plant definitions.

3. *Location adjustments.* Location adjustments are not provided for under the present Topeka order. Until recently, the procurement, bottling, and sale of milk was carried on exclusively by distributing plants located in or near the marketing area and location adjustments were not applicable. Only these distributing plants were defined as pool plants.

The development of supply plants makes it necessary to consider location adjustments, since such facilities are commonly located at considerable distances from the market. It is also widely recognized that distributing plants are serving much wider sales territories than they did a few years ago. It is quite possible that milk may be distributed directly in the Topeka marketing area from plants located at substantial distances from the market. If so, a location adjustment should be allowed in order to equalize the cost of such milk, at the marketing area, with the cost of milk to handlers whose plants are physically located in the area.

The location adjustments to handlers should be at the same rates as the location adjustments provided under the Kansas City order. Kansas City is the closest other Federal order market and hauling conditions are approximately the same in the two areas. The Kansas City rates appropriately reflect transportation costs.

One modification which should be made in the Kansas City location adjustment structure is occasioned by extension of the Topeka marketing area to include Lyon County and the City of Emporia. Distances should be measured from the City Hall in Emporia or in Topeka, whichever is closer.

The location adjustment to handlers should apply only on milk utilized for Class I purposes. In the case of bulk milk transferred from a supply plant to a distributing plant, an allocation procedure is necessary to determine what proportion of milk so transferred can be considered as having been used for Class I purposes at the distributing plant. This can be accomplished by deducting from the distributing plant's total Class I use the quantity of milk received at such plant directly from producers' farms. The remaining Class I utilization would be assigned to the milk received from supply plants. In case a distributing plant receives milk from more than one supply plant, the milk received from the nearest location would be assigned first to the Class I use.

The location adjustments to producers should be at the same rates as to handlers, but should apply to all the milk delivered by producers to any plant at which the location adjustments apply. Producers delivering milk to supply plants are pooled throughout the year, even though their milk may physically be received in the market only during the summer and fall months. Whenever the milk is physically needed, transportation charges are incurred for the haul from the distant plant to the marketing area. It follows that its potential value to the market, whether or not it is physically moved, is reduced by the amount of the location adjustment.

4. *Base-rating.* The order should not be amended to provide a base for producers entering the market after the base-setting months of September through December. A handler proposed that producers entering during any of the base-operating months of January through July be provided a base proportionate to the market average percentage of base deliveries.

In all markets where new producers are allowed to establish bases, old producers (those who had established bases during the regular base-setting months) are allowed to relinquish their old bases and establish new ones under the same conditions as apply to new producers. This is done in the interest of equity since old producers may have changed their operations or recovered from some adversity which prevailed during the base-setting period to an extent that they are almost as much new shippers as producers who had not previously been associated with the market. At the Topeka hearing, producers testified that a new producer provision coupled with one for relinquishing old bases would greatly reduce the effectiveness of the base plan in leveling production.

The extensive intermingling of Topeka and Kansas City shippers must also be considered in this connection. The base-rating plans in the two markets are now identical. Any substantial change in the operation of the plan, particularly in the smaller of the two markets, might seriously disrupt competitive relationships and affect the relative supply of milk in the two markets.

The base-rating provisions should be changed, however, to accommodate shippers to any plants which may qualify as pool plants this fall. This can be accomplished in the same fashion as bases were established in the fall of 1954 when these provisions of the order first became effective. Producers shipping to newly qualified pool plants should be permitted either to establish bases on their deliveries during the period from the effective date of the amending order through December 1956 or to have a base computed from verifiable delivery records for the entire period September through December 1956.

5. *Class II price.* Producers testified that they did not consider the present Class II price provisions of the order appropriate to the marketing area as proposed to be extended.

The most obvious deficiency concerns the list of local manufacturing plants on which the Class II price has been based. One of the three plants has discontinued operations entirely. Another plant is operated in conjunction with a Grade A receiving station which is a regulated supply plant under the Kansas City order. The third plant is operated by the major handler under the Topeka order.

In addition to its manufacturing plant at Topeka, this handler also maintains a receiving station at Emporia which frequently accepts surplus milk from fluid handlers in that locality in addition to milk from ungraded shippers. This milk is then transported to the Topeka plant for processing.

There are manufacturing plants in Kansas which are not associated with fluid milk operations under Federal orders, and the local plant price should be based upon a representative number of such plants. Three such plants are already used for similar purposes under other Federal orders. These are the Borden Company plant at Ft. Scott, Kansas; the Pet Milk Company plant at Iola, Kansas; both condenseries; and the Arkansas City Cooperative Milk Association plant at Arkansas City, Kansas, a plant which specializes in the manufacture of butter and nonfat dry milk. Other plants which appear appropriate for this use include the Carnation Company plant at Girard, Kansas, a condensery, and the Swift and Company plant at Parsons, Kansas, which specializes in the manufacture of American cheese.

The Class II price should be strengthened by using a butter-powder formula as an alternative to the local plant price during the months of lowest production, August through January. To date, the Topeka handlers do not appear to have acquired supplies in excess of Class I needs. During 1955, substantial quantities of milk were imported for Class I purposes in the months of September, October, and November. However, either the present handlers or the prospective new ones may in the future be encouraged to build up Grade A supplies in excess of bottling needs if Class II prices are too low in relation to the values of the resulting products.

One indication that the local plant prices are not fully representative of the value of milk for Class II uses during the short season is that they have been substantially lower than those prevailing in nearby markets. The Kansas City Class II price for the 6 months of low production (September through February in that market) are established by the basic formula price. During the period September 1955 through February 1956 they averaged 35.7 cents above the Topeka Class II price. In the Wichita and Southwest Kansas markets, the Class II price is the average price paid at manufacturing plants throughout the United States. In the same 6-month period these averaged 10.5 cents higher than Topeka. For the 12-month period March 1955 through February 1956 the Topeka Class II price averaged 21.6 cents below the Kansas City price and 10.3 cents below Wichita and Southwest Kansas. Clearly, the Topeka Class II prices are substantially below those applying to similar uses in adjacent Federal order markets and below the U. S. average price for manufacturing grade milk.

Another indication that the Class II price does not fully reflect manufacturing values is the payment by manufacturing plants of premiums over the reported prices on which the Class II price is based. A research study by the U. S. Department of Agriculture, cited at the hearing, disclosed that during the years 1951 through 1953 supplemental payments were substantial. They consisted mainly of hauling subsidies and quality payments. It was testified that the latter are still in effect. Also, it was pointed out that these premiums are of such magnitude that producers can gain a price advantage by marketing their excess milk directly at manufacturing plants rather than through their regular handlers.

In the months of August through January, only a comparatively small proportion of Topeka receipts are utilized for Class II purposes. In the period August 1955 through January 1956 the percentage of producer milk in Class II ranged from lows of 2 percent in August and September to a high of 26 percent in January and averaged 16 percent. During these months a substantial portion of such producer milk as is classified as Class II is utilized for cottage cheese or ice cream in the handler's plants. It is commonly recognized that milk for these uses commands a premium over milk for other manufacturing uses. For example, in mid-June 1956, a plant at Emporia was paying 31 cents per hundredweight over the Topeka Class II price for milk for use in the manufacture of ice cream. Moreover, during this period, there is little or no need to incur the expense of transporting surplus milk from handlers' plants to manufacturing plants for processing.

The butter-powder formula should be computed by subtracting 3 cents from the price of 92-score butter at Chicago, adding a 20 percent yield factor, multiplying by 3.8, the standard test of milk, and adding a value of the nonfat portion obtained by deducting 5.5 cents from the average prices of spray and roller process nonfat dry milk at Chicago area plants and multiplying by a yield factor of 7. This formula does not result in as high a level of prices as that proposed by producers. However, from August 1955 through January 1956 it would have increased the Class II price by an average of 21.2 cents per hundredweight. In view of the available outlets for Class II milk, it is concluded that the increases provided herein are appropriate to conditions as they exist in the market at this time.

The local plant price should be used during the months of February through July and the butter-powder alternative should be applied during the remaining months of August through January. The February through July period is the same as that used for operation of the base-excess plan. Producers specifically testified that the base-operating months should not be changed. It is noted, however, that the records of receipts and utilization for recent years shows that July through December are the 6 months of lowest supply in relation to sales and that January through June are the months of highest production. If interested parties in the market consider it likely that July will continue to be one of the short months instead of one of the months of flush production, it would be appropriate to change the months of the base-operating period, those applying to pool plant qualification, and those in which the butter-powder price is part of the Class II formula.

General findings. (a) The proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

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

(c) The proposed order, as amended, and as hereby proposed to be further amended, 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. Within the period reserved for filing exceptions to the recommended decision, exceptions were submitted on behalf of interested parties. These exceptions have been fully considered and to the extent to which the findings and conclusions of this decision are at variance with the exceptions, such exceptions are hereby overruled.

Determination of representative period. The month of July 1956, is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order amending the order, as amended, regulating the handling of milk in the Topeka, Kansas, marketing area, in the manner set forth in the attached amending order, is approved or favored by producers, as defined in the order, as amended, and as proposed hereby to be further amended, who during such representative period were engaged in the production of milk for sale in the marketing area as defined in the order, as amended, and as proposed hereby to be further 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 Topeka, Kansas, Marketing Area, and Order Amending the Order, as Amended, Regulating the Handling of Milk in the Topeka, Kansas, 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 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 24th day of September 1956.

[SEAL] EARL L. BUTZ,
Assistant Secretary.

Order[1] Amending the Order, as Amended, Regulating the Handling of Milk in the Topeka, Kansas, Marketing Area.

§ 980.0 *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 all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Topeka, Kansas, on July 10 and 11, 1956, upon certain proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Topeka, Kansas, 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 resonable 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;

(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;

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expenses of the market administrator for the maintenance and functioning of such agency will require the payment by each handler as his pro rata share of expense, 2 cents per hundredweight, or such amount not exceeding 2 cents per hundredweight, as the Secretary may prescribe with respect to all milk received during such delivery period from approved dairy farmers.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Topeka, Kansas, 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 as set forth below:

1. Revise § 980.5 to read as follows:

§ 980.5 *Topeka, Kansas, marketing area.* The "Topeka, Kansas, marketing area", hereinafter called the "marketing area", means the cities of Topeka and Emporia, and all of the territories included within the counties of Shawnee and Lyon, all in the State of Kansas.

2. Revise § 980.6 to read as follows:

§ 980.6 *Approved dairy farmer.* "Approved dairy farmer" means any person who delivers to an approved plant milk:

(a) Approved under a permit or rating issued by the health authority of any municipal or State government for the production of milk to be disposed of as Grade A milk; or

(b) Acceptable to agencies of the United States Government for fluid consumption in its institutions or bases as Type I; Type II, No. 1, or Type III, No. 1.

3. Revise § 980.8 to read as follows:

§ 980.8 *Approved plant.* "Approved plant" means any milk plant or portion thereof which is:

(a) Approved by the health authority of any municipal or State government for the handling of milk for consumption as Grade A milk in the marketing area; or

(b) Approved for the supplying of milk to any agency of the United States Government located within the marketing area.

4. Revise § 980.9 to read as follows:

§ 980.9 *Pool plant.* A "pool plant" shall be any plant meeting the conditions of paragraph (a) or (b) of this section, except the plant of a producer-handler:

(a) Any approved plant, hereinafter referred to as a "distributing plant", from which during the month the quantity of milk disposed of as Class I milk on a route(s) in the marketing area is equal during April, May, June, or July to 20 percent of the receipts at such plant of milk from approved dairy farmers or from other approved plants, or during August through March to 25 percent of such receipts: *Provided*, That the total quantity of milk disposed of as Class I milk on routes from such plants is equal during April, May, June, or July to 40 percent of the receipts at such plant of milk from approved dairy farmers or from other approved plants, or during August through March to 50 percent of such receipts; or

(b) Any approved plant, hereinafter referred to as a "supply plant," from which, during the month not less than 50 percent of its supply of milk from approved dairy farmers, less any milk regularly disposed of as Class I on routes moved to a distributing plant(s): *Provided*, That any supply plant which has shipped to a distributing plant(s) the required percentage of its supply of milk from approved dairy farmers during each of the months of October, November, and December 1956, and, in subsequent years, during each of the months of August through December, shall be a pool plant for each of the following months of January through July.

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

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

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

5. Revise § 980.10 to read as follows:

§ 980.10 *Handler.* "Handler" means (a) any person in his capacity as operator of a pool plant, (b) any person who operates an approved plant from which Class I products are disposed of on a route(s) in the marketing area, or (c) any cooperative association with respect to the milk of any producer which such cooperative association causes to be diverted from a pool plant to another milk plant for the account of such cooperative association.

6a. Delete § 980.46 (a) (2) and substitute therefor the following:

(2) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in other source milk other than that to be subtracted pursuant to subparagraph (3) of this paragraph;

(3) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in other source milk received from a plant at which the handling of milk is fully subject to the pricing and payment provisions of another marketing agreement or order issued pursuant to the act;

b. In § 980.46 (a) change the designation of subparagraphs "(3)", "(4)", "(5)", and "(6)" to "(4)", "(5)", "(6)" and "(7)", respectively.

7. Revise § 980.50 (b) to read as follows:

(b) *Class II milk.* The price of Class II milk in delivery periods during the months of February through July shall be equal to the price specified in subparagraph (1) of this paragraph and

[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.

during the months of August through January shall be the higher of the prices specified in subparagraphs (1) and (2) of this paragraph:

(1) The average price ascertained by the market administrator to have been paid for ungraded milk of 3.8 percent butterfat content received during such delivery period at the following plants:

Present Operator and Location

Borden Co., Ft. Scott, Kansas
Carnation Co., Girard, Kansas
Pet Milk Co., Iola, Kansas
Arkansas City Cooperative Milk Association, Arkansas City, Kansas
Swift & Co., Parsons, Kansas; or

(2) A price equal to the sum of the plus values of the following computations:

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

(ii) From the simple average, as computed by the market administrator, of the weighted averages of carlot prices per pound for nonfat dry milk, spray and roller process, respectively, for human consumption, f. o. b., manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the United States Department of Agriculture, deduct 5.5 cents, and multiply by 7.

8. Add a § 980.52 as follows:

§ 980.52 *Location adjustments to handlers.* (a) For milk which is received from producers at a pool plant located more than 50 miles by shortest highway distance, as determined by the market administrator, from the City Hall in either Topeka or Emporia, whichever is closer, and which is classified as Class I milk the prices computed pursuant to § 980.50 (a) shall be reduced by 16 cents if such plant is located more than 50 miles, but not more than 70 miles from such city hall and by an additional one-half cent for each 10 miles or fraction thereof that such distance exceeds 70 miles.

(b) Milk moved in bulk from a supply plant as defined in § 980.9 (b) to a distributing plant as defined in § 980.9 (a) shall be considered to be Class I milk to the extent that the Class I milk disposed of from the distributing plant exceeds receipts of milk from producers' farms: *Provided*, That if milk is received by a distributing plant from more than one supply plant, the milk so classified as Class I shall be deemed to have been transferred from the supply plants in the order of their least distance from the applicable city hall.

9. Delete the proviso in § 980.66 (a) and substitute therefor the following: "*Provided*, That the daily base applicable during the delivery periods of February through July 1957 for producers delivering milk to any plant qualifying as a pool plant pursuant to § 980.9 shall be the higher of that resulting from such computation or that resulting from an identical computation with respect to milk received from such producer during the delivery periods from the effective date hereof through December 1956."

10. In § 980.81 delete the words "and subject to the butterfat differential set forth in § 980.82" and substitute therefor the following, "and subject to the butterfat and location differentials set forth in § 980.82."

11. Revise § 980.82 to read as follows:

"§ 980.82 *Producer butterfat and location differentials*—(a) *Butterfat differential.* In making payments pursuant to § 980.80, there shall be added to or subtracted from the uniform price for each one-tenth of one percent that the average butterfat content of milk received from the producer is above or below 3.8 percent, an amount computed by adding four cents to the simple average as computed by the market administrator of the daily wholesale selling price (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 United States Department of Agriculture during the delivery period, dividing the resulting sum by 10 and rounding to the nearest one-tenth of a cent.

(b) *Location differential.* For milk which is received from producers at a pool plant located more than 50 miles by shortest highway distance as determined by the market administrator, from the city hall in either Topeka or Emporia (whichever is closer), there shall be deducted 16 cents per hundredweight of milk if such plant is located more than 50 miles but not more than 70 miles from such city hall plus an additional ½ cent for each 10 miles or fraction thereof if such distance exceeds 70 miles.

Order of the Secretary Directing That a Referendum be Conducted Among the Producers Supplying Milk to the Topeka, Kansas, Marketing Area, 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, and as hereby proposed to be further amended, regulating the handling of milk in the Topeka, Kansas marketing area) who, during the month of July 1956, were engaged in the production of milk for sale in the marketing area specified in the aforesaid order to determine whether such producers favor the issuance of the order which is a part of the decision of the Secretary of Agriculture filed simultaneously herewith.

The month of July 1956 is hereby determined to be the representative period for the conduct of such referendum.

Edward L. St. Clair 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 20th day from the date this referendum order is issued.

Done at Washington, D. C., this 24th day of September 1956.

[F. R. Doc. 56-7802; Filed, Sept. 26, 1956; 8:51 a. m.]

[7 CFR Part 989]

[Docket No. AO 198-A3]

RAISINS PRODUCED FROM RAISIN VARIETY GRAPES GROWN IN CALIFORNIA

DECISION WITH RESPECT TO PROPOSED FURTHER AMENDMENT OF AMENDED 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.), (hereinafter referred to as the "act"), and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900; 19 F. R. 57), a public hearing was held at Fresno, California, on June 18 and 19, 1956, upon proposed further amendments to Marketing Agreement No. 109, as amended, and Order No. 89, as amended (20 F. R. 6435), regulating the handling of raisins produced from raisin variety grapes grown in California. Said amended marketing agreement and order are effective pursuant to the provisions of the act.

Upon the basis of the evidence adduced at the aforementioned hearing and the record thereof, the Deputy Administrator, Marketing Services, United States Department of Agriculture, on September 5, 1956, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding. Notice of such recommended decision, and opportunity to file written exceptions with respect thereto, was published in the FEDERAL REGISTER (21 F. R. 6832) on September 8, 1956. No exception to said recommended decision was filed.

Material issues. The material issues presented on the record of the hearing involve amendatory proposals relating to:

(1) Mail or telegraphic voting;

(2) Reconditioning off-grade raisins, including disposition of residual material, storage of off-grade raisins received for reconditioning, and establishment of necessary rules and procedures;

(3) Exemption of shipments or other dispositions of any packed raisins to which the established or prescribed minimum grade standards are not applicable, and modification of the minimum grade and condition standards for natural condition raisins;

(4) The reporting of inter-plant transfers of raisins;

(5) The recovery of raisins from residual raisins obtained in the processing of standard raisins or from any raisins acquired as standard raisins;

(6) The latest date on which the committee must make its recommendation

with respect to the free, reserve, and surplus percentages for any crop year;

(7) The procedure for allocating to handlers offers of surplus tonnage raisins for sale in export;

(8) The price at which reserve tonnage raisins may be offered to handlers, and sale of such raisins after the committee receives notice that the Secretary does not disapprove the making of an offer;

(9) Sale of surplus tonnage raisins after the committee receives notice that the Secretary does not disapprove the making of an offer;

(10) Payment to alternate members of the committee for expenses incurred in attending a meeting when the member also attends; and

(11) The making of such other changes in the order as may be necessary to make the entire order conform with the proposed amendments thereto.

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

(1) The provisions of § 989.52 (a) of the order, relating to voting by the committee, should be amended by deleting the requirement for 14 concurring votes to reach a decision on a mail or telegraphic vote and substituting therefor a provision that a unanimous vote of all selected and eligible members or alternates acting in the place and stead of members shall be required to reach a decision on such vote. Since the full committee membership consists of 14 members and their respective alternates, the present requirement for 14 concurring votes prevents the committee from voting by mail or telegraph if vacancies exist in both the member and the respective alternate position. The proposed amendment would enable the committee to vote in that manner when there is no assembled meeting even though vacancies should reduce the committee to less than its full membership. However, a negative vote by any member, or by an alternate acting for a member, would prevent the adoption of a proposition, as is the case under the present provisions regarding mail and telegraphic voting. The proposal would make it clear that the alternate may vote when a member is unavailable, the same as if the action were taken in an assembled meeting. It is intended that voting may be by mail or telegraph only on routine matters where no extended discussion is necessary and the committee is in complete agreement. Failure of any member or alternate to vote within a reasonable time (not to exceed 10 days) as stated in the balloting notice would raise a question as to complete agreement. Hence, such failure to vote should be held to be a dissenting vote.

(2) The provisions of § 989.58 (e) entitled "options as to off-grade natural condition raisins" should be amended by deleting the last two sentences thereof and substituting therefor other provisions which would: (a) Provide that any off-grade raisins (including stemmer waste and raisin offal) accumulated as a final residual by a handler in reconditioning raisins shall, during or after reconditioning has been completed, be disposed of by the handler, without further inspection, for distillation, animal feed or uses other than for human consumption; (b) require a handler to keep off-grade raisins received by him for reconditioning separate and apart from all other raisins until after the raisins have been reconditioned and the quality of raisins is established by inspection and certification; and (c) require the committee to establish, with the approval of the Secretary, such rules and procedures as may be necessary to insure adequate control over the reconditioning of off-grade raisins and the use of the residual off-grade raisins from such reconditioning operations.

The present provisions of the order permit a handler to return the residual material from reconditioning to the tenderer (or producer) of the off-grade raisins, or dispose of it without further inspection, for distillation, animal feed, or uses other than for human consumption. In the operation of the order, producers who have tendered off-grade raisins to handlers for reconditioning have not requested the return of the residual material. The producer might use such residual material which consists of extremely low grade raisins, stems, and possibly foreign matter for fertilizer or animal feed. Evidently, the value of this material for such purposes does not warrant the producer taking it back to the farm. If the residual matter should be returned to producers, it is possible that some of them would blend it with above-minimum quality raisins and then be able to deliver the resulting blend to handlers as standard raisins. This would be contrary to good sanitation and could subject the producer to having the raisins condemned or seized by the California State authorities as a violation of State food and sanitary rules and regulations. Therefore, in proposing that return of the residual matter to producers be prohibited, official notice is taken of such State rules and regulations. The proposed amendment would place complete responsibility on the handler for the disposition of the residual matter for use in the prescribed outlets.

It is intended that the handler may employ whatever procedures are necessary in reconditioning, other than blending with raisins received or acquired as standard raisins, to recover all of the raisins that can be properly certified as standard raisins, and that the final residual material be disposed of as stated. It should be made clear that a handler shall dispose of any final residual material in the prescribed outlets during or after the reconditioning process has been completed. He should be permitted to make such disposition during the reconditioning process so as to enable him to maintain desirable sanitation and better utilize available space in his plant.

The proposed amendment would not prevent a handler from returning to the tenderer any lot of off-grade raisins in the same form as received, or the standard raisins from any lot turned over to the handler for reconditioning. Whenever off-grade raisins are turned over to a handler for reconditioning, the handler and the person tendering the raisins would consider the value of the residual material in arriving at the terms of the agreement under which the reconditioning is to be done.

Experience during the past season also has demonstrated that no useful purpose is served by requiring lots of off-grade raisins received for reconditioning to be held by the handler separate and apart from each other, as required in the present provisions of the order. In practice, handlers often find it necessary to group together lots of off-grade raisins having similar defects so as to conserve storage space and provide units large enough so that the raisins can be reconditioned economically. The cost of stopping and starting the machinery for individual lots could make the reconditioning of off-grade raisins unprofitable. In most instances, the handler settles with the producer for off-grade raisins received for reconditioning on the basis of the total standard raisins which may be obtained from the lot as determined by the information disclosed on the inspection certificate. Hence, it is not necessarily required that handlers keep particular lots of off-grade raisins received for reconditioning separate from other lots of similar raisins in order to determine the actual out-turn of standard raisins from the lot. If a producer desires that any lot of off-grade raisins tendered to a handler for reconditioning be kept separate from other lots for any reason, he may make arrangements with the handler for having this done. By relieving the handler from the order requirement of separate storage by lots, control of quality would not be impaired, and the resulting lower cost of reconditioning in the larger units should be reflected in lower reconditioning costs to the producer.

The handler would still be required to keep off-grade raisins received for reconditioning separate and apart from all other raisins until the quality of the reconditioned raisins is established by inspection and certification. This would not preclude a handler from mixing final residual material from the reconditioning of off-grade raisins with similar material from his processing of raisins acquired by him as standard raisins, which are to be disposed of for distillation, animal feed, or uses other than for human consumption.

A provision should be added to § 989.58 (e) requiring the committee to establish, with the approval of the Secretary, such rules and procedures as may be necessary to insure adequate control over the reconditioning of off-grade raisins and the use of the residual material from such reconditioning operations. Although the order now authorizes the committee to make rules and procedures to effectuate the terms and provisions thereof, the added provision would require the committee to consider and establish, with the Secretary's approval, such rules and procedures as may be necessary in connection with the reconditioning of off-grade raisins.

(3) The provisions of § 989.59 (a) should be amended by adding a provision to make it clear that a handler is not prohibited from shipping or making

disposition of any raisins to which the minimum grade standards established by or pursuant to § 989.59 (a) or (b) are not applicable. Section 989.59 (a) prescribes U. S. Grade C, as defined in the effective United States Standards for Grades of Processed Raisins, as the minimum grade standards for packed raisins other than Layer Muscats and Zante Currants. For Layer Muscats and Zante Currant raisins, U. S. Grade B is prescribed. Section 989.59 (b) provides for modification of these minimum grade standards.

During the past season, there were instances of handlers desiring to ship certain new or unusual varietal packs of raisins for which applicable minimum grade standards had not been prescribed. These included, among others, packs of Soda Dipped Seeded (Valencia) raisins, and Unseeded, Uncapstemmed, Loose Muscat raisins. Soda Dipped raisins normally are unseeded, and Loose Muscat raisins normally are capstemmed. Such new or unusual varietal packs of raisins may be prepared to fill a special trade demand requiring raisins of good quality, and, in the absence of appropriate minimum grade standards under which they can be inspected, handlers should not be prevented from shipping them. The proposed amendment would enable handlers to ship such varietal packs of raisins without inspection until appropriate minimum grade standards can be established.

The question was considered at the hearing as to whether it would be desirable to amend § 989.97 (Exhibit B; minimum grade and condition standards for natural condition raisins) to include therein the changes of a relatively permanent nature which have been made in such standards during the 1955–56 crop year or to otherwise modify such standards in light of operations during such crop year. The only desirable change in this connection concerns lots of mixed varietal types. Growers sometimes have two or more varieties of grapes interplanted in the same vineyard. In these instances, the growers find it difficult or impossible to prevent commingling of different varietal types of raisins in the same container. Except in a few unusual situations, samples of the individual varieties can be drawn from the commingled raisins and the grade of each determined. To provide a basis for inspecting and certifying these commingled raisins, the first paragraph of § 989.97 should be amended by adding a provision that where the raisins in any lot consist of two or more varietal types commingled within their containers, the lot shall be considered as standard raisins if each varietal type in the lot meets the applicable minimum standards for that varietal type. Since Layer Muscat raisins and Natural (sun-dried) Muscat raisins are not readily distinguishable when commingled within a container, it should be provided that, in the event such raisins are commingled, the entire lot shall be considered as Natural (sun-dried) Muscat raisins and as standard raisins if the lot as a whole meets the minimum standards for Natural (sun-dried) Muscat raisins. Also, since the moisture content of all of the raisins in a container tends to equalize, it should be provided that, should the requirements with respect to moisture content differ as between two or more varietal types which are commingled, the lower (lowest) maximum moisture content requirement shall apply for each varietal type.

(4) The provisions of § 989.59 (e) relating to inter-plant and inter-handler transfers of free tonnage raisins should be amended to provide that transfers of raisins between plants owned or operated by the same handler need not be reported to the committee. The present provisions may be interpreted as requiring a handler who transfers raisins from one of his plants to another plant owned or operated by him to report the transfer. Reporting inter-plant transfers is an unnecessary burden to the handler and the information is not needed by the committee.

(5) The first sentence of § 989.59 (f) relating to disposition of off-grade raisins provides that any off-grade raisins (including stemmer waste and raisin offal) which may be received by a processor or accumulated by a handler by removing them from his standard raisins, and any raisins acquired as standard raisins by a handler which do not meet the applicable grade and condition standards for shipment or final disposition as raisins, shall be disposed of or marketed, without further inspection, for distillation, animal feed, or uses other than for human consumption. A question arose in the operation of the order as to whether these provisions preclude a packer from recovering raisins from any of such off-grade raisins, for shipment or disposition in normal trade channels if by further processing or reworking them they were made to meet the prescribed minimum grade standards. To clarify this situation, § 989.59 (f) should be amended by changing the period at the end of the first sentence to a colon and adding *"Provided*, That this shall not preclude a packer from recovering raisins from such accumulations or acquisitions."

Most handlers normally conduct their processing operations so as to pack several grades of raisins, the lowest of which would be equal to or better than the prescribed minimum grade. This is done to provide different trade outlets with the quality they desire. The raisins which remain from the processing to obtain raisins of high quality may fail to meet the prescribed minimum grade standards. By further processing, at least a part of these residual raisins may be made to meet the minimum grade standards. Also, a handler may hold raisins acquired by him as standard raisins, which have become off-grade. They may be raisins which had gone out of condition in trade channels and were returned to the handler, or raisins which were damaged while held by the handler. In his normal operations, the handler will process, reprocess, or rework these off-grade raisins, including the blending of them with standard raisins, if he finds that he can recover enough good raisins to make it profitable for him to do so. Prohibiting such recovery could cause financial hardship for the handler since he purchased such raisins as standard raisins. It is intended that the order should not interfere with a handler's normal operations in these respects. It is intended that a handler may ship in normal trade channels raisins which he obtains or recovers from raisins acquired as standard raisins if, after his final processing of them, they can be properly certified as meeting the prescribed minimum grade standards for shipment or final disposition.

Since food and sanitary regulations of city, county, state, federal or other agencies may apply to the handling of raisins, § 989.59 (f) should be amended also by adding a provision that this paragraph is not intended to excuse any failure to comply with all applicable food and sanitary rules and regulations of city, county, state, federal or other agencies having jurisdiction.

(6) The provisions of § 989.63 (a) should be amended by changing the date by which the committee's recommendations to the Secretary shall be made for the fixing of the initial free, reserve, and surplus percentages for any crop year from October 1 to October 5 of such year, with provision that this date may be extended by the committee not more than five days if warranted by a late crop. This change is proposed in order to permit the committee to have available more detailed information on which to base such recommendations. During the past year, the committee adopted a formula for arriving at the percentages that should be recommended. Information on production in the form of a raisin lay report normally is expected to be received by the committee from the California Crop and Livestock Reporting Service by October 1 of each year, on the basis of agreements with such agency. Approximately five days are required for the board and the committee to consider the latest available information, including the raisin lay report, and for the committee to formulate and submit to the Secretary its recommendation on free, reserve, and surplus percentages. However, in unusual seasons the grape crop may be so late in maturing that it would be impracticable for a reliable estimate of raisin production to be made by October 1. To provide for such an eventuality, provision should be made for the committee to extend the date for making its recommendation on the fixing of volume percentages not more than five days beyond October 5 if warranted by a late crop.

The date on which the committee makes its recommendation on volume percentages should be the earliest date possible with proper consideration of all available information concerning raisin production. In some years it may be practicable for the committee to make its recommendation before October 5. Only in the most unusual situations would it be necessary for the recommendation to be delayed beyond October 5. The committee's recommendation must be made as soon as practicable because raisin producers and handlers need to know what the free, reserve, and surplus percentages will be for the crop year so that field prices for raisins may be

established and the season's trade in raisins begun.

(7) The first sentence of § 989.66 (e) (4) now provides that each handler's share of an offer of surplus tonnage raisins for sale in export shall be determined as the same proportion that the surplus tonnage raisins acquired by him is of the surplus tonnage raisins acquired by all handlers. As set forth in the notice of hearing, it was proposed that this formula be revised so as to change the allocation basis from that of handlers' current acquisitions of surplus tonnage to that of handlers' current acquisitions of free tonnage, and to provide more specific procedure for its application. At the hearing, it was further proposed that another formula based on handlers' acquisitions of free tonnage raisins during the preceding crop year be provided for use in conjunction with the formula as proposed in the notice to take care of an allocation problem which occurs in the first part of the crop year. This and other aspects of allocating surplus tonnage raisins to handlers throughout the crop year was considered at the hearing.

Handlers' acquisitions of free tonnage raisins, rather than their acquisitions of surplus tonnage, should be used in allocating surplus tonnage to them for sale in export. The same free tonnage percentage applies throughout the crop year. Under § 989.67 (c), any reserve tonnage held unsold on July 1 becomes surplus tonnage on that date. Also, any reserve tonnage acquired between July 1 and the end of the crop year becomes surplus tonnage at the time of acquisition. The proposed use of free tonnage acquisitions as a basis for allocating surplus tonnage to handlers would eliminate the apparent change in the base (from the standpoint of relation to total acquisitions) when reserve tonnage becomes surplus on and after July 1. It would not result in any material difference in a handler's share of an offer of surplus tonnage as compared with the use of surplus tonnage acquisitions as an allocation basis, because the quantity of any raisins acquired by handlers after July 1 is extremely small, and by definition (§ 989.17) the quantity of reserve tonnage held on July 1 which becomes surplus would not be an acquisition by reason of the transfer to surplus.

The demand for surplus tonnage raisins for sale in export usually is most active during the fall and early winter months. The respective handlers are concerned, therefore, that they receive their proper allocations of surplus tonnage offered during this period. Also, to the extent that each handler's allocation during this period is proportional to his normal volume of business during the crop year, a larger total quantity of surplus tonnage may be sold. A large cooperative marketing association and some of the other handlers acquire most, or all, of their raisins during the first part of the crop year. Other handlers, because of limited facilities or the effect on income taxes, acquire a substantial part of their raisins after the first of January. Hence, the use of current acquisitions of free tonnage raisins as an allocation basis would not permit some handlers to receive an allocation of surplus tonnage during the period of most active demand which would be proportional to their normal acquisitions of free tonnage raisins over the entire crop year. On the other hand, such basis permits other handlers to obtain, in the early part of the season, shares of surplus which are more than proportional to such acquisitions, and more than they may sell in export at the time. The use of total free tonnage acquisitions of the preceding crop year as an allocation basis prior to February 1, with subsequent adjustments of shares to a basis of current free tonnage acquisitions as set forth below, would overcome this problem and yet keep the allocations on a basis as nearly current as possible.

Therefore, § 989.66 (e) (4) should be amended so as to provide that, except for new handlers, each handler's share of surplus tonnage raisins offered for sale in export prior to February 1 of any crop year shall be determined as the same proportion of the quantity offered that the free tonnage raisins acquired by him during the preceding crop year is of the free tonnage raisins acquired by all handlers during the preceding crop year who remain handlers. The amendment should provide that subsequent to January 31 of any crop year, each handler's share shall be determined as the same proportion of the quantity offered that the free tonnage raisins acquired by him during the then current crop year is of the total free tonnage raisins acquired by all handlers during the then current crop year. It should provide also that with respect to any offer other than the initial offer, each handler's share of the total quantity offered as of that date (the then current offer plus all prior offers of that crop year) shall first be determined by the appropriate formula, and then his share of the current offer determined by subtracting from his share of the total quantity offered, the total of his share of prior offers from the beginning of the crop year. This would have the effect of establishing the shares of all handlers for the crop year on the basis of current acquisitions of free tonnage raisins. Yet, it would provide the necessary flexibility prior to February 1.

To provide for new handlers, provision should be added to § 989.66 (e) (4) that, if any handler did not acquire raisins during the preceding crop year, the basis for his share of surplus tonnage offered prior to February 1 shall be his acquisitions of free tonnage raisins during the then current crop year. The current free tonnage acquisitions of all of such handlers should, for the purpose of determining the shares of all handlers, be added to the total acquisitions of free tonnage raisins during the preceding crop year by all handlers. While a new handler's share by this formula would normally be relatively smaller than shares of handlers who acquired raisins during the preceding crop year, his relative share would be brought in line with those of the other handlers by adjustment after January 31, under the amendatory proposal stated above. In the past seven years, only a very few persons have entered the raisin packing business as new members.

Amendment of § 989.66 (e) (4) should provide also that, if prior to February 1 of any crop year a handler's share of any offer exceeds the quantity of surplus tonnage raisins held by him for the account of the committee (the shortage being for reasons other than deferment of his set-aside obligations pursuant to § 989.66 (c)), and upon the committee concluding that the handler's acquisitions of surplus as of January 31 will exceed the total of his shares or upon said handler furnishing the committee such written undertaking secured by a bond as the committee may require, the committee may permit the handler to borrow, for a period not to exceed 30 days (or ending not later than January 31) from the date of the acceptance of the offer, raisins from any reserve tonnage held by him for the account of the committee. Since failure to repay the reserve tonnage would seriously interfere with the operations of the order, and to further insure repayment, it should be provided that any handler who has not repaid all prior loans from the reserve pool by the end of the 30-day period or by January 31, whichever date is earlier, may not participate in any subsequent offers of surplus tonnage until the loan is repaid. Borrowing from the reserve tonnage in this way would eliminate or reduce the cost to the committee of transferring surplus tonnage from one handler to another during the period ending January 31. Most handlers' purchasing of raisins from producers is such that there would be no question of them subsequently acquiring enough surplus to repay any loan. However, if there are indications that a handler will complete his acquisitions early or will not continue in business, thus making it unlikely that he could repay a loan, the committee should obtain a bond from the handler to insure repayment to the reserve pool. The amount of the bond should be sufficient, considering the amount the handler pays the committee for his purchase of the raisins as surplus, to cover necessary expenses and enable the committee to purchase free tonnage raisins and repay the reserve pool. However, in case of recovery under a bond, the committee could, in its discretion, credit the reserve pool with the amount recovered, plus the return from the sale of the borrowed reserve tonnage as surplus.

In some crop years, essentially all of the surplus tonnage raisins acquired as surplus, or the reserve tonnage which becomes surplus on July 1, may have been offered to handlers on a share basis. In this event, some of the handlers probably would not be interested in further offers of any surplus tonnage which then remained unpurchased. To facilitate disposition of the remaining tonnage, amendment of § 989.66 (e) (4) should include a provision that, in such an event, approval of applications may be made in the same order in which the applications are filed with the committee.

Any handler's share or allocation of surplus tonnage raisins, determined in accordance with the conclusions stated above, could be less than or exceed his holdings by a minor quantity. Amendment of § 989.66 (e) (4) should provide that, in such an event, the committee

may adjust the handler's share or allocation so as to avoid the cost of physical transfers of raisins. The maximum quantity by which a handler's share or allocation may properly be adjusted to avoid such a transfer of raisins could vary, depending on prevailing conditions, and should not be prescribed in the order. However, it should be provided in the proposed amendment that such maximum quantity shall be prescribed in rules and procedures with respect to the allocation of surplus tonnage raisins to handlers which the committee shall establish with the approval of the Secretary.

The present provisions of § 989.66 (e) (4), other than the first sentence, should remain unchanged, except for desirable clarification.

(8) The provisions of § 989.67 (b), which relate to the price at which reserve tonnage raisins may be sold to handlers, should be amended to provide that where the outlook for the next crop year or other factors have caused a downward trend in the prices received by producers for free tonnage raisins or in the prices received by handlers for free tonnage packed raisins, reserve tonnage may be sold to handlers at the currently prevailing or the approximate computed field price for free tonnage raisins, as determined by the committee. This proposal is similar to the present provisions in these respects, except that they do not specifically provide for any downward trend in prices to be determined on the basis of the prices received by handlers for free tonnage packed raisins, or for the field price for free tonnage raisins to be computed. Reserve tonnage is most often offered for sale to handlers during the latter part of the crop year. Usually, handlers' purchasing of raisins from producers is largely completed by February or March, and there may be no prevailing field price or one which is representative when the committee offers reserve tonnage. The committee should be permitted to use packers' prices for packed raisins for computing a field price or determining whether there has been a downward trend. The prices which handlers pay producers for their free tonnage raisins are determined by the market for packed raisins. Hence, prices received by handlers provide a reasonable basis for determining any downward trend in prices, and for computing a field price.

It was testified at the hearing that the committee should first determine the percentage decline in handler's prices for packed raisins and then apply the same percentage to the field price established earlier in order to arrive at the current field price. It was testified also that this would give a higher computed field price than if it were computed by deducting from handlers' current price for packed raisins the normal margin between the price for packed raisins and the field price. When there has been a downward trend in prices, the computed field price most desirable for use in offering reserve tonnage may vary according to trading conditions, including whether the trend is continuing downward, leveling off, or showing an upturn. Since reserve tonnage becomes surplus (for sale in surplus outlets usually at lower prices) if not purchased by handlers, the offering price for reserve tonnage should be such as to enable handlers to purchase their reasonable requirements and maximize pool returns. The committee would need to use a price which will best achieve that purpose. Therefore, in order to maintain some flexibility in this regard, no particular method of computing the field price should be prescribed in the order.

The provisions of § 989.67 (b) which relate to the review by the Secretary of the committee's offers of reserve tonnage raisins to handlers and his right to disapprove now require the committee to file the necessary information with the Secretary five days (exclusive of Saturdays, Sundays, and holidays) prior to making any offer to sell reserve tonnage raisins. This could be interpreted as preventing the committee from making the offer in less than the five days, even though the committee is advised earlier that the Secretary will not disapprove. Frequently, it is desirable that offers to handlers be made as soon as possible in order for them to have raisins to meet their requirements. If the committee is advised that the Secretary does not disapprove, it is unnecessary that it wait until the end of the five-day period before making the offer. Therefore, the provisions of § 989.67 (b) should be amended to provide that at any time prior to the expiration of the five-day period, the offer may be made to handlers upon the committee receiving from the Secretary notice that he does not disapprove the making of the offer.

(9) Those provisions of § 989.68 (d) and (e), which relate to the Secretary's review of proposals to sell surplus tonnage raisins and subsequent action by the committee if the Secretary does not disapprove, should be amended in the same manner and for the same reasons as specified in issue (8) for offers of reserve tonnage raisins.

(10) Section 989.48 now provides that members of the committee and the board, and alternate members when acting as members, shall serve without compensation but shall be allowed their necessary expenses as approved by the committee. This section should be amended to provide that whenever specifically authorized in advance by the committee, or when requested to attend due to the anticipated absence of a member, an alternate member of the committee shall be reimbursed for reasonable expenses incurred by him in attending not to exceed three committee meetings per crop year when the committee member for whom he serves as alternate also attends such meetings. Some committee meetings, such as the annual marketing policy meeting, are of such importance that both members and alternates are justified in attending. By attending such meetings, the alternates will be better qualified to act when they are later required to serve for members. An alternate member who, upon request, attends a meeting to serve in place of the member, and the member subsequently attends unexpectedly, has acted in good faith and should be reimbursed for the expenses incurred by him in attending. However, there should be only a few meetings which both members and the alternates need to attend. To avoid unnecessary meeting expense, the number of meetings that an alternate may attend and be reimbursed for his expenses when the member also attends should be limited to not more than three in any one crop year.

(11) It was testified at the hearing that changes should be made in any other provisions of the order not directly involved in connection with specific amendments, but which are necessary to make such other provisions conform with any amended provisions which might result from this proceeding. Such changes should be made in §§ 989.79 and 989.54. The necessity for these results from the proposed amendment of § 989.63 (a) which would change the date by which the committee's recommendations to the Secretary shall be made for the fixing of the initial free, reserve, and surplus percentages for any crop year from October 1 to October 5 of such crop year, with provision that this date may be extended by the committee not more than five days if warranted by a late crop. This proposed amendment is discussed under issue (6).

The provision in § 989.79, which requires the committee to file with the Secretary not later than October 1 of each crop year a proposed budget of expenses for the maintenance of the committee and the board and a proposal as to the assessment rate to be fixed pursuant to § 989.80, should be amended to provide for the filing of such proposed budget and rate of assessment not later than October 5 of each crop year, with provision that this date may be extended by the committee not more than five days if warranted by a late crop. The free, reserve, and surplus percentages when applied to the estimated acquisitions of raisins by handlers during the crop year provide a basis for estimating the committee's budget. They provide a basis also for determining the probable assessable tonnage and the assessment rate. Because of this interrelationship between the percentages and the budget and assessment rate, it would be impracticable to require the committee to file its proposed budget and rate of assessment before the percentages to be recommended to the Secretary had been formulated. They should, in fact, be formulated and recommended at the same time, which is consistent with the existing provisions for dates of filing the respective recommendations with the Secretary.

It is now provided in § 989.54 that not later than August 20 preceding the beginning of each crop year, the committee shall hold a meeting to formulate and adopt a marketing policy for the marketing of raisins for the ensuing crop year and shall submit to the Secretary within 10 days a report setting forth its marketing policy for the regulation of the handling of raisins in each crop year. This provision of § 989.54 should be amended to provide that prior to or simultaneously with making its recommendation to the Secretary for fixing the initial free, reserve, and surplus percentages for any crop year (which would be not later than

October 5 of such crop year unless this date should be extended by the committee not more than five days because of a late crop), the committee shall hold a meeting to formulate and adopt a marketing policy for the marketing of raisins for the crop year and shall submit promptly to the Secretary a report setting forth its marketing policy for the regulation of the handling of raisins in such crop year. As discussed under issue (6), a formula has been adopted for arriving at the free, reserve, and surplus percentages and the use of this formula depends upon the accuracy of estimates of raisin production. An official production estimate is expected to be received from a governmental agency, normally not later than October 1 of each year. In most years, volume regulation is the most important consideration in the adoption of a marketing policy. Since an official estimate of production on which volume regulation can be recommended will not be available on August 20, it would be impracticable to require the committee to adopt its marketing policy by that date. In fact, it would be inadvisable for the committee to adopt a policy based on unofficial estimates in view of forthcoming official estimates. Since the volume percentages provide a basis for trading in raisins, producer returns could be affected adversely if the committee used estimates in adopting its marketing policy which were later changed. These difficulties would be overcome by permitting the committee to delay its adoption of a marketing policy until it makes its recommendations for fixing the volume percentages.

Amendments to the marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled respectively, "Agreement Further Amending the Marketing Agreement, as Amended, Regulating the Handling of Raisins Produced from Raisin Variety Grapes Grown in California," and "Order Further Amending the Order, as Amended, Regulating the Handling of Raisins Produced from Raisin Variety Grapes Grown in California," which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the aforesaid rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

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

Dated: September 21, 1956.

[SEAL] TRUE D. MORSE,
Acting Secretary.

Order[1] Further Amending the Order, as Amended, Regulating the Handling of Raisins Produced From Raisin Variety Grapes Grown in California

§ 989.0 *Findings and determinations*—(a) *Previous findings and determinations.* The findings and determinations set forth below in this section are supplementary, and in addition, to the findings and determinations which were previously made in connection with the original issuance of this marketing order (14 F. R. 5136) and related marketing agreement, as supplemented by the findings and determinations which were made in connection with the amendment of such marketing order (20 F. R. 6435) and marketing agreement which were issued on August 26, 1955, and all of said previous findings and determinations are hereby ratified and confirmed, except insofar as such findings and determinations may be in conflict with the findings set forth herein.

(b) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure thereunder (7 CFR Part 900; 19 F. R. 57), a public hearing was held at Fresno, California, on June 18 and 19, 1956, upon proposed amendments of Marketing Agreement No. 109, as amended, and Order No. 89, as amended (7 CFR Part 989; 20 F. R. 6435), regulating the handling of raisins produced from raisin variety grapes grown in California. Upon the basis of the evidence adduced at such hearing, and the record thereof, it is found that:

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

(2) The said amended marketing order, as hereby proposed to be further amended, will be applicable only to persons in the respective classes of industrial and commercial activities specified or necessarily included in the proposals upon which the amendment hearing has been held; and

(3) There are no differences in the production and marketing of raisins in the production area covered by this amended marketing order, as hereby proposed to be further amended, which make necessary different terms applicable to different parts of such area.

It is therefore ordered, That, on and after the effective date hereof, all handling of raisins produced from raisin variety grapes grown in California shall be in conformity to, and in compliance with, the terms and conditions of the aforesaid amended order, as hereby further amended as follows:

1. Amend the provisions of § 989.52 (a) to read as follows:

§ 989.52 *Procedure.* (a) All decisions of the committee reached at an assembled meeting shall be by majority vote of the members present and a quorum must be present. All votes in an assembled meeting shall be cast in person. The presence of nine members shall be required to constitute a quorum. The committee may vote by mail or telegraph when there is no assembled meeting, but any proposition to be so voted upon first shall be explained accurately, fully, and identically in a notice by mail or telegraph to all members, or alternates acting in the place and stead of the members. Said notice shall contain a statement of a reasonable time not to exceed 10 days in which a member or alternate must vote by mail or telegraph in order that the vote may be counted. A unanimous vote of all selected and eligible members or alternates acting in the place and stead of members shall be required to reach a decision on a mail or telegraphic vote. Failure of any such member or alternate to vote within the prescribed time shall be held to be a dissenting vote. No action to recommend a marketing policy or volume regulation can be taken on the basis of a mail or telegraphic vote.

2. Amend the provisions of § 989.58 (e) to read as follows:

(e) *Options as to off-grade natural condition raisins.* Any natural condition raisins tendered to a handler which fail to meet the applicable minimum grade standards may at the option of either the handler or the person making the tender: (1) Be returned to the person tendering the raisins; (2) if storable, be turned over to the handler to be held by him as off-grade natural condition raisins for the account of the committee; or (3) be turned over to the handler for reconditioning under the terms of a written agreement between the person making the tender and the handler. If the handler is to acquire such raisins after they are reconditioned, his obligations with respect to such raisins shall be based on the weight of the raisins (if stemmed, adjusted to natural condition weight) after they have been reconditioned. If after such reconditioning, such raisins meet the minimum grade standards but are no longer natural condition raisins, any handler who acquires such raisins shall meet his surplus and reserve tonnage obligations from natural condition raisins acquired by him. Any off-grade raisins (including stemmer waste and raisin offal) accumulated as a final residual by a handler in reconditioning raisins shall, during or after reconditioning has been completed, be disposed of by the handler, without further inspection, for distillation, animal feed, or uses other than for human consumption. Off-grade raisins received by a handler for reconditioning shall be kept by him separate and apart from all other raisins until after the raisins have been reconditioned and the quality of the raisins is established by inspection and certification. The committee shall establish, with the approval of the Secretary, such rules and procedures as may be necessary to insure adequate control over the reconditioning of off-grade raisins and the

[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 orders have been met.

use of the residual matter from such reconditioning operations.

3. Amend the provisions of § 989.59 (a) to read as follows:

§ 989.59 *Regulation of the handling of raisins subsequent to their acquisition by handlers*—(a) *Regulation.* Unless otherwise provided in this part, no handler shall: (1) Ship or otherwise make final disposition of natural condition raisins unless they meet the effective applicable minimum grade and condition standards for natural condition raisins; or (2) ship or otherwise make final disposition of packed raisins unless they at least meet the following minimum grade standards or such standards as modified pursuant to the provisions of paragraph (b) of this section: (i) With respect to all raisins except Layer Muscats and Zante Currants, "U. S. Grade C" as defined in effective United States Standards for Grades of Processed Raisins; (ii) with respect to Golden Seedless and Sulfur Bleached raisins, the color requirements for "bleached color" (or "choice color") as defined in the said standards; (iii) with respect to Layer Muscat raisins, "U. S. Grade B" as defined in the said standards; and (iv) with respect to Zante Currant raisins, "U. S. Grade B" as defined in the effective United States Standards for Grades of Dried Currants: *Provided*, That nothing contained in this paragraph shall prohibit the shipment or final disposition of any raisins to which the prescribed standards are not applicable.

3a. Amend the provisions of the first paragraph of § 989.97 to read as follows:

Raisins meeting the varietal standards set forth hereinafter shall be considered as standard raisins and those failing to meet such standards shall be considered as offgrade raisins. Where the raisins in any lot consist of two or more varietal types commingled within their containers, the lot shall be considered as standard raisins if each varietal type in the lot meets the applicable minimum standards for that varietal type: *Provided*, That, in the event Layer Muscat raisins are commingled within their containers with Natural (Sun-dried) Muscat raisins, the entire lot shall be considered as Natural (sun-dried) Muscat raisins, and as standard raisins if the lot as a whole meets the minimum standards for Natural (sun-dried) Muscat raisins: *Provided further*, That, should the requirements with respect to the maximum moisture content differ as between any two or more varietal types which are commingled, the lower (lowest) maximum moisture content requirement shall apply for each varietal type. In each category, only those raisins which have been properly dried and cured in original natural condition, are free from active infestation, and are in such condition that they are capable of being received, stored, and packed without undue deterioration or spoilage, shall be considered as storable raisins.

4. Amend the provisions of § 989.59 (e) to read as follows:

(e) *Inter-plant and inter-handler transfers.* Any handler may transfer from his plant to his own or another handler's plant within the State of California any free tonnage raisins without having had such raisins inspected as provided in paragraph (d) of this section. The transferring handler shall transmit promptly to the committee a report of such transfer, except that transfers between plants owned or operated by the same handler need not be reported. Before shipping or otherwise making final disposition of such raisins, the receiving handler shall comply with the requirements of this section.

5. Amend the provisions of § 989.59 (f) to read as follows:

(f) *Off-grade raisins accumulated by handlers.* Any off-grade raisins (including stemmer waste and raisin offal) which may be received by a processor or accumulated by a handler by removing them from his standard raisins, and any raisins acquired as standard raisins by a handler which do not meet the applicable grade and condition standards for shipment or final disposition as raisins, shall be disposed of or marketed, without further inspection, for distillation, animal feed, or uses other than for human consumption: *Provided*, That this shall not preclude a packer from recovering raisins from such accumulations or acquisitions. The committee shall establish, with the approval of the Secretary, such rules and procedures as may be necessary to insure such uses. The provisions of this paragraph are not intended to excuse any failure to comply with all applicable food and sanitary rules and regulations of city, county, state, federal or other agencies having jurisdiction.

6. Amend the provisions of § 989.63 (a) to read as follows:

§ 989.63 *Recommendation for designation of percentages.* (a) If the committee concludes that the supply and demand conditions for raisins make it advisable to designate the percentages of standard raisins acquired by handlers in any crop year which shall be free tonnage, reserve tonnage, and surplus tonnage, respectively, it shall recommend such percentages to the Secretary. The committee may recommend such percentages separately, for each varietal type. The committee also shall submit, together with any recommendation with respect to percentages, the information on the basis of which such recommendation was made, and the recommendation of the board, and also shall specify for each varietal type of raisins the outlets which were considered in determining the free and surplus tonnages and the free and surplus percentages. In the event the committee subsequently deems it desirable to modify, suspend, or terminate any designation by the Secretary of such percentages, it shall submit to the Secretary its recommendation in that regard along with the information on the basis of which such modification, suspension or termination is recommended, and the recommendation of the board. The committee shall file with its recommendation to the Secretary, a verbatim record of that portion of its meeting or meetings, relating to the free, reserve, and surplus percentages. The recommendations of the committee for the fixing of the initial free, reserve, and surplus percentages for any crop year shall be made not later than October 5 of such year, but this date may be extended by the committee not more than five days if warranted by a late crop.

7. Amend the provisions of § 989.66 (e) (4) to read as follows:

(4) (i) Except as provided in subdision (ii) of this subparagraph, for new handlers, each handler's share of surplus tonnage raisins offered for sale in export prior to February 1 of any crop year shall be determined as the same proportion of the quantity offered that the free tonnage raisins acquired by him during the preceding crop year is of the free tonnage raisins acquired by all handlers during the preceding crop year who remain handlers. Subsequent to January 31, each handler's share shall be determined as the same proportion of the quantity offered that the free tonnage raisins acquired by the handler during the then current crop year is of the total free tonnage raisins acquired by all handlers during the then current crop year. With respect to any offer other than the initial offer, each handler's share of the total quantity offered as of that date (the then current offer plus all prior offers of that crop year) shall first be determined by the appropriate formula. His share of the current offer shall then be determined by subtracting from his share of the total quantity offered, the total of his share of prior offers from the beginning of the crop year.

(ii) If any handler did not acquire raisins during the preceding crop year, the basis for his share of any quantity of surplus tonnage raisins offered prior to February 1 shall be his acquisitions of free tonnage raisins during the then current crop year. The current free tonnage acquisitions of all such new handlers shall, for the purpose of determining the shares of all handlers prior to February 1, be added to the total acquisitions of free tonnage raisins during the preceding crop year of all handlers in business at the time the offer is made.

(iii) If prior to February 1 of any crop year, a handler's share of any offer exceeds the quantity of surplus tonnage raisins held by him for the account of the committee (the shortage being for reasons other than deferment of his set aside obligations pursuant to § 989.66 (c)), and upon the committee concluding that the handler's acquisitions of surplus as of January 31 will exceed the total of his shares or upon said handler furnishing the committee such written undertaking secured by a bond as the committee may require, the committee may permit the handler to borrow, for a period not to exceed 30 days (or ending not later than January 31) from the date of the acceptance of the offer, raisins from any reserve tonnage held by him for the account of the committee. Any handler who has not repaid all prior loans from the reserve pool by the end of the required 30-day period or by January 31, whichever date is earlier, may not participate in any subsequent offers of surplus tonnage until the loan is repaid.

(iv) If prior to the close of any offer of surplus tonnage raisins for sale in export and subsequent to any share

reservation period the entire offer has not been purchased, any handler who has purchased his entire share and makes application to the committee shall be allocated additional surplus tonnage raisins from such raisins held by him. In the event such handler no longer holds any surplus tonnage raisins for the account of the committee, the committee shall, subsequent to any period the committee may prescribe for handlers to purchase their holdings, allocate and deliver to the handler, surplus tonnage raisins held by other handlers. In making such allocation, the committee shall, insofar as is practicable, first withdraw surplus tonnage raisins from those handlers who have purchased for sale in export the smallest percentage of the surplus tonnage raisins acquired by them or who for other reasons are holding the largest percentage of their acquisitions of surplus tonnage. The cost of transporting any such surplus tonnage raisins from one handler to another shall be paid by the committee from surplus pool funds.

(v) Whenever essentially all of the surplus tonnage raisins acquired as surplus, or the reserve tonnage which becomes surplus on July 1, have been offered on a share basis, and any unpurchased or unoffered tonnage of surplus is offered to handlers, approval of applications may be made in the same order in which the applications are filed with the committee.

(vi) Whenever a handler's share or allocation pursuant to this subparagraph is less than or exceeds his holdings of surplus by a minor quantity, the committee may adjust the handler's share or allocation so as to avoid the cost of the physical transfer. The maximum quantity by which a handler's share or allocation may be so adjusted shall be prescribed in rules and procedures with respect to the allocation of surplus tonnage raisins to handlers which the committee shall establish with the approval of the Secretary.

8. Amend the provisions of § 989.67 (b) to read as follows:

(b) Reserve tonnage of any varietal type shall not be sold at a price below that which the committee concludes reflects the average price received by producers for free tonnage of the same varietal type purchased by handlers during the current crop year up to the time of any offer for sale of reserve tonnage by the committee, to which shall be added the costs incurred by the committee on account of the receiving, inspecting, storing, insuring, and holding of said raisins: *Provided*, That where the outlook for the next crop year or other factors have caused a downward trend in the prices received by producers for free tonnage raisins or in the prices received by handlers for free tonnage packed raisins, reserve tonnage may be sold to handlers at the currently prevailing or the approximate computed field price for free tonnage raisins, as determined by the committee. No offer to sell reserve tonnage raisins to handlers shall be made by the committee until five days (exclusive of Saturdays, Sundays, and holidays) have elapsed from the time it files with the Secretary complete information as to varietal type, quantity, and price involved in such offer, and the Secretary may disapprove the offer or any term thereof: *Provided*, That at any time prior to the expiration of the five-day period, the offer may be made to handlers upon the committee receiving from the Secretary notice that he does not disapprove the making of the offer.

9. Amend the provisions of § 989.68 (d) and (e) to read as follows:

(d) Surplus tonnage raisins shall be sold to handlers at prices and in a manner intended to maximize producer returns and achieve complete disposition of such raisins by August 31 of the crop year. No offer to sell surplus tonnage raisins to handlers shall be made by the committee until five days (exclusive of Saturdays, Sundays, and holidays) have elapsed from the time it files with the Secretary complete information as to varietal type, quantity, and price involved in such offer, and the Secretary may disapprove the offer or any term thereof: *Provided*, That at any time prior to the expiration of the five-day period, the offer may be made to handlers upon the committee receiving from the Secretary notice that he does not disapprove the making of the offer.

(e) The committee may sell surplus tonnage raisins as provided in paragraph (b) (3) of this section only when such country is not included in the list of specified countries established pursuant to paragraph (c) of this section and may sell surplus tonnage raisins to foreign government agencies or foreign importers in any country removed from such list. No agreement to sell surplus tonnage raisins shall be entered into by the committee until five days (exclusive of Saturdays, Sundays, and holidays) have elapsed from the time it files with the Secretary complete information as to varietal type, quantity, price, and foreign country involved in any such proposed sale, and the Secretary may disapprove such sale or any term thereof: *Provided*, That at any time prior to the expiration of the five-day period, the sale may be made upon the committee receiving from the Secretary notice that he does not disapprove the making of the sale.

10. Amend the provisions of § 989.48 to read as follows:

§ 989.48 *Compensation and expenses.* The members of the committee and the board, and the alternate members when acting as members, shall serve without compensation but shall be allowed their necessary expenses as approved by the committee. Whenever specifically authorized in advance by the committee, or when requested to attend due to the anticipated absence of a member, an alternate member of the committee shall be reimbursed for reasonable expenses incurred by him in attending not to exceed three committee meetings per crop year when the committee member for whom he serves as alternate also attends such meetings.

11. Amend the provisions of § 989.79 to read as follows:

§ 989.79 *Expenses.* The committee is authorized to incur such expenses (other than those specified in § 989.82) as the Secretary finds are reasonable and likely to be incurred by it during each crop year, for the maintenance and functioning of the committee and the board. The funds to cover such expenses shall be obtained by levying assessments as provided in § 989.80. The committee shall file with the Secretary for each crop year a proposed budget of these expenses and a proposal as to the assessment rate to be fixed pursuant to § 989.80, together with a report thereon. Such filing shall be not later than October 5 of the crop year, but this date may be extended by the committee not more than five days if warranted by a late crop. Also, it shall file at the same time a proposed budget of the expenses likely to be incurred during the crop year in connection with reserve, surplus, or off-grade raisins held for the account of the committee, exclusive of the receiving, storing, and handling expenses which are covered by a schedule of payments to handlers effective pursuant to § 989.66 (f) or any rules and procedures established by the committee, and exclusive of any expenses it may incur in connection with the disposition of such raisins and which are unknown at the time. The said report shall also cover this proposed budget.

11a. Amend the provisions of § 989.54 to read as follows:

§ 989.54 *Marketing policy.* Prior to or simultaneously with making its recommendation to the Secretary for fixing the initial free, reserve, and surplus percentages for any crop year (which shall be not later than October 5 of such crop year unless this date is extended by the committee not more than five days as provided in § 989.63 (a)), the committee shall hold a meeting to formulate and adopt a marketing policy for the marketing of raisins for the crop year and shall submit promptly to the Secretary a report setting forth its marketing policy for the regulation of the handling of raisins in such crop year. The report shall include the data and information used by the committee in formulating the marketing policy, and the recommendation of the board. In developing the marketing policy, the committee shall give consideration to the following factors with respect to each varietal type of raisins:

(a) The estimated tonnage of raisins held by producers and handlers;

(b) The estimated tonnage of raisins which will be produced during the crop year;

(c) An appraisal of the quality of raisins of the crop to be produced in such crop year, including the estimated tonnage of standard raisins and off-grade raisins, respectively;

(d) The tonnage of raisins marketed during recent crop years in the domestic market and in Canada;

(e) The tonnage of raisins marketed in recent crop years in foreign markets,

segregated to show the quantities marketed from free and surplus tonnage raisins and the countries in which such raisins were marketed;

(f) The current price being received for raisins by producers and handlers;

(g) The estimated trade demand during the crop year for raisins in normal market channels both domestic and foreign;

(h) The trend and level of consumer income in the domestic market;

(i) The estimated probable market requirements for raisins during the crop year in foreign markets segregated by countries or groups of countries;

(j) Such factors, if any, which in the supplying of foreign markets, may tend to directly affect or burden the normal domestic market;

(k) Any other pertinent factors bearing on the marketing of raisins; and

(l) The conditions, including pricing formula, for the sale of surplus tonnage raisins in foreign markets pursuant to the provisions of § 989.68.

Order Directing That a Referendum Be Conducted; Designating Agents To Conduct Such Referendum; and Determining the Representative Period

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), it is hereby directed that a referendum be conducted among the producers who, during the period July 1, 1955 through June 30, 1956 (which is hereby determined to be a representative period for the purpose of such referendum), were engaged, in the State of California, in the production for market, of raisin variety grapes to determine whether such producers approve or favor the issuance of an order further amending the order, as amended, regulating the handling of raisins produced from raisin variety grapes grown in California. The order further amending the amended order is annexed to the decision of the Secretary of Agriculture filed simultaneously herewith.

W. Allmendinger, W. B. Blackburn, David B. Fitz, Eugene C. Holly, and M. G. Young, of the Fruit and Vegetable Division, Agricultural Marketing Service, U. S. Department of Agriculture, are hereby designated agents of the Secretary of Agriculture to conduct said referendum severally or jointly.

The procedure applicable to this referendum shall be the "Procedure for the Conduct of Referenda Among Producers in Connection with Marketing Orders (Except Those Applicable to Milk and its Products) to Become Effective Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (15 F. R. 5176; 19 F. R. 35), except that subparagraph (6) of paragraph (c) thereof is hereby amended, for the purposes of this referendum, to read as follows:

(6) Cause copies of the text of the proposed further amendments to the amended order (regulating the handling of raisins produced from raisin variety grapes grown in California), instructions on voting, and appropriate ballot and other necessary forms to be mailed to each such cooperative association, and each producer of raisin variety grapes who produced raisins during the representative period, whose name and address is on record with the Raisin Administrative Committee, established under Marketing Agreement No. 109 and Marketing Order No. 89 (20 F. R. 6435); and such agents shall make copies of the ballot, and other necessary forms and instructions available in the office of Farm Advisor, County Director of Agricultural Extension, in each county in California in which raisin variety grapes are produced for market.

Copies of the aforesaid annexed order, the aforesaid referendum procedure, and this order may be examined in the Office of the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington 25, D. C.

Any producer of raisin variety grapes for market who does not receive a ballot, a copy of the proposed further amendments to the amended order, and other necessary forms and instructions for use in the referendum by mail, may obtain them from the appropriate Farm Advisor, County Director of Agricultural Extension, or from W. Allmendinger, Oakland Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, 1515 Clay Street, 6th Floor, Oakland 12, California, or O. C. Fuqua, Fresno Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, 3529 East Tulare Street, Fresno 2, California.

[F. R. Doc. 56-7782; Filed, Sept. 26, 1956; 8:47 a. m.]

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Parts 657, 673, 706]

[Administrative Order 468]

PUERTO RICO; ALCOHOLIC BEVERAGE AND INDUSTRIAL ALCOHOL INDUSTRY; FOOD AND RELATED PRODUCTS INDUSTRY; TOBACCO INDUSTRY

APPOINTMENTS TO INVESTIGATE CONDITIONS AND RECOMMEND MINIMUM WAGES; NOTICE OF HEARING

Pursuant to authority under the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended; 29 U. S. C. 201 et seq.), and Reorganization Plan No. 6 of 1950 (5 U. S. C. 611), I hereby appoint, convene, and give notice of the hearings of Industry Committee No. 25–A for the alcoholic beverage and industrial alcohol industry in Puerto Rico, Industry Committee No. 25–B for the food and related products industry in Puerto Rico, and Industry Committee No. 25–C for the tobacco industry in Puerto Rico.

Industry Committee No. 25–A is composed of the following representatives:

For the Public: Maynard Persig, Chairman, Minneapolis, Minnesota; Reed Tripp, Madison, Wisconsin; Pedro Munoz Amato, Rio Piedras, Puerto Rico.

For the Employees: Mario Azpeitia, Washington, D. C.; Karl F. Feller, Cincinnati, Ohio; Hipolito Marcano, San Juan, Puerto Rico.

For the Employers: Hiram S. Hall, New York, New York; Jesus F. Diaz-Hernandez, San Juan, Puerto Rico; Antonio Escudero Torruellas, Santurce, Puerto Rico.

For the purpose of this order the alcoholic beverage and industrial alcohol industry in Puerto Rico is defined as follows:

The manufacture, including, but without limitation, the distilling, rectifying, blending, or bottling of rum, gin, whisky, brandy, cordials, liqueurs, wines, ale, beer and similar malt beverages with or without alcohol, other alcoholic beverages, industrial alcohol (such as ethyl alcohol, butyl alcohol, and acetone), anti-freeze, and any related by-product resulting from the manufacture of any of the foregoing products.

Industry Committee No. 25–B is composed of the following representatives:

For the Public: Maynard Persig, Chairman, Minneapolis, Minnesota; Reed Tripp, Madison, Wisconsin; Pedro Munoz Amato, Rio Piedras, Puerto Rico.

For the Employees: Mario Azpeitia, Washington, D. C.; Karl F. Feller, Cincinnati, Ohio; Hipolito Marcano, San Juan, Puerto Rico.

For the Employers: Hiram S. Hall, New York, New York; Norman E. Parkhurst, Bayamon, Puerto Rico; Antonio J. Bennazar, Santurce, Puerto Rico.

For the purpose of this order the food and related products industry in Puerto Rico is defined as follows:

The canning, preserving (including freezing, drying, dehydrating, curing, pickling, and similar processes), or other manufacturing or processing, and the packaging in conjunction therewith, of foods, ice, and non-alcoholic beverages, including, but without limitation, meat animals and meat animal products, poultry and poultry products, milk and dairy products, fish and seafood products, fruits and vegetables and fruit or vegetable products, grains and grain products, bakery products, confectionery and related products, and miscellaneous foods and food products. The handling, grading, packing, or preparing in their raw or natural state of fresh vegetables, fresh fruits, or nuts, and the gathering of wild plant or animal life. *Provided, however,* That the definition shall not include any product or activity included in the Sugar Manufacturing Industry, as defined in the wage order for that industry in Puerto Rico, or in the Chemical, Petroleum, Rubber, and Related Products Industry, as defined in Administrative Order No. 464 appointing Industry Committee No. 23–A for Puerto Rico, or in the Alcoholic Beverage and Industrial Alcohol Industry, as defined in Administrative Order No. 468 appointing Industry Committee 25–A for Puerto Rico.

Industry Committee No. 25–C is composed of the following representatives:

For the Public: Maynard Persig, Chairman, Minneapolis, Minnesota; Reed Tripp, Madison, Wisconsin; Pedro Munoz Amato, Rio Piedras, Puerto Rico.

For the Employees: Mario Azpeitia, Washington, D. C.; Karl F. Feller, Cincinnati, Ohio; Hipolito Marcano, San Juan, Puerto Rico.

For the Employers: Hiram S. Hall, New York, New York; Serafin Inclan, Jr., Caguas,

Puerto Rico; Francisco Verdiales, Caguas, Puerto Rico.

For the purpose of this order the tobacco industry in Puerto Rico is defined as follows:

The processing of leaf tobacco including, but without limitation, the grading, fermenting, stemming, chopping, packing, storing, drying, and handling of tobacco; and the manufacture of cigarettes, cigars, cheroots, little cigars, snuff, chewing tobacco, and smoking tobacco.

I hereby refer to each of the above mentioned industry committees the question of the minimum wage rate or rates to be fixed under section 6 (c) of the act for its industry. Each such industry committee shall investigate conditions in its industry, and the committee, or any authorized subcommittee thereof, shall hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under the act.

Industry Committee No. 25–A shall commence its hearing on October 22, 1956, at 2:00 p. m. in the offices of the Wage and Hour Division, United States Department of Labor, New York Department Store Building, Fortaleza and San Jose Streets, San Juan, Puerto Rico. Consecutively, at the same place, after the hearing of Industry Committee No. 25–A, Industry Committees Nos. 25–B and 25–C shall hold their hearings in that order.

Each committee will meet at the same place before its hearing to make its investigation and appropriate decisions concerning its hearing. Industry Committee No. 25–A will meet at 10:00 a. m. on October 22, 1956, and Industry Committee Nos. 25–B and 25–C will meet at an hour to be designated by the committee chairman.

In order to reach as rapidly as is economically feasible the objective of the minimum wage prescribed in paragraph (1) of section 6 (a) of the act, each industry committee shall recommend to the Administrator the highest minimum wage rate or rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry and will not give any industry in Puerto Rico a competitive advantage over any industry in the United States outside of Puerto Rico. Where an industry committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in the industry, the industry committee shall recommend such reasonable classifications within the industry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate that can be determined for it under the principles set out here which will not substantially curtail employment in such classification and will not give a competitive advantage to any group in the industry. No classification shall be made, however, and no minimum wage shall be fixed solely on a regional basis or on the basis of age or sex. In determining whether there should be classifications within the industry, in making such classifications, and in determining the minimum wage rates for such classifications, the committee shall consider, among other relevant factors, the following: (1) Competitive conditions as affected by transportation, living, and production costs; (2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and (3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

The Administrator shall prepare an economic report containing such data as he is able to assemble pertinent to the matters herein referred to each committee. Copies of these reports may be obtained at the national and Puerto Rican offices of the United States Department of Labor as soon as they are completed and prior to the hearings. Each committee will take official notice of the facts stated in the economic report to the extent they are not refuted at the hearings.

The procedure of these industry committees will be governed by Title 29 of the Code of Federal Regulations, Part 511, as revised and amended on November 4, 1955 (20 F. R. 8285) and May 30, 1956, (21 F. R. 3678). As a prerequisite to participation as witnesses or parties these regulations require, among other things, that interested persons in the present matters shall file a prehearing statement containing certain specified data, not later than October 12, 1956.

Signed at Washington, D. C. this 21st day of September 1956.

JAMES P. MITCHELL,
Secretary of Labor.

[F. R. Doc. 56–7805; Filed, Sept. 26, 1956; 8:52 a. m.]

THE RENEGOTIATION BOARD

[32 CFR Part 1467]

MANDATORY EXEMPTION OF CONTRACTS AND SUBCONTRACTS FOR STANDARD COMMERCIAL ARTICLES OR SERVICES

NOTICE OF PROPOSED RULE MAKING

The Renegotiation Board pursuant to section 109 of the Renegotiation Act of 1951, Public Law No. 9, 82d Congress, as amended by Public Law No. 764, 83d Congress, Public Law No. 216, 84th Congress, and Public Law No. 870, 84th Congress, proposes to issue the following regulations not less than thirty days after the date of this publication in the FEDERAL REGISTER. The Board intends to make such changes in these proposed regulations as it considers appropriate in the light both of recommendations made by interested persons for changes and improvements therein and of its own further study.

Interested persons are hereby notified that, in order for recommendations for changes and improvements in the proposed regulations to be considered, they must be presented, in writing, to The Renegotiation Board, Washington 25, D. C., within thirty days from the date of this publication in the FEDERAL REGISTER.

Dated: September 24, 1956.

THOMAS COGGESHALL,
Chairman.

Part 1467 is amended in the following respects:

1. The heading "Subpart A—Fiscal Years Ending On Or Before June 30, 1956" is inserted before § 1467.1.

2. Section 1467.1 *Statutory provision* is amended by deleting "section 106 (a) (8) of the act (added by Pub. Law 764, 83d Cong., approved September 1, 1954) exempts the following:" and inserting in lieu thereof the following: "With respect to fiscal years ending on or before June 30, 1956, section 106 (a) (8) of the act (added by Pub. Law 764, 83d Cong., approved September 1, 1954, as limited by Pub. Law 870, 84th Cong., approved August 1, 1956) exempts the following:".

3. Section 1467.1 is further amended by deleting the matter in brackets at the end of such section and inserting in lieu thereof the following:

[The statutory provision set forth above applies to contracts with the Departments and subcontracts only to the extent of the amounts received or accrued by a contractor or subcontractor after December 31, 1953 in a fiscal year ending on or before June 30, 1956. Matter in italics added by Pub. Law 216, 84th Cong., approved August 3, 1955. By Pub. Law 870, 84th Cong., approved August 1, 1956, section 106 (a) (8) of the act was stricken out with respect to fiscal years ending after June 30, 1956.]

4. Subpart B, consisting of new §§ 1467.21 to 1467.37, is added to read as follows:

SUBPART B—FISCAL YEARS ENDING AFTER JUNE 30, 1956

Sec.

AUTHORITY: §§ 1467.21 to 1467.37 issued under sec. 109, 65 Stat. 22; 50 U. S. C. App. 1219. Interpret or apply sec. 106, 65 Stat. 17, as amended; 50 U. S. C. App. 1216.

§ 1467.21 *Statutory provision.* With respect to fiscal years ending after June 30, 1956, section 106 (e) of the act (added by Pub. Law 870, 84th Cong., approved August 1, 1956) provides as follows:

(e) *Mandatory exemption for standard commercial articles and services—(1) Articles and services.* The provisions of this title shall not apply to amounts received or ac-

crued in a fiscal year under any contract or subcontract for an article or service (with respect to such fiscal year) is—

(A) A standard commercial article;

(B) An article which is identical in every material respect with a standard commercial article; or

(C) A service which is a standard commercial service or is reasonably comparable with a standard commercial service.

(2) *Classes of articles.* The provisions of this title shall not apply to amounts received or accrued in a fiscal year under any contract or subcontract for an article which (with respect to such fiscal year) is an article in a standard commercial class of articles.

(3) *Applications.* Paragraph (1) (B) or (C) and paragraph (2) shall apply to amounts received or accrued in a fiscal year under any contract or subcontract for an article or service only if—

(A) The contractor or subcontractor at his election files, at such time and in such form and detail as the Board shall by regulations prescribe, an application containing such information and data as may be required by the Board under its regulations for the purpose of enabling it to make a determination under the applicable paragraph, and

(B) The Board determines that such article or service is, or fails to determine that such article or service is not, an article or service to which such paragraph applies, within the following periods after the date of filing such application:

(i) In the case of paragraph (1) (B) or (C), three months;

(ii) In the case of paragraph (2), six months; or

(iii) In either case, any longer period stipulated by mutual agreement.

(4) *Definitions.* For the purposes of this subsection—

(A) The term "article" includes any material, part, component, assembly, machinery, equipment, or other personal property;

(B) The term "standard commercial article" means, with respect to any fiscal year, an article—

(i) Which either is customarily maintained in stock by the contractor or subcontractor or is offered for sale in accordance with a price schedule regularly maintained by the contractor or subcontractor, and

(ii) From the sales of which by the contractor or subcontractor at least 35 percent of the receipts or accruals in such fiscal year, or of the aggregate receipts or accruals in such fiscal year and the preceding fiscal year, are not (without regard to this subsection and subsection (c) of this section) subject to this title;

(C) An article is, with respect to any fiscal year, "identical in every material respect with a standard commercial article" only if—

(i) Such article is of the same kind and manufactured of the same or substitute materials (without necessarily being of identical specifications) as a standard commercial article from sales of which the contractor or subcontractor has receipts or accruals in such fiscal year,

(ii) Such article is sold at a price which is reasonably comparable with the price of such standard commercial article, and

(iii) At least 35 percent of the aggregate receipts or accruals in such fiscal year by the contractor or subcontractor from sales of such article and sales of such standard commercial article are not (without regard to this subsection and subsection (c) of this section) subject to this title;

(D) The term "service" means any processing or other operation performed by chemical, electrical, physical, or mechanical methods directly on materials owned by another person;

(E) The term "standard commercial service" means, with respect to any fiscal year, a service from the performance of which by the contractor or subcontractor at least 35 percent of the receipts or accruals in such fiscal year are not (without regard to this subsection) subject to this title;

(F) A service is, with respect to any fiscal year, "reasonably comparable with a standard commercial service" only if—

(i) Such service is of the same or a similar kind, performed with the same or similar materials, and has the same or a similar result, without necessarily involving identical operations, as a standard commercial service from the performance of which the contractor or subcontractor has receipts or accruals in such fiscal year, and

(ii) At least 35 percent of the aggregate receipts or accruals in such fiscal year by the contractor or subcontractor from the performance of such service and such standard commercial service are not (without regard to this subsection) subject to this title; and

(G) The term "standard commercial class of articles" means, with respect to any fiscal year, two or more articles with respect to which the following conditions are met:

(i) At least one of such articles either is customarily maintained in stock by the contractor or subcontractor or is offered for sale in accordance with a price schedule regularly maintained by the contractor or subcontractor,

(ii) All of such articles are of the same kind and manufactured of the same or substitute materials (without necessarily being of identical specifications),

(iii) All of such articles are sold at reasonably comparable prices, and

(iv) At least 35 percent of the aggregate receipts or accruals in the fiscal year by the contractor or subcontractor from sales of all of such articles are not (without regard to this subsection and subsection (c) of this section) subject to this title.

(5) *Waiver of exemption.* Any contractor or subcontractor may waive the exemption provided in paragraphs (1) and (2) with respect to his receipts or accruals in any fiscal year from sales of any article or service by including a statement to such effect in the financial statement filed by him for such fiscal year pursuant to section 105 (e) (1), without necessarily waiving such exemption with respect to receipts or accruals in such fiscal year from sales of any other article or service. A waiver, if made, shall be unconditional, and no waiver may be made without the permission of the Board for any receipts or accruals with respect to which the contractor or subcontractor has previously filed an application under paragraph (3).

(6) *Nonapplicability during national emergencies.* Paragraphs (1) and (2) shall not apply to amounts received or accrued during a national emergency proclaimed by the President, or declared by the Congress, after the date of the enactment of the Renegotiation Amendments Act of 1956.

§ 1467.22 *Application of exemption*—(a) *Effective date.* The exemption provided in section 106 (e) of the act, and the regulations contained in this subpart, are applicable only with respect to fiscal years ending after June 30, 1956. The exemption applies to amounts received or accrued in any such fiscal year under prime contracts with the Departments and subcontracts, without regard to whether such prime contracts or subcontracts were made before or during such fiscal year.

(b) *Scope.* Section 106 (e) of the act exempts amounts received or accrued under any contract or subcontract for any of the following:

1. A standard commercial article;

2. An article which is identical in every material respect with a standard commercial article (hereinafter in this subpart referred to as a "like article");

3. An article in a standard commercial class of articles;

4. A standard commercial service;

5. A service which is reasonably comparable with a standard commercial service (hereinafter in this subpart referred to as a "like service").

The exemption of item 1 is applied by the contractor itself, without application to the Board, or it may be waived. With respect to items 2, 3, 4 and 5, the contractor must file an application with the Board in order to obtain exemption. The contractor is not required to file an application for exemption of any of these items, but may elect to do so; or the contractor may waive the exemption expressly with respect to all or any of such items. The contractor shall not be entitled to claim exemption for any like articles, standard commercial services, or like services, to which the 3-month period prescribed in section 106 (e) (3) (B) (i) of the act is applicable, and in the same application to claim exemption for articles in one or more standard commercial classes of articles, to which the 6-month period prescribed in section 106 (e) (3) (B) (ii) of the act is applicable, unless the contractor consents and agrees that such 6-month period shall apply with respect to all of the articles, or all of the articles and services, for which exemption is claimed in such application.

(c) *Effect.* (1) When the contractor does not waive the exemption with respect to amounts received or accrued in a fiscal year from the sale of a standard commercial article, such receipts or accruals are exempt and may not be included as renegotiable sales in the financial statement filed by the contractor for such fiscal year.

(2) When the contractor files an application for exemption of amounts received or accrued in a fiscal year from the sale of a like article, or a standard commercial service, or a like service, such receipts or accruals are exempt for such fiscal year if within three months thereafter, or any longer agreed period, the Board grants, or fails to deny, such application.

(3) When the contractor files an application for exemption of amounts received or accrued in a fiscal year from sales of an article in a standard commercial class of articles, such receipts or accruals are exempt if within six months thereafter, or any longer agreed period, the Board grants, or fails to deny, such application.

(d) *Procedure.* When a contractor files an application, pursuant to section 106 (e) (3) of the act, for exemption of some of its receipts or accruals for a fiscal year, the applicability of the exemption to such receipts or accruals will be determined by the Board before the Board takes action with respect to any other receipts or accruals of the contractor in such fiscal year.

(e) *Initial treatment.* (1) If the amounts received or accrued under prime contracts with the Department and subcontracts during the fiscal year by the contractor and all related contractors, including receipts or accruals for which exemption may be obtained

only by application to the Board under section 106 (e) (3) of the act, aggregate less than the minimum amount for renegotiation prescribed in section 105 (f) (1) of the act, the contractor shall not file the Application for Commercial Exemption set forth in § 1467.31. An Application for Commercial Exemption filed under such circumstances will be returned to the contractor without action by the Board thereon.

(2) Except as stated in subparagraph (1) of this paragraph, every contractor who claims that the exemption provided in paragraph (1) (B) or (C) or paragraph (2) of section 106 (e) of the act is applicable to any of its receipts or accruals for a fiscal year shall file the Application for Commercial Exemption as provided in § 1467.31.

(3) If, in addition to receipts or accruals for which the contractor has filed an Application for Commercial Exemption, the contractor in the same fiscal year has other renegotiable receipts or accruals which in themselves aggregate more than the minimum amount prescribed in section 105 (f) (1) of the act, the contractor shall also file the Standard Form of Contractor's Report with respect to such other receipts or accruals (see § 1470.3 of this subchapter). Unless before the Standard Form of Contractor's Report is filed the Board shall have determined that the exemption is not applicable to the receipts or accruals for which exemption has been claimed by the contractor in its Application for Commercial Exemption, such receipts or accruals shall be excluded from the Standard Form of Contractor's Report.

(4) If, in addition to receipts or accruals for which the contractor has filed an Application for Commercial Exemption, the contractor in the same fiscal year has other renegotiable receipts or accruals which in themselves do not aggregate more than the minimum amount prescribed in section 105 (f) (1) of the act, the contractor shall not be entitled to file the Statement of Non-Applicability prescribed in § 1470.91 (b) of this subchapter until the Board has completed its action upon the Application for Commercial Exemption. A Statement of Non-Applicability filed before such time will be returned to the contractor, and will not constitute the filing of a financial statement under section 105 (e) (1) of the act and will not commence the running of the one-year period of limitations prescribed in section 105 (c) of the act.

§ 1467.23 *Waiver of exemption*—(a) *Scope.* Under section 106 (e) of the act, the contractor may waive the exemption therein granted by including a statement to such effect in the Standard Form of Contractor's Report filed by the contractor pursuant to section 105 (e) (1). If the Board agrees to accept a waiver of the exemption from a contractor who has not included such waiver in its Standard Form of Contractor's Report, such waiver, when accepted, will be deemed a part of the Standard Form of Contractor's Report of such contractor with the same force and effect as if it had been set forth therein when such report was filed. The exemption may be waived with respect to the receipts or accruals of the contractor in the fiscal year from sales of all articles or services within the scope of section 106 (e) of the act; or the contractor may waive the exemption with respect to receipts or accruals in the fiscal year from sales of any of such articles or services, without necessarily waiving the exemption with respect to receipts or accruals in such fiscal year from sales of any other of such articles or services. The exemption may be waived either individually or by class with respect to any articles or services. For this purpose, articles or services may be grouped into such product or service classes as the contractor uses regularly in its own accounting system.

(b) *Limitations.* (1) A waiver made in the Standard Form of Contractor's Report shall be effective only with respect to the fiscal year to which such report relates, and shall not be effective for any other year.

(2) The exemption may not be claimed with respect to receipts or accruals under certain prime contracts or subcontracts for an article or service, and waived with respect to receipts or accruals in the same fiscal year under other prime contracts or subcontracts for the same article or service.

(3) A waiver of the exemption, to be effective, must be unconditional. The contractor shall not be entitled to state in its Standard Form of Contractor's Report or in its Application for Commercial Exemption that, if the Board denies the exemption with respect to certain articles or services, or classes thereof, the exemption is waived with respect to any or all other articles or services, or classes thereof.

(4) No waiver may be made without the permission of the Board for any receipts or accruals with respect to which the contractor has previously filed an Application for Commercial Exemption.

(5) Once made, a waiver of this exemption may not be withdrawn except with the permission of the Board.

§ 1467.24 *The term "article".* Section 106 (e) (4) (A) of the act defines the term "article" to include any material, part, component, assembly, machinery, equipment, or other personal property. For the purposes of this exemption, the term "article" will be given a narrow meaning. When two products differ only in dimensions or size, or in such nonfunctional respects as color or markings, and are sold at the same price, it will be considered that such products are a single article. If such products are sold at different prices, each will be considered a separate article. Similarly, if two products differ in any respects other than those indicated above, each will be considered a separate article, even though both may sell coincidentally at the same price. In determining whether prices are the same or different, volume or other discounts will be disregarded.

Example. If copper tubing is quoted and sold at a stated price per lineal foot, sales of such tubing are considered to be sales of a single article, although different customers may buy it in different lengths. On the other hand, and ignoring volume or other discounts, if 1-foot lengths of copper tubing are quoted and sold at one stated price, and 2-foot lengths are quoted and sold at a price other than exactly double, a difference in price exists and each such length of tubing is considered a separate article.

§ 1467.25 *Exemption of standard commercial articles*—(a) *Scope.* Section 106 (e) (1) (A) exempts all "standard commercial articles," as that term is defined in section 106 (e) (4) (B) of the act. This exemption is self-executing; it may be availed of by the contractor without application to the Board. However, the exemption does not apply and will not be allowed to the contractor in any fiscal year unless both of the two conditions prescribed in section 106 (e) (4) (B) are met with respect to such fiscal year. These conditions are explained in the succeeding paragraphs of this section.

(b) *Stock or catalog sales.* (1) The first requisite of a standard commercial article, as provided in section 106 (e) (4) (B) (i) of the act, is that the article must be customarily maintained in stock by the contractor, or must be offered for sale in accordance with a price schedule regularly maintained by the contractor.

(2) An article is "customarily maintained in stock" if it is customarily kept in continuing inventory on a maximum-minimum or other acceptable inventory basis, and if sales orders are customarily filled from such supply.

(3) The expression "offered for sale in accordance with a price schedule regularly maintained by the contractor" means that the prices and terms at which the article is customarily sold by the contractor are made known to customers generally, by either a published catalog, a posted price list, or any other acceptable means. The price schedule need not state separately the price of every article, but may show the prices of certain basic articles and extra charges for other articles containing specific variations. The fact that seasonal or other general price adjustments are made in a price schedule does not necessarily mean that it is not regularly maintained. When the contractor customarily offers an article for sale in accordance with daily or other periodically published market quotations, such quotations will be considered to be a price schedule maintained by the contractor.

(c) *The 35 percent test.* (1) The second requisite of a standard commercial article, as provided in section 106 (e) (4) (B) (ii) of the act, is that the non-renegotiable receipts or accruals of the contractor from sales of the article must aggregate at least 35 percent of the contractor's total receipts or accruals from such sales in the fiscal year under review, or in such fiscal year and the preceding fiscal year. The purpose of this requirement is to establish the existence of a commercial market for the article. The requirement is met if at least 35 percent of the contractor's sales of the article in the fiscal year under review are non-renegotiable. If this is not the case, the contractor may still satisfy the requirement if at least 35 percent of its aggregate sales of the article in the fiscal year under review and the preceding fiscal year are non-renegotiable.

(2) In computing non-renegotiable receipts or accruals for the purpose of

subparagraph (1) of this paragraph, the receipts or accruals for which exemption is claimed in the Application for Commercial Exemption shall be considered renegotiable. Also, the extent to which a prime contract or subcontract for new durable productive equipment is exempt by reason of section 106 (c) of the act shall be disregarded; every such prime contract or subcontract shall, for such purpose, be considered wholly renegotiable.

Example. A contractor manufactures and sells typewriters to order. Its catalog lists a standard office model in either a black or gray finish, with no difference in price, but $10.00 higher if equipped with elite type rather than pica type. In the fiscal year under review, the contractor has $80,000 of renegotiable sales and $20,000 of non-renegotiable sales of black standard office typewriters with elite type. Of the gray typewriter with elite type, the contractor has renegotiable sales of $60,000 and non-renegotiable sales of $40,000 in the fiscal year under review. Of total sales of $200,000, only 30 percent are non-renegotiable. Thus, the exemption does not apply unless, by including its sales in the preceding fiscal year, the contractor attains the qualifying percentage. Assume that in the preceding fiscal year the contractor had renegotiable sales of $10,000 and non-renegotiable sales of $90,000 of the black typewriter with elite type, and had no renegotiable sales and $50,000 of non-renegotiable sales of the gray typewriter with elite type. Now, of aggregate sales of $350,000 for the two years, the contractor's sales of typewriters with elite type are well above 35 percent, and thus that article qualifies for exemption as a standard commercial article in the fiscal year under review. Since the typewriter with pica type is sold at a different price, it is a different article (see § 1467.23) and the sales thereof must be considered separately for purposes of the exemption.

§ 1467.26 *Exemption of "like articles".*—(a) *In general.* Section 106 (e) (1) (B) exempts an article which is "identical in every material respect with a standard commercial article", as that term is defined in section 106 (e) (4) (C), and whether or not the contractor has waived the exemption with respect to such standard commercial article. The statute contemplates that such an article, although not itself a standard commercial article, is sufficiently like a standard commercial article to warrant similar treatment for renegotiation purposes. The exemption of such "like articles" is not self-executing; it may be obtained only by application to the Board, upon a showing that all of the conditions prescribed in section 106 (e) (4) (C) exist. If any of such conditions is not present, the article is not identical in every material respect with a standard commercial article, and the exemption does not apply. The necessary conditions are explained in the succeeding paragraphs of this section.

(b) *Limitations.* (1) This exemption, if granted, is effective only with respect to the fiscal year under review. If exemption is desired for any other year, separate application must be made therefor to the Board.

(2) The standard commercial article selected for comparison must be one sold by the contractor itself in the fiscal year under review. The requirements of the statute cannot be satisfied by comparing like articles with standard commercial articles sold by other contractors in the fiscal year under review, or with standard commercial articles sold by the contractor or by other contractors in any fiscal year other than the fiscal year under review.

(c) *"Of the same kind".* (1) Section 106 (e) (4) (C) (i) provides that a like article must be "of the same kind" as the standard commercial article selected for comparison. In determining whether articles are of the same kind, the Board will consider both their generic and their specific qualities or attributes. The articles need not be of identical specifications. The uses made or to be made of the respective articles will be taken into consideration, but such uses need not be identical.

(2) The term "of the same kind" will be narrowly construed to exclude unreasonable deviations from the standard commercial article selected for comparison. For example, an ultra-precision bearing manufactured to extremely close tolerances is not considered to be an article of the same kind as a bearing manufactured of the same materials but to much wider tolerances. Also, a capacitor for an aircraft electronic assembly, having an estimated reliability ratio of 1 unit in 20,000 units and requiring 40 hours to manufacture, is not considered to be an article of the same kind as a capacitor for a commercial radio, having an estimated reliability ratio of 1 unit in only 200 units and requiring only 2 hours to manufacture.

(3) The term "of the same kind" will also be construed to exclude obviously unlike articles which, for accounting or other purposes, are sometimes grouped together by the contractor in a single general classification. For example, ordinary commercial plate and armor plate are not considered to be articles of the same kind although both may be carried by the contractor under the single accounting classification of "plate".

(d) *"Same or substitute materials."* (1) Section 106 (e) (4) (C) (i) provides that a like article must be "manufactured of the same or substitute materials" as the standard commercial article selected for comparison. This requirement may be satisfied without the two articles necessarily being of identical specifications.

(2) The term "same or substitute materials" will be construed to exclude materials having substantially different combinations of elements or ingredients. For example, aluminum sheet made of an alloy containing 5 percent zinc is not an article manufactured of "the same or substitute materials" as aluminum sheet of the same dimensions but made from an alloy containing 4 percent copper and having significantly different performance characteristics, such as melting temperature, strength, etc. Because of these differences, and because one of these alloys is used predominantly in high-speed airplane construction and users are willing to pay a considerably higher price for it, these two types of aluminum sheet would also not be considered to be articles of the same kind under paragraph (c) of this section.

(e) *"Reasonably comparable" price.* (1) Section 106 (e) (4) (C) (ii) provides that a like article must be sold at a price which is "reasonably comparable" with the price of the standard commercial article selected for comparison. As so used, the term "reasonably comparable" means that such differences as exist between the prices of the two articles are attributable to measurable characteristics and, without resort to cost analyses, are explainable in terms of market-tested differentials shown in the contractor's established commercial pricing pattern for articles of the same kind. This does not include price differences which are not reflected in the contractor's commercial price schedules, even though such differences are alleged to be and can be proved to be consistent with the cost differences between the articles. The Board will disregard price differences which it considers to be of negligible importance.

Example. Assume that the contractor sells pipe in the following sizes only, listed in its catalog at the following prices:

Inside diameter	Wall thickness (Price per linear foot)		
	0.15 in.	0.20 in.	0.25 in.
1 inch	$0.10	$0.14	$0.18
2 inches	.15	.21	.27
3 inches	.19	.27	.35

Assume also that all of the pipe sizes are articles of the same kind and manufactured of the same materials.

(i) Assume further that the Army is the sole purchaser of the contractor's 2-inch pipe of .15-inch wall thickness, and that all of the other articles listed are sold by the contractor in substantial quantities to commercial customers. It is evident that the price of the pipe bought by the Army is consistent with the market-tested relationships shown in the contractor's catalog for pipe of different diameters and different wall thicknesses, and hence is reasonably comparable with the prices of such other articles.

(ii) Assume now that the contractor makes only negligible sales of pipe of 3-inch diameter. The catalog relationship between price increases and pipe diameter increases would thus be without market-tested support. In such case the contractor's price of 15 cents for the 2-inch pipe sold to the Army would not be considered reasonably comparable with the 10-cent price for 1-inch pipe of the same wall thickness.

(iii) Assume now that the contractor customarily makes substantial commercial sales of all of the articles listed above, and fills a special order from the Navy for 5-inch pipe. With no market-tested price record to offer for pipe in diameters above 3 inches, the contractor would be unable to establish that its price to the Navy for 5-inch pipe is reasonably comparable with its prices for the other pipe sizes.

(f) *The 35 percent test.* (1) Section 106 (e) (4) (C) (iii) of the act provides that at least 35 percent of the aggregate sales in the fiscal year under review of a like article and the standard commercial article selected for comparison must be non-renegotiable. Under this provision, unlike that relating to the exemption of standard commercial articles (see § 1467.25 (c)), recourse may not be had to sales in the preceding fiscal year; the like article must qualify on the basis of the contractor's sales in the fiscal year under review only.

(2) In computing non-renegotiable receipts or accruals for the purpose of subparagraph (1) of this paragraph, the receipts or accruals for which exemption is claimed in the Application for Commercial Exemption shall be considered renegotiable. Also, the extent to which a prime contract or subcontract for new durable productive equipment is exempt by reason of section 106 (c) of the act shall be disregarded; every such prime contract or subcontract shall, for such purpose, be considered wholly renegotiable.

§ 1467.27 *Exemption of standard commercial classes of articles*—(a) *In general.* Section 106 (e) (2) of the act exempts an article in "a standard commercial class of articles", as that term is defined in section 106 (e) (4) (G). Under this provision, a group of articles may be exempted even though the contractor does not maintain sales records on the individual articles comprising the group and is thus unable to qualify any individual article in the group as a standard commercial article. This exemption is not self-executing; it may be obtained only by application to the Board, upon a showing that all of the conditions prescribed in section 106 (e) (4) (G) exist. If any of such conditions is not present, the group containing the articles for which exemption is sought does not constitute a standard commercial class of articles, and the exemption does not apply. The necessary conditions are explained in the succeeding paragraphs of this section.

(b) *Limitation.* This exemption, if granted, is effective only with respect to the fiscal year under review. If exemption is desired for any other year, separate application must be made therefor to the Board.

(c) *Stock or catalog sales.* Section 106 (e) (4) (G) (i) of the act provides that at least one of the articles in a standard commercial class of articles must be customarily maintained in stock, or must be offered for sale in accordance with a price schedule regularly maintained by the contractor. For the purposes of this section, these terms shall have the meanings given to them in § 1467.25. The contractor will be required to identify the article or articles which are alleged to meet this requirement.

(d) *"Of the same kind" and "same or substitute materials".* Section 106 (e) (4) (G) (ii) of the act provides that all of the articles in a standard commercial class of articles must be of the same kind and manufactured of the same or substitute materials (without necessarily being of identical specifications). For the purposes of this section, these terms shall have the meanings given to them in § 1467.26.

(e) *"Reasonably comparable" prices.* Section 106 (e) (4) (G) (iii) of the act provides that all of the articles in a standard commercial class of articles must be sold at reasonably comparable prices. For the purposes of this section, this term shall have the meaning given to it in § 1467.26. However, since it is recognized that a standard commercial class of articles will often include articles for which separate sales records are not available, the contractor will not be required to furnish market-tested support for the price of each separate article in the class.

(f) *The 35 percent test.* (1) Section 106 (e) (4) (G) (iv) of the act provides that at least 35 percent of the aggregate sales in the fiscal year under review of all the articles in a standard commercial class of articles must be non-renegotiable. Sales of any of such articles in the preceding fiscal year are not relevant to this computation and shall not be included therein.

(2) In computing non-renegotiable receipts or accruals for the purpose of subparagraph (1) of this paragraph, the receipts or accruals for which exemption is claimed in the Application for Commercial Exemption shall be considered renegotiable. Also, the extent to which a prime contract or subcontract for new durable productive equipment is exempt by reason of section 106 (c) of the act is disregarded; every such prime contract or subcontract shall, for such purpose, be considered wholly renegotiable.

§ 1467.28 *The term "service".* Section 106 (e) (4) (D) of the act defines the term "service" to mean any processing or other operation performed by chemical, electrical, physical, or mechanical methods directly on materials owned by another person. For the purposes of this exemption, the term "service" will be given a narrow meaning. When two operations differ in non-essential respects only, and are sold at the same price, it will be considered that such operations are a single service. If such operations are sold at different prices, each will be considered a separate service. Similarly, if two operations differ in any essential respects, each will be considered a separate service, even though both may sell coincidentally at the same price. In determining whether prices are the same or different, volume or other discounts will be disregarded.

§ 1467.29 *Exemption of standard commercial services*—(a) *In general.* Section 106 (e) (1) (C) exempts a "standard commercial service", as that term is defined in section 106 (e) (4) (E) of the act. This exemption is not self-executing; it may be obtained only by application to the Board.

(b) *Interpretation.* This exemption is not limited to services performed on articles which qualify for exemption under section 106 (e) of the act. A service may qualify as a standard commercial service even though it is performed on an article which does not itself qualify for exemption. For example, if a contractor produces aircraft parts and furnishes them to a subcontractor for plating, the subcontractor is not precluded from obtaining the exemption merely because the aircraft parts are not exempt under section 106 (e) of the act.

(c) *The 35 percent test.* To qualify as a standard commercial service, a service must be one from the performance of which by the contractor at least 35 percent of the receipts or accruals in the fiscal year under review are non-renegotiable. In computing non-renegotiable receipts or accruals for this purpose, the receipts or accruals for which exemption is claimed in the Application for Commercial Exemption shall be considered renegotiable.

(d) *Limitation.* This exemption, if granted, is effective only with respect to the fiscal year under review. If exemption is desired for any other year, separate application must be made therefor to the Board.

§ 1467.30 *Exemption of like services*—(a) *In general.* Section 106 (e) (1) (C) exempts a service which is "reasonably comparable with a standard commercial service", as that term is defined in section 106 (e) (4) (F) of the act, and whether or not the contractor has waived the exemption with respect to such standard commercial service. The Statute contemplates that such a service, although not itself a standard commercial service, is sufficiently like a standard commercial service to warrant similar treatment for renegotiation purposes. The exemption of such "like services" is not self-executing; it may be obtained only by application to the Board, upon a showing that all of the conditions prescribed in section 106 (e) (4) (C) exist. If any of such conditions is not present, the service is not reasonably comparable with a standard commercial service, and the exemption does not apply. The necessary conditions are explained in the succeeding paragraphs of this section.

(b) *Limitations.* (1) This exemption, if granted, is effective only with respect to the fiscal year under review. If exemption is desired for any other year, separate application must be made therefor the Board.

(2) The standard commercial service selected for comparison must be one performed by the contractor itself in the fiscal year under review. The requirements of the statute cannot be satisfied by comparing like services with standard commercial services performed by other contractors in the fiscal year under review, or with standard commercial services performed by the contractor or by other contractors in any fiscal year other than the fiscal year under review.

(c) *Qualitative requirements.* Section 106 (e) (4) (F) (i) of the act provides that a like service must be of the same or a similar kind, must be performed with the same or similar materials, and must have the same or a similar result as a standard commercial service from the performance of which the contractor has receipts or accruals in the fiscal year under review. In determining whether two services meet these requirements, the Board will consider both their generic and their specific characteristics. These requirements may be satisfied without the two services necessarily involving identical operations.

(d) *The 35 percent test.* (1) Section 106 (e) (4) (F) (ii) of the act provides that at least 35 percent of the aggregate sales in the fiscal year under review of a like service and the standard commercial service selected for comparison must be non-renegotiable. Sales of the contractor in the preceding fiscal year are not

relevant to this computation and shall not be included therein.

(2) In computing non-renegotiable receipts or accruals for the purposes of subparagraph (1) of this paragraph, the receipts or accruals for which exemption is claimed in the Application for Commercial Exemption shall be considered renegotiable.

§ 1467.31 *Application for Commercial Exemption*—(a) *Form.* No printed form is prescribed for the filing of an application for exemption under section 106 (e) (3) of the act. However, the information and data prescribed in paragraph (b) of this section will be known as the "Application for Commercial Exemption". This application shall be furnished in writing, shall be entitled "Application for Commercial Exemption", and shall consist of numbered paragraphs corresponding with the numbers in paragraph (c) of this section. Attention is called to the fact that the submission of this application is subject to the penalty provisions of section 105 (e) (1) of the act.

(b) *Use.* Except as provided in § 1467.22 (e) (1), the Application for Commercial Exemption shall be filed by every contractor who claims exemption under section 106 (e) of the act for any articles or services, except standard commercial articles (see § 1467.22 (b)). A separate application must be filed by every contractor claiming the exemption; affiliated or related contractors may not file consolidated applications.

(c) *Contents.* The Application for Commercial Exemption shall contain the information and data prescribed in the following instructions:

(1) *Description of articles or services.* Set forth a description of the articles or services claimed to be exempt, including representative catalogs or brochures, if available. State clearly whether exemption is being claimed for (i) like articles—i. e., articles which are identical in every material respect with a standard commercial article or articles; (ii) articles in a standard commercial class or classes of articles; (iii) standard commercial services; or (iv) like services—i. e., services which are reasonably comparable with a standard commercial service or services. If it is desired in a single application to claim exemption for any like articles, standard commercial services, or like services, as well as for articles in one or more standard commercial classes of articles, a statement in substantially the following form must be included: "The contractor hereby consents and agrees that the 6-month period prescribed in section 106 (e) (3) (B) (ii) of the act shall apply with respect to all of the articles (or: all of the articles and services) for which exemption is claimed in this application."

(2) *Like articles.* With respect to each like article described separately in subparagraph (1) of this paragraph, set forth a description of the standard commercial article with which such like article is claimed to be identical in every material respect; set forth information sufficient to establish that both of such articles are of the same kind, are manufactured of the same or substitute materials, and are sold at reasonably comparable prices; and set forth a schedule of sales showing the following with respect to the fiscal year under review:

Like article claimed to be exempt	Standard commercial article compared	Total sales		Renegotiable sales		Nonrenegotiable sales (like and standard combined)	
		Like	Standard	Like	Standard	Amount	Percent of total
(1)							
(2)							
(3)							
(4)							

The above figures must be actual, not estimated. If the new durable productive equipment exemption is applicable (see Part 1454 of this subchapter), the sales listed above should be stated before application of such exemption.

(3) *Standard commercial classes of articles.* With respect to any standard commercial class of articles described in subparagraph (1) of this paragraph, identify at least one article in the class which either is customarily maintained in stock by the contractor or is offered for sale in accordance with a price schedule regularly maintained by the contractor; set forth information sufficient to establish that all of the articles in the class are of the same kind, are manufactured of the same or substitute materials, and are sold at reasonably comparable prices; and set forth a schedule of sales showing the following with respect to the fiscal year under review:

Standard commercial class of articles	Total sales	Sales claimed to be exempt	Nonrenegotiable sales	
			Amount	Percent of total
(1)				
(2)				
(3)				
(4)				

The above figures must be actual, not estimated. If the new durable productive equipment exemption is applicable (see Part 1454 of this subchapter), the sales listed above should be stated before application of such exemption.

(4) *Standard commercial services.* With respect to each standard commercial service described in subparagraph (1) of this paragraph, state the total amount of sales of such service in the fiscal year under review, and the amount and percent of the nonrenegotiable portion of such sales.

(5) *Like services.* With respect to any like service described in subparagraph (1) of this paragraph, describe the standard commercial service with which such like service is claimed to be reasonably comparable; set forth information sufficient to establish that both of such services are of the same or a similar kind, are performed with the same or similar materials, and have the same or a similar result; and set forth a schedule of sales showing the following with respect to the fiscal year under review:

Like service claimed to be exempt	Standard commercial service compared	Total sales		Renegotiable sales		Non-renegotiable sales (like and standard combined)	
		Like	Standard	Like	Standard	Amount	Percent of total
(1)							
(2)							
(3)							
(4)							

The above figures must be actual, not estimated.

(d) *Time for filing.* Except as set forth in § 1467.22 (e) (1), every contractor who claims that the exemption provided in paragraph (1) (B) or (C) or paragraph (2) of section 106 (e) of the act is applicable to any of its receipts or accruals in a fiscal year, under prime contracts with the Departments or subcontracts, shall file an Application for Commercial Exemption as soon as practicable after the close of such fiscal year, but in no event later than the date upon which the contractor is required to file the Standard Form of Contractor's Report with respect to such fiscal year. If the Application for Commercial Exemption is filed before the date upon which the contractor is required to file the Standard Form of Contractor's Report with respect to such fiscal year, the contractor shall not be required to file the Standard Form of Contractor's Report until the date prescribed in § 1470.3 (d) (1) of this subchapter for the filing thereof or until the thirtieth day after the Board sends to the contractor written notice of the action of the Board on the claim for exemption, whichever occurs

later. If, as a result of such action of the Board, the renegotiable receipts or accruals of the contractor and all related contractors in such fiscal year aggregate less than the minimum amount for renegotiation prescribed in section 105 (f) (1) of the act, the contractor shall not be required to file the Standard Form of Contractor's Report but shall be entitled, if it elects so to do, to file the Statement of Non-Applicability with respect to such fiscal year.

§ 1467.32 *Duty to furnish additional information.* The filing of an Application for Comercial Exemption in accordance with the provisions of this section will not relieve any prime contractor or subcontractor of the duty to furnish any other information, records or data which are determined by the Board to be necessary to carry out its responsibilities under section 106 (e) of the act.

§ 1467.33 *Effect of filing Application for Commercial Exemption*—(a) *In general.* When the Application for Commercial Exemption is filed, it will be considered that the contractor has filed the information and data prescribed in paragraph (3) of section 106 (e) of the act, and the applicable 3-month or 6-month period prescribed in said paragraph will thereupon begin to run, except as provided in the succeeding paragraphs of this section.

(b) *When application is defective.* If, within sixty (60) days after the filing of an Application for Commercial Exemption, the Board sends to the contractor a written notice that such application is in the opinion of the Board incomplete or otherwise defective in any material respect, and that exception has been taken thereto in such respect, the filing of such application will not be considered to be the filing of the information and data prescribed in paragraph (3) of section 106 (e) of the act, sufficient to start the running of the applicable 3-month or 6-month period prescribed in said paragraph, and such period will not begin to run until such defect has been corrected by the filing of the information or data specified in the notice of the Board. If the contractor fails to correct the defect within a reasonable time after such notice, the Board may deny the application of the contractor for exemption.

(c) *When additional information is required.* If, within sixty (60) days after the filing of an Application for Commercial Exemption, the Board sends to the contractor a written request to furnish specific additional information or data to support the claim for exemption, the filing of such application will not be considered to be a filing of information and data sufficient to start the running of the applicable 3-month or 6-month period prescribed in section 106 (e) (3) of the act, and such period will not begin to run until a complete and satisfactory filing of the additional information or data so requested has been made. Any such additional information or data, when filed, will be deemed a part of the Application for Commercial Exemption. If such additional filing is complete and satisfactory, the Board as soon as possible thereafter will send to the contractor a written notice that the additional information and data is complete and satisfactory and that the applicable 3-month or 6-month period began to run on the date of such additional filing. If the contractor fails to furnish the additional information or data within a reasonable time after the request therefor, the Board may deny the application of the contractor for the exemption.

(d) *When material mis-statement occurs.* If the Application for Commercial Exemption filed by any contractor contains a mis-statement of a material fact, the applicable 3-month or 6-month period prescribed in section 106 (e) (3) of the act will not begin to run until such mis-statement has been corrected, with or without any notice or request from the Board, and notwithstanding that the Board previously may have notified the contractor that such application had been accepted as complete and satisfactory.

§ 1467.34 *Grant of exemption.* If, within the applicable 3-month or 6-month period prescribed in section 106 (e) (3) of the act, computed in accordance with the provisions of § 1467.33, or within any longer period stipulated by mutual agreement, the Board determines that any article or service for which exemption has been claimed by the contractor in the Application for Commercial Exemption is an article or service to which the exemption applies, the Board will give written notice of such determination to the contractor and will advise the contractor that its sales of such article or service in the fiscal year under review are exempt under section 106 (e) of the act. Except as provided in § 1467.33 (d), such exemption shall be fixed and final.

§ 1467.35 *Accrual of exemption by failure of Board to act.* If, within the applicable 3-month or 6-month period prescribed in section 106 (e) (3) of the act, computed in accordance with the provisions of § 1467.33, or within any longer period stipulated by mutual agreement, the Board fails to determine that any article or service for which exemption has been claimed by the contractor in the Application for Commercial Exemption is not an article or service to which the exemption applies, the sales of such article or service in the fiscal year under review shall be exempt under section 106 (e) of the act and, except as provided in § 1467.33 (d), such exemption shall be fixed and final.

§ 1467.36 *Denial of exemption.* If, within the applicable 3-month or 6-month period prescribed in section 106 (e) (3) of the act, computed in accordance with the provisions of § 1467.33, or within any longer period stipulated by mutual agreement, the Board determines that any article or service for which exemption has been claimed by the contractor in the Application for Commercial Exemption is not an article or service to which the exemption applies, the Board will give written notice of such determination to the contractor and will advise the contractor that its sales of such article or service in the fiscal year under review are not exempt under section 106 (e) of the act.

§ 1467.37 *Exemption not applicable to related subcontracts.* The exemption provided in section 106 (e) of the act is limited to prime contracts and subcontracts meeting the conditions prescribed in said subsection (e). It does not extend to related subcontracts. With respect to any such subcontracts, the exemption, if claimed, must be independently established. Section 106 (a) (7) of the act, which exempts subcontracts under certain exempt prime contracts or subcontracts, does not apply to subcontracts under prime contracts or subcontracts exempted under section 106 (e) of the act (see § 1453.6 of this subchapter).

[F. R. Doc. 56-7806; Filed, Sept. 26, 1956; 8:53 a. m.]

NOTICES

DEPARTMENT OF COMMERCE

Federal Maritime Board

CITY OF OAKLAND, CALIF. AND ENCINAL TERMINALS

NOTICE OF AGREEMENT FILED FOR APPROVAL

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916, 39 Stat. 733, 46 U. S. C. 814.

Agreement No. 8155, between the City of Oakland, California and Encinal Terminals, covers the lease to Encinal of certain terminal property in the Outer Harbor Terminal Area, Oakland, designated as Building C-107, Building B-101, and the open area between and adjacent to said buildings, subject to the terms and conditions set forth in the agreement, dated September 1, 1956, for a term of one year beginning on the first day of the month next succeeding 30 days after approval by the Board.

Interested parties may inspect this agreement 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 the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: September 24, 1956.

By order of the Federal Maritime Board.

[SEAL] GEO. A. VIEHMANN, *Assistant Secretary.*

[F. R. Doc. 56-7803; Filed, Sept. 26, 1956; 8:52 a. m.]

FREDERIC HENJES, JR., INC. AND KENNEDY-WHITE & CO., INC.

NOTICE OF AGREEMENT FILED FOR APPROVAL

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916, 39 Stat. 733, 46 U. S. C. 814.

Agreement No. 8145 between Frederic Henjes, Jr., Inc., New York, New York, and Kennedy-White & Co., Inc., Baltimore, Maryland, is a cooperative working arrangement between the parties under which they perform freight forwarding services for each other.

Interested parties may inspect this agreement 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 the agreement, and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: September 24, 1956.

By order of the Federal Maritime Board.

[SEAL] GEO. A. VIEHMANN, *Assistant Secretary.*

[F. R. Doc. 56-7804; Filed, Sept. 26, 1956; 8:52 a. m.]

Office of the Secretary

CARL M. VUCKEL

STATEMENT OF CHANGES IN FINANCIAL INTERESTS

In accordance with the requirements of section 710 (b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER of 21 F. R. 2666, April 25, 1956.

A. Deletions: No change.

B. Additions: No change.

This statement is made as of September 16, 1956.

Dated: September 18, 1956.

CARL M. VUCKEL.

[F. R. Doc. 56-7792; Filed, Sept. 26, 1956; 8:49 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Doc. 141]

[Classification 54]

ARIZONA

SMALL TRACT CLASSIFICATION

SEPTEMBER 19, 1956.

1. Pursuant to authority delegated by Document No. 43, Arizona, effective May 19, 1955, (20 F. R. 3514-15), I hereby classify the following described land, totalling approximately 240 acres in Maricopa County, Arizona, as suitable for lease and sale for residence purposes under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended.

GILA AND SALT RIVER MERIDIAN

T. 5 N., R. 2 E.,
Sec. 35: NW¼, W½SW¼.

2. Classification of the above described land by this order segregates it from all appropriations, including locations under the mining laws, except as to applications under the mineral leasing laws.

3. The land classified by this order shall not become subject to application under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended, until it is so provided by an order to be issued by an authorized officer, opening the land to application or bid with a preference right to veterans of World War II and of the Korean Conflict and other qualified persons entitled to preference under the act of September 27, 1944 (58 Stat. 497; 43 U. S. C. 279-284), as amended.

4. All valid applications filed prior to February 9, 1949 will be granted, as soon as possible, the preference right provided for by 43 CFR 257.5 (a).

E. R. TRAGITT, *State Lands and Minerals, Staff Officer.*

[F. R. Doc. 56-7774; Filed, Sept. 26, 1956; 8:46 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 8222]

LAURENTIDE AVIATION LTD.

NOTICE OF HEARING ON APPLICATION FOR EXTENSION OF FOREIGN AIR CARRIER PERMIT

In the matter of the application of Laurentide Aviation Limited for an extension of its foreign air carrier permit to perform operations of a casual, occasional, or infrequent nature, in common carriage into the United States.

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on October 2, 1956, at 10:00 a. m., e. d. s. t., in Room 1032, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D. C., September 21, 1956.

[SEAL] FRANCIS W. BROWN, *Chief Examiner.*

[F. R. Doc. 56-7773; Filed, Sept. 26, 1956; 8:45 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-2453]

MANUFACTURERS LIGHT AND HEAT CO.

ORDER FIXING DATE OF HEARING

The Commission, by order issued June 4, 1954, in this docket, suspended the FPC Gas Tariff, Third Revised Volume No. 1 filed by The Manufacturers Light and Heat Company proposing an increase in rates and charges for the sale in interstate commerce of natural gas for resale to each of its fifteen wholesale customers.

The Commission finds: It is appropriate and in the public interest in carrying out the provisions of the Natural Gas Act that the proceeding in this docket be set for hearing as hereinafter provided.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 4, 5, 15 and 16 of the Natural Gas Act and the Commission's general rules and regulations including rules of practice and procedure (18 CFR, Chapter I), public hearing hereby is set to commence on October 15, 1956, 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 and the issues presented by the above-entitled proceeding.

(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).

Issued: September 20, 1956.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 56-7777; Filed, Sept. 26, 1956; 8:46 a. m.]

[Docket Nos. G-9383, G-11112]

C. N. HOUSH, ET AL.

ORDER PERMITTING CHANGE IN RATES DUE TO REDUCTION IN TEXAS OCCUPATION TAX AND SUSPENDING PROPOSED INCREASE IN RATES

On August 24, 1956, C. N. Housh, et al., (Applicant) submitted for filing proposed changes in Applicant's rate schedules presently in effect. The proposed changes and proposed effective date are as follows:

Description; Purchaser; Rate Schedule Designation; and Effective Date[1]

Notice of change undated: Texas Illinois Natural Gas Pipeline Company; Supplement No. 6 to Applicant's FPC Gas Rate Schedule No. 1.

By order issued September 22, 1955 in Docket No. G-9383, the Commission suspended the increased rates and charges previously proposed by Supplement No. 5 to Applicant's FPC Gas Rate Schedule No. 1. On August 24, 1956, concurrently with the present filing, Applicant moved to place in effect such suspended Supplement No. 5, and, by order in Docket No. G-9383 issued concurrently herewith, the Commission has allowed such increased rates and charges to become effective as of August 24, 1956,

[1] Applicant proposes and the Commission hereinafter prescribes September 1, 1956 as the effective date for the change in rates due to reduction in Texas Occupation Tax. Applicant also proposes September 1, 1956 as the effective date for the proposed increase in rates; however, the effective date of this portion of the filing is the first day after expiration of the 30-days' notice required by sec. 4 (d) of the Natural Gas Act, or September 6, 1956.

subject to refund if subsequently so ordered by the Commission.

The present filing perfects an original tender for filing made August 6, 1956, covering the present subject matter, which omitted to take into account the prior suspension above-mentioned.

Applicant here proposes by said Supplement No. 6 (1) to give effect in the rates being collected subject to refund (pursuant to the above-mentioned order issued concurrently herewith) to the reduction in the Texas occupation tax as of September 1, 1956; and (2) to reflect as of the same date a periodic increase in the price of gas sold to Texas Illinois Natural Gas Pipeline Company. The increased rates and charges proposed by the periodic increase have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful.

The Commission finds:

(1) Good cause has been shown that the 30-day notice period provided in section 4 (d) of the Natural Gas Act be waived with respect to the change in rates proposed in Supplement No. 6 to Applicant's FPC Gas Rate Schedule No. 1 to give effect to the change in the Texas occupation tax, and it is appropriate and in the public interest that such change should be permitted to become effective as of September 1, 1956; provided, however, that such change in rates in no way amends, modifies, or changes the rate suspension proceedings involved in Docket No. G-9383.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the increased rates and charges proposed in Supplement No. 6 to Applicant's FPC Gas Rate Schedule No. 1 and that said supplement insofar as it pertains to a periodic rate increase be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) The 30-day notice period provided in section 4(d) of the Natural Gas Act is hereby waived with respect to Supplement No. 6 to Applicant's FPC Gas Rate Schedule No. 1, insofar as it provides for a change in rate to give effect to the change in Texas occupation tax, and such Supplement, to that extent, hereby is permitted to become effective as of September 1, 1956, subject to the proviso contained in Finding (1) above.

(B) Pursuant to the authority contained in sections 4, 5, 15 and 16 of the Natural Gas Act, and the Commission's general rules and regulations, a public hearing be held, upon a date to be fixed by notice from the Secretary, concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 6 to Applicant's FPC Gas Rate Schedule No. 1; and pending such hearing and decision thereon, said supplement insofar as it relates to the proposed periodic increased rates and charges hereby is suspended in Docket No. G-11112 and the use thereof deferred until February 6, 1957, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the Commission's rules of practice and procedure.

Issued: September 21, 1956.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 56-7778; Filed, Sept. 26, 1956; 8:46 a. m.]

[Project No. 2218]

PUBLIC UTILITY DISTRICT NO. 1 OF KLICKITAT COUNTY, WASH.

NOTICE OF APPLICATION FOR PRELIMINARY PERMIT

SEPTEMBER 21, 1956.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U. S. C. 791a-825r) by Public Utility District No. 1 of Klickitat County, Washington, of Goldendale, Washington, for preliminary permit for proposed water power Project No. 2218, known as the John Day Project, to be located on the Columbia River in the region of Boardman, Castle Rock, Irrigon, Arlington, and Umatilla, Oregon, and Alderdale, Roosevelt, Luzon, Plymouth, and Patterson, Washington, and in Gilliam and Morrow Counties, Oregon, and Klickitat and Benton Counties, Washington, affecting United States Government lands and navigable waters of the United States. The proposed project would comprise a concrete gravity dam having a gated spillway section 1,310 feet long, an intake and powerhouse section 1,298 feet long, and several connecting non-overflow gravity sections aggregating 1,192 feet in length, creating a reservoir with normal pool at elevation 255 feet extending 75 miles upstream to McNary Dam; a navigation lock; fishways; a powerhouse with initial installation of 13 units; each turbine rated at 134,000 horsepower and direct connected to a generator rated at 85,000 kilowatts at 93 feet rated head and provisions for expansion of the powerhouse for ultimate installation of 18 units; and appurtenant facilities. The power generated would be used to serve the applicant's customers and to meet the requirements of an expected industrial growth. The preliminary permit, if issued, shall be for the sole purpose of maintaining priority of application for a license under the terms of the Federal Power Act for the proposed project.

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 last day upon which protests or petitions may be filed is November 8, 1956. The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 56-7779; Filed, Sept. 26, 1956; 8:46 a. m.]

GENERAL SERVICES ADMINISTRATION

CERTAIN GOVERNMENT OFFICIALS

DELEGATION OF AUTHORITY TO MAKE CERTAIN ADVANCE PAYMENTS

1. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, herein called the act, and in the interest of carrying out Recommendation No. 6 of the First Progress Report of the Cabinet Committee on Small Business with respect to advance payments, authority is hereby delegated to the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Postmaster General, the Chairman of the Atomic Energy Commission and the Administrator of Veterans Affairs to make certain advance payments in accordance with section 305 of the act, in connection with contracts negotiated without advertising. This authority applies to contracts negotiated under the Federal Property and Administrative Services Act of 1949, as amended, or under any other law.

2. Contracts employing the authority herein delegated shall be subject to applicable limitations and requirements in the act, particularly sections 304 and 307, and shall be exercised in accordance with policies, procedures and controls prescribed by the General Services Administration.

3. This authority may not be redelegated but may be exercised in accordance with the provisions of section 309 (a) of the act.

4. This delegation shall be effective as of the date hereof.

Dated: September 25, 1956.

FRANKLIN G. FLOETE, *Administrator.*

[F. R. Doc. 56-7838; Filed, Sept. 26, 1956; 8:54 a. m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

SEPTEMBER 24, 1956.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 32657: *Fluorspar—Norfolk and Newport News, Va., to northern points.* Filed by C. W. Boin, Agent, for interested rail carriers. Rates on fluor-

spar, carloads from Norfolk and Newport News, Va., to specified points in Pennsylvania, Ohio, and West Virginia.

Grounds for relief: Circuitous route.

Tariff: Supplement 194 to Agent LeGrande's tariff I. C. C. 253.

FSA No. 32658: *Commodities from, to and between the South.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on various commodities, carloads, as described in exhibit A of the application.

Grounds for relief: Carrier competition and circuitous routes.

FSA No. 32659: *Coal—Alabama mines to Panama City, Fla.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on fine bituminous coal, screened, carloads from specified points in Alabama to Panama City, Fla.

Grounds for relief: Competition with fuel oil and circuitous routes.

Tariffs: Gulf, Mobile and Ohio Railroad Company I. C. C. 231, St. Louis-San Francisco Railway Company, A–580.

FSA No. 32660: *Logs—Virginia to North Carolina.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on native wood logs, carloads from Amoco, Oriana, Oyster Point, and Reservoir, Va., to Cleveland, High Point, Lenoir, Liberty, Statesville, and Thomasville, N. C.

Grounds for relief: Truck and truck-rail competition.

Tariff: Supplement 131 to Agent Spaninger's I. C. C. 1297.

FSA No. 32661: *Liquefied chlorine gas—Evans City, Ala., to West Virginia.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on liquefied chlorine gas, tankcar loads from Evans City, Ala., to Charleston, Belle and Nitro, W. Va.

Grounds for relief: Barge competition and circuitous routes.

Tariff: Supplement 230 to Agent Spaninger's I. C. C. 1351.

FSA No. 32662: *All freight—Atlanta, Ga., group to St. Louis, Mo., and East St. Louis, Ill.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on merchandise, all kinds, in mixed carloads from Atlanta, Ga., and points in Georgia in the Atlanta group taking same rates to St. Louis, Mo., and East St. Louis, Ill.

Grounds for relief: Circuitous routes.

Tariff: Supplement 51 to Agent Spaninger's I. C. C. 1458.

FSA No. 32663: *Crushed stone—Alabama and Georgia to Kentucky.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on crushed stone, carloads from Brownson, Gantt's Quarry, Cartersville, Tate, and Whitestone, Ga., to Dorton, Louisa, Paintsville and White House, Ky.

Grounds for relief: Short-line distance formula and circuitous routes.

Tariff: Supplement 78 to Agent Spaninger's I. C. C. 1469.

FSA No. 32664: *Grain and products to Texas points.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on grain and grain products and related articles, including seeds, carloads from points in Arkansas, Colorado, Illinois, Kansas, Louisiana, Missouri, Nebraska and Oklahoma, also Memphis, Tenn., to specified points in Texas.

Grounds for relief: Circuitous routes.

Tariff: Suplement 139 to Agent Kratzmeir's I. C. C. 3941.

FSA No. 32665: *Barite—Valles Mines, Mo., to Louisiana.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on barite (barytes), ground, carloads from Valles Mines, Mo., to Crowley, Franklin, New Iberia, Lake Charles, and Thibodaux, La., and other stations in Louisiana.

Grounds for relief: Short-line distance formula and circuitous routes.

Tariff: Supplement 58 to Agent Kratzmeir's I. C. C. 4092.

FSA No. 32666: *Barite—Valles Mines, Mo., to New Orleans, La.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on ground barite (barytes), carloads from Valles Mines, Mo., to New Orleans, La.

Grounds for relief: Short-line distance formula and circuitous routes.

Tariff: Supplement 58 to Agent Kratzmeir's I. C. C. 4092.

FSA No. 32667: *Paper winding cores—east of the Rocky Mountains.* Filed by C. W. Boin, Agent, for interested rail carriers. Rates on cores, newsprint paper winding, old or reused, iron or steel, as more fully described in the application, carloads, within and between points in official (including Illinois), Canadian, southern, southwestern, and western trunkline territories.

Grounds for relief: Short-line distance formula and circuitous routes.

By the Commission.

[SEAL] HAROLD D. McCOY,
Secretary.

[F. R. Doc. 56–7781; Filed, Sept. 26, 1956; 8:47 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

STATE OF NETHERLANDS FOR BENEFIT OF GERSON MULLER ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of: Gerson Muller (Geoffrey McMurray), L. S. Claim No. 500; $784.16 in the Treasury of the United States.

Martha Smit, Martha Ruinen, Benedictus van Baren and Betje de Vries, L. S. Claim No. 539; $1,960.40 in the Treasury of the United States.

Martin Levie, J. L. Zeckel and E. S. van Goor, L. S. Claim No. 576; $784.16 in the Treasury of the United States.

Salomon de Miranda, L. S. Claim No. 614; $1,176.24 in the Treasury of the United States.

Theofila Morgendorff, L. S. Claim No. 628; $392.08 in the Treasury of the United States.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., on September 19, 1956.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 56–7784; Filed, Sept. 26, 1956; 8:48 a. m.]

STATE OF NETHERLANDS FOR BENEFIT OF ENOCH ITALIE ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of: Enoch Italie, Rachel and Dwojre Wurm, L. S. Claim No. 711; $392.08 in the Treasury of the United States.

Aron de Smitt, L. S. Claim No. 730, $2,352.48 in the Treasury of the United States.

Atie Wiesebron, L. S. Claim No. 782, $2,744.56 in the Treasury of the United States.

Mrs. E. de Vries, L. S. Claim No. 788; $1,176.24 in the Treasury of the United States.

Salomon de Winter, Vrouwtje Boas and Mouris Veskraper, L. S. Claim No. 808; $392.08 in the Treasury of the United States.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., September 19, 1956.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 56–7785; Filed, Sept. 26, 1956; 8:48 a. m.]

STATE OF NETHERLANDS FOR BENEFIT OF VERONICA SIMONS ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to Section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of: Veronica Simons, L. S. Claim No. 95; $2,293.67 in the Treasury of the United States.

Karel Spanjaard, L. S. Claim No. 264; $1,850.00 in the Treasury of the United States.

Geertruida Keizer-Hijmans and Alfred and Frederik van Emden, L. S. Claim No. 483; $1,035.09 in the Treasury of the United States.

Johanna de Jong, L. S. Claim No. 510; $1,117.43 in the Treasury of the United States.

Daniel Jo da Silva, Jacobus Pinedo, and Cornelia Schoenmakers, L. S. Claim No. 598; $1,104.38 in the Treasury of the United States.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., September 19, 1956.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 56-7786; Filed, Sept. 26, 1956; 8:48 a. m.]

STATE OF NETHERLANDS FOR BENEFIT OF DINA JUDELS ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of: Mrs. Dina Judels and Frits Kaplan, L. S. Claim No. 350; $1,013.66 in the Treasury of the United States.

Mrs. Henriette van Dam, L. S. Claim No. 357; $1,540.00 in the Treasury of the United States.

Hans, Clara and Sonja van Es, L. S. Claim No. 390; $780.00 in the Treasury of the United States.

Jeannette Gans, Louis and Judith Sibeyn, L. S. Claim No. 417; $506.83 in the Treasury of the United States.

Gerardina Korthals, L. S. Claim No. 544; $1,000.00 in the Treasury of the United States.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., September 19, 1956.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 56-7787; Filed, Sept. 26, 1956; 8:48 a. m.]

GIOVANNI GUERCI

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Giovanni Guerci, Turin, Italy, Claim No. 42899; Vesting Order No. 94; property described in Vesting Order No. 94 (7 F. R. 6693, August 25, 1942) relating to Patent Application Serial No. 320,199 (now United States Letters Patent No. 2,342,801) and Patent Application Serial No. 320,200 (now United States Letters Patent No. 2,348,433); subject, however, to a royalty-free nonexclusive license agreement dated June 24, 1944 (License No. 854) by and between the Alien Property Custodian and Globe Roofing Products Co., Inc., Whiting, Indiana, relating to United States Letters Patent No. 2,348,433.

Executed at Washington, D. C., on September 20, 1956.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 56-7788; Filed, Sept. 26, 1956; 8:48 a. m.]

MAURICE JEAN PAUL ROUMAZEILLES

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Maurice Jean Paul Roumazeilles, Vincennes (Seine), France, Claim No. 38701; Vesting Order No. 2621; $1,961.47 in the Treasury of the United States and all interests and rights (including all royalties and other monies payable or held with respect to such interests and rights and all damages for breach of the agreement hereinafter described, together with the right to sue therefor) created in this claimant by virtue of an agreement entered into on or about September 1, 1938 (including all modifications thereof and supplements thereto, if any), by and between Albert Emile Pierre Girard, Maurice Jean Paul Roumazeilles, and Freydberg Bros., Inc., which agreement relates, among other things, to Patent No. 1,776,073, to the extent owned by Maurice Jean Paul Roumazeilles immediately prior to vesting by Vesting Order No. 2621 (8 F. R. 17243 (December 22, 1943)).

Rene Cecile Madeleine Provost and Jacqueline Cecile Jeanne Mertz, Paris, France, Claim No. 38702; Vesting Order No. 2621; $1,961.47 in the Treasury of the United States and all interests and rights (including all royalties and other monies payable or held with respect to such interests and rights and all damages for breach of the above agreement, together with the right to sue therefor) created in Albert Jean Pierre Girard by virtue of the above agreement, to the extent owned by Albert Jean Pierre Girard immediately prior to Vesting by Vesting Order No. 2621 (8 F. R. 17243 (December 22, 1943)).

Executed at Washington, D. C., on September 19, 1956.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 56-7789; Filed, Sept. 26, 1956; 8:48 a. m.]