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TITLE 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

Subchapter D—Regulations Under Soil Bank Act [Amdt. 11]

PART 485—SOIL BANK

SUBPART—ACREAGE RESERVE PROGRAM

The regulations governing the 1958 acreage reserve program, 22 F. R. 6397, as amended and supplemented, are hereby further amended as follows:

1. Section 485.309 (a) is amended by deleting the period at the end of the second sentence and adding the following: "except that the Administrator may, in order to prevent undue hardship, authorize the county committee to accept an agreement after such closing date if, because of misinformation or misunderstanding, the producer was under the impression that he had filed an agreement or did not realize that he had to file an agreement by the applicable closing date."

2. Section 485.309 (b) (3) is amended by adding at the end thereof the following: "Notwithstanding the foregoing provisions of this subparagraph, the Administrator may authorize the county committee to permit the owner or landlord to sign an agreement after the dates provided for above in this subparagraph if, in his judgment, such action is necessary in order to prevent undue hardship."

3. Section 485.337 is amended to read as follows:

§ 485.337 *Termination of agreements.* The Administrator, in order to prevent undue hardship, may, upon recommendation of the State committee, consent to the termination by the producer of any agreement entered into hereunder, if in his judgment, such action is in the best interests of the program.

(Sec. 124, 70 Stat. 198; 7 U. S. C. 1812)

Issued at Washington, D. C., this 14th day of July 1958.

[SEAL]

TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 58-5485; Filed, July 16, 1958; 8:54 a. m.]

TITLE 15—COMMERCE AND FOREIGN TRADE

Chapter IV—Foreign-Trade Zones Board

[Order 47]

PART 400—GENERAL REGULATIONS GOVERNING FOREIGN-TRADE ZONES IN THE UNITED STATES, WITH RULES OF PROCEDURE

APPLICATIONS; EXAMINERS COMMITTEE

Pursuant to the provisions of section 8 of the Foreign-Trade Zones Act of June 18, 1934 (48 Stat. 1000; 19 U. S. C. 81h), the General Regulations Governing Foreign-Trade Zones in the United States, with Rules of Procedure (15 CFR Part 400), are hereby amended as follows:

1. Amend § 400.1307 to read as follows:

§ 400.1307 *Applications.* Upon receipt of an application, the Executive Secretary of the Foreign-Trade Zones Board will designate an examiner who will investigate the application and accompanying exhibits for compliance with the provisions of §§ 400.600 to 400.608.

2. Amend § 400.1308 to read as follows:

§ 400.1308 *Examiners Committee.* If the application and accompanying exhibits are in order, the Executive Secretary of the Foreign-Trade Zones Board will appoint an Examiners Committee and designate a chairman. This committee will consist of the examiner appointed by the Executive Secretary who has examined the application as provided in § 400.1307, the Collector of Customs and the District Engineer in whose districts the proposed zone is to be located. The committee will then make a thorough investigation of the application and report its findings to the Board.

It is found that compliance with the notice, public rule making procedure, and effective date requirements of the Administrative Procedure Act (5 U. S. C. 1003) is unnecessary in connection with the issuance of this order, because its application is restricted to the administrative functions of the Foreign-Trade Zones Board, and is of a nature that it imposes no burden on the parties of interest. The effective date of this order

(Continued on p. 5419)

CONTENTS

Agricultural Marketing Service	Page
Proposed rule making:	
Apricots grown in designated counties in Washington.....	5465
Cherries, sweet, grown in designated counties in Washington.....	5466
Dates, domestic, produced or packed in Los Angeles and Riverside Counties of California.....	5454
Milk handling in South Bend-La Porte-Elkhart, Ind., marketing area.....	5439
Rules and regulations:	
Milk in:	
Central Arizona marketing area.....	5430
Chattanooga, Tenn., marketing area.....	5423
Quad Cities marketing area..	5422
Agriculture Department	
See also Agricultural Marketing Service; Commodity Stabilization Service.	
Notices:	
Illinois; designation of area for production emergency loans...	5468
Alien Property Office	
Notice:	
Vested property, intention to return:	
Klein, Werner Günther and Gerhard Horst Klein.....	5472
Leclabart, Jean.....	5472
Civil Aeronautics Board	
Notices:	
Delegations of final authority related to substantive program matters.....	5468
Hearings, etc.:	
Eastern Air Lines, Inc., et al.; Puerto Rico passenger fares.....	5469
Shulman, Inc.; enforcement proceeding.....	5469
U. S. Aircoach and Melvin N. Chapman.....	5469
Commerce Department	
See Federal Maritime Board; Foreign-Trade Zones Board.	



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CONTENTS—Continued

	Page
Commodity Stabilization Service	
Notices:	
Faulkner, J. R.; notice of public hearing regarding application.....	5468
Rules and regulations:	
Mainland cane sugar area; proportionate shares for farms, 1959 crop.....	5419
Soil bank, acreage reserve program; miscellaneous amendments.....	5417
Tobacco, certain types; marketing quota regulations 1958-59 marketing year; correction.....	5419

RULES AND REGULATIONS

CONTENTS—Continued

Customs Bureau	Page
Rules and regulations:	
Articles conditionally free, subject to reduced rate, etc.; reduced rate of duty for certain woolen textiles.....	5431
Federal Communications Commission	
Notices:	
Hearings, etc.:	
Chaconas, Nick J., et al.....	5469
Clarion Broadcasting Co. and County Broadcasting Co.....	5470
Community Telecasting Corp. et al.....	5469
Florida Gulfcoast Broadcasters, Inc., et al.....	5469
Leavenworth Broadcasting Co. et al.....	5470
Roley, Samuel James.....	5470
Federal Maritime Board	
Notices:	
Agreements filed for approval:	
Pacific/Straits Conference and Prince Line, Ltd.....	5468
Ziegler, H. L., Inc., and Berry & McCarthy Shipping Co.....	5468
Ziegler, H. L., Inc., and Dumont Shipping Co., Inc.....	5468
Federal Power Commission	
Notices:	
Hearings, etc.:	
American Louisiana Pipe Line Co. et al.....	5472
Magnolia Petroleum Co.....	5471
Magnolia Petroleum Co. et al.....	5470
Sun Oil Co.....	5471
Proposed rule making:	
General policy and interpretations; nonacceptability of rate filings based upon State-prescribed minimum prices.....	5466
Rules and regulations:	
Rates schedules and tariffs; order modifying rules and regulations with respect to supplements reflecting addition to Louisiana State Gas Gathering Tax.....	5431
Fish and Wildlife Service	
Rules and regulations:	
Alaska Commercial fisheries, Chignik Area; restriction of fishing.....	5438
Food and Drug Administration	
Rules and regulations:	
Antibiotic and antibiotic-containing drugs; certification; animal feeds containing antibiotic drugs.....	5432
Foreign-Trade Zones Board	
Rules and regulations:	
General regulations governing Foreign-Trade Zones in U. S., rules of practice; applications; Examiners Committee.....	5417
Health, Education, and Welfare Department	
See Food and Drug Administration.	
Indian Affairs Bureau	
Proposed rule making:	
Rules of Bureau of Indian Affairs.....	5439

CONTENTS—Continued

Indian Affairs Bureau—Con.	Page
Rules and regulations:	
Flathead Indian Irrigation Project, St. Ignatius, Mont.; operation and maintenance charges.....	5432
Interior Department	
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Reclamation Bureau.	
Justice Department	
See Alien Property Office.	
Land Management Bureau	
Notices:	
Alaska; revocation of orders opening lands under Forest Homestead Act.....	5467
Idaho; proposed withdrawal and reservation of lands (2 documents).....	5466
Rules and regulations:	
Mining, development and utilization of mineral resources of public lands withdrawn or reserved for power development.....	5436
Panama Canal	
Rules and regulations:	
Cross reference.....	5432
Fort Gulick Army Reservation; addition of parcel of land.....	5432
Post Office Department	
Rules and regulations:	
Air carriers; international air-mail regulations.....	5434
Reclamation Bureau	
Notices:	
John Day Project, Oreg.; order of revocation.....	5467
Securities and Exchange Commission	
Notices:	
Triumph Mines, Ltd.; order temporarily suspending exemption, statement of reasons therefor, and notice of opportunity for hearing.....	5472
Treasury Department	
See Customs Bureau.	

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.

	Page
Title 6	
Chapter IV:	
Part 485.....	5417
Title 7	
Chapter VII:	
Part 723.....	5419
Chapter VIII:	
Part 855.....	5419
Chapter IX:	
Part 944.....	5422
Part 967 (proposed).....	5439
Part 1000.....	5423
Part 1003 (proposed).....	5454
Part 1004.....	5430
Part 1020 (proposed).....	5465
Part 1022 (proposed).....	5466

CODIFICATION GUIDE—Con.

Title 15	Page
Chapter IV:	
Part 400.....	5417
Title 18	
Chapter I:	
Part 2 (proposed).....	5466
Part 154.....	5431
Title 19	
Chapter I:	
Part 10.....	5431
Title 21	
Chapter I:	
Part 146.....	5432
Title 25	
Chapter I:	
Part 1 (proposed).....	5439
Part 221.....	5432
Title 35	
Chapter I:	
Part 21.....	5432
Appendix (Canal Zone orders):	
2 (superseded by CZO 49).....	5432
20 (superseded by CZO 49).....	5432
49.....	5432
Title 39	
Chapter I:	
Part 96.....	5434
Title 43	
Chapter I:	
Part 185.....	5436
Title 50	
Chapter I:	
Part 107.....	5438

is, therefore, upon publication in the FEDERAL REGISTER.

(Sec. 8, 48 Stat. 1000; 19 U. S. C. 81h)

Signed at Washington, D. C., this 11th day of July 1958.

FOREIGN-TRADE ZONES BOARD,

[SEAL] SINCLAIR WEEKS,
Secretary of Commerce,
Chairman and Executive Officer,
Foreign-Trade Zones Board.

Attest:

JOSEPH M. MARRONE,
Executive Secretary.

[F. R. Doc. 58-5474; Filed, July 16, 1958; 8:51 a. m.]

TITLE 7—AGRICULTURE

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

[1026 (Cigar-Binder and Cigar-Filler and Binder-58)-1]

PART 723—CIGAR-FILLER TOBACCO, CIGAR-BINDER TOBACCO, AND CIGAR-FILLER AND BINDER TOBACCO

CIGAR-BINDER (TYPES 51 AND 52) TOBACCO, AND CIGAR-FILLER AND BINDER (TYPES 42, 43, 44, 53, 54 AND 55) TOBACCO MARKETING QUOTA REGULATIONS, 1958-59 MARKETING YEAR

Correction

In F. R. Document 58-5232, appearing in the issue for Wednesday, July 9, 1958,

at page 5183, make the following change: In § 723.938 (d), lines 24 and 25, "acre penalty" should read "zero penalty".

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

Subchapter G—Determination of Proportionate Shares

[Sugar Determination 855.6]

PART 855—MAINLAND CANE SUGAR AREA PROPORTIONATE SHARES FOR FARMS; 1959 CROP

Pursuant to the provisions of section 302 of the Sugar Act of 1948, as amended (hereinafter referred to as "act"), the following determination is hereby issued:

§ 855.6 *Proportionate shares for sugarcane farms in the Mainland Cane Sugar Area for the 1959 crop—(a) Definitions.* "Acreage" or "acres" as used in this section means the area of sugarcane within the farm proportionate share on which sugarcane is grown and marketed (or processed) for the extraction of sugar or liquid sugar, or which is harvested for seed or abandoned and classified as bona fide abandonment under procedure issued by the Commodity Stabilization Service. The term "operator" as used in this section means the person who as producer controls and directs the operations on the farm. The term "Secretary" as used in this section means the Secretary of Agriculture of the United States, or any officer or employee of the United States Department of Agriculture to whom authority has been delegated, or to whom authority may hereafter be delegated to act in his stead.

(b) *Farm proportionate share.* A 1959-crop proportionate share for each sugarcane farm in the Mainland Cane Sugar Area, as constituted at the beginning of harvest of the 1959 crop on such farm, shall be established as hereinafter provided in terms of acres by the Agricultural Stabilization and Conservation County Committee (hereinafter referred to as "county committee") for the county in which the farm headquarters is located.

(1) *Farms for which 1958 farm proportionate shares were established.* (i) The 1959 proportionate share for any farm for which a proportionate share was established pursuant to § 855.5 (22 F. R. 8112) shall be the larger of (a) ten acres or (b) 110 percent of the final established 1958 proportionate share for the farm, or in the case of subdivisions or combinations of 1958 farms, 110 percent of the 1958 proportionate share computed in accordance with subdivisions (ii) and (iii) of this subparagraph.

(ii) The 1958 proportionate share for any farm which is subdivided for the purposes of the 1959-crop proportionate share program shall be divided among the subdivisions for the purposes of establishing 1959-crop proportionate shares for such subdivisions pursuant to subdivision (i) of this subparagraph by one of the following methods: By multiplying the 1958 proportionate share for the farm of which such subdivisions

were a part by the percentage that the cropland suitable for the production of sugarcane in each subdivision is of the total cropland suitable for the production of sugarcane in the 1958 farm; or, if the county committee determines that the use of the cropland relationship in any case results in the establishment of a proportionate share which is materially inconsistent with the acreage of sugarcane grown on any subdivision during the crop years 1956, 1957 and 1958, or is not representative of the existing sugarcane acreage growing on any subdivision, by apportioning the 1958 proportionate share for such farm to the subdivisions thereof on the basis of the total acreage of sugarcane grown within farm proportionate shares on each subdivision during the crop years 1956, 1957 and 1958, or on the basis of existing acreage of sugarcane growing on each subdivision; or if all persons concerned in the subdivision of such farm file a written request with the county committee which is approved by the county committee, by apportioning the 1958 proportionate share for such farm to the subdivisions thereof on the basis of the total acreage of sugarcane grown within farm proportionate shares on each subdivision during the crop years 1956, 1957 and 1958 or on the basis of existing acreage of sugarcane growing on each subdivision, whichever is requested.

(iii) If, for the purposes of the 1959-crop proportionate share program, two or more farms are constituted for the 1958-crop proportionate share program, or two or more subdivisions of any such farms are combined, or there is a combination of one or more such farms and one or more such subdivisions, the 1958 proportionate share computed for the combined farm for the purposes of subdivision (i) of this subparagraph shall be the sum determined by adding the 1958 farm proportionate shares of entire 1958 farms, if any, involved in the combination, and the 1958 proportionate shares calculated for farm subdivisions, if any, involved in the combination, as provided in subdivision (ii) of this subparagraph.

(2) *New farms.* The proportionate share for any farm for which a 1958 proportionate share was not established shall be 5.0 acres.

(3) *Transfer of farm proportionate shares.* The proportionate share established or which would have been established pursuant to subparagraph (1) of this paragraph for any land either removed from sugarcane production because of transfer by sale, lease or donation to any Federal, State or other agency or entity, having the right of eminent domain, or transferred to such an agency or entity for use primarily for the production of sugarcane for experimental purposes, shall, upon application to the appropriate Agricultural Stabilization and Conservation State Office (referred to in this section as "State Office") within five years from the date of such transfer, be added to the proportionate share, if any, established for other land within the State owned, purchased, or leased by the owner of the land so transferred.

(4) *Adjustments of proportionate shares.* Wherever the county commit-

tee determines that the proportionate share established for a farm is not large enough to provide for experimental seedings of sugarcane under the supervision of a Federal or State agency, or is not fair and equitable as compared with proportionate shares for other farms in the county or parish, considering the availability and suitability of land, adequacy of drainage, availability of production facilities, and the production experience of the operator, the county committee shall, after review of all the facts, forward the case, together with its recommendations, to the appropriate Agricultural Stabilization and Conservation State Committee (referred to in this section as "State Committee"). The State Committee shall review the county committee's recommendation, make such adjustments in the proportionate share as are determined to be necessary to establish a proportionate share for the farm which will permit the planting of such experimental acreage or one which is fair and equitable considering the foregoing factors and return the case to the county committee indicating appropriate disposition. For the purpose of making such adjustments, a maximum of 440 acres is hereby established for the State of Louisiana, and a maximum of 60 acres is established for the State of Florida.

(5) *Notification of proportionate shares.* Each operator of a farm for which a proportionate share is established pursuant to this section shall be notified in writing on behalf of the county committee of the proportionate share established for his farm and of his right to appeal under subparagraph (7) of this paragraph.

(6) *Notification of excess sugarcane acreage.* If the county committee determines that the measured acreage of sugarcane for any farm is in excess of the acreage established as the proportionate share for such farm, written notice of the acreage in excess of the proportionate share (referred to in this section as "excess acreage") and of the eligibility requirements for payment as set forth in paragraph (c) (6) of this section shall be furnished to the operator of such farm.

(7) *Appeals.* A producer of sugarcane who believes that the proportionate share established for his farm pursuant to this section is inequitable may file an appeal in writing at the local Agricultural Stabilization and Conservation County Office (referred to in this section as "county office") prior to July 1, 1959. The county committee shall make such adjustments as are necessary due to the use of any incorrect data in determining the proportionate share. In any other case, the county committee shall, after review of all the facts, forward the case, together with its recommendation, to the State Committee. The State Committee shall review the county committee's recommendation, act upon the appeal, and return the case to the county committee indicating the appropriate disposition. Upon receipt thereof, the county committee shall notify the producer in writing as soon as possible regarding the decision on his appeal. If

the producer is dissatisfied with the decision, he may appeal in writing before September 1, 1959, to the Director of the Sugar Division, Commodity Stabilization Service, U. S. Department of Agriculture, Washington 25, D. C., whose decision shall be final. In acting upon the appeal, the State Committee or the Director shall consider only such matters as under the provisions of this section are required or permitted to be considered by the county committee in the establishment of the farm proportionate share to be reviewed.

(8) *Erroneous notice of 1959 proportionate share.* If through error, a producer is officially notified of a 1959 proportionate share for his farm greater than the proportionate share properly established pursuant to this section, and it is found by the State Committee that such producer, acting solely on the information contained in the erroneous notice, marketed 1959-crop sugarcane from an acreage in excess of the proportionate share properly established, the producer will be deemed to be in compliance with the farm proportionate share unless he marketed sugarcane for sugar from an acreage in excess of the proportionate share stated in the erroneous notice or unless it is determined by the State Committee that the error was so gross as to place the producer on notice regarding the error. However, the Sugar Act payment with respect to the farm shall be limited to the amount of sugar commercially recoverable from the sugarcane marketed (or processed) from the acreage within the properly established proportionate share.

(c) *Eligibility for payment under the Act.* The eligibility of any producer of sugarcane for payment under the act shall be subject to the following conditions:

(1) That the acreage of sugarcane grown on the farm and marketed (or processed) for the production of sugar or liquid sugar shall not exceed the proportionate share determined for the farm in accordance with this section, except that any sugarcane grown on acreage in excess of such proportionate share may be marketed (or processed) for the extraction of sugar or liquid sugar for livestock feed or for the production of livestock feed, if the operator-producer on the farm furnishes to the county committee weight tickets evidencing that such sugarcane was sold by him, or was processed by or for him for the extraction of sugar or liquid sugar for livestock feed or the production of livestock feed, and if so sold, was purchased by the processor for such purpose. Notwithstanding the foregoing provisions of this subparagraph, the producer shall be deemed to have met the requirements for payment with respect to marketings (or processings) within the farm proportionate share where sugarcane was marketed (or processed) for sugar or liquid sugar from an acreage on the farm exceeding the farm proportionate share: *Provided, That:* (i) Such excess acreage is not more than the larger of two-tenths acre or one percent of the farm proportionate share but not to exceed three acres, and (ii) within one year

from the date of the processing of such excess sugarcane, the producer has arranged for a quantity of sugar which was produced from sugarcane in the Mainland Cane Sugar Area, which had not been marketed to fill a quota for such area as provided in Part 816 of this chapter and which is equivalent to the quantity of sugar produced from such excess acreage, to be made subject to a bond given pursuant to the provisions of Part 816 of this chapter which provides that a condition of such bond be that the sugar shall be used for livestock feed or for the production of livestock feed. The Sugar Act payment in any such case shall be limited to the amount of sugar commercially recoverable from the sugarcane marketed (or processed) from the acreage within such share;

(2) That the number of share tenants or sharecroppers engaged in the production of sugarcane of the 1959 crop on the farm shall not be reduced below the number so engaged with respect to the previous crop, unless such reduction is approved by the State Committee. In considering such approval the State Committee shall be guided by whether the reduction was the result of a voluntary action of the share tenant or sharecropper, or whether the reduction was beyond the control of the producer;

(3) That the producer shall not have entered into any leasing or cropping agreement for the purpose of diverting to himself or any other producer any payments to which share tenants or sharecroppers would be entitled if their leasing or cropping agreements for the previous crop were in effect;

(4) That the requirements of the act with respect to child labor shall have been met, except that such requirements shall not be applicable to any sugarcane marketed (or processed) from an acreage in excess of the proportionate share for the farm for the production of sugar or liquid sugar for livestock feed if the producer furnishes proof which the county committee finds acceptable and adequate that the work performed by any child subject to such requirements was related solely to such sugarcane;

(5) That the requirements of the act and of the regulations issued pursuant thereto with respect to wage rates and, in the case of a processor-producer (a producer who is also a processor), prices paid for sugarcane shall have been met;

(6) That if the county committee determines there is excess acreage of sugarcane on a farm:

(i) Any excess acreage which the producer elects to plow-out, abandon, or harvest separately must be so disposed of before or after the harvest of sugarcane for sugar and appropriate notification must be given by the operator to permit verification by a county office representative of the action taken, except that in Florida excess acreage may be plowed-out or harvested for cattle feed during the period that sugarcane is being harvested for sugar if the county office is notified prior thereto and a representative of that office verifies that such acreage has been plowed-out or harvested for cattle feed;

(ii) Any excess acreage of sugarcane harvested for feed, the manufacture of

sirup, or sugar for livestock feed or for the production of livestock feed concurrently with acreage within the proportionate share which is being harvested for sugar or liquid sugar must be staked out or similarly and clearly identified by a representative of the county office and the staked-out acreage must be so located on the farm that it may be harvested readily without interfering with the harvest of proportionate share acreage and the identity of the sugarcane from excess acreage must be maintained separately after harvest to assure its marketing to the mill for such purposes: *Provided*, That if sugarcane is harvested from excess acreage for the manufacture of sirup concurrently with the harvest of sugarcane for the production of sugar or liquid sugar, other than sugar for livestock feed, and such acreage is not staked-out or identified as provided in this subdivision, the producer shall not market a quantity of sugarcane for the production of sugar or liquid greater than the total of the tonnages of sugarcane marketed for both sugar and sirup multiplied by the percentage that the acreage harvested for sugar on the farm is of the total acreage of sugarcane marketed for both of such purposes.

(iii) An estimate of the average tons of sugarcane per acre growing on excess acreage which has been staked-out or similarly identified and which has been designated for harvest for sirup or sugar for livestock feed must be made jointly and before harvest by a representative of the county office and by the operator of the farm, which estimate must be reduced to writing and signed by the operator and placed on record in the county office.

(iv) Any farm operator who markets sugarcane from excess acreage for sirup must furnish to the county committee weight tickets evidencing that such sugarcane was sold by him or processed by him or for him for such purpose, and in the case where excess acreage is staked-out and an estimate is made as provided in subdivision (iii) of this subparagraph, if the average tonnage of sugarcane per acre grown on such excess acreage, as computed by dividing the total tonnage of sugarcane marketed for sirup by the excess acreage, is less than 80 percent of the estimate made pursuant to subdivision (iii) of this subparagraph, no payment shall be made until the operator furnishes proof acceptable to the county committee that the sugarcane from all of the excess acreage on the farm was marketed or disposed of other than for seed or the production of sugar or liquid sugar except sugar or liquid sugar for livestock feed.

(v) The operator must maintain a record of the excess acreage in each field or parts of fields and the method and purpose of disposal of sugarcane grown on excess acreage in each such case.

(d) *Filing application for payment.* Application for payments authorized under Title III of the act with respect to sugarcane planted on a farm for harvest during the 1959-crop season shall be made on Form SU-120 by a producer on the farm (as used in this section the

term "producer" means any person who is the legal owner at the time of harvest or abandonment of a portion or all of the crop of sugarcane grown on the farm for the extraction of sugar or liquid sugar) or his legal representative or heirs who must sign and file the form in the county office for the county where the farm or major portion thereof is located or with a representative of such office no later than June 30, 1961.

(e) *Determination of eligibility and basis for payment and appeals for review thereof.* Except as otherwise provided in regulations relating to conditional payments, compliance with the conditions prescribed by the act and regulations for any payment authorized under Title III of the act, the facts constituting the basis for any such payment, and the amount thereof shall be determined by the county committee. Any producer may, within 15 days after notice thereof is forwarded to or made available to him, request the county committee in writing to reconsider such determination. The county committee shall notify the producer of its decision in writing. If the producer is dissatisfied with the decision of the county committee, he may, within 15 days after the date of mailing of the decision to him, appeal in writing to the State Committee. The State Committee shall, after giving the producers an opportunity to appear before the Committee, if so requested, notify the producer of its decision in writing within 30 days after the submission of the appeal. If the producer is dissatisfied with the decision of the State Committee, he may, within 15 days after the date of mailing of the decision to him, request the Secretary to review the decision of the State Committee. The decision of the Secretary shall be final. Determinations by the County and State Committees and reviews thereof shall be made and decided in accordance with the applicable provisions of the act and regulations issued by the Secretary thereunder and on the basis of the facts in the individual case.

(f) *Obtaining information regarding eligibility for payment.* Where it is necessary to obtain information to assist the county committee in determining compliance with the conditions prescribed by the act and regulations for any payment authorized under Title III of the act, the facts constituting the basis for any such payment or the amount thereof, or to assist the State Committee or the Secretary in reviewing, upon appeal, any such determination by the county committee, any such information with respect to acreage or compliance shall be obtained as provided in the applicable provisions of Part 718 of this title, as amended. If the operator or his representative, of any farm with respect to which application is made for any payment authorized under Title III of the act prevents the obtaining of the information necessary to determine compliance with the conditions for any such payment, the facts constituting the basis of any such payment or the amount thereof, as provided in this paragraph, the conditions prescribed by the act and regulations for any such payment shall

be deemed not to have been met until such farm operator or his representative permits such information to be obtained.

STATEMENT OF BASES AND CONSIDERATIONS

Sugar Act requirements. Section 301 (b) of the act provides as a condition for payment to producers that there shall not have been marketed (or processed), except for livestock feed, an amount of sugarcane grown on the farm and used for the production of sugar or liquid sugar in excess of the proportionate share for the farm as determined by the Secretary pursuant to section 302 of the act. For the Mainland Cane Sugar Area, the term "proportionate share" means the individual farm's share of the total acreage of sugarcane required to enable the area to meet the quota (and provide a normal carryover inventory) as estimated by the Secretary, for the calendar year during which the larger part of the sugar from such crop normally would be marketed.

Section 302 (a) of the act provides that the amount of sugar with respect to which payment may be made shall be the amount of sugar commercially recoverable from the sugarcane grown on the farm and marketed (or processed by the producer) not in excess of the proportionate share for the farm.

Section 302 (b) provides that in determining the proportionate share for a farm, the Secretary may take into consideration the past production on the farm of sugarcane marketed (or processed) for the extraction of sugar or liquid sugar and the ability to produce such sugarcane, and that the Secretary shall, insofar as practicable, protect the interests of new producers and small producers, and the interests of producers who are cash tenants, share tenants, or sharecroppers and of producers in any local producing area whose past production has been adversely, seriously, and generally affected by drought, storm, freeze, flood, disease, insects, or other similar abnormal and uncontrollable conditions.

General. Pursuant to the foregoing provisions of the act, proportionate shares for sugarcane farms are established for each crop since the marketing of sugarcane within such shares by producers constitutes one of the conditions for payment. Restrictive proportionate shares are required in any area when the indicated production will be greater than the quantities needed to fill the quota and provide a normal carryover inventory for such area.

Situation indicated for 1959. Information available at the time the 1958-crop determination was issued (October 8, 1957) indicated that the effective inventory of sugar on January 1, 1958 (i. e., sugar on hand, plus sugar processed after January 1, from sugarcane of the previous year's designation) would equal or exceed the January 1, 1957, inventory of about 347,000 tons. Because of extremely unfavorable weather conditions during the harvest season, 1957-crop production was limited to 532,000 tons. With 1957 marketings of 635,700 tons, the effective inventory on January 1, 1958, actually amounted to 243,000 tons, down

by more than 100,000 tons from a year earlier. Information received from the industry indicates that the same adverse weather conditions in the fall of 1957 also affected the 1958 crop of sugarcane to some degree and that sugar production therefrom may not be significantly higher than 600,000 tons. Assuming this production level and the present quota of 685,441 tons, the effective inventory on January 1, 1959, will be about 160,000 tons of sugar. While this is lower than any beginning-of-the-year inventory since 1952, it is reasonable to assume that if the 1959 crop were unrestricted and if yields of sugar per acre resume the upward trend shown for the period prior to 1957, excessive stocks would accumulate. Accordingly it is deemed that restrictions on the 1959 crop are needed.

Public hearing. An informal public hearing was held in New Orleans, Louisiana, on May 20, 1958, to receive information and recommendations for establishing farm proportionate shares in the Mainland Sugarcane Area for the 1959 crop. In a press release of May 6, 1958, the Department asked for comments, suggestions and discussion at the hearing regarding the type of program desired by the producers concerned. The industry also was asked for views regarding the total acreage which should be allotted for sugarcane production for the 1959 crop and for recommendations as to what a normal carryover of sugar should be. The hearing was attended by a large number of interested persons from Louisiana and Florida, and testimony was presented by persons representing essentially all producers of sugarcane in the area.

A recommendation was made by an industry representative, which was concurred in by other industry representatives, that the basic pattern of the 1958 program be extended for the 1959 crop. Recommendations by industry representatives for changes from the 1958-crop determination, included the following: (1) That the 1959 proportionate share for each old farm be the larger of ten acres or 110 percent of the 1958 farm share.

(2) That the special provisions of the 1958 determination applicable to Avoyelles, Rapides and St. Landry Parishes in Louisiana be omitted from the 1959 determination.

(3) That the adjustment provisions be amended to permit an increase in the proportionate share acreage for a farm to enable an experiment station to expand its acreage of seedling sugarcane.

Those who testified recommended unanimously that the 1959 acreage level for the area be increased by 10 percent over the 1958-crop level. They also agreed that the industry would be willing to carry any increased sugar inventories that might possibly result from the proposed increase in the acreage level.

Determination. This determination provides for the establishment of total 1959-crop proportionate shares, as recommended by the industry, at 110 percent of the 1958 acreage level. In establishing this acreage level, consideration has been given to the prospective sugar supply and inventory situation, the probable sugar marketing opportunities for

the area in 1958 and 1959, factors such as variations in yield and the possibilities of freeze damage which may affect production, and the testimony presented at the hearing. Production of sugar from the acreage level provided for in this determination should enable the area to fill its quota and maintain a normal carry-over inventory.

For 1959 farms which are identical with 1958 farms, 1959 proportionate shares will equal 110 percent of the 1958 proportionate shares, except that the minimum share for any such farm will be ten acres rather than five acres as was the case for 1958. This will permit a somewhat more economical level of operation for many small farms. Special provisions included in the 1957 and 1958 determinations for the Northern Louisiana Area have been eliminated from this determination, since the proportionate shares established pursuant to the determination should provide sufficient acreage to permit an economic operation of the one mill located in that area.

The provisions of this determination with respect to (1) proportionate shares for new farms, (2) proportionate shares for farms removed from sugarcane production because of transfer to any agency or entity having the right of eminent domain or for use primarily for the production of sugarcane for experimental purposes, (3) the division or combining of acreage records where farms are subdivided or combined, and (4) other general provisions are substantially the same as those included in the 1958-crop determination. The recommendations of the industry have been adopted generally. The acreages made available for adjustments in proportionate shares (440 in Louisiana and 60 in Florida) are identical to those effective for 1958. Based upon experience during the past four years, such acreages will be sufficient to make equitable adjustments in farm proportionate shares and in addition enable the adjusting of proportionate shares to provide for acreages of seedling sugarcane grown by experiment stations of Federal and State agencies.

As in 1958, this determination provides for a written notice to any farm operator for whose farm it is determined that the growing sugarcane acreage is in excess of the proportionate share and provides further that such farm operator shall be notified of the requirements that must be met with respect to such excess acreage in order to be eligible for payment. To make it more practicable for county committees to determine compliance with proportionate shares, farm operators of farms having excess acreage are again required to dispose of such acreage at certain times and under certain conditions and to furnish proof that the sugarcane from the excess acreage was used for purposes other than the production of quota sugar.

It is believed that this determination provides an equitable basis for establishing proportionate shares for the 1958 Mainland Sugarcane Crop.

Accordingly, I hereby find and conclude that the foregoing determination will effectuate the applicable provisions of the act.

(Sec. 403, 61 Stat. 932; 7 U. S. C. 1133; Interpretations or applies secs. 301, 302, 61 Stat. 930, as amended; 7 U. S. C. 1132)

Issued this 14th day of July 1958.

[SEAL]

TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 58-5487; Filed, July 16, 1958; 8:54 a. m.]

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

PART 944—MILK IN QUAD CITIES MARKETING AREA

ORDER SUSPENDING CERTAIN PROVISIONS

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. et seq.), and of the order regulating the handling of milk in the Quad Cities marketing area (7 CFR Part 944), it is hereby found and determined that:

(a) The following provisions of § 944.10 (b) will not tend to effectuate the declared policy of the act for the months of July and August 1958: "From which the volume of fluid milk products shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year."

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

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

(2) A substantial majority of the producers and handlers of milk for the market have requested this action.

(3) This suspension order is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area.

(4) This suspension order does not require of persons affected substantial or extensive preparation.

Therefore, good cause exists for making this order effective July 1, 1958.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended effective July 1, 1958, for the period July through August 1958.

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

Issued at Washington, D. C., this 11th day of July 1958.

[SEAL]

DON PAARLBERG,
Assistant Secretary.

[F. R. Doc. 58-5472; Filed, July 16, 1958; 8:51 a. m.]

PART 1000—MILK IN CHATTANOOGA, TENN.,
MARKETING AREA

Sec. 1000.0 Findings and determinations.

DEFINITIONS

1000.1 Act.

1000.2 Secretary.

1000.3 Department of Agriculture.

1000.4 Chattanooga, Tennessee, marketing area.

1000.5 Person.

1000.6 Producer.

1000.7 Pool plant.

1000.8 Nonpool plant.

1000.9 Handler.

1000.10 Producer-handler.

1000.11 Producer milk.

1000.12 Fluid milk product.

1000.13 Other source milk.

1000.14 Route.

1000.15 Cooperative association.

1000.16 Chicago butter price.

1000.17 Base milk.

1000.18 Excess milk.

1000.19 Department of Agriculture.

MARKET ADMINISTRATOR

1000.25 Designation.

1000.26 Powers.

1000.27 Duties.

REPORTS, RECORDS AND FACILITIES

1000.30 Reports of sources and utilization.

1000.31 Other reports.

1000.32 Records and facilities.

1000.33 Retention of records.

CLASSIFICATION OF MILK

1000.40 Skim milk and butterfat to be classified.

1000.41 Classes of utilization.

1000.42 Responsibility of handlers.

1000.43 Transfers.

1000.44 Computation of skim milk and butterfat in each class.

1000.45 Allocation of skim milk and butterfat classified.

MINIMUM PRICES

1000.50 Basic formula price.

1000.51 Class prices.

1000.52 Butterfat differentials to handlers.

1000.53 Location differentials to handlers.

1000.54 Rate of compensatory payments.

1000.55 Use of equivalent prices.

APPLICATION OF PROVISIONS

1000.60 Producer-handlers.

1000.61 Plants subject to other Federal orders.

1000.62 Operators of nonpool plants.

DETERMINATION OF PRICES TO PRODUCERS

1000.70 Computation of the value of producer milk for each handler.

1000.71 Computation of the uniform price.

1000.72 Computation of uniform prices for base milk and excess milk.

1000.73 Butterfat differential to producers.

1000.74 Location differential to producers.

1000.75 Notification of handlers.

PAYMENTS

1000.80 Time and method of payment for producer milk.

1000.81 Producer-settlement fund.

1000.82 Payments to the producer-settlement fund.

1000.83 Payments out of the producer-settlement fund.

1000.84 Adjustment of errors in payment.

1000.85 Marketing services.

1000.86 Expenses of administration.

1000.87 Termination of obligations.

DETERMINATION OF BASE

1000.90 Computation of daily average base for each producer.

1000.91 Base rules.

Sec. 1000.92 Announcement of established bases.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

1000.100 Effective time.

1000.101 Suspension or termination.

1000.102 Continuing obligations.

1000.103 Liquidation.

MISCELLANEOUS PROVISIONS

1000.110 Agents.

1000.111 Separability of provisions.

AUTHORITY: §§ 1000.0 to 1000.111 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 1000.0 Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Chattanooga, 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 hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

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

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

(4) All milk and milk products handled by handlers, as defined in the 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 expense 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 such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per

hundredweight as the Secretary may prescribe with respect to all butterfat and skim milk contained in (i) producer milk, (ii) other source milk allocated to Class I milk pursuant to § 1000.45 (a) (3) and (4) and (b), and (iii) Class I milk disposed of in the marketing area (except to a pool plant) from a non-pool plant as determined pursuant to § 1000.62.

(b) Additional findings. It is necessary in the public interest to make this order amending the order effective not later than August 1, 1958.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator of the Agricultural Marketing Service was issued May 21, 1958, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued June 19, 1958. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective August 1, 1958, and that 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. (See section 4 (c), Administrative Procedure Act, 5 U. S. C. 1001 et seq.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c (9) of the act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the act of advancing the interests of producers as defined in the order as hereby amended; and

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

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

DEFINITIONS

§ 1000.1 Act. "Act" means Public Act No. 10, 73d Congress, as amended, and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

§ 1000.2 Secretary. "Secretary" means the Secretary of Agriculture or any officer or employee of the United States authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 1000.3 *Chattanooga, Tennessee, marketing area.* "Chattanooga, Tennessee, marketing area", called the "marketing area" in this part, means all of the territory included within the boundaries of Hamilton, McMinn and Bradley counties, all in the State of Tennessee.

§ 1000.4 *Person.* "Person" means any individual, partnership, corporation, association or any other business unit.

§ 1000.5 *Approved dairy farmer.* "Approved dairy farmer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority.

§ 1000.6 *Producer.* "Producer" means any approved dairy farmer who produces milk which is received during the month at a pool plant: *Provided*, That if such milk is diverted from a pool plant by a handler to a nonpool plant for his account any day during the months of March through July or on not more than 10 days during any other month, the milk so diverted shall be deemed to have been received by the diverting handler at a pool plant at the location of the plant from which diverted.

§ 1000.7 *Pool plant.* "Pool plant" means any:

(a) Milk distributing plant approved or recognized by any health authority having jurisdiction in the marketing area for the receiving or processing of Grade A milk and from which Class I milk equal to not less than 50 percent of its receipts of milk from other pool plants and from approved dairy farmers is disposed of during the month on a route(s) and from which Class I milk equal to not less than 20 percent of its total Class I disposition is disposed of during the month on a route(s) in the marketing area.

(b) Milk supply plant which, during the month, ships fluid milk products approved by any health authority having jurisdiction in the marketing area as eligible for distribution under a Grade A label in a volume equal to not less than 50 percent of its receipts of milk from approved dairy farmers to a plant specified in paragraph (a) of this section: *Provided*, That any plant which qualifies as a pool plant pursuant to this paragraph in each of the months of August through February shall be designated as a pool plant for the following months of March through July: *And provided further*, That any such plant may withdraw from pool plant status for any month in the March-July period if the operator of such plant files with the market administrator prior to the first day of such month a written request for such withdrawal.

§ 1000.8 *Nonpool plant.* "Nonpool plant" means any milk plant other than a pool plant.

§ 1000.9 *Handler.* "Handler" means: (a) Any person in his capacity as the operator of one or more pool plants; or (b) a cooperative association with respect to milk of producers diverted for the account of such association from a pool plant to a nonpool plant in accordance with the provisions of § 1000.6.

§ 1000.10 *Producer-handler.* "Producer-handler" means any approved dairy farmer who operates a distributing plant in which he processes milk from his own production, and distributes all or a portion of such milk within the marketing area as Class I milk, but who receives no milk from other dairy farmers or from nonpool plants.

§ 1000.11 *Producer milk.* "Producer milk" means only that skim milk and butterfat contained in milk (a) received at the pool plant directly from producers, or (b) diverted from a pool plant to a nonpool plant (except a nonpool plant which is fully subject to the pricing provisions of another order issued pursuant to the act) in accordance with the provisions of § 1000.6.

§ 1000.12 *Fluid milk product.* "Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk and skim milk drinks, yogurt, cream (sweet or sour) or any mixture in fluid form of milk, skim milk and cream (except sterilized products packaged in hermetically sealed containers, eggnog, ice cream and ice milk mix and aerated cream).

§ 1000.13 *Other source milk.* "Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month 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) which are reprocessed or converted to another product in the plant during the month.

§ 1000.14 *Route.* "Route" means any delivery (including delivery by a vendor or a sale from a plant or plant store) of milk or any milk product classified as Class I milk pursuant to § 1000.41 (a) other than a delivery to any milk processing plant.

§ 1000.15 *Cooperative association.* "Cooperative association" means any cooperative association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1923, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk of its members.

§ 1000.16 *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 92-score bulk creamery butter at Chicago as reported during the month by the Department of Agriculture.

§ 1000.17 *Base milk.* "Base milk" means milk received at pool plants from a producer during any of the months of March through July which is not in excess of such producer's daily average base computed pursuant to § 1000.90, multiplied by the number of days in such month.

§ 1000.18 *Excess milk.* "Excess milk" means milk received at pool plants from a producer during any of the months of March through July which is in excess of the base milk of such producer for such month, and shall include all milk received during such months from a producer for whom no daily average base can be computed pursuant to § 1000.90.

§ 1000.19 *Department of Agriculture.* "Department of Agriculture" means the United States Department of Agriculture or any other Federal agency that may be authorized by act of Congress or by executive order to perform the price reporting functions of the United States Department of Agriculture.

MARKET ADMINISTRATOR

§ 1000.25 *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.

§ 1000.26 *Powers.* The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

§ 1000.27 *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 30 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

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

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

(d) Pay out of the funds received pursuant to § 1000.86: (1) The cost of his bond and of the bonds of his employees, (2) his own compensation, and (3) all other expenses, except those incurred under § 1000.85 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 section, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly disclose to handlers and producers, 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 handler who, after the date on which he is required to perform such acts has not made reports pursuant to §§ 1000.30 and 1000.31 or payments pursuant to §§ 1000.80 through 1000.86;

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

(h) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler;

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

(j) Prepare and make available for the benefit of producers, consumers, and handlers, general statistics and information concerning the operation of this order which do not reveal confidential information; and

(k) On or before the date specified publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, and mail to each handler at his last known address a notice of, the following:

(1) The 10th day of each month, the Class I milk price and the Class I butterfat differential, both for the current month; and the Class II milk price, and the Class II butterfat differential, both for the preceding month; and

(2) The 10th day of each month, the uniform prices, computed pursuant to §§ 1000.71 and 1000.72, and the producer butterfat differential, both for the preceding month.

REPORTS, RECORDS AND FACILITIES

§ 1000.30 *Reports of sources and utilization.* On or before the 6th day after the end of each month each handler, except a producer-handler, shall report for each of his pool plants for such month to the market administrator in the detail and on forms prescribed by the market administrator as follows:

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

- (1) Producer milk;
- (2) Fluid milk products received from other pool plants;
- (3) Other source milk;
- (4) Inventories of fluid milk products on hand at the beginning of the month; and

(5) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph, including separate statements as to the disposition of Class I milk outside the marketing area, and inventories of fluid milk products on hand at the end of the month.

§ 1000.31 *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, except a producer-handler, shall report to the market administrator, in the detail and on forms prescribed by the market administrator:

(1) On or before the 6th day of each of the months of April through August, the aggregate quantity of base milk received at his pool plant(s) for the preceding month;

(2) On or before the 20th day after the end of the month, for each of his pool plants, his producer payroll for such month which shall show for each producer: (i) His name and address, (ii) the total pounds of milk received from such producer, including for the months of March through July, the pounds of base milk, (iii) the days for which milk was received from such producer if less than the entire month, (iv) the average butterfat content of such milk, and (v) the net amount of such handler's payment to the producer, together with the price paid and the amount and nature of any deductions;

(3) On or before the day prior to diverting producer milk pursuant to § 1000.6, his intention to divert such milk, the date or dates of such diversion and the nonpool plant to which such milk is to be diverted; and

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

(c) Upon request by the market administrator, operators of nonpool plants distributing milk in the marketing area or selling milk to pool plants as defined in § 1000.7 shall file a report containing such information with respect to receipts and utilization of butterfat and skim milk as the market administrator may prescribe.

§ 1000.32 *Records and facilities.* Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data for each month with respect to:

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

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

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

(d) Payments to producers, including any deductions authorized by producers and disbursement of money so deducted.

§ 1000.33 *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 calendar month to which such books and records pertain: *Provided*, That if, within such three-year period, the market adminis-

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

CLASSIFICATION OF MILK

§ 1000.40 *Skim milk and butterfat to be classified.* The skim milk and butterfat to be reported for pool plants pursuant to § 1000.30 (a) shall be classified each month pursuant to the provisions of §§ 1000.41 through 1000.45.

§ 1000.41 *Classes of utilization.* Subject to the conditions set forth in §§ 1000.42 through 1000.45, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat (1) disposed of from the plant in the form of fluid milk products, except those classified pursuant to paragraph (b) (3) of this section, and (2) not specifically accounted for as Class II milk; and

(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) contained in inventories of fluid milk products on hand at the end of the month; (3) skim milk disposed of and used for livestock feed or skim milk dumped subject to prior notification to and inspection (at his discretion) by the market administrator; and (4) in shrinkage not to exceed 2 percent, respectively, of the skim milk and butterfat contained in producer milk (except that diverted pursuant to § 1000.6) and other source milk: *Provided*, That if shrinkage of skim milk or butterfat is less than such 2 percent it shall be assigned pro rata to the skim milk or butterfat contained in producer milk (except that diverted pursuant to § 1000.6) and other source milk respectively.

§ 1000.42 *Responsibility of handlers.* All skim milk and butterfat to be classified pursuant to this order shall be classified Class I milk, unless the handler who first receives such skim milk and butterfat establishes to the satisfaction of the market administrator that it should be classified as Class II milk.

§ 1000.43 *Transfers.* (a) Skim milk and butterfat transferred to a pool plant of another handler (except a producer-handler) in the form of fluid milk products shall, to the extent required, be classified so as to result in the maximum assignment of the producer milk of both handlers to Class I milk. Any additional amounts of skim milk and butterfat shall be classified Class I milk, unless the operators of both plants claim utilization thereof in Class II milk in their reports submitted pursuant to § 1000.30: *Provided*, That the skim milk or butterfat so assigned to Class II milk

for any month shall be limited to the respective amounts thereof remaining in Class II milk for such month at the pool plant(s) of the receiving handler after the subtraction of other source milk pursuant to § 1000.45;

(b) Skim milk and butterfat transferred to the plant of a producer-handler in the form of fluid milk products, shall be classified Class I milk;

(c) Skim milk and butterfat transferred or diverted in bulk form as milk or skim milk to a nonpool milk plant shall be classified Class I milk unless, (1) the transferee-plant is located less than 250 miles from the City Hall in Chattanooga, Tennessee, by the shortest hard-surfaced highway distance, as determined by the market administrator, (2) the transferring or diverting handler claims classification in Class II milk in his report submitted to the market administrator pursuant to § 1000.30 for the month within which such transaction occurred, (3) the operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification, and (4) not less than an equivalent amount of skim milk and butterfat was actually utilized in the nonpool plant in the use indicated in such report: *Provided*, That if it is found that an equivalent amount of skim milk and butterfat was not actually used in such plant during the month in such indicated use, the pounds transferred in excess of such actual use shall be classified Class I milk; and

(d) Skim milk and butterfat transferred in bulk form as cream to a nonpool plant shall be classified Class I milk unless, (1) the transferring handler claims classification in Class II milk in his report submitted to the market administrator pursuant to § 1000.30, (2) the handler attaches tags or labels to each container of such cream bearing the words "for manufacturing uses only" and the shipment is so invoiced, (3) the handler gives the market administrator sufficient notice to allow him to verify such shipment, (4) the operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification, and (5) not less than an equivalent amount of skim milk and butterfat was actually utilized in the nonpool plant in the use indicated in such report: *Provided*, That if it is found that an equivalent amount of skim milk and butterfat was not actually used in such plant during the month in such indicated use, the pounds transferred in excess of such actual use shall be classified Class I milk.

§ 1000.44 *Computation of skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical and other obvious errors, the reports submitted by each handler pursuant to § 1000.30 and compute the total pounds of skim milk and butterfat respectively, in Class I milk and Class II milk at all of the pool plants

of such handler: *Provided*, That the skim milk contained in any product utilized, produced, or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 1000.45 *Allocation of skim milk and butterfat classified.* (a) The pounds of skim milk remaining in each class after making the following computations each month with respect to the pool plant(s) of each handler, shall be the pounds of skim milk in such class allocated to the producer milk of such handler for such month:

(1) Subtract from the pounds of skim milk in Class I milk disposed of as cream (sweet or sour), skim milk, flavored milk, flavored milk and skim milk drinks, and buttermilk, all in consumer-packaged form on routes, the pounds of such skim milk received during the month in the same product and same packages from a plant fully regulated pursuant to Order No. 88 (Part 988 of this chapter) regulating the handling of milk in the Knoxville marketing area: *Provided*, That this subparagraph shall not apply to any item received if the same product is processed and packaged in the pool plant.

(2) Subtract from the total pounds of skim milk in Class II milk the shrinkage of skim milk in producer milk classified as Class II milk pursuant to § 1000.41 (b).

(3) Subtract from the pounds of skim milk remaining in Class II milk the skim milk received as other source milk not in the form of fluid milk products: *Provided*, That if the pounds of skim milk to be subtracted are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk.

(4) Subtract from the pounds of skim milk remaining in Class II milk the skim milk in other source milk received in the form of fluid milk products and not subject to the Class I pricing provisions of another order issued pursuant to the act: *Provided*, That if the pounds of skim milk to be subtracted are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk.

(5) Subtract from the pounds of skim milk remaining in Class II milk the skim milk in other source milk which was not subtracted pursuant to subparagraph (1) of this paragraph and which is subject to the Class I pricing provisions of another order issued pursuant to the act: *Provided*, That if the pounds of skim milk to be subtracted are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk.

(6) Subtract from the pounds of skim milk remaining in Class II milk the skim milk contained in inventories of fluid milk products on hand at the beginning of the month: *Provided*, That if the pounds of skim milk in such inventory exceed the remaining pounds of skim milk in Class II milk the balance shall

be subtracted from the pounds of skim milk remaining in Class I milk.

(7) Subtract the pounds of skim milk in fluid milk products received from pool plants of other handlers from the pounds of skim milk remaining in the class to which assigned, pursuant to § 1000.43 (a).

(8) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (2) of this paragraph.

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

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

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

MINIMUM PRICES

§ 1000.50 *Basic formula price.* The basic formula price per hundredweight (computed to the nearest cent) to be used in determining the price for Class I milk pursuant to § 1000.51 (a) shall be the highest of the prices per hundredweight for milk of 4.0 percent butterfat content computed pursuant to paragraph (a), (b), or (c) of this section, or § 1000.51 (b) (1).

(a) To the arithmetical average of the basic (or field) prices reported to have been paid or to be paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department of Agriculture on or before the 6th day after the end of the month:

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.

and an amount computed by multiplying the butterfat differential computed pursuant to § 1000.73, by 5.

(b) The price per hundredweight computed as follows:

(1) Multiply the Chicago butter price by 6;

(2) Add an amount equal to 2.4 times the arithmetical average of the weekly prevailing price per pound of "Twins" during the month on the Wisconsin Cheese Exchange: *Provided*, That if the price of "Twins" is not quoted on such

Exchange, the weekly prevailing price per pound of "Cheddars" shall be used; and

(3) Divide by 7, add 30 percent thereof, and then multiply by 4.

(c) The price per hundredweight computed as follows: Multiply the Chicago butter price by 4.0, add 20 percent thereof, and add to such sum 3 3/4 cents for each full one-half cent that the arithmetical average of carlot prices per pound of nonfat dry milk solids, spray and roller process, for human consumption, f. o. b. Chicago area manufacturing plants, for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department of Agriculture, is above 5 cents.

§ 1000.51 *Class prices.* Subject to the provisions of §§ 1000.52 and 1000.53, the minimum prices per hundredweight of milk containing 4 percent butterfat, to be paid by each handler for milk received at his pool plant from producers, during the month, shall be as follows:

(a) *Class I milk price.* The price per hundredweight for Class I milk for the month shall be the basic formula price for the preceding month, subject to the adjustments provided in subparagraphs (1) and (2) of this paragraph:

- (1) Add \$1.75;
- (2) Add if the utilization percentage calculated pursuant to subparagraph (3) of this paragraph is less than, or subtract if it is more than, the standard utilization range, an amount determined by multiplying the net utilization percentage calculated pursuant to subparagraph (4) of this paragraph by 2 cents: *Provided*, That any addition or subtraction shall be limited to 50 cents per hundredweight;

(3) Calculate a utilization percentage for each month by dividing the net hundredweight of Class I milk (excluding that Class I milk subtracted pursuant to § 1000.45 (a) (1) and (b)), disposed of from all pool plants for the first and second preceding months into the total hundredweight of producer milk for the same months, multiplying by 100, and rounding the resultant figure to the nearest whole number;

(4) Calculate a net utilization percentage by determining the amount by which the utilization percentage calculated pursuant to subparagraph (3) of this paragraph exceeds the higher figure or is less than the lower figure of the standard utilization range in the following table:

Month for which price applies	Months for which utilization is computed	Standard utilization range	
		Minimum	Maximum
January	November-December	117	121
February	December-January	117	121
March	January-February	117	121
April	February-March	119	123
May	March-April	124	128
June	April-May	134	138
July	May-June	134	138
August	June-July	128	132
September	July-August	115	119
October	August-September	110	114
November	September-October	114	118
December	October-November	114	118

(b) *Class II milk price.* For the months of February through August, the Class II milk price shall be the price computed pursuant to subparagraph (1) of this paragraph, rounded to the nearest cent. For all other months, it shall be the price computed pursuant to subparagraph (1) of this paragraph, or the price computed pursuant to § 1000.50 (c), whichever is higher.

(1) The average of the basic or field prices reported to have been paid or to be paid per hundredweight for milk of 4.0 percent butterfat content received from dairy farmers during the month at the following plants or places, for which prices have been reported to the market administrator or to the Department on or before the 6th day after the end of the month:

Company and Location

- Kraft Foods Co., Fayetteville, Tenn.
- Pet Milk Co., Greensville, Tenn.
- Carnation Co., Murfreesboro, Tenn.
- Borden Co., Lewisburg, Tenn.

§ 1000.52 *Butterfat differentials to handlers.* For milk containing more or less than 4.0 percent butterfat, the class prices calculated pursuant to § 1000.51 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 milk price.* Multiply the Chicago butter price for the preceding month by 0.13; and

(b) *Class II milk price.* Multiply the Chicago butter price for the month by 0.115: *Provided*, That such butterfat differential shall not exceed the result obtained by dividing the Class II price, pursuant to § 1000.51 (b), by 40.

§ 1000.53 *Location differentials to handlers.* For that milk which is received from producers at a pool plant located 65 miles or more from the City Hall of Chattanooga, Tennessee, by shortest hard-surfaced highway distance, as determined by the market administrator, and which is assigned to Class I milk pursuant to the proviso of this section, or otherwise classified as Class I milk, the price specified in § 1000.51 (a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the City Hall of Chattanooga, Tenn. (miles):	Rate per hundred weight (cents)
65 but not more than 75	15.0
For each additional 10 miles or fraction thereof an additional	1.5

Provided, That for the purpose of calculating such location differential, fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class II milk in the plant to which transferred after making the calculations prescribed in § 1000.45 (a) (1) through (6), and the comparable steps in § 1000.45 (b) for such plant, such assignment to the transferring plants to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 1000.54 *Rate of compensatory payments.* The rate of compensatory payment per hundredweight shall be calculated as follows:

(a) For the months of March through July, subtract the Class II price, adjusted by the Class II butterfat differential, from the Class I price, adjusted by the Class I butterfat differential, and in the case of fluid milk products, adjusted by the Class I location differential of the plant at which the milk was received from farmers.

(b) For the months of August through February, subtract the uniform price to producers from the Class I price.

§ 1000.55 *Use of equivalent prices.* If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 1000.60 *Producer-handlers.* Sections 1000.40 through 1000.45, 1000.50 through 1000.53, 1000.61 and 1000.62, 1000.70 through 1000.75, and 1000.80 through 1000.87 shall not apply to a producer-handler.

§ 1000.61 *Plants subject to other Federal orders.* Upon application to the market administrator and a subsequent determination by the Secretary, a plant specified in paragraph (a) or (b) of this section shall be treated as a nonpool plant except that the operator of such plant shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(a) Any distributing plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the act, unless a greater volume of Class I milk is disposed of from such plant to retail or wholesale outlets (except pool plants or nonpool plants) in the Chattanooga, Tennessee, marketing area than in the marketing area regulated pursuant to such order; and

(b) Any supply plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the act, unless such plant qualified as a pool plant for each of the preceding months of August through February.

§ 1000.62 *Operators of nonpool plants.* An operator of a nonpool plant which is not subject to the classification and pricing provisions of another order issued pursuant to the act, shall, on or before the 12th day after the end of the month, pay to the market administrator for deposit into the producer-settlement fund an amount calculated by multiplying the total hundredweight of butterfat and skim milk disposed of in the form of fluid milk products from such nonpool plant to retail or wholesale outlets (including deliveries by vendors and sales through plant stores) in the marketing

area during the month by the rate of compensatory payment calculated pursuant to § 1000.54.

DETERMINATION OF PRICES TO PRODUCERS

§ 1000.70 *Computation of the value of producer milk for each handler.* For each month, the market administrator shall compute the value of producer milk for each handler as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 1000.45 by the applicable class price, total the resulting amounts, and add any amount necessary to reflect adjustments in location differential allowance required pursuant to the proviso of § 1000.53;

(b) Add the amounts computed in subparagraphs (1), (2) and (3) of this paragraph;

(1) Multiply the rate of compensatory payment determined pursuant to § 1000.54 by the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1000.45 (a) (3) and (b);

(2) Multiply the rate of compensatory payment determined pursuant to § 1000.54 at the nearest plant(s) from which an equivalent amount of other source milk was received in the form of fluid milk products by the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1000.45 (a) (4) and (b);

(3) Multiply the rate of compensatory payment determined pursuant to § 1000.54 at the nearest plant(s) from which an equivalent amount of other source milk was received by the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1000.45 (a) (6) and (b), which is in excess of the sum of: (i) The quantity for which a payment must be computed pursuant to paragraph (d) of this section, and (ii) the quantity subtracted from Class II milk pursuant to § 1000.45 (a) (5) and (b) in the preceding month;

(c) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 1000.45 (a) (9) and (b) by the applicable class price; and

(d) Add the amount computed by multiplying the difference between the appropriate Class II price for the preceding month and the appropriate Class I milk price for the current month by the hundredweight of skim milk and butterfat remaining in Class II milk after the calculations pursuant to § 1000.45 (a) (7) and (b) for the preceding month or the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1000.45 (a) (6) and (b) for the current month, whichever is less, respectively.

§ 1000.71 *Computation of the uniform price.* For each of the months of August through February, the market administrator shall compute the uniform price per hundredweight of producer milk of 4.0 percent butterfat content, f. o. b. market, as follows:

(a) Combine into one total the values computed pursuant to § 1000.70 for the producer milk of all handlers who submit reports prescribed in § 1000.30 and

who are not in default of payments pursuant to § 1000.80 or § 1000.82;

(b) Subtract, if the average butterfat content of the producer milk included under paragraph (a) of this section is greater than 4.0 percent, or add, if such average butterfat content is less than 4.0 percent, an amount computed as follows: Multiply the amount by which the average butterfat content of such milk varies from 4.0 percent by the butterfat differential computed pursuant to § 1000.73, and multiply the result by the total hundredweight of such milk;

(c) Add an amount equal to the sum of the deductions to be made from producer payments for location differentials pursuant to § 1000.80 (a) (2);

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

(e) Add the total amount of payment due pursuant to § 1000.62;

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

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

§ 1000.72 *Computation of uniform prices for base milk and excess milk.* For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 4.0 percent butterfat content, f. o. b. market, as follows:

(a) Compute the aggregate value of excess milk for all handlers who submit reports pursuant to § 1000.30, and who are not in default of payments pursuant to § 1000.80 or § 1000.82 as follows: (1) Multiply the hundredweight quantity of such milk which does not exceed the total quantity of producer milk assigned to Class II milk in the pool plants of such handlers by the Class II milk price, (2) multiply the remaining hundredweight quantity of excess milk by the Class I milk price, and (3) add together the resulting amounts;

(b) Divide the total value of excess milk obtained in paragraph (a) of this section by the total hundredweight of such milk, adjust to the nearest cent and subtract 4 cents. The resulting figure shall be the uniform price for excess milk of 4.0 percent butterfat content received from producers;

(c) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b) of this section, plus 4 cents, times the hundredweight of excess milk from the total value of producer milk for the month as determined according to the calculations set forth in § 1000.71 (a) through (e);

(d) Divide the amount calculated pursuant to paragraph (c) of this section by the total hundredweight of base milk included in these computations; and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The resulting figure shall be the uniform price for base milk of 4.0 percent butterfat content f. o. b. market.

§ 1000.73 *Butterfat differential to producers.* The applicable uniform price to be paid each producer shall be

increased or decreased for each one-tenth of one percent which the average butterfat content of his milk is above or below 4.0 percent, respectively, at the rate determined by multiplying the pounds of butterfat in producer milk allocated to each class by the appropriate butterfat differentials for such class as determined by § 1000.52, dividing by the total butterfat in producer milk, and rounding to the nearest fifth of a cent.

§ 1000.74 *Location differential to producers.* The applicable uniform prices to be paid for producer milk received at a pool plant located 65 miles or more from the City Hall of Chattanooga, Tennessee, by the shortest hard-surfaced highway distance, as determined by the market administrator, shall be reduced according to the location of the pool plant where such milk was received at the rates set forth in § 1000.53.

§ 1000.75 *Notification of handlers.* On or before the 10th day after the end of each month, the market administrator shall mail to each handler, who submitted the report(s) prescribed in § 1000.30, at his last known address, a statement showing:

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

(b) For the months of March through July the amounts and value of his base and excess milk respectively, and the totals thereof;

(c) The uniform price(s) computed pursuant to §§ 1000.71 and 1000.72 and the butterfat differential computed pursuant to § 1000.73; and

(d) The amounts to be paid by such handler pursuant to §§ 1000.82, 1000.85 and 1000.86, or § 1000.62 and the amount due such handler pursuant to § 1000.83.

PAYMENTS

§ 1000.80 *Time and method of payment for producer milk.* (a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

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

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price(s) adjusted by the butterfat and location differentials to producers multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments: (i) Less payments made to such producer pursuant to subparagraph (1) of this paragraph, (ii) less marketing service deductions made pursuant to § 1000.85, (iii) plus or minus adjustments for errors made in previous payments made to such producers, and (iv) less proper

deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1000.83 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

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

(c) Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association or to the market administrator for transmittal to such cooperative association for each such producer as follows:

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

(2) On or before the 7th day of the following month (i) the pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) for the months of March through July the total pounds of base milk received, (iii) the amount or rate and nature of any deductions to be made from payments, and (iv) the amount and nature of payments due pursuant to § 1000.84.

§ 1000.81 *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 §§ 1000.62, 1000.82 and 1000.84, and out of which he shall make all payments pursuant to §§ 1000.83 and 1000.84: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1000.82 *Payments to the producer-settlement fund.* On or before the 12th day after the end of each month, each handler shall pay to the market administrator any amount by which the value of his producer milk as computed pursuant to § 1000.70 for such month, is greater than the amount owed by him for such milk at the appropriate uniform price(s) adjusted by the producer butterfat and location differentials.

§ 1000.83 *Payments out of the producer-settlement fund.* On or before the 13th day after the end of each month,

the market administrator shall pay to each handler any amount by which the total value of his producer milk, computed pursuant to § 1000.70, for such month is less than the amount owed by him for such milk at the appropriate uniform price(s) adjusted by the producer butterfat and location differentials. If at such time 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 appropriate funds are available.

§ 1000.84 *Adjustment of errors in payment.* Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1000.82, 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 verification discloses that payment is due from the market administrator to any handler, pursuant to § 1000.83, 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 or cooperative association for milk received by such handler discloses payment of less than is required by § 1000.80, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1000.85 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1000.80, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association;

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such

deduction was computed for each producer.

§ 1000.86 *Expenses of administration.* On or before the 15th day after the end of each month, each handler shall pay to the market administrator for each of his pool plants, 4 cents or such lesser amount as the Secretary may prescribe, for each hundredweight of butterfat and skim milk contained in (a) producer milk, (b) other source milk allocated to Class I milk pursuant to § 1000.45 (a) (3) and (4) and (b), or (c) Class I milk disposed of in the marketing area (except to a pool plant) from a nonpool plant as determined pursuant to § 1000.62.

§ 1000.87 *Termination of obligations.* The provisions of this section shall apply to any obligations under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such 2-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 order, to make available to the market administrator or his representative 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 representative;

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims

to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler, if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c (15) (A) of the act, a petition claiming such money.

DETERMINATION OF BASE

§ 1000.90 *Computation of daily average base for each producer.* Subject to the rules set forth in § 1000.91, the daily average base for each producer shall be an amount calculated by dividing the total pounds of milk received from such producer at all pool plants during the months of September through January immediately preceding, by the number of days from the first day of delivery by such producer during such months to the last day of January, inclusive, or by 120, whichever is more: *Provided*, That any producer who, during the preceding months of September through January, delivered his milk to a nonpool plant which became a pool plant after the beginning of such period shall be assigned a base in the same manner as if he had been a producer during such period, calculated from his deliveries during such September-January period to such plant.

§ 1000.91 *Base rules.* The following rules shall apply in connection with the establishment and assignment of bases:

(a) Subject to the provisions of paragraph (b) of this section, the market administrator shall assign a base calculated pursuant to § 1000.90 to each person for whose account producer milk was delivered to pool plants during the months of September through January;

(b) A base which is assigned pursuant to the proviso of § 1000.90 shall be non-transferable. An entire base which is otherwise assigned shall be transferred from a person holding such base to any other person effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to be transferred: *Provided*, That if a base is held jointly, the entire base shall be transferable only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred; and

(c) A base which has been established by two or more persons operating a dairy farm as a partnership may be divided between the partners on any basis agreed to in writing by the partners provided written notification of the agreed division of base signed by each partner is received by the market administrator prior to the first day of the month on which such division is to be effective.

§ 1000.92 *Announcement of established bases.* On or before March 1 of

each year, the market administrator shall notify each producer, and the handler receiving milk from such producer, of the daily average base established by such producer, and shall notify a cooperative association of which such producer is a member of such daily average base if the cooperative association so requests.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

§ 1000.100 *Effective time.* The provisions of this part, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1000.101 *Suspension or termination.* The Secretary shall, whenever he finds that any or all provisions of this part, or any amendment thereto, obstruct or do not tend to effectuate the declared policy of the act, terminate or suspend the operation of any or all provisions of this part or any amendment thereto.

§ 1000.102 *Continuing obligations.* If, upon the suspension or termination of any or all provisions of this part, or any amendment thereto, there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 1000.103 *Liquidation.* Upon the suspension or termination of any or all provisions of this part, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidating and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1000.110 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent and representative in connection with any of the provisions of this part.

§ 1000.111 *Separability of provisions.* If any provisions of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Issued at Washington, D. C., this 11th day of July, 1958, to be effective on and after the 1st day of August, 1958.

[SEAL]

DON PAARLBERG,
Assistant Secretary.

[F. R. Doc. 58-5471; Filed, July 16, 1958; 8:51 a. m.]

PART 1004—MILK IN CENTRAL ARIZONA MARKETING AREA

ORDER SUSPENDING CERTAIN PROVISION

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 1004), regulating the handling of milk in the Central Arizona marketing area, hereinafter referred to as the "order", it is hereby found that:

(a) The following provisions: (1) The phrase, "Subject to the provisions of paragraph (b) of this section," in § 1004.91 (a), and (2) § 1004.91 (b) in its entirety no longer tend to effectuate the declared policy of the act;

(b) Notice of proposed rule making, public procedure thereon, and 30-days' prior notice to the effective date hereof are found to be impracticable, unnecessary, and contrary to the public interest in that (1) this suspension order is necessary to correct a situation which has threatened to disrupt the orderly marketing of milk, whereby producers through abuse of the base transfer provisions have been able to inflate their earned bases quite substantially. A hearing on proposed amendments providing for extensive revision of the order (No. 104), as amended, including a revision of the base rules was conducted at Phoenix, Arizona, on June 11 and 12, 1958, (23 F. R. 38817). The time required for a thorough analysis of the record evidence, and the performance of the several procedural steps which must be followed before an amendment can be issued, preclude the possibility of making an amendment to the order (No. 104), as amended, effective before August 1, 1958; (2) since the base-forming period begins on August 1, it is necessary to give producers ample notice before that date, that base-inflating transfers will not be permitted; (3) this suspension order does not require of persons affected substantial or extensive preparation prior to its effective date; and (4) the time intervening between the date of this suspension order and its effective date affords persons affected a reasonable time to prepare for its effective date.

It is therefore ordered, That the following provisions be and hereby are suspended effective July 17, 1958:

1. In § 1004.91 (a) the phrase, "Subject to the provisions of paragraph (b) of this section".

2. Section 1004.91 (b).

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

Done at Washington, D. C., this 11th day of July 1958.

[SEAL] DON PAARLBERG,
Assistant Secretary.

[F. R. Doc. 58-5470; Filed, July 16, 1958; 8:50 a. m.]

TITLE 18—CONSERVATION OF POWER

Chapter I—Federal Power Commission

[Order 206]

PART 154—RATES SCHEDULES AND TARIFFS ORDER MODIFYING RULES AND REGULATIONS WITH RESPECT TO SUPPLEMENTS REFLECTING ADDITION TO LOUISIANA STATE GAS GATHERING TAX

JULY 11, 1958.

In the matter of The Louisiana State Gas Gathering Tax (Act No. 8, Louisiana Law of 1958, Amending Title 47 of the Louisiana Revised Statutes of 1950) [House Bill No. 303].

Pursuant to Act No. 8 of 1958 (House Bill No. 303), of the State of Louisiana, as approved on June 16, 1958, amending Title 47 of the Louisiana Revised Statutes of 1950, an additional "excise, license or privilege tax for the privilege of engaging" in the "business" of "gathering gas produced" in Louisiana is levied "at the rate of one cent (1¢) per thousand (1,000) cubic feet (corrected to a base pressure of 15.025 pounds per square inch, absolute pressure)" of gas gathered within the State of Louisiana, for a period of two years beginning August 1, 1958 and continuing through July 31, 1960 (unless made non-operative sooner as provided in the subject law).

The incidence of such tax may result in increases in the rates paid by the purchasers under all rate schedules governing sales of natural gas produced in Louisiana, subject to the jurisdiction of the Commission, which contain provisions whereby the buyer is to reimburse the seller for any portion of such additional tax. The Natural Gas Act and § 154.94 of the Commission's regulations thereunder make it mandatory that any such proposed increased rates be timely and properly filed with the Commission.

To simplify the proposed required changes in rates, the Commission deems it expedient and in the public interest to waive the 30-day notice requirement under section 4 (d) of the act and § 154.94 of the Commission's regulations and to eliminate, to the extent feasible, the data and information thereby required to be submitted in support of any proposed changes in rate based upon said Act No. 8, to be effective August 1, 1958.

Accordingly, a natural-gas company, in submitting a supplement to any of its effective rate schedules on file with the Commission to reflect as of August 1, 1958, the statutory addition of one cent (1¢) per Mcf to the present gathering tax may, notwithstanding other provisions of the Commission's Rules and Regulations, make such filings as hereinafter provided.

A number of affected natural-gas companies have advised the Commission that litigation is to be instituted challenging the constitutionality of the aforesaid Act No. 8 of 1958 of the State of Louisiana. In view of this fact, and to assure appropriate refund, in the event said Act No. 8 of 1958 should be declared unconstitutional by final judicial decision, of payments made pursuant to rate schedule changes proposed as a result of such legislation, the Commission proposes to suspend for one day beyond the date they would otherwise become effective any such rate schedule changes.

The Commission finds: It is appropriate and in the public interest in the administration of the Natural Gas Act (a) to waive the 30-day notice requirement set forth in section 4 (d) of the Natural Gas Act and § 154.94 of the Commission's regulations with respect to the filing of any appropriate supplement reflecting the addition of one cent (1¢) to the Louisiana gathering tax, effective August 1, 1958, providing such filing is made on or before August 1, 1958; and (b) with respect to the filing, whether before or after August 1, 1958, of any appropriate supplement reflecting the additional Louisiana gathering tax to submit 3 copies of the data in the form set forth below, in lieu of the data required by § 154.94 (e) of the Commission's regulations.

1. This filing is submitted pursuant to Commission Order No. -- to reflect -- percent reimbursement of the additional Louisiana gas gathering tax of one cent (1¢) per Mcf effective August 1, 1958 levied by Act No. 8 of 1958 of the State of Louisiana (House Bill No. 303).

2. Such reimbursement is provided by section -- of the contract dated ----- between ----- and ----- on file with the Commission and designated ----- FPC Gas Rate Schedule No. ---

3. A copy of this filing was served on the buyer as required by the Commission's regulations on -----

4. Comparison of rates prior to and subsequent to such change in rate (cents per Mcf) at 15.025 psia:

Date	Base price per Mcf	Tax reimbursement per Mcf	Total price per Mcf
July 31, 1958.....
Aug. 1, 1958.....

Sales for 12 months ended April 30, 1958..... Mcf

The Commission orders: Rate schedule changes reflecting the incidence of the additional one cent (1¢) per Mcf gathering tax of the State of Louisiana as of August 1, 1958, if filed on or before August 1, 1958 may be filed on less than the 30 days' notice required by section 4 (d) of the Natural Gas Act and in accordance with the findings of this order.

(Sec. 16, 52 Stat. 830; 15 U. S. C. 7170)

By the Commission.

[SEAL] JOSEPH H. GUTRIE,
Secretary.

[F. R. Doc. 58-5458; Filed, July 16, 1958; 8:43 a. m.]

TITLE 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T. D. 54630]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

REDUCED RATE OF DUTY FOR CERTAIN WOOLEN TEXTILES

Presidential Proclamation No. 3160 of September 28, 1956, as amended by Presidential Proclamation No. 3225, dated March 7, 1958, provides that after the annual quota on certain woolen fabrics classifiable under paragraphs 1108 and 1109 (a), Tariff Act of 1930, has been filled, the ad valorem part of the duty on serges, weighing not over 6 ounces per square yard, and nuns' veilings and other woven fabrics, weighing not over 4 ounces per square yard: All the foregoing wholly or in chief value of wool of the sheep, valued at over \$4 per pound, in solid colors, imported to be used in the manufacture of apparel for members of religious orders, shall be at the rate of 30 percent rather than at the rate of 45 percent. To prescribe regulations governing the entry of these woolen textiles at this reduced rate the Customs Regulations are amended as follows:

Part 10 is amended by adding at the end thereof the following new center-head and section:

WOOLEN TEXTILES

§ 10.111 *Woolen textiles imported to be used in the manufacture of apparel for members of religious orders.* (a) Serges, weighing not over 6 ounces per square yard, and nun's veiling and other woven fabrics, weighing not over 4 ounces per square yard; all the foregoing wholly or in chief value of wool of the sheep, valued at over \$4 per pound, in solid colors, imported to be used in the manufacture of apparel for members of religious orders, entered, or withdrawn from warehouse, for consumption after the annual quota on certain wool fabrics classifiable under paragraphs 1108 and 1109 (a), Tariff Act of 1930, has been filled may be released on deposit of estimated duties at the rate the ad valorem part of which is 30 percent, as provided for in the President's Proclamation No. 3160 of September 28, 1956 (3 CFR, 1956 Supp., Ch. 1; TD 54212), as amended by the President's Proclamation No. 3225 of March 7, 1958 (23 F. R. 1687; TD 54550), if there is filed with the entry or the withdrawal a declaration of a person having knowledge of the facts that the fabrics were imported to be used in the manufacture of apparel for members of religious orders. Liquidation of the entry covering the fabrics shall be suspended until the proof of use provided for in paragraph (b) of this section is furnished or the time allowed for the production thereof has expired.

(b) Within 1 year from the date of the entry (in case of warehouse entries as well as consumption entries) or any extension of that period as hereinafter provided for, the importer shall furnish

proof of use satisfactory to the collector that the imported fabrics have been used in the manufacture of apparel for members of religious orders. The collector may, upon written application of the importer before the expiration of the initial or any extended period, extend the period for further periods of 1 year each, but not to exceed 5 years from the date of entry.

(c) When proof of use is not furnished within the 1 year period or any extension thereof provided for in paragraph (b) of this section, the entry shall be liquidated at the rate the ad valorem part of which is 45 percent, as provided for in the President's Proclamation No. 3160 of September 28, 1956, as amended.

(Sec. 1 (para. 1108, 1109) 46 Stat. 648; 19 U. S. C. 1001 (para. 1108, 1109))

(R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624)

[SEAL] C. A. EMERICK,
Acting Commissioner of Customs.

Approved: July 10, 1958.

A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F. R. Doc. 58-5455; Filed, July 16, 1958;
8:47 a. m.]

TITLE 21—FOOD AND DRUGS

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

Subchapter C—Drugs

PART 146—GENERAL REGULATIONS FOR THE CERTIFICATION OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

ANIMAL FEED CONTAINING ANTIBIOTIC DRUGS

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; sec. 701, 52 Stat. 1055, as amended; 21 U. S. C. 357, 371) and delegated to the Commissioner of Food and Drugs by the Secretary (22 F. R. 1045), the general regulations for the certification of antibiotic and antibiotic-containing drugs (21 CFR, 1957 Supp., 146.26 (23 F. R. 1620)) are amended as indicated below:

In § 146.26 *Animal feed containing penicillin*; * * * paragraph (b) (37) is amended by changing the words "0.004 percent" to read "0.006 percent".

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it was drawn in collaboration with interested members of the affected industry, since it relaxes existing requirements, and since it would be against public interest to delay providing for the amendment herein set forth.

I further find that animal feed containing antibiotic drugs and conforming with the conditions prescribed in the regulations need not comply with the requirements of sections 502 (1) and 507 of the Federal Food, Drug, and Cosmetic Act in order to ensure their safety and efficacy.

Effective date. This order shall become effective upon publication in the

FEDERAL REGISTER, since both the public and the affected industry will benefit by the earliest effective date, and I so find.

(Sec. 701, 52 Stat. 1055, as amended; 21 U. S. C. 371. Interprets or applies secs. 502, 507, 52 Stat. 1051, 59 Stat. 463 as amended; 21 U. S. C. 352, 357)

Dated: July 10, 1958.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F. R. Doc. 58-5447; Filed, July 16, 1958;
8:45 a. m.]

TITLE 25—INDIANS

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

PART 221—OPERATION AND MAINTENANCE CHARGES

FLATHEAD INDIAN IRRIGATION PROJECT ST. IGNATIUS, MONTANA

Pursuant to section 4 (a) of the Administrative Procedure Act of June 11, 1946 (Pub. Law 404, 79th Cong., 60 Stat. 238) and authority contained in the acts of Congress approved August 1, 1914; May 18, 1916; and March 7, 1928 (36 Stat. 583; 25 U. S. C. 385; 39 Stat. 142; and 45 Stat. 210; 25 U. S. C. 387) and by virtue of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs to the Area Director (Bureau Order No. 551 Amendment No. 1; 16 F. R. 5454-7), notice was given of the intention to modify §§ 221.24, 221.26, and 221.28 of Title 25, Code of Federal Regulations, dealing with irrigable lands of the Flathead Indian Irrigation Project, Montana, that are subject to the jurisdiction of the several irrigation districts, as follows:

Charges applicable to all irrigable lands of the Flathead Indian Irrigation Project that are included in the Irrigation District Organization and are subject to the jurisdiction of the three irrigation districts.

Interested persons were thereby given opportunity to participate in preparing the modification by submitting data or written arguments within 30 days from the publication of the notice. No objections were submitted. Accordingly, §§ 221.24, 221.26, and 221.28 are modified as follows:

§ 221.24 *Charges.* Pursuant to a contract executed by the Flathead Irrigation District, Flathead Indian Irrigation Project, Montana, on May 12, 1928, as supplemented and amended by later contracts dated February 27, 1929; March 28, 1934; August 26, 1936, and April 5, 1950, there is hereby fixed for the season of 1959 an assessment of \$240,744 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines and under the jurisdiction of the Flathead Irrigation District. This assessment involves an area of approximately 74,262.5 acres; does not include any land held in trust for Indians and covers all proper general charges and project overhead.

§ 221.26 *Charges.* Pursuant to a contract executed by the Mission Irrigation District, Flathead Indian Irrigation

Project, Montana, on March 7, 1931, approved by the Secretary of the Interior on April 21, 1931, as supplemented and amended by later contracts dated June 2, 1934, June 6, 1936, and May 16, 1951, there is hereby fixed, for the season of 1959 an assessment of \$45,776 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines and under the jurisdiction of the Mission Irrigation District. This assessment involves an area of approximately 13,779.1 acres; does not include any land held in trust for Indians and covers all proper general charges and project overhead.

§ 221.28 *Charges.* Pursuant to a contract executed by the Jocko Valley Irrigation District, Flathead Indian Irrigation Project, Montana, on November 13, 1934, approved by the Secretary of the Interior on February 26, 1935, as supplemented and amended by later contracts dated August 26, 1936, and April 18, 1950, there is hereby fixed, for the season of 1959 an assessment of \$17,240 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines and under the jurisdiction of the Jocko Valley Irrigation District. This assessment involves an area of approximately 6,135.4 acres; does not include any lands held in trust for Indians and covers all proper general charges and project overhead.

(Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U. S. C. 385)

M. A. JOHNSON,
Acting Area Director.

[F. R. Doc. 58-5448; Filed, July 16, 1958;
8:45 a. m.]

TITLE 35—PANAMA CANAL

Chapter I—Canal Zone Regulations

PART 21—PUBLIC LANDS; MILITARY AND NAVAL RESERVATIONS

FORT GULICK ARMY RESERVATION, CANAL ZONE

CROSS REFERENCE: For amendment to the tabulation in § 21.3, insofar as it relates to Fort Gulick Army Reservation, see Canal Zone Order 49 in Appendix to this chapter, *infra*.

Appendix—Canal Zone Orders

[Canal Zone Order 49]

FORT GULICK ARMY RESERVATION, CANAL ZONE

By virtue of the authority vested in the President of the United States by section 5 of Title 2 of the Canal Zone Code, as amended by section 1 of the Act of September 26, 1950, 64 Stat. 1038, and delegated to me by Executive Order No. 9746 of July 1, 1946, as amended by Executive Order No. 10595 of February 7, 1955, it is ordered as follows:

SECTION 1. *Setting apart of reservation; boundaries.* The following-described area of land in the Canal Zone is hereby reserved and set apart as, and assigned to the uses and purposes of an

Army reservation, which shall be known as Fort Gulick Army Reservation, and which shall be under the control and jurisdiction of the Secretary of the Army, subject to the provisions of section 2 of this order:

The area comprising this reservation is situated southeasterly of Mount Hope on the western shore of the Quebrada Ancha Arm of Gatun Lake, and includes Banana Island and the Egronal Islands which are situated in Gatun Lake, and the boundary is more particularly described as follows:

Beginning at monument No. 1, which is a 1½-inch galvanized iron pipe set in concrete, located on the continuous 92-foot contour of the west shore of the Quebrada Ancha Arm of Gatun Lake, the geographic position of which monument, referred to the Canal Zone triangulation system is in latitude 9°18' N, plus 2,418.6 feet and longitude 79°52' W., plus 3,280.0 feet from Greenwich.

Thence from said initial point by metes and bounds:

N. 23°08'00" W., 359.9 feet, to monument No. 1A, which is a 1½-inch galvanized iron pipe;

N. 23°12'30" W., 297.4 feet, through monument No. 1B, which is a 1½-inch galvanized iron pipe, to monument No. 2, which is a 2½-inch galvanized iron pipe, the distances being 202.7 feet and 94.7 feet, successively, from beginning of the course;

N. 73°07'30" W., 369.8 feet, to monument No. 3, which is a 1½-inch galvanized iron pipe;

N. 72°56'30" W., 998.8 feet, through monuments Nos. 4, NF14 and 5 (monument No. 4 is a 2½-inch galvanized iron pipe; monument No. NF14 is a concrete post 8 inches square; monument No. 5 is a 1½-inch galvanized iron pipe) to monument No. 6, which is a concrete post 8 inches square, the distances being 284.8 feet, 453.6 feet, 114.1 feet and 146.3 feet, successively, from beginning of the course;

N. 45°58'00" W., 118.2 feet, to monument No. 7, which is a 1½-inch galvanized iron pipe;

N. 46°13'30" W., 315.5 feet to monument No. 8, which is a 2½-inch galvanized iron pipe;

N. 46°01'00" W., 456.1 feet, to monument No. 9, which is a 2½-inch galvanized iron pipe;

N. 46°02'00" W., 400.0 feet, to monument No. 10, which is a 2½-inch galvanized iron pipe;

N. 46°01'00" W., 463.0 feet, to monument No. 11, which is a 2½-inch galvanized iron pipe;

N. 46°01'30" W., 205.1 feet, to monument No. 12, which is a 2½-inch galvanized iron pipe;

N. 46°01'00" W., 1,141.6 feet, through monuments Nos. 13 and 14, which are 2½-inch galvanized iron pipes, to monument No. 15, which is a concrete post, 8 inches square, the distances being 389.8 feet; 394.9 feet and 356.9 feet, successively, from beginning of the course;

(From monument NF-14 to monument No. 15, the above described line follows the northeasterly boundary of the Gatun Tank Farm Naval Reservation);

N. 00°01'00" W., 2515.4 feet, through monuments Nos. 16 to 21 inclusive, which are 2½-inch galvanized iron pipes, to monument No. 22, which is a 1½-inch galvanized iron pipe, the distances being 249.8 feet, 193.4 feet, 470.0 feet, 525.0 feet, 520.6 feet, 406.0 feet and 150.8 feet, successively, from beginning of the course;

N. 54°57'00" W., 470.7 feet, to monument No. 23, which is a 1½-inch galvanized iron pipe;

N. 53°41'30" E., 52.9 feet, to monument No. 23-A, which is a 2-inch galvanized iron

pipe, located 50 feet southwesterly from the centerline of the Fort Gulick Road;

N. 54°56'00" W., 175.6 feet, to monument No. 23-X, which is a 2-inch galvanized iron pipe, located 50 feet southwesterly from the centerline of the Fort Gulick Road;

N. 35°04'00" E., 100.0 feet, through monument No. 23-Y, which is a ½-inch brass plug located on the centerline of the Fort Gulick Road, to monument No. 23-D, which is a 1½-inch galvanized iron pipe, the distances being 49.9 feet and 50.1 feet, successively, from beginning of the course;

N. 89°06'30" E., 342.2 feet, through monument No. 23-E, which is a 2-inch galvanized iron pipe, to monument No. 24, which is a 1½-inch galvanized iron pipe, the distances being 186.1 feet and 156.1 feet, successively, from beginning of the course;

N. 10°13'30" W., 75.6 feet, to monument No. 24-A which is a 1½-inch galvanized iron pipe;

N. 10°16'30" W., 715.2 feet, to monument No. 24-B, which is a 1½-inch galvanized iron pipe;

N. 10°18'00" W., 431.3 feet, to monument No. 24-C, which is a 1½-inch galvanized iron pipe;

N. 10°12'00" W., 236.0 feet, to monument No. 24-D, which is a 1½-inch galvanized iron pipe;

N. 10°15'30" W., 192.8 feet, to monument No. 24-E, which is a concrete post 8 inches square;

Due East, 239.4 feet, to monument No. 24-F, which is a 1½-inch galvanized iron pipe;

N. 89°59'30" E., 140.8 feet, to monument No. 25, which is a 2½-inch galvanized iron pipe;

N. 00°01'00" W., 370.0 feet, to monument No. 26, which is a concrete post 8 inches square;

S. 50°31'00" E., 1522.2 feet, through monuments Nos. 27 and 28, which are 2½-inch galvanized iron pipes, to monument No. 29, which is a concrete post 8 inches square, the distances being 501.6 feet, 563.0 feet and 457.6 feet, successively, from beginning of the course;

N. 85°14'00" E., 432.9 feet, through monuments Nos. 30 and 31, which are 2½-inch galvanized iron pipes, to monument No. 32, which is a 1½-inch galvanized iron pipe, the distances being 180.6 feet, 62.4 feet and 189.9 feet, successively, from beginning of the course;

N. 43°47'30" E., 1037.4 feet, parallel to and 50 feet southeasterly of the centerline of the Fort Gulick-France Field Road, to monument No. 33, which is a 1½-inch galvanized iron pipe;

On a curve to the left, with a radius of 1011.3 feet, 422.3 feet to monument No. 34, which is a 1½-inch galvanized iron pipe (the direct bearing and distance between monuments Nos. 33 and 34 is N. 31°49'30" E., 419.4 feet);

N. 19°50'00" E., 1345.0 feet, parallel to and 50 feet easterly of the centerline of the Fort Gulick-France Field Road, to monument No. 35, which is a 1½-inch galvanized iron pipe;

S. 24°59'30" E., 626.4 feet, to monument No. 36, which is a 1½-inch galvanized iron pipe;

Due East, 9122.1 feet, through monuments Nos. 37 to 43 inclusive, which are 1½-inch galvanized iron pipes, and 47 to 74 inclusive, which are 2½-inch galvanized iron pipes, to monument No. 75, which is a concrete post 8 inches square, located on the continuous 100-foot contour of the west shore of the Quebrada Ancha Arm of Gatun Lake, the distances being 374.3 feet, 125.1 feet, 254.1 feet, 335.2 feet, 254.4 feet, 234.3 feet, 335.1 feet, 156.8 feet, 325.0 feet, 161.0 feet, 400.0 feet, 400.0 feet, 300.0 feet, 227.0 feet, 173.0 feet, 264.0 feet, 517.4 feet, 307.0 feet, 134.0 feet, 340.4 feet, 187.2 feet, 203.0 feet, 300.0 feet, 332.0 feet, 92.0 feet, 342.0 feet, 180.0 feet, 73.0 feet, 262.0 feet, 440.8 feet, 113.0 feet, 347.0 feet, 334.0 feet, 126.0 feet, 125.0 feet and

107.2 feet, successively, from beginning of the course;

Due East, 100 feet, more or less, to an unmarked point on the continuous 87-foot contour of the shore line of Gatun Lake;

In a general southwesterly direction, along the 87-foot contour of the shore line of Gatun Lake, as it meanders, to an unmarked point, from which the bearing and distance to the above mentioned monument No. 1, is N. 23°08'00" W., 15 feet, more or less;

N. 23°08'00" W., 15 feet, more or less, to the point of beginning.

In addition to the above described area, there shall be included within the reservation all land above the 87-foot contour, consisting of islands known as the Egronal Islands and Banana Island, located in Gatun Lake within the boundaries described as follows:

Beginning at an unmarked point called "A" on the drawing, located on the shore of the Quebrada Ancha Arm of Gatun Lake where longitude 79°51' plus 4,975.0 feet intersects the 87-foot contour;

Thence from said initial point by metes and bounds:

Due South 4,300 feet, more or less, to an intersection with latitude 9°17' plus 4,200 feet, to an unmarked point called "B" on the drawing;

Due West, 2,000 feet, to an unmarked point called "C" on the drawing;

Northwesterly, 3,550 feet, more or less, to an unmarked point called "D" on the drawing, located at a point on the shore of Gatun Lake where longitude 79°52' plus 2,200 feet intersects the 87-foot contour on the shore of Quebrada Ancha Arm of Gatun Lake;

In a general northeasterly and southeasterly direction, following the 87-foot contour of the shore of Gatun Lake, to unmarked point called "A" on the drawing, the point of beginning.

The directions of the lines refer to the true meridian. All geographic positions are referred to the Panama-Colon datum of the Canal Zone triangulation system.

The boundary of the reservation, from monument No. 1 to monument No. 23-A inclusive, and from monument No. 23-D to monument No. 75 inclusive, was surveyed by the Surveys Branch, The Panama Canal, in January and February 1940 and December 1946, and the boundary from monument No. 23-A to monument No. 23-D was surveyed by said Surveys Branch in April 1950.

The reservation contains an area of 1,841.1 acres, more or less. (Main land 1,755.8 acres and islands 85.3 acres) and is as shown on Panama Canal Company drawing No. M-6118-44, entitled "Map Showing Boundary of Fort Gulick Army Reservation", scale 1:10,000, dated January 20, 1958, on file in the Office of the Governor of the Canal Zone, Balboa Heights, Canal Zone.

SEC. 2. Conditions and limitations. The reservation established by section 1 of this order shall be subject to the following conditions and limitations:

(a) The areas comprising this reservation shall continue to be subject to the civil jurisdiction of the Canal Zone Government in conformity with the provisions of the Canal Zone Code as amended and supplemented.

(b) The Canal Zone Government and the Panama Canal Company, their agents, employees, contractors, licensees, and permittees shall enjoy access to the reserved area in carrying out the operations of such agencies, subject, however, to necessary security measures.

(c) No sanitary sewage originating within the developed sections of the reservation shall be permitted to discharge into the drainage basin of Gatun Lake.

SEC. 3. *Orders superseded.* This order supersedes Canal Zone Order No. 2 of December 1, 1946, and Canal Zone Order No. 20 of June 29, 1950. Any lands included within Gatun Lake Military Reservation or Fort Gulick Military Reservation as set out by said previous orders and not included within the area included in this order are hereby released and returned to the jurisdiction and control of the Canal Zone Government.

WILDER M. BRUCKER,
Secretary of the Army.

JULY 8, 1958.

[P. R. Doc. 58-5456; Filed, July 16, 1958;
8:47 a. m.]

TITLE 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 96—AIR CARRIERS

INTERNATIONAL AIR TRANSPORTATION

Section 96.7 *International airmail regulations* is amended to read as follows:

§ 96.7 *International air transportation*—(a) *Authority*—(1) *Applicability.* The rules and regulations in this part apply to all international and overseas air carriers assigned FAM numbered routes by the Post Office Department and to foreign air carriers to the extent noted in this section, and supplement the provisions of the Convention of the Universal Postal Union.

(2) *Air transportation defined.* (i) "Air Carrier" means any individual or company of the United States engaging in air transportation.

(ii) "Foreign Air Carrier" means any individual or company not of the United States engaging in foreign air transportation.

(iii) "Carrier" means both a U. S. flag and foreign flag air carrier.

(iv) "Air Transportation" means the transportation of mail by aircraft.

(v) "Interstate, Overseas and Foreign Air Transportation" means transportation of persons, property or mail by an air carrier for hire.

(vi) "Mail" means United States mail and foreign mail.

(3) *Authority to engage in air transportation*—(i) *American Flag air carriers.* Air carriers shall not engage in air transportation unless a certificate has been issued by the Civil Aeronautics Board authorizing them to do so. Each such certificate states the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation.

(ii) *Foreign Flag air carriers.* Foreign air carriers shall not engage in air transportation from U. S. soil without a permit issued by the Civil Aeronautics Board authorizing such transportation.

(4) *Rules and policy.* The Department will make such rules and regulations as may be necessary for the safe and expeditious transportation of mail by aircraft. The Assistant Postmaster General, Bureau of Transportation, will establish the policy for transportation of

mail and for exchange of airmail between postal employees and carriers.

(5) *Agreements.* The Department may enter into agreements with postal administrations of other countries with respect to airmail transportation. The Department may also make arrangements with foreign air carriers for the transportation of mail if they have been issued permits by the Civil Aeronautics Board.

(6) *Transportation of foreign origin mail.* Air carriers transporting mail of foreign countries are subject to control and regulation of the United States.

(b) *Carrier operations*—(1) *Filing of schedules.* Carriers authorized to engage in air transportation shall transport mail only after filing their schedules of operation with the Department. The Department will designate the flights required for the transportation of mail and inform the carriers accordingly. No carrier shall transport mail in accordance with any schedule other than one designated or ordered to be established by the Department for the transportation of mail.

(2) *Schedule revisions.* Changes to existing schedules must be filed with the Department not less than ten days before their effective dates. Three copies should be filed with the Director, International Service, Bureau of Transportation, Post Office Department, Washington 25, D. C., one with the distribution and traffic manager, Post Office Department, in each region concerned, and three with the claim for the mail transportation.

(3) *Flight movement.* Carriers should operate designated flights as nearly as practicable at the times indicated in published schedules. Whenever earlier or later departures are required, sufficient advance notice should be given the local postal representatives in order that appropriate adjustments may be made in the dispatch schedules.

(4) *Extra sections.* Extra sections of a designated scheduled flight may be used for the transportation of mail.

(5) *Emergency flights.* Emergency flights operated by a carrier may be used for the transportation of mail. However, carriers should not accept mail for any country served by the emergency flight if they are not authorized to serve that country regularly.

(6) *Omission of service.* If a scheduled stop is to be omitted on a designated flight, the carrier must immediately notify the local postal representatives concerned. If the service is to be suspended for one week or more, the carrier must notify the Director, International Service, Post Office Department, Washington 25, D. C., and the local postal representative at the point involved. The same officials should be notified when the service is resumed.

(7) *Cancelled flights.* When a flight is cancelled at the initial terminal or any point en route, the carrier should promptly notify the local postal representatives concerned.

(8) *Delayed departures.* If a flight is delayed after accepting mail and the delay is estimated to be six hours or less beyond the scheduled departure, the mail

will be retained aboard the flight. If the flight is delayed over six hours, the dispatching postal unit should be informed of the delay and the probable time of departure. In such cases, the postal representative will determine whether the mail should be returned to the postal unit.

(9) *Accidents.* Carriers will immediately inform the Post Office Department, Washington, D. C., of any accident resulting in possible damage to or loss of United States mail. When an accident occurs in the United States, the distribution and traffic manager, Post Office Department, in the region concerned should also be notified. Accidents occurring outside the United States must be reported to the postal administration of the country to which the carrier belongs and to the postal administration of the country in which the accident occurs. (See paragraph (c) (6) of this section.)

(c) *Transportation of mail*—(1) *Tender of mail.* When authorized to transport mail, carriers shall provide necessary and adequate facilities and service for its transportation and will be held strictly accountable for the proper care of mail and postal equipment while in their custody.

(2) *Priority of mail and allocations*—(i) *Priority.* Air carriers shall transport all mail available for each flight designated by the Department. If the mail available for dispatch exceeds the weight allocation or normal load, the excess shall have priority of transportation over all unconfirmed and non-revenue traffic. (See § 96.1 (a) for normal mail load.)

(ii) *Allocations and estimates.* Weight allocations are for planning purposes to assist the postal service as well as air carriers to fully realize the maximum payload on each flight. Postal units will give air carriers an advance estimate of the mail anticipated for the flight, which may be above or below the weight allocation already agreed upon. If the estimate is in excess of the allocation, the air carrier may refuse the excess if confirmed traffic prevents its acceptance. If the air carrier refuses mail, Form 2759, Report of Irregular Handling of Air Mail, should be prepared for the difference between the amount accepted and the allocation or normal load. (See paragraph (d) of this section.)

(iii) *Backlog.* Carriers will be expected to provide sufficient lift to accommodate any backlog of mail which has accumulated due to irregular operations or cancellations.

(iv) *Removal or refusal.* When it becomes necessary to reduce the load of an aircraft due to weather or other cause, the following order of removal or refusal shall prevail:

- (a) Company material.
- (b) Express and cargo.
- (c) All categories of mail other than letters and cards (LC).
- (d) Diplomatic pouches not carried as first class mail.
- (e) Company mail.
- (f) LC mail after removal of all other traffic except revenue passengers with space confirmed prior to knowledge that the load must be reduced.

(3) *Delivery of mail to carriers*—(1) *Documentation.* The postal unit delivering mail must prepare the AV-7s, Mail Waybills, listing the origin, destination, weight of the mail, and dispatch and routing instructions. One set of AV-7s must be prepared for each stop point on the flight where mail is available for transportation.

(ii) *Verification by carriers.* The carriers shall verify all mail tendered for transportation against the entries appearing on the AV-7s. If an irregularity in the condition of the mail is observed at the time of acceptance, it should be brought to the attention of the postal unit before signing the AV-7s.

(4) *Delivery of mail to carriers on delayed flights and extra sections*—(i) *Delayed flights.* After flight documents have been completed for imminent departure and a delay occurs, additional mail should not be accepted by carriers unless it can be done without detriment and cause no further delay in departure of the flight. Additional mail will be tendered if space is available and it will not cause removal of passengers or cargo already manifested on the aircraft documents.

(ii) *Extra sections.* Mail may be conveyed on extra sections of a designated flight. Mail carried on extra sections shall be considered as having been conveyed on the regular scheduled flight for purposes of arriving at the base weight for the flight.

(5) *Transfer between flights.* Each carrier must transfer mail between its own flights whenever the transfer is shown on the AV-7s. It must transfer mail at points in the United States, its territories or possessions with domestic air carriers as directed by the Department. It must transport Form 2733, Interline Airmail Record, from the point of dispatch to the point of transfer, delivering the forms to the receiving air carrier with the mail. The receiving air carrier must accept and receipt for all mail listed on Form 2733. If the mail does not agree with the listing on the form, the delivering air carrier must prepare Form 2734, Airmail Exception Record. Actual mail transferred must be listed by on-line destination. In case of failure to connect the trip prescribed in Form 2733, air carrier should deliver the mail, together with the forms, to the local postal unit.

(6) *Retaining mail in foreign countries.* In a foreign country, carriers may retain custody of United States civilian mail aboard a flight when the departure is delayed up to 24 hours. On delays over 24 hours, or upon cancellation, civilian mail must be delivered to the local post office for disposition. The original documents, properly endorsed, must accompany the mail. Military airmail must be held in the custody of the air carrier, and the Post Office Department, Washington, D. C., should be promptly requested by wire to furnish instructions for disposition. Under no circumstances should military airmail be turned over to a foreign post office or to a foreign air carrier.

(7) *Delivery of mail by carriers to postal representatives.* Upon arrival of

a flight, the carrier must unload the mail and make delivery as soon as possible to the authorized postal representative at such point as may be designated.

(i) *AV-7s.* One copy of each set of AV-7s and additional copies which are required for receipt to the carrier must be delivered with the mail. Any irregularities must be noted on all copies of the AV-7.

(ii) *No documents in the United States.* Carriers delivering mail to United States postal installations without AV-7s will obtain receipt on Form 2753, Receipt to Airline, for all mail delivered to the postal unit. The receipt will show only the total number of pieces being delivered. If a postal unit is not located at the airport, Form 2753 must be prepared by the carrier for signature by the postal service motor vehicle driver.

(iii) *No documents in foreign countries.* Carriers delivering mail to foreign postal installations without AV-7s will obtain receipt on such form as may be prescribed in that country.

(iv) *Delivery of all mail aboard an aircraft.* At terminal points of flights, all mail on board the aircraft will be delivered to the postal unit unless there is an agreement to the contrary between carriers and the governments concerned.

(v) *Irregular stops.* Carriers making irregular landings in the United States due to weather or other causes may retain the mail for six hours while holding for clearance to proceed to the designated terminal point. If the flight cannot proceed within the six hours, the mail on board, together with the mail documents, shall be delivered to the local postal unit.

(8) *Irregularities*—(i) *Labels lost in transit.* When a dispatch has lost its label in transit, the carrier may transport the dispatch to its off-loading point if it can be identified from the mail documents. Otherwise, the dispatch should be delivered to a postal unit for identification and re-labeling. Receipt should be obtained by the carrier from the accepting postal unit.

(ii) *Damaged mail dispatches.* When mail is discovered in a damaged condition, it should be off-loaded at the first stop or at the destination of the dispatch whichever occurs first. The damaged mail should be tendered to the local post office for handling and a receipt obtained therefor.

(iii) *Mail depredations.* All sealed mail containers that have been tampered with while in a carrier's custody should be surrendered immediately to the local post office with a statement of facts for any action deemed appropriate according to the laws of the country where the depredations or tampering of the mail occurred.

(9) *Refusals and removals of mail.* Refusals and removals of mail by a carrier may result in diversion of the mail to another carrier and in the imposition of fines.

(d) *Mail transportation irregularities*—(1) *Deductions and fines.* Carriers transporting mail will observe all applicable rules and regulations issued by the Department. The Department may im-

pose a penalty against air carriers for failure to comply.

(2) *Reporting of irregularities.* It is the responsibility of postal personnel at international exchange offices to report all instances of irregularities that come to their attention. These reports should be made on Form 2759; the original and first copy of which will be sent to the distribution and traffic manager having jurisdiction over that unit; the second copy to the local station manager of the carrier concerned; and the third copy retained at the office preparing the report. Reports of irregularities not chargeable to a carrier should be forwarded to the distribution and traffic manager; with the usual copy being retained for files of the reporting unit.

(3) *Processing Form 2759.* If it is determined that a penalty is in order, the 2759 will be sent to the fining region with recommendation by the 20th of the month following that in which the irregularity occurred.

(4) *Notification to the carrier.* The copy of Form 2759 sent to the air carrier serves as notice of the irregularity. It is not contemplated that there will be a letter of acceptance of responsibility by the carrier. Failure to inform the distribution and traffic manager in whose region the 2759 was prepared by the 10th of the following month will be considered as an acceptance of the facts as stated in the report.

(5) *Assessing penalties.* All irregularities occurring during a month will be processed as a unit and cleared by the end of the following month. It is not intended that a penalty be imposed if the irregularity is the result of weather conditions or other circumstances beyond the control of the carrier. The following schedule shall be used to determine the amount of each penalty.

(i) *Refusal and removal.* Air carriers using pre-determined weight allocations need not submit Form 2760, Refusal or Removal Report. In such cases, an explanation should be furnished the distribution and traffic manager within fifteen days after the irregularity occurs but no later than the 10th of the following month, including such facts as the weight of company material and cargo carried on the flight. Failure to accept the allocation or advance estimate, if any is given, will be analyzed to determine whether a penalty should be imposed. The basis for such penalty shall be \$1.00 for each kilogram or fraction.

(ii) *Failure to notify postal authorities.* Failure to notify postal authorities of non-operation, late departure, additional sections, additional stops, omission of scheduled stops, etc., will be subject to a penalty if in the opinion of the distribution and traffic manager there is significant failure to cooperate. Such penalties should be in multiples of \$25.00 for each offense.

(iii) *Delayed delivery to postal unit.* Air carriers delivering mail to the postal unit at the airport in excess of the prescribed time limit shall be assessed a penalty of \$3.00 for each piece unless appropriate explanation is furnished.

(iv) *Non-receipt of mail documents.* Air carriers delivering mail without

AV-7s or mail manifest will be penalized on the basis of \$10.00 for each such occurrence unless a satisfactory explanation is given.

(v) *Serious infractions.* In the event of a serious infraction which requires punitive action not specifically mentioned herein, the distribution and traffic manager will communicate such facts to the Director, International Service, for decision.

(6) *Computing penalties.* After computing penalties for a month and the total penalties amount to \$50.00 or less, the cases shall be filed and no penalty imposed for that month.

Name of carrier	Route No.	Region assessing fines	Office settling accounts
American Airlines, Inc.	FAM 26	Fort Worth	Reg. Controller, Wichita.
Braniff Airways, Inc.	FAM 24	do	(c).
Delta Airlines, Inc.	FAM 31	Atlanta	(c).
Eastern Air Lines, Inc.	FAMs 33 and 35	New York	Reg. Controller, Richmond.
National Airlines, Inc.	FAM 32	Washington	Do.
Northwest Airlines, Inc.	FAM 28	Minneapolis	(c).
Pan American Airways, Inc. (Latin American Division)	FAM 5	Atlanta	(c).
Pan American Airways, Inc. (Pacific Division)	FAM 14	San Francisco	(c).
Pan American Airways, Inc. (Atlantic Division)	FAM 18	New York	(c).
Pan American-Grace Airways, Inc.	FAM 9	do	(c).
Trans World Airlines, Inc.	FAM 27	Chicago	(c).
United Air Lines, Inc.	FAM 30	Denver	Reg. Controller, Denver.
Western Air Lines, Inc.	FAM 36	San Francisco	Reg. Controller, San Francisco.

¹ International Accounts Section, Bureau of Finance, Post Office Department, Washington 25, D. C.

(e) *Records and reports—(1) Form 2759, Report of Irregular Handling of Air Mail.* Postal employees must prepare Form 2759 promptly to report all irregularities in the handling of mail, including refusals by carriers. The form serves as a basis for assessing penalties against air carriers whenever the circumstances warrant.

(2) *Form 2753, Receipt to Airline.* Form 2753 is a receipt prepared by postal personnel and given carriers delivering mail without AV-7s. The receipt is prepared in duplicate and will show only the total number of pieces and flight data.

(3) *Form 2734, Airmail Exception Record.* Form 2734 will be prepared by air carriers due to effect transfer of airmail to a United States domestic air carrier when circumstances prevent following the original routing, loss of papers, etc.

(f) *Rates of compensation—(1) Rates for air carriers; United States mail.* Rates of compensation due air carriers for the transportation of mail are fixed by the Civil Aeronautics Board and amounts due them are paid by the Department from appropriations for the transportation of mail by aircraft.

(7) *Appeal by carrier.* If a carrier should appeal the amount of the penalty on any particular irregularity, all papers should be forwarded to the Director, International Service, for review.

(8) *Notification to the office settling the accounts.* The distribution and traffic manager will advise the office settling the accounts as indicated below, the total deduction to be made from mail pay due the carrier. A copy of such advice should also be sent to the Director, International Service. Also, a copy should be sent to the carrier concerned, together with a copy of Form 2759 on which penalties have been assessed.

(3) *Foreign air carrier accounts; payment for mail loaded in the United States.* Foreign flag air carriers authorized by their governments to collect direct from the United States Post Office Department will submit their claims prepared and supported according to instructions furnished by the Post Office Department, Washington 25, D. C. Transportation charges for mail enplaned in the United States will be claimed from the United States Post Office Department irrespective of actual origin of the mail transported from the United States by foreign air carriers.

(h) *International air handbook.* Exchange offices will be governed by instructions contained in Transportation Handbook, Series T-1, Instructions for Handling and Reporting of International Airmail at Exchange Offices, together with such special instructions as may be issued from time to time.

Note: The corresponding Postal Manual Part is Part 542.

(R. S. 161, 396, as amended; sec. 405, 52 stat. 994, as amended; 5 U. S. C. 22, 369, 49 U. S. C. 483)

[SEAL]

LEO G. KNOLL,
Acting General Counsel.

[F. R. Doc. 58-5457; Filed, July 16, 1958; 8:48 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

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

Subchapter L—Mineral Lands

[Circular 2007]

PART 185—GENERAL MINING REGULATIONS SUBPART I—MINING, DEVELOPMENT AND UTILIZATION OF THE MINERAL RESOURCES OF PUBLIC LANDS WITHDRAWN OR RESERVED FOR POWER DEVELOPMENT

On pages 8946 to 8948, inclusive, of the FEDERAL REGISTER for November 16, 1956, there was published a notice of proposed regulations to implement the act of August 11, 1955 (69 Stat. 681; 30 U. S. C. secs. 621-625). Interested persons were allowed 30 days in which to submit written comments, suggestions or objections with respect to the proposed regulations. As a result of certain comments received, the following changes in the proposed regulations are made:

1. The title is changed by adding Subpart I thereto, which was omitted from the proposed regulations.

2. The sections were renumbered to be chronologically in agreement with the subpart designation and to allow for possible expansion of regulations previously written and printed in Circular No. 1941.

3. That part of § 185.174 (b) reading "every notice of location made must contain a statement that it is made subject to the act and" is deleted. This suggested change was adopted because it is believed that such a statement, as written, was not authorized by the law.

Carrier	FAM Route No.	Office settling accounts
American Airlines, Inc.	FAM 26	Reg. Controller, POD, Wichita.
Eastern Air Lines, Inc.	FAMs 33 and 35	Reg. Controller, POD, Richmond.
National Airlines, Inc.	FAM 32	Reg. Controller, POD, Richmond.
United Air Lines, Inc.	FAM 30	Reg. Controller, POD, Denver.
Western Airlines, Inc.	FAM 36	Reg. Controller, POD, San Francisco.
Braniff Airways, Inc.	FAM 34	
Delta Air Lines, Inc.	FAM 31	
Northwest Airlines, Inc.	FAM 28	
Pan American World Airways, Inc.: (Latin American Division)	FAM 5	International Accounts Section, Bureau of Finance, Post Office Department, Washington 25, D. C.
(Pacific Division)	FAM 14	
(Atlantic Division)	FAM 18	
Pan American-Grace Airways, Inc.	FAM 9	
Trans World Airlines, Inc.	FAM 27	

4. Section 185.177 was redrafted to detail more completely the subject of hearings which may be required relative to placer mining locations.

5. That part of § 185.178 reading "State Supervisor" was changed to "Examiner" in conformance with the Administrative Procedures Act.

6. Section 185.183 (b) (3) was redrafted to read "The location was made prior to August 11, 1955 on lands restored to location from a power site reserve or withdrawal subject to section 24 of the Federal Power Act" for clarification only.

7. The following was added to § 185.183 (c) as an alternative for the deletion in § 185.174 (b): "For identification purposes only, the copy of the location notice or certificate, filed in the Land Office under this subsection, should contain a notation that it was filed under the Act of August 11, 1955."

8. The word "must" where it appears in § 185.183 (c) and (d), has been changed to "shall" to agree with the act.

9. The word "must" where it appears in § 185.184 (b), has been changed to "shall" to meet the objections of the American Mining Congress.

Subpart I of Part 185, as published and revised, is set forth below.

HATFIELD CHILSON,

Acting Secretary of the Interior.

JULY 10, 1958.

SUBPART I—MINING, DEVELOPMENT, AND UTILIZATION OF THE MINERAL RESOURCES OF PUBLIC LANDS WITHDRAWN OR RESERVED FOR POWER DEVELOPMENT

Sec.	
185.172	Purpose and authority.
185.173	Power site lands opened to mineral location and development exception.
185.174	Power rights retained in United States.
185.175	O. & C. R. R. and Coos Bay Wagon lands subject to act of April 8, 1948.
185.176	Placer locator to conduct no mining operation for 60 days.
185.177	Hearing, time and place; fees and costs.
185.178	Bond or deposit required.
185.179	Restoration of surface condition.
185.180	Act ineffective as to other withdrawals.
185.181	Prospecting and development at financial risk of party or parties doing work.
185.182	United States not liable except for negligence.
185.183	Owner of claim to file notice of location and assessment work.
185.184	No limitation or restriction of rights under valid claims located prior to withdrawal.
185.185	No limitation of rights where claimant in diligent prosecution of work when future withdrawal made.
185.186	Mining claim and mill site use; limitation.

AUTHORITY: §§ 185.172 to 185.186 issued under R. S. 2478, as amended, sec. 2, 69 Stat. 682; 43 U. S. C. 1201, 30 U. S. C. 621.

§ 185.172 *Purpose and authority.* The act of August 11, 1955 (69 Stat. 681) was enacted "To permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or

reserved for power development, and for other purposes". The regulations in this part are intended to implement those parts of the act which require action by the Department of the Interior. The expression "act" shall mean the act of August 11, 1955 (69 Stat. 681), cited in the act as the "Mining Claims Rights Restoration Act of 1955".

§ 185.173 *Power site lands opened to mineral location and development; exception.* The act in section 2 provides in part as follows:

All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes; * * * that nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

§ 185.174 *Power rights retained in the United States.* (a) The act in the first proviso provides as follows:

That all power rights to such lands shall be retained by the United States.

(b) Under this proviso every patent issued for such a location must contain a reservation unto the United States, its permittees or licensees of the right to enter upon, occupy and use, any part of the lands for power purposes without any claim or right to compensation accruing to the locator or successor in interest from the occupation or use of any of the lands within the location, for such purposes. Furthermore, the patent will contain a provision that the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

§ 185.175 *O. & C. R. R. and Coos Bay Wagon lands subject to the act of April 8, 1948.* The act in the second proviso thereof provides

that locations made under the act within the reverted Oregon and California Railroad and reconveyed Coos Bay Wagon grant lands shall also be subject to the provisions of the Act of April 8, 1948 (62 Stat. 162).

See §§ 185.37a-185.37e.

§ 185.176 *Placer locator to conduct no mining operations for 60 days.* (a) The act in section 2 (b) provides in part as follows:

The locator of a placer claim under this Act, however, shall conduct no mining operations for a period of sixty days after the filing of a notice of location pursuant to section 4 of this Act. If the Secretary of the Interior, within sixty days from the filing of the notice of location, notifies the locator by registered mail of the Secretary's intention to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land included within the placer claim, mining operations on that claim shall be further suspended until the Secretary has held the hearing and has issued an appropriate order. The order issued by the Secretary of the Interior shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations; or (3) a general permission to engage in placer mining. No order by the Secretary with respect to such operations shall be valid unless a certified copy is filed in the same State or county office in which the locator's notice of location has been filed, in compliance with the United States mining laws.

(b) Upon receipt of a notice of location of a placer claim filed in accordance with § 185.183 for land subject to location under the act, a determination will be made by the authorized officer of the Bureau of Land Management as to whether placer mining operations on the land may substantially interfere with other uses thereof. If it is determined that placer operations may substantially interfere with other uses, a notice of intention to hold a hearing will be sent to each of the locators by registered mail within 60 days from date of filing of the location notice.

§ 185.177 *Hearing, time, and place; notice by parties desiring to protest; fees and costs.* (a) If a hearing is to be held, notice of the hearing will be delivered personally or by registered mail to the locator of the placer claim. The notice will indicate the time and place of hearing. The procedures with respect to service of notice of hearing and conduct thereof shall follow the rules of practice of the Department of the Interior (Part 221 of this title) in effect at the time the hearing is held. No publication of the notice will be required but a copy thereof shall be posted in the proper land office of the Bureau of Land Management for a period of not less than 30 days prior to the date set for the hearing. The manager shall give such publicity to the hearing as may be done without expense to the Government.

(b) Any party, other than a Federal agency, desiring to appear and testify at a hearing in protest to placer mining operations must file a written notice of protest in the land office wherein the notice of hearing is posted. Such notice, accompanied by a \$10 filing fee, must contain the party's name and address and a statement showing the nature of the party's interest in the use of the lands embraced within the mining

claim. Each notice of protest must be filed within the period of time specified in the notice of hearing. The manager shall forward a copy of each such notice that is filed to the mining locator prior to the hearing. Each party appearing at the hearing shall pay the reporter's fee covering the testimony of the party and of his witnesses and his cross-examination of any other party or witnesses.

(c) Following the hearing, the examiner will render a decision, subject to the right of appeal by any person admitted as a party to the hearing in accordance with the rules of practice of the Department of the Interior (Part 221 of this title). Each decision by an examiner, or upon appeal, shall provide for the issuance of an appropriate order as provided in section 2 (b) of the act; but no such order shall issue until the decision, upon which it is based, becomes final. A certified copy of any order issued shall be filed in the same State or county office in which the location notice has been filed. Any such order permitting mining operations shall be filed at the expense of the mining locator.

§ 185.178 *Bond or deposit required.* Should a limited order be issued under section 2 (b) (2) of the act, the locator is required to furnish a bond in a sum determined by the Examiner. The bond must be either a corporate surety bond or a personal bond accompanied by cash or negotiable Federal securities equal at their par value to the amount of the penal sum of the bond, together with power-of-attorney to the Secretary of the Interior or his delegate.

§ 185.179 *Restoration of surface condition.* If the locator fails or refuses to restore the surface, appropriate action will be taken against him and his surety, including the appropriation of any money deposited on personal bonds, to be used for the purpose of restoring the surface of the claim involved. Any moneys on deposit or received from surety in excess of the amount needed for the restoration of the surface of the particular claim shall be refunded.

§ 185.180 *Act ineffective as to other withdrawals.* (a) The act in section 2 (c) provides as follows:

Nothing in this act shall affect the validity of withdrawals or reservations for purposes other than power development.

(b) If the power site lands are also affected by any other type of withdrawal which prevents mining location in whole or in part, the provisions of the act apply only to the extent that the lands are otherwise open to location.

§ 185.181 *Prospecting and development at financial risk of party or parties doing work.* The act in section 3 provides in part as follows:

Prospecting and exploration for and the development and utilization of mineral resources authorized in this act shall be entered into or continued at the financial risk of the individual party or parties undertaking such work.

§ 185.182 *United States not liable except for negligence.* The act in section 3 provides in part as follows:

Provided, That the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

§ 185.183 *Owner of claim to file notice of location and assessment work.* (a) The act in section 4 provides as follows:

The owner of any unpatented mining claim located on land described in section 2 of this act shall file for record in the United States district land office of the land district in which the claim is situated (1) within one year after the effective date of this act, as to any or all locations heretofore made, or within sixty days of location as to locations hereafter made, a copy of the notice of location of the claim; (2) within sixty days after the expiration of any annual assessment year, a statement as to any work done or improvements made during the previous assessment year.

(b) Neither section 4 nor any other provision of the act validates any mining location made prior to the act, which is invalid because made on lands after they were withdrawn or reserved for power purposes and before a favorable determination by the Federal Power Commission under section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1063; 1075), as amended (16 U. S. C. 792; 818) and the opening or restoration of the lands to location. Section 4 applies to unpatented locations for lands referred to in § 185.173 only if:

(1) The location was made on or after August 11, 1955, or

(2) The location was made prior to August 11, 1955 and prior to the withdrawal or reservation of the lands for power purposes, or

(3) The location was made prior to August 11, 1955 on lands restored to location from a powersite reserve or withdrawal subject to section 24 of the Federal Power Act.

(c) The owner of an unpatented location coming under paragraph (b) (1) of this section, within sixty days from the date of location shall file in the United States land office for the district in which the lands lie, a copy of the notice or certificate of location and within sixty days after the expiration of each assessment year, a statement as to the assessment work done or improvements made during that assessment year.¹

(d) The owner of an unpatented location coming under either paragraph (b) (2) or (3) of this section, before August 11, 1956 shall have filed in the United

¹In this connection, the land office for North Dakota and South Dakota is located at Billings, Montana; that for Nebraska at Cheyenne, Wyoming; and that for Arkansas, Florida, Louisiana and Mississippi, at Washington, D. C.

²For identification purposes only, the copy of the location notice or certificate, filed in the land office under this subsection, should contain a notation that it was filed under the Act of August 11, 1955.

States land office for the district in which the lands lie, a copy of the notice or certificate of location and within 60 days from the date of expiration of the assessment year which ended noon July 1, 1956 and within 60 days from the date of expiration of each succeeding assessment year, shall file a statement as to the assessment work done or improvements made during the previous assessment year.

§ 185.184 *No limitation or restriction of rights under valid claims located prior to withdrawal.* (a) The act in section 5 provides:

Nothing in this act contained shall be construed to limit or restrict the rights of the owner or owners of any valid mining claim located prior to the date of withdrawal or reservation: *Provided,* That nothing in this act shall be construed to limit or restrict the rights of the owner or owners of any mining claim who are diligently working to make a discovery of valuable minerals at the time any future withdrawal or reservation for power development is made.

(b) Although the act does not limit or restrict the rights of owners of locations to which section 5 refers, such owners shall comply with section 4 by making the filings required either by paragraph (c) or paragraph (d) of § 185.183, whichever is applicable.

§ 185.185 *No limitation of rights where claimant in diligent prosecution of work when future withdrawals made.* (a) Under section 5 of the act quoted in § 185.114 the rights to a location made prior to any future withdrawal or reservation for power development or one on which the locator was diligently working to make a discovery of valuable minerals are not limited or restricted.

§ 185.186 *Mining claim and mill site use; limitation.* (a) The act in section 6 provides as follows:

Notwithstanding any other provisions of this act, all mining claims and mill sites or mineral rights located under the terms of this act or otherwise contained on the public lands as described in section 2 shall be used only for the purposes specified in section 2 and no facility or activity shall be erected or conducted thereon for other purposes.

(b) Under this section, a mining claim or mill site may not be used for purposes other than for legitimate mining and milling. The claimant, therefore, may not erect on the mining claim any facility or activity such as filling stations, curio shops, cafes, tourist or hunting and fishing lodges, or conduct such businesses thereon.

[P. R. Doc. 58-5449; Filed, July 16, 1958; 8:46 a. m.]

TITLE 50—WILDLIFE

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

Subchapter F—Alaska Commercial Fisheries

PART 107—CHIGNIK AREA

CURTAILMENT OF FISHING

Basis and purpose: Field observations show that the catch of red salmon in the Chignik Bay district has arisen to a total

of 266,000 as compared to an escapement through the weir of 156,000 and it is, therefore, necessary to curtail fishing to achieve greater escapements.

Section 107.9 is amended in paragraph (b) by adding the following proviso: "Provided, That fishing is further prohibited from 6 a. m. July 16 to 6 a. m. July 21, 1958."

(Sec. 1, 43 Stat. 464, as amended; 48 U. S. C. 221)

Immediate action is necessary if required escapements are to be achieved.

Therefore, notice and public procedure on this amendment are not practical nor in the public interest and it shall become effective immediately upon publication in the FEDERAL REGISTER. (60 Stat. 237; 5 U. S. C. 1001 et seq.)

RALPH C. BAKER,
Acting Director,

Bureau of Commercial Fisheries.

JULY 15, 1958.

[F. R. Doc. 58-5511; Filed, July 15, 1958; 2:11 p. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 1]

RULES OF THE BUREAU OF INDIAN AFFAIRS

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given of intention to add a new Part 1, to Title 25 of the Code of Federal Regulations, to read as set forth below. The purpose of this addition is to establish a procedure permitting interested persons to petition for the issuance, amendment, or repeal of rules in Title 25.

All interested persons are hereby given the opportunity to submit in writing views, data, and arguments concerning the proposed addition, to the Commissioner of Indian Affairs, Department of the Interior, Washington 25, D. C., within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

ROGER ERNST,
Assistant Secretary of the Interior.

JULY 10, 1958.

PART 1—RULES OF THE BUREAU OF INDIAN AFFAIRS

Sec.

1.1 Scope.

1.2 Petitions respecting regulations.

AUTHORITY: §§ 1.1 and 1.2 issued under 25 U. S. C. 2 and 5 U. S. C. 22.

§ 1.1 *Scope.* Chapters I and II of this title contain the bulk of the regulations of the Department of the Interior of general application relating to Indian affairs. Subtitle B, Chapter I, Title 43 of the Code of Federal Regulations contains rules relating to the relationship of Indians to public lands and townsites. Subtitle A of Title 43 of the Code of Federal Regulations has application to certain aspects of Indian affairs and, among other things, governs practice before the Department of the Interior, of which the Bureau of Indian Affairs is a part. Indian health matters are covered in 42 CFR Part 36. Title 30 of the Code of Federal Regulations contains regulations on oil and gas and other mining operations which, under certain circumstances, may be applicable to Indian resources.

§ 1.2 *Petitions respecting regulations.* Any interested persons may petition for issuance, amendment, or repeal of any

regulation in Chapters I and II of this title. Such petition shall show the text of the proposed regulation or amendment or identify the regulations the repeal or modification of which is desired, and set forth the reasons in support of the petition. The petition may be filed, by mail or by delivery in person, with the office of the Secretary of the Interior, Washington, D. C. (5 U. S. C. 1003d.)

[F. R. Doc. 58-5454; Filed, July 16, 1958; 8:47 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 967]

[Docket No. AO-170-A11]

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

DECISION WITH RESPECT TO PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT AND TO ORDER

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at South Bend, Indiana, on March 18-20, 1958, pursuant to notice thereof issued on February 6, 1958 (23 F. R. 876) and notice of postponement of hearing issued February 25, 1958 (23 F. R. 1257).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Deputy Administrator, Agricultural Marketing Service, on June 6, 1958 (23 F. R. 4057) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto. The material issues on the record of the hearing relate to:

- (1) Expansion of the marketing area to cover several counties,
- (2) Adoption of delivery performance requirements for plants participating in the marketwide pool; inclusion of a definition of "reload point",
- (3) Introduction of compensatory payments on certain milk partially regulated,

(4) Modification of the base and excess plan to permit the computation of bases for new producers entering the regulated market as the result of any marketing area expansion,

(5) Revision of the price formulas for Class I milk and Class II milk; and introduction of price adjustments for location,

(6) Adoption of provisions by which announced class prices would be expressed in terms of prices per hundred-weight of milk of 3.5 percent butterfat content, plus or minus a butterfat differential for butterfat test variation in each class, in lieu of separately computed class prices for skim milk and butterfat,

(7) Revision of the administrative assessment provision, and

(8) Certain order revisions for administrative purposes.

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

(1) The marketing area should be enlarged to include all territory geographically located within the perimeter boundaries of the counties of La Porte, St. Joseph, and Elkhart, Indiana, together with all incorporated communities therein. The name of the marketing area should be changed to "South Bend-La Porte-Elkhart, Indiana, marketing area".

The South Bend-La Porte, Indiana, marketing area as defined at the present time includes the cities of Michigan City and La Porte, in La Porte County, and the cities of South Bend and Mishawaka, in St. Joseph County, all in the State of Indiana. Territory outside the corporate limits of such cities but located within the respective counties named is not a part of the marketing area.

Producers proposed the expansion of the marketing area to cover such named counties in their entirety, including all incorporated communities lying therein and also the entire county of Elkhart, together with its incorporated places.

One handler proposed the inclusion of the same areas suggested in the producers' proposal plus the Indiana counties of Starke, Marshall, Kosciusko, Pul-ton, and Pulaski in their entirety. This proposal was abandoned by proponent during the course of the hearing and in view of the lack of evidence as to the need for regulation of the latter five counties, it is concluded that such counties should not be made a part of the defined marketing area.

Extension of regulation to La Porte, St. Joseph, and Elkhart counties, however, will correct unstable marketing conditions caused by lack of uniformity in the buying prices for milk in these counties. It will provide also a framework for orderly marketing and insure an adequate supply of Grade A milk for consumers. Basically, an order provides for:

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

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

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

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

(e) Uniform returns to producers supplying the market and an equitable sharing by all producers of the lower returns from the sale of reserve milk; and

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

In this instance the order also would establish for producers supplying the annexed area, as well as maintain for the producers currently affected by the order, uniform rules for the operation of a base and excess plan to encourage more even production of milk seasonally.

The suburban communities in St. Joseph County, adjacent to the city of South Bend, represent a regular outlet for a substantial proportion of the total Class I milk business of South Bend (regulated) handlers. A very large percentage of the fluid milk sold in St. Joseph County is processed in plants under the South Bend-La Porte order and thus is subject to order pricing. Some fluid milk sold in the county in competition with order-priced milk is distributed by persons not under price regulation of any kind and for a long period such distribution has presented difficult competitive problems for regulated handlers as the result of price advantage in the purchase of milk from dairy farmers. Since the adoption in July 1957 of statewide regulations in Indiana requiring the sale of Grade A milk only for fluid consumption, all milk distributed in St. Joseph County from milk plants located in that county or in other counties has been required to meet quality standards substantially the same as those applicable to milk sold in the city of South Bend. Such milk thus may reasonably be priced on a basis equivalent to South Bend approved milk. The elimination of differences in the pricing of milk purchased from dairy farmers for sale in the county will tend to promote orderly marketing.

At the present time there are no unregulated plants distributing milk in La Porte County. Although the county has not issued a formal health ordinance as have St. Joseph and Elkhart Counties, all milk distributed in the county meets the State quality requirements for milk to be sold for fluid consumption as Grade A milk through inspection by the health authorities of the city of La Porte and Michigan City. Since regulated plants service this county with its complete milk requirements at the present time and the county is a part of the regular distribution area for a substantial proportion of the Grade A milk processed in such plants, its inclusion in the marketing area is practicable and desirable to avoid repetition of the pricing disadvantages which have been experienced

by regulated handlers operating in St. Joseph County. La Porte County should be included in the marketing area.

South Bend handlers distribute milk in Elkhart County in competition with milk distributors at Elkhart and with milk distributors from locations outside either county. Also farms of dairy farmers delivering milk to Elkhart distributors are interspersed with those of producers whose milk is shipped to South Bend and currently priced by the order. Farm prices for milk in the South Bend and Elkhart milksheds have fluctuated widely, with consequent supply problems for the South Bend market. The Elkhart market has been subject to recurring resale price disturbances with detrimental effect on farm prices for milk. At other times, when milk prices in the Cleveland market (at Goshen, Indiana) have been relatively attractive, Elkhart prices to farmers have been sufficiently high to attract milk from South Bend plants, without regard to the adequacy of supplies for such plants.

The adoption of price regulation for the Elkhart market will promote greater stability of supplies for both markets and, with the prices recommended herein, will provide more assurance for consumers that adequate supplies will be available in both markets which have had periodic difficulties in maintaining sufficient supplies. Further, competitive difficulties resulting from differences in the cost of purchasing milk from farmers will be avoided as between South Bend and Elkhart dealers and between Elkhart dealers and distributors more distantly located who have established outlets in Elkhart County. It is concluded that Elkhart County should be included in the marketing area.

In view of the addition of the City of Elkhart, a principal community, to the marketing area, it is concluded that henceforth the marketing area should be referred to as the "South Bend-La Porte-Elkhart, Indiana, marketing area".

(2) Performance requirements for plants to participate in the marketwide pool and a definition of "reload point" should be provided.

The major producers' association proposed that delivery performance standards be established for plants to participate in the marketwide pool. Proponents submitted that a "pool plant" should be defined as either (a) a plant which is approved by a health authority having jurisdiction in the marketing area for the processing and distribution of milk in fluid form and from which (i) at least 10 percent of the plant's volume of Class I and Class II milk is disposed of on routes lying entirely or partially within the marketing area, and (ii) either 50 percent of its receipts of producer milk is disposed of as Class I milk, or 85 percent of such receipts is disposed of in Class I and Class II milk combined; or (b) a plant or reload point from which not less than 50 percent of the receipts of milk or butterfat is disposed of to a plant as defined in (a) above. Proponents, in a separate proposal, also suggested an increase in the level of the Class II price, and conditioned their support of the use of Class II milk utilization

as a basis of pool plant qualification on the adoption of a Class II price increase.

Several handlers joined in a separate, but similar, proposal to establish delivery performance standards as a basis for pool plant qualification. However, as noted elsewhere in this decision, handlers proposed to discontinue the use of a separate classification and price for milk used in the manufacture of cottage cheese, and to price milk in this use at the current Class III price level.

Under the present order all milk eligible for distribution as fluid milk which is received at an "approved plant" from which Class I milk is disposed of in the marketing area is fully regulated and pooled. A plant may become fully regulated during any month of the year by making only token sales of Class I milk in the marketing area. While the present provisions have functioned to serve their intended purposes of pricing and pooling only that milk customarily associated with the market, recent changes in procurement practices, i. e., the procurement of milk from greater distances, and the proposed expansion of the marketing area, make advisable more precise standards for determining the milk to be eligible for pooling. Such standards are necessary to specify adequately, for regulatory purposes, that milk which may be said to be identified primarily with this market.

The order provides for the distribution of producer returns by means of a marketwide pool. Since the marketwide pool results in payments to all producers on an average utilization for the market, individual handlers are relieved, in large measure, of responsibility for maintaining a high Class I utilization in order to support their pay rates to producers. Whatever utilization of milk a handler may have, his minimum rate of pay to producers will be the same as that of other handlers in the market because handlers whose proportion of utilization in Class I is greater than the market average make payments into the producer-settlement fund and those whose proportion of utilization in Class I is less than the average for the market receive payment from the fund, in order that all producers may receive uniform prices. Thus, under certain circumstances, the operators of plants engaged principally in the manufacture of milk into manufactured dairy products, or in supplying other fluid markets, have an incentive to place their plants under the regulation for the sole purpose of obtaining payment from the producer-settlement fund. If a distributor loses some portion of fluid sales in another marketing area temporarily, he may seek to join the South Bend-La Porte-Elkhart market pool in order to continue to pay farmers a blended price on such milk, even though it is used in lower-priced manufacturing uses. If unregulated operators are entirely free to decide when they will or will not share in the market pool, their decisions normally will be made to join the pool when they will draw payments from the equalization fund. Thus, status of a plant with respect to the pool may be the determining factor in guiding the operations of

the plant operator. The South Bend-La Porte-Elkhart market, however, would gain no advantage from the payment of equalization on such supplies. Such a distribution of equalization payments, in fact, would reduce the blended price to dairy farmers regularly supplying the market, thereby having an adverse effect on returns to those producers furnishing milk supplies upon which this market depends. The scope of pooling and the plan for distributing returns for Class I sales under the order, therefore, must be such that the Class I use values will serve the purpose for which they are intended, i. e., to insure a sufficient and dependable supply of milk for the market.

A major problem in establishing or maintaining a marketwide pool is to fix standards which will accommodate the sharing of Class I sales among only those producers who are an essential and regular part of the milk supply for the marketing area. In order not to extend regulation beyond the point necessary to accomplish the objectives of the statute, standards adopted should be flexible enough to include in the pool only those plants having significant association with this market and to permit intermittent shipments and casual sales of milk, without pooling, by plants the primary function of which is the supplying of milk for other markets, but which are found to be distributing milk in the area on the basis of a small, perhaps accidental, shipment.

It is concluded that delivery performance should be the measure of whether a plant is sufficiently identified with the market to be fully subject to the pricing, pooling and payment provisions of the order. A 50-percent requirement on Class I disposition will identify those distributing plants which, in the first place, are primarily employed in a fluid milk business as contrasted to a milk manufacturing operation. The requirement that at least 10 percent of the distributing plant's Class I sales be made within the marketing area on routes is designed to include in the pool only those plants which have more than an incidental association with this market.

The requirement that 50 percent of the monthly receipts of milk from dairy farmers at a supply-type plant be moved to a distributing-type plant which is qualified as a pool plant, in order that the supply plant may participate in the pool, will identify those supply plants with the primary function of supplying such milk as is needed over and above the quantities delivered from farms of individual producers directly to the marketing area. At the present time there is only one plant (actually a reload point) of this type at which the total volume of Grade A milk received is an integral part of the supply for the marketing area. A supply-type plant with less than 50 percent of its receipts supplied to the marketing area in any month should be considered a source primarily for some other market. It is expected that such limitation on pool participation, in practice, will affect only plants which have no previous record of service to the marketing area but

for which area outlets may be sought in the future. Any plant or reload point, however, which has served the market as a supply source for each of any five consecutive months in the period from August to March, inclusive, in accordance with the 50 percent delivery requirements for such months, will be permitted automatic pool plant status for the immediately following four months of April through July.

Milk from sources other than those meeting Grade A requirements may be utilized for cottage cheese to be sold in parts of the marketing area. If performance standards for pooling were based on Class II milk utilization as well as Class I milk, it would be possible for a plant the major function of which is the manufacture and sale of such product to qualify for pooling, and dairy farmers producing milk not meeting Grade A quality standards would receive the marketwide blended price. The pricing and pooling provisions are designed to return to producers a blended price which will bring forth an adequate supply of Grade A milk for the market's fluid needs. Since it is not required uniformly that Grade A milk be used in cottage cheese, it would be inappropriate for a plant to qualify for pooling on the basis of Class II sales. It is concluded, therefore, that Class II utilization should not be used as a basis for pool qualification.

There is no provision in the current order for the pricing of milk at reload points. It was proposed, however, that a definition of "reload point" be incorporated into the order so that all producers would be equitably treated in the distribution of returns for their milk on the basis of the location to which their milk is delivered.

The conversion from can handling to bulk tank handling of milk presents additional problems in the handling and pricing of milk. When milk comes to the market in cans from great distances the milk of individual producers is dumped, weighed, tested and assembled in storage tanks in the country supply plant and cooled for shipment by over-the-road tanks to the processing plant. Upon receipt at such plant the handler becomes responsible for accounting for the milk and the plant is also the point of pricing.

When milk is collected from distant farms by the bulk tank method, it may be measured in the farm bulk tank, sampled for butterfat, pumped into a bulk tank truck, and delivered either to a supply plant or to a reloading point where, in turn, the tank loads of milk hauled from the farms are pumped directly into large over-the-road tank trucks and delivered to a distributing plant. In the case of the one reload point being used in this market individual records of each farmer's deliveries are kept as well as facilities maintained for washing and sanitizing the tank trucks and for the testing of butterfat samples.

One Order 67 handler currently reloads milk from individual farm pick-up tanks into over-the-road tankers and delivers the milk to his distributing plant. Since a reload point under the bulk han-

dling method serves a function similar to that of a supply plant under the can handling method, it should be treated in the same manner insofar as pricing, location differentials to handlers, and performance requirements for pool status are concerned. It is concluded that a definition of reload point and its application to pricing, location differentials, and performance requirements will facilitate the pricing and orderly marketing of milk under Order 67. The term "reload point" should be defined to mean 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 as a part of the plant's operations.

(3) The order should be amended to provide compensatory payments on other source milk (except that priced under another order) disposed of as Class I milk in the marketing area.

Producers and handlers made similar proposals which would provide for compensatory payments on milk which is not priced by the order but is disposed of in the marketing area in Class I milk or Class II milk. Proponents suggested that such compensatory payments should be at the respective rate of the difference between the Class I or Class II price, depending on the class in which disposition was made, and the Class III price.

Since the order will provide for the identification of that milk which is subject to total regulation under the order, the possibility remains that some milk (i. e. other source milk) will be disposed of in the marketing area as Class I milk which will not be subject to total regulation.

It should be required that on all other source milk classified as Class I milk, a payment shall be made into the equalization fund at a rate equal to the difference between the Class I price and the Class III price. Payments at this rate are necessary to maintain the integrity of the pricing and pooling provisions of the order.

Essentially all other source milk which might be utilized as Class I milk in the marketing area would be produced as part of a supply intended primarily to meet the demand for milk for fluid consumption (or the equivalent of Class I milk uses under the order) in some area other than the area regulated by this order but not used for such purposes in the area for which it was produced. It could be only milk in excess of the amount needed for fluid disposition in the area for which it was produced. This is particularly so in view of the statewide Grade A milk law in Indiana. If the plant operator with such milk could not find a Class I sale for such milk within the Order 67 marketing area, it would be necessary for him to convert the milk into a manufactured milk product. The most likely surplus disposition of this other source milk would be as butter and nonfat dry milk, or as cheese. Its value, therefore, to the plant operator would be a surplus milk value. The Class III price for milk under the South Bend-La Porte-Elkhart order is based on the value of milk converted into butter and nonfat dry milk, and this is the price which regu-

lated handlers are required to pay for milk when they convert it into these products in their own plants or dispose of reserve supplies to manufacturing plants. The Class III price, therefore, is an accurate and fair representation of the value to the receiving plant operator of surplus milk from an unregulated plant which is disposed of for Class I purposes in the marketing area.

If unregulated plant operators were allowed to dispose of surplus milk for Class I purposes in the regulated marketing area without some compensating, or neutralizing, provision of the order, it is clear that the disposition of such milk, because of its price advantage relative to fully regulated milk, would displace the fully regulated milk in Class I uses in the marketing area. The plan of Congress, as contemplated under the Agricultural Marketing Agreement Act of 1937, as amended, of returning a reasonable level of prices to the producers for the regulated marketing area, would be defeated. Moreover, inefficiencies in the marketing of milk would be encouraged, since there would be incentive for the regulated handlers to obtain milk for Class I uses not from the regular and normal sources of supply for the market but from other sources of supply generated solely as a result of the price advantage created for unregulated milk by the regulation itself. Providing for some method of compensating for, or neutralizing the effect of, the advantage created for unregulated milk is, therefore, an essential and necessary provision of this order.

Because the value for Class I milk in the regulated market is established by the level of the Class I price provided for in the order and the true value of other source milk when disposed of in the marketing area is the Class III value, a payment computed as the difference between the Class III price and the Class I price will remove the advantage which other source milk otherwise would have. Although from the standpoint of health standards, ungraded milk is not to be used for Class I purposes, the possibility remains that this grade of milk may find its way at times into such uses. When this occurs, the same rate of payment should apply to such milk, normally used in manufactured milk products, since its value is established by a lack of eligibility, on a Grade A standard, for regular use as Class I milk.

On the other hand, such payments should not apply to milk entering this marketing area from a plant regulated under another order since its proper classification and price will be determined pursuant to the other order, and if used in Class I milk as defined in this order will be priced equivalently (with due allowance for the transportation cost between markets) under the other order.

There may be other situations in which plant operators may find it economical or desirable to make shipments of small quantities of milk to the marketing area and yet it would be neither necessary nor desirable in terms of effective regulation to bring the plants fully under regulation. For instance, a plant which is associated with another market may find it advantageous to ship milk to a plant

regulated by the order in order to have such milk converted into manufactured milk products. It would be quite possible, through misunderstanding or error, for such milk, which was intended for utilization in Class III products, to be assigned a Class I classification. In such circumstances it would not be practical or desirable to place the plant under full regulation. The application of compensatory payments as prescribed will accommodate such situations.

If milk is distributed as Class I milk within the marketing area or routes from a nonpool plant, it is necessary to require payments to be made into the producer-settlement fund on such milk, also, in order to maintain reasonable uniformity of cost of milk and equity among all handlers. Accordingly, there is included in the amended order a provision that each handler operating routes in the area from a nonpool plant shall make payment at the difference between the Class I and Class III price per hundredweight on that volume of "other source milk" distributed as Class I milk in the marketing area. As previously stated, all milk produced for consumption in fluid form in the State of Indiana must meet minimum Grade A requirements and is subject to statewide sanitary standards. As a consequence of this code of sanitary requirements and reciprocal arrangements existing with other state and local health authorities, any milk wherever produced which has approval by the health authorities for fluid consumption is eligible from a sanitation standpoint for sale in the South Bend-LaPorte-Elkhart marketing area. Because of this, small quantities of milk may be disposed of in the regulated marketing area as Class I milk from plants which are not normal or regular sources of supply for the marketing area. If any small, incidental, or accidental shipment of milk into the marketing area were to bring under total regulation all the milk at the plant from which such shipment was made, undue hardship might result for the operator of such plant and for the farmers delivering the milk involved.

Under the definition of "pool plant" any plant, no matter where located, which becomes an integral part of the South Bend-LaPorte-Elkhart market may be brought under regulation by delivery performance in the manner required, and any such plant may be removed from full regulation when it no longer operates in a way that brings it within the scope of the pool plant qualification section of the order. In each case the decision as to whether a plant will be fully regulated under the order, or will not be subject to total regulation, may be determined by the decision of the plant operator.

In view of the competitive circumstances in this market relating to the production and sale of cottage cheese as discussed elsewhere in this decision, no compensatory payment should apply on milk disposed of as Class II milk.

(4) The "base and excess plan" of distributing among producers the proceeds from the sale of milk should not be revised.

Producers proposed that the base and excess plan be revised to permit the com-

putation of bases for those producers brought onto the market through marketing area expansion by the same method as is used for computing the bases of regular producers now on the market. Such revision would eliminate from the category of "new producers", for base-allotment purposes, any producers brought onto the market by such means. The proposed method of calculation was intended to apply in 1958 only and therefore would not have significance unless the amended order were to become effective prior to August 1, 1958. If the marketing area were to be expanded, effective July 1, 1958, for example, the revised base computation provisions would apply to the month of July only since beginning August 1 a uniform (weighted average) price for all milk delivered is payable to all producers for several months following and a new base effective on deliveries in the April-July 1959 period is computed for each producer on his deliveries in the fall months of 1958.

On the basis that the marketing area expansion cannot take place prior to August 1, 1958, it is concluded that this proposal should not be adopted.

(5) (a) The supply-demand adjustment relative to the Class I price should be modified to provide closer Class I price alignment between the South Bend-LaPorte-Elkhart market and other major markets.

The order presently provides for a Class I price determined from a basic formula price of midwest condensery prices or Chicago butter-nonfat dry milk prices, whichever provides the higher level, plus price differentials which average \$1.10 annually, increased or decreased by a supply-demand adjustment identical to that computed under Order 41, as amended, regulating the handling of milk in the Chicago, Illinois, marketing area.

Producers proposed that the supply-demand adjustment as computed under Order 41 and applied to Order 67 milk be eliminated and that a supply-demand adjustment based on supply and sales conditions in the local market be incorporated. A proponent witness testified that, at current prices, South Bend-LaPorte-Elkhart producers have been attracted to the Cleveland market and to unregulated markets even though local supplies were inadequate at all times to meet handlers' needs for fluid milk.

Experience with the supply-demand adjustment as computed under Order 41 and applied to milk priced under Order 67 discloses that such adjustment factor does not fully reflect supply and demand conditions in the Order 67 marketing area at all times. With the expansion of the marketing area herein proposed, the use of the current supply-demand formula would be even less effective in reflecting local conditions.

Among the factors influencing the supply-demand situation in the South Bend-LaPorte-Elkhart market which indicate the propriety of a modification of the supply-demand formula at this time are:

1. Competition for supplies from nearby fluid milk markets.

2. Costs involved in procuring additional supplies from locations beyond the immediate milkshed.

3. Recently effective uniform Grade A requirements on all fluid milk distributed within the marketing area.

4. The inadequacy of current milk supplies.

Cleveland (Order 75), Fort Wayne (Order 32), and Order 67 handlers, and unregulated dealers, all compete for supplies in the various parts of the Order 67 milkshed. The proposed extension of the marketing area to include Elkhart County will intensify competition for milk supplies between Order 67 handlers and the Cleveland market. In 1957 the Order 67 minimum Class I price, on a 3.5 percent butterfat basis, averaged \$4.06 while in the same period the minimum Cleveland Class I price f. o. b. Goshen, Indiana (located in Elkhart County), averaged \$4.34. If the 1957 Order 67 Class I price had not been decreased by the supply-demand adjustment in effect, the Cleveland Class I price f. o. b. Goshen would have exceeded the Order 67 price by only 10 cents instead of 28 cents per hundredweight. Class I utilization of milk for these markets averaged 71 and 73 percent, respectively, for the year. The 1957 Cleveland order minimum uniform price f. o. b. Goshen, Indiana, averaged \$3.99 and the comparable Order 67 uniform price was \$3.83. The minimum Class I price for 3.5 percent milk under the Fort Wayne, Indiana, order for 1957, official notice of which is taken, averaged \$4.34 per hundredweight.

Prices for fluid milk reported paid to dairy farmers by unregulated dealers in nearby communities have been at times in excess of Order 67 Class I prices. One Michigan dealer who competes for supplies with Order 67 handlers paid prices for fluid milk for bottling as high as \$4.70 per hundredweight on a 4 percent butterfat basis during recent winter months (or about \$4.40 on a 3.5 percent butterfat basis). Several of the farmers from whom such dealer purchased milk formerly delivered their milk to Order 67 handlers.

Order 41 handlers distribute milk in the South Bend-La Porte marketing area from Chicago regulated plants and also offer local handlers competition for farm supplies of milk. Thus, it is recognized that the Class I price level under Order 67 must be reasonably related to Class I prices under Order 41 as well as to price levels in other nearby markets. However, Order 41 Class I prices announced for the 55-70 mile zone do not reveal entirely the prevailing price relationships between the two markets. The basic formula price under Order 41 is, for all practical purposes, the same as that of Order 67. The respective Class I price differentials, on an annual average basis, under the two orders are \$0.90 and \$1.10 per hundredweight. The Chicago Class I price is announced for a zone 55-70 miles from the City Hall in Chicago while the South Bend-La Porte Class I price is announced f. o. b. the marketing area. Although not computed f. o. b. market under the order, as in the case of the South Bend-La Porte market, the return for Class I milk delivered to market in

Chicago, after the addition of an inner zone payment (4 cents per hundredweight) and consideration of that portion of the farm-to-plant hauling cost (14.5 cents per hundredweight on the average) borne by handlers, is appreciably higher than that for the 55-70 mile zone location from which the various zone Class I price differentials for the milkshed are computed. A reasonable price level for the South Bend-La Porte market must take such factors into account since they affect the South Bend handlers' ability to procure milk supplies in competition with this neighboring market.

Another important factor which has had recent impact on milk supplies available to Order 67 handlers is the Indiana Grade A law. This statute which became effective July 1, 1957, requires that all milk sold for fluid distribution anywhere in the State be produced on inspected farms and labeled as Grade A milk. Ungraded milk supplies in northern Indiana have decreased substantially in recent years, leaving relatively small quantities of Grade B milk available in this area for conversion to Grade A outlets. Inasmuch as the South Bend-La Porte-Elkhart milkshed area overlaps the procurement areas of numerous unregulated dealers serving such markets, who formerly were not required to purchase milk meeting the Grade A standard, such dealers now compete with Order 67 handlers for supplies of the higher quality.

One Order 67 handler has arranged for a regular supply of milk from Schullsburg, Wisconsin. This handler, who operates in the Chicago market from other plants, purchases the milk directly from producers who have converted to bulk farm tanks, reloads the milk into over-the-road tankers and transports it to his Order 67 bottling plant in Indiana. On the assumption that milk may be procured from Wisconsin farms at the Chicago Class I price for the zone in which the plant or reload point is located plus transportation to South Bend, the cost per hundredweight of such milk to the Order 67 handler, delivered to the market, would be greater than the current Order 67 Class I price. With decreasing supplies of Grade A milk available in the direct-delivery area in relation to overall fluid milk requirements, and taking account of the prices being paid at competing outlets, Order 67 handlers have the choice of obtaining their milk requirements from locations beyond Chicago or of paying prices sufficient to maintain production from direct-delivery producers. Therefore, it is reasonable to compute the Class I price under Order 67 on a basis that takes into account the costs of procuring more distant supplies.

On an annual average, handlers under Order 67 have maintained a reserve supply of milk above Class I milk requirements of approximately 26 percent. Such reserve, which may be regarded as appropriate to a reasonably balanced supply for this market, varies from about 18 percent in November, the month of lowest production, to approximately 34 percent in May, the month of highest

production. Class I uses in January and February 1958 were 77.9 and 74.7 percent, respectively, of total producer receipts as compared with approximately 74.3 and 69.6 percent, respectively, for the same months last year. Normal percentages of Class I milk to producer receipts in these months in a balanced supply situation would approximate 76 and 75 percent, respectively. Although the market supply is becoming tighter with a lesser proportion of the total receipts being locally produced, the present supply-demand adjustment is having the effect of reducing Class I prices below the level needed to provide adequate supplies.

In view of the above, a price adjustment based on local supply-demand relationships is appropriate. The supply-demand adjustment should be designed to increase the Class I price when Class I utilization is relatively high in relation to supply and to decrease the Class I price when Class I utilization is relatively low. An appropriate price adjustment for each month may be made on the basis of utilization data for the second and third preceding months. The use of figures for the second and third preceding months will provide a reasonable indication of current market conditions and will be the latest figures available in advance of the month for which the price is being computed. The following table sets forth monthly utilization percentages considered as standard, or normal, for a balanced supply situation, and the month in which the price would be affected thereby:

Month for which price applies	Months used in computing current supply-demand ratio	Standard utilization percentage
January	October-November	80
February	November-December	79
March	December-January	77
April	January-February	76
May	February-March	75
June	March-April	73
July	April-May	69
August	May-June	67
September	June-July	70
October	July-August	71
November	August-September	75
December	September-October	76

The rate of adjustment should be 2 cents for each percentage point that the Class I utilization is above or below the standard utilization percentage. The total amount of the adjustment should be limited, however. Supply-demand adjustments applicable under Chicago Order No. 41 and Cleveland Order No. 75 are limited to plus or minus 24 and 25 cents per hundredweight, respectively. A limitation under this order of plus or minus adjustments of 24 cents per hundredweight with a floor of the Chicago minimum Class I price for the 55-70 mile zone will provide greater assurance of a reasonable price relationship with adjacent markets at all times.

Also, to accomplish the above purposes, the Class I price differentials for the months of December and July should be modified by decreasing the differential 20 cents (from \$1.30 to \$1.10) in December and increasing the differential 20 cents (from \$0.90 to \$1.10) in July. This seasonal modification of the Class I price differentials will provide for each month stated Class I price differentials 20 cents

higher than the stated differentials for the 55-70 mile zone under the Chicago order. At the present time monthly differences in the differentials under the two orders vary from 0 to 40 cents per hundredweight with an average of 20 cents per hundredweight.

(b) A schedule of location adjustments applicable to the pricing of milk received at pool plants should be established in relation to the distance the plant is located from South Bend. The rate should be 10 cents per hundredweight for milk received at plants located not less than 55 miles but not more than 60 miles from the St. Joseph County Courthouse in South Bend, plus 1.6 cents for each 10 miles (or fraction thereof) in excess of 60 miles therefrom.

The present order does not provide for location differentials. Class and uniform prices for milk at regulated plants (or at reload points) located at various distances from the marketing area are the same as are applicable to milk received from farms at plants located within the marketing area.

Historically, there have been no outlying plants supplying milk in bulk to distributing plants in the South Bend-La Porte marketing area. For the most part handlers have purchased their milk from direct-delivery producers. In periods of short supply, handlers have purchased needed additional supplies from plants regulated under other Federal orders, particularly the Chicago order. As stated above, one Order 67 handler, in addition to purchasing milk from producers whose farms are located in the vicinity of his distributing plant location, began in recent months the purchase of milk from producers with farms located in southwest Wisconsin, approximately 255 miles from South Bend. The net uniform price for such milk, after hauling deductions, paid to the Wisconsin producers has been closely aligned with the uniform price computed under the Chicago order for the same location.

Producer proponents testified that although no particular problems had arisen, it might be possible in the absence of location differentials for inequities of cost among handlers and in the distribution of returns among producers to result.

Milk produced on farms or received at plants has a progressively lower value in relation to a given market as such farms or plants are located farther from the market. The difference in value is related to the cost of transporting milk to the market from the respective locations. It is economically sound and necessary to recognize such differences in value at pool plants to promote a uniform basis of determining milk costs for handlers and in distributing the returns for milk among producers. Producers are producing milk for the fluid milk market. The difference in value of producer milk for fluid purposes received at a country point as compared with a city distributing plant is the additional cost to the handler in getting the milk to the city plant. Returns to producers located near the market should reflect their location advantage. This may be done by

establishing a schedule of location adjustments to apply at distant plants, and at reload points, in accordance with their respective distances from the marketing area.

At this time only one handler regularly purchases milk at a considerable distance from the marketing area. As referred to, this milk is purchased in southwest Wisconsin and is reloaded at that location before being shipped in large tankers to his distributing plant. Such reload point is located approximately 255 miles from South Bend and 278 miles from the handler's plant. The hauling rate for the delivery of milk from that location to South Bend approximates 42 cents per hundredweight.

Proponents suggested that no location differential should apply within 70 miles from the County Court House in St. Joseph County. It was testified that custom and the basing point for pricing under Order No. 41 for Chicago are the basis for this proposal. As previously stated, Order 67 provides that prices shall be announced f. o. b. marketing area, whereas under Order No. 41 the Class I price is announced for the 55-70 mile zone and is supplemented by customary "inner zone" pricing arrangements. In comparing returns to direct-delivery producers under Chicago Order 41 with returns to direct-delivery producers under Order 67 consideration must be given to the previously mentioned customary and prevailing subsidies for hauling paid by Order 41 handlers and to the additional 4 cents per hundredweight required to be paid by Chicago handlers to all producers delivering milk to plants located in the marketing area, which payments are not reflected in the announced price for the 55-70 mile zone. The application of location differentials, as herein adopted, beginning at a 55-mile distance from South Bend will provide not only close alignment of farm returns for Class I milk at Order 41 plants in the Calumet area, which are the closest Order 41 plants to the South Bend-La Porte-Elkhart marketing area, and at Order 67 distributing plants, but also a close alignment at all points beyond the 55-mile zone. No adjustments for location are appropriate for points less than 55 miles from South Bend since country plants or reload points would not serve an economic purpose within this distance insofar as the maintenance of market supplies are concerned or provide a marketing function for producers. Also, within the 55-mile distance competing markets offer alternative outlets for milk at prices equivalent to or higher than the delivered-to-market price at South Bend.

Milk can be hauled in large quantities from distant points to plants in South Bend for approximately 1.6 cents per hundredweight for each 10 miles of distance. Even though no location differential should be provided within the 55-mile zone, the differential should apply on the basis of the total distance that the supply plant, or reload point, is located from South Bend.

The location differential allowed to handlers should apply only to that por-

tion thereof which is actually needed for utilization as Class I milk at the distributing plant. In determining the quantity so utilized in Class I, allocation of Class I milk, for pricing purposes, should first be made to direct receipts from producers at the distributing plant. Any residual Class I milk should be allocated to the more distant plants, or reload points, in sequence beginning with the plant or reload point having the smallest location differential. This will assure that producers as a whole do not absorb excessive hauling costs for milk.

It is concluded that a schedule of location differentials should be adopted to apply in determining handler costs of Class I milk and producer payments applicable at various locations in the milkshed.

(c) The price differential (over basic formula price) for Class II milk should not be increased; the classification of milk used for cottage cheese (Class II milk) should not be changed.

Milk used to produce cottage cheese is classified as Class II milk and priced at the basic formula price plus 70 cents per hundredweight for August through February, and plus 45 cents per hundredweight for March through July.

Producers proposed to increase the Class II price 15 cents per hundredweight above the current level for each month. It is contended that current order Class II prices do not reflect the costs involved in producing Grade A milk for use in cottage cheese and that the return for such milk tends to reduce the uniform price. It is anticipated by proponents that even though, in the past, the use of milk from uninspected sources has been permitted for cottage cheese manufacture in portions of the enlarged marketing area, county health regulations will require, in the near future, the use of inspected milk for this product.

The separate classification and pricing for milk used to produce cottage cheese under Order 67 became effective March 1, 1957. Although the new Indiana Grade A milk law requires milk for fluid distribution to be derived from inspected sources, it does not require milk for cottage cheese to be derived from similar sources. While local health ordinances for portions of the marketing area indicate the necessity of using inspected milk for this product, the standards applicable throughout the marketing area are not uniform at this time and substantial quantities of cottage cheese produced from ungraded milk are sold in parts of the area.

In view of the lack of uniformity in the enforcement of requirements on milk used in the manufacture of cottage cheese, provision for higher pricing might well intensify the use of ungraded milk for this purpose, causing a net loss in returns to producers if equivalent quantities of producer milk were forced into the lower-priced Class III uses. Considering the prices of skim milk and butterfat from alternative sources for cottage cheese manufacture, and the availability of outside sources of cottage cheese in finished form, the Class II price level provided is designed to insure

the maximum return to producers without a loss of market for inspected milk in this product.

Handlers proposed that milk for cottage cheese be classified with other manufactured dairy products and that, as a corollary change, the Class III classification be designated as Class II milk. The redesignated Class II milk would be priced, however, at the current Class III price level. They testified that at a previous hearing when the classification and pricing of cottage cheese was considered, it was anticipated that enforcement of regulations requiring inspected milk for cottage cheese would be uniform throughout the marketing area and that since it has not been, the lower pricing of milk so used is appropriate.

The extra value of producer (inspected) milk for making cottage cheese is recognized by handlers in practice and present pricing has not caused a reduction in cottage cheese sales. It is concluded that producers should receive the higher return provided by the Class II price for the quality of milk furnished for this product. Therefore, no change in classification should be made at this time.

(6) The order should be amended to provide that class prices be announced in terms of a hundredweight of milk containing 3.5 percent butterfat, with class butterfat differentials for butterfat test variations above or below 3.5 percent.

Class prices under the present order are set forth in terms of separate prices for the butterfat and skim milk contained in a hundredweight of milk used in each class. However, the market administrator calculates and publishes for informational purposes a price per hundredweight for each class on a 3.5 percent butterfat basis.

Revision of the order to provide for the announcement of class prices for a hundredweight of milk on a 3.5 percent butterfat basis with appropriate class price differentials for butterfat test variations above or below the basic test is desirable to provide for simplicity of calculations, better understanding of price levels, and statistical comparisons of prices under Order 67 with prices of other markets. Expression of prices in these terms will not, of itself, materially alter handlers' costs or producers' returns on an annual basis. Such changes as may affect the levels of class prices are discussed in connection with issue numbered 5 in this decision. This change was supported by the major cooperative in the market and no objections thereto were offered at the hearing. It is concluded that the revised method of computing and announcing class prices should be adopted.

Class price differentials for each point of butterfat test variation to provide class prices for butterfat similar to those in the current order could be calculated as follows:

Classes I and II. Multiply by 0.13 the average of the daily wholesale prices per pound of 93-score butter at Chicago during the month, as reported by the United States Department of Agriculture, and round to the nearest tenth of a cent.

Class III. Multiply by 0.12 the average

of the daily wholesale prices per pound of 92-score butter at Chicago, similarly reported, and round to the nearest tenth of a cent. These differentials were suggested by the major cooperative in the market.

In the case of the Class I butterfat differential the amount resulting from the above computation represents a reasonable value of butterfat in Class I uses and is adopted. However, in view of somewhat different competitive circumstances involved in the marketing of cottage cheese, including the availability of butterfat from lower-priced sources for use in such product in some portions of the marketing area, a differential computed by multiplying Chicago 93-score butter by 0.125 is more appropriately related to the lower value of milk utilized in Class II milk, and therefore, is adopted. This modification will place a slightly increased value on the skim milk and a lesser value on the total amount of butterfat so utilized. However, such change does not alter the Class II price level on a 3.5 percent butterfat basis.

Manufactured products in Class III must compete on a national basis with products made from ungraded milk. Therefore, the present basis for computing the price of Class III butterfat should be continued through the medium of the Class III butterfat differential.

In setting up a new system for calculating class prices per hundredweight of milk it is desirable for administrative reasons to round such prices to the nearest cent. This revision is also adopted. For convenience in computing handlers' costs the use of separate class prices for skim milk and butterfat, reflecting the levels established by the prices per hundredweight of 3.5 percent milk, will be continued.

(7) The application of the assessment for expense of administration should be modified.

It was proposed that the assessment (not to exceed 4 cents per hundredweight of milk) for expense of administration of the order be limited, insofar as "other source-milk" is concerned, to those portions classified as Class I milk and Class II milk. At the present time the assessment applies to all other source milk, except such milk subject to another Federal order, even though some or all the milk may be used strictly for the manufacture of milk products of the types covered by Class III milk.

At least one milk distributor who would be regulated upon expansion of the marketing area maintains a substantial business in products produced from ungraded (Grade B) milk as well as a fluid milk business utilizing Grade A milk. The application of the administrative assessment to milk of Grade B quality utilized in manufactured milk products would present an expense to him not ordinarily associated with the processing of ungraded milk.

Funds to cover the necessary auditing of reserves of producer milk which from time to time may be commingled with ungraded milk for disposition as manufactured milk products will be derived from the application of the assessment to the producer milk so utilized. It is

possible, however, that at times some other source milk may be utilized as Class I milk or Class II milk. It is the duty of the market administrator to verify for each month the receipts and disposition of milk from all sources in order that the integrity of the classified-price plan for producers' milk (Grade A milk priced by the order) may be maintained. Equity in sharing the cost of administration of the order among all handlers will be achieved, therefore, by applying the administrative assessment to all producer milk (including such handler's own production) and to such other source milk as may be allocated to Class I milk. In view of the fact that cottage cheese is not required to be produced from Grade A milk in all parts of the marketing area it is not practicable to apply the assessment to other source milk so used by pool handlers.

(8) Certain revisions of the order should be made for administrative purposes.

(a) The order should be amended to set forth clearly the conditions under which milk subject to this order may be made exempt therefrom when such milk is also subject to the class price provisions of another marketing agreement or order.

The present order provides that skim milk and butterfat disposed of as Class I milk in the marketing area on a route shall not be subject to the provisions of this order if "(a) such milk is priced under another marketing agreement or order issued pursuant to the act, and (b) the person making such disposition of milk in the marketing area is subject to regulation under such other marketing agreement or order," provided that the handler making such disposition of milk in the marketing area shall make reports to the market administrator, at such time and in such manner as the latter may require, which shall be subject to verification. In general, interested parties at the hearing supported revision of the provisions of the order to the extent necessary relative to plants regulated under other orders, and to producer milk which might qualify for pooling under two orders, to provide clarity in the application of this order to such milk.

Some milk in packaged form is distributed in the market by handlers regulated under Order 41. In light of the expanded marketing area, it is possible that even larger quantities of Class I milk may be distributed in the area from plants regulated by other orders. Milk may be disposed of from plants under this order into other Federally-regulated markets.

Order 41 contains a provision which exempts from regulation thereunder a plant from which a greater percentage of its receipts is disposed of as Class I milk in another Federal marketing area. It is consistent with the pooling requirements that a plant be regulated under the South Bend-La Porte-Elkhart order if the Class I disposition in the marketing area is greater than in another marketing area. The provision that a distributing plant shall be regulated under the order for the market in which the

greater disposition is made will provide clarity, avoid duplication of regulation and will coordinate orders affecting adjacent marketing areas as to milk involved under more than one order.

The pooling standards for supply-type plants in adjacent Federal order markets provide for automatic pool status during certain months based on performance requirements in other months. It is possible under such conditions that a supply plant for such other market which has automatic pool status during certain months could dispose of a major portion of its receipts to a distributing plant in this market in such months. In this circumstance, such a plant should not be regulated under this order so long as it continues to be regulated under the order in which it already has met pooling requirements and from which it has not become exempt through withdrawal or otherwise according to the terms of such other order. The provisions of the attached order so provide.

Although exemption of other Federal order distributing plants would depend on a determination by the Secretary that the conditions prescribed in the order apply to the plant(s) in question, the operator of such a plant, otherwise exempt from order provisions, must be required to make reports to the market administrator as to receipts and utilization, so that the exact status of the plant can be determined. A similar requirement is necessary also with respect to supply-type plants involved with more than one order.

(b) The conversion from can handling to bulk tank handling of milk by producers creates problems as to the pool treatment of milk under the order which has been diverted from a plant regulated under another order. In view of the proximity of Order 67 plants to plants regulated under other orders, it is entirely possible that producer milk may be diverted to an Order 67 plant from a plant regulated under another order without having been received first at the latter plant. Since the present order does not provide a specific method of determining which order would apply to such milk, it is quite possible that the milk would be subject to the two orders. Any inclusion of milk under this order which would cause duplication of regulation could prove unduly burdensome to the handlers involved. Therefore, it is concluded that the South Bend-La Porte-Elkhart order should provide for a determination by the Secretary as to the extent to which such order shall apply when the milk is also subject to another order. The provisions of the attached order so provide.

(c) An equivalent price provision should be incorporated in the order. It has been found that from time to time various price quotations specified in an order become unavailable with little if any advance notice. The use of an equivalent price would remove uncertainty as to the procedure to be followed in the absence of price quotations specified in the order and thus would prevent unnecessary interruption in the opera-

tion of the order. The proposal should be adopted.

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

(a) The tentative marketing agreement and the order, as hereby proposed to be 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 hereby proposed to be 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 hereby proposed to be 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 on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the South Bend-La Porte-Elkhart, Indiana, Marketing Area", and "Order Regulating the Handling of Milk in the South Bend-La Porte-Elkhart, Indiana, Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

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

Referendum Order; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted to determine whether the issuance of the attached order regulating the handling of milk in the South Bend-La Porte-Elkhart, Indiana, marketing area, is approved or favored by the producers, as defined under the terms of the order, as hereby proposed to be amended, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of April 1958 is hereby determined to be the representative period for the conduct of such referendum.

Richard J. Connolly 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 decision is issued.

Issued at Washington, D. C., this 11th day of July 1958.

[SEAL]

DON PAARLBERG,
Assistant Secretary.

Order¹ Regulating the Handling of Milk in the South Bend-La Porte-Elkhart, Indiana, Marketing Area

Sec. 967.0	Findings and determinations.
	DEFINITIONS
967.1	Act.
967.2	Secretary.
967.3	Department.
967.4	Person.
967.5	Market administrator.
967.6	South Bend-La Porte-Elkhart, Indiana, marketing area.
967.7	Route.
967.8	Plant.
967.9	Reload point.
967.10	Pool plant.
967.11	Nonpool plant.
967.12	Producer.
967.13	Cooperative association.
967.14	Producer milk.
967.15	Handler.
967.16	Producer-handler.
967.17	Other source milk.
967.18	Base, base milk and excess milk.
	MARKET ADMINISTRATOR
967.20	Designation.
967.21	Powers.
967.22	Duties.
	REPORTS, RECORDS AND FACILITIES
967.30	Monthly reports of receipts and utilization.
967.31	Other reports.
967.32	Records and facilities.
967.33	Retention of records.
	CLASSIFICATION
967.40	Skim milk and butterfat to be classified.

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met. This order amends the order (No. 67) regulating the handling of milk in the South Bend-La Porte, Indiana, marketing area.

Sec.	
967.41	Classes of utilization.
967.42	Shrinkage.
967.43	Responsibility of handlers and reclassification of milk.
967.44	Transfers.
967.45	Computation of skim milk and butterfat in each class.
967.46	Allocation of skim milk and butterfat classified.

MINIMUM PRICES

967.50	Class prices.
967.51	Basic formula price.
967.52	Supply and demand adjustment.
967.53	Class I price.
967.54	Class II price.
967.55	Class III price.
967.56	Location differential credits to handlers on Class I milk.
967.57	Class butterfat differentials.
967.58	Computation of prices of skim milk and butterfat.
967.59	Use of equivalent prices.

APPLICATION OF PROVISIONS

967.60	Exempt milk.
967.61	Producer-handlers.
967.62	Computation of base.
967.63	Base rules.

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

967.70	Computation of the value of milk.
967.71	Computation of uniform price.
967.72	Computation of uniform prices for base milk and excess milk.

PAYMENTS

967.80	Time and method of payment.
967.81	Producer butterfat and location differentials.
967.82	Producer-settlement fund.
967.83	Payments to the producer-settlement fund.
967.84	Payments out of the producer-settlement fund.
967.85	Expense of administration.
967.86	Marketing services.
967.87	Adjustments of accounts.
967.88	Termination of obligations.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

967.90	Effective time.
967.91	Suspension or termination.
967.92	Continuing obligations.
967.93	Liquidation.

MISCELLANEOUS PROVISIONS

967.100	Agents.
967.101	Separability of provisions.

AUTHORITY: §§ 967.0 to 967.101 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 967.0 *Findings and determinations.* The findings and determinations herein after set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of Order No. 67 and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (Part 900 of this chapter), 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 South Bend-La Porte, Indiana, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof; it is found that:

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

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

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

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, 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 expense 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 such expense, 4 cents per hundredweight, or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to skim milk and butterfat received within the month in producer milk (including such handler's own production), and in other source milk either allocated to Class I milk or disposed of within the marketing area as Class I milk on routes, which is not priced under another Federal marketing agreement or order issued pursuant to the act.

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

DEFINITIONS

§ 967.1 *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 (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.).

§ 967.2 *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 of the Secretary of Agriculture.

§ 967.3 *Department.* "Department" means the United States Department of Agriculture or such other Federal Agency authorized to perform the price report-

ing functions of the United States Department of Agriculture specified in this part.

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

§ 967.5 *Market administrator.* "Market administrator" means the person designated pursuant to § 967.20 as the agency for the administration of this part.

§ 967.6 *South Bend-La Porte-Elkhart, Indiana, marketing area.* "South Bend-La Porte-Elkhart, Indiana, marketing area", hereinafter called the "marketing area", means all the territory geographically located within the perimeter boundaries of La Porte, St. Joseph and Elkhart Counties, including all incorporated and unincorporated cities, towns, and villages, Federal military reservations, facilities and installations, and State institutions lying wholly or partially within such counties; all in the State of Indiana.

§ 967.7 *Route.* "Route" means any delivery either inside or outside the marketing area (including disposition by a vendor or from a plant store or from vending machines) of any item of Class I milk to a wholesale or retail stop other than a plant (§ 967.8), but excluding any disposition of skim milk or butterfat in the marketing area from a nonpool plant to any other plant or to a commercial processor of foods.

§ 967.8 *Plant.* "Plant" means the entire land, buildings, surroundings, facilities and equipment, whether owned or operated by one or more persons, maintained and operated at the same location primarily for the receiving, processing or other handling of milk or milk products. This definition shall not include any building, premises, facilities, or equipment used primarily to hold or store bottled milk or milk products in finished form in transit for wholesale or retail distribution on a route(s).

§ 967.9 *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.

§ 967.10 *Pool plant.* "Pool plant" means any plant meeting the conditions of paragraph (a) of this section, or any plant or reload point meeting the conditions of paragraph (b) of this section, but not any plant exempt pursuant to § 967.60, or the plant of a person defined in § 967.16:

(a) A plant in which milk is processed or packaged and from which not less than 10 percent of its total disposition of Class I milk during the month either by the operator of such plant or by another person is made within the marketing area on a route(s); *Provided*, That the total quantity of Class I milk disposed of from such plant during the month either inside or outside the marketing area is not less than 50 percent of such plant's total receipts of milk eligible for sale in fluid form as Grade A milk within the marketing area; or

(b) Any plant or reload point from which during any month 50 percent or more of its total receipts for such month from farms of skim milk or butterfat eligible for sale in fluid form as Grade A milk within the marketing area is delivered to a plant(s) which has qualified pursuant to paragraph (a) of this section: *Provided*, That if during each of any five consecutive months during the period August through March, inclusive, a plant meets the delivery requirements set forth in this paragraph, such plant shall be a pool plant for the immediately following months of April, May, June and July, unless the plant is withdrawn from such status upon request of the handler, which withdrawal would become effective on the first day of the month following in which the market administrator is notified of the request for withdrawal. Any plant so withdrawn from pool plant status may not regain status prior to the following August.

§ 967.11 *Nonpool plant*. "Nonpool plant" means any plant other than a pool plant.

§ 967.12 *Producer*. "Producer" means any person, except a person as defined in § 967.16, who produces milk eligible for sale in fluid form as Grade A milk within the marketing area which is either (a) received from the farm at a pool plant(s), or (b) caused to be temporarily diverted by handler for his account from a pool plant to a nonpool plant: *Provided*, That such diverted milk shall be deemed to be received by such handler at the location of the pool plant from which it was diverted.

§ 967.13 *Cooperative association*. "Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association, to be qualified pursuant to the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," and to be engaged in making collective sales or marketing of milk or its products for the producers thereof.

§ 967.14 *Producer milk*. Except as provided in § 967.60, "producer milk" or "milk received from producers" means milk produced by one or more dairy farmers who are producers (as defined in § 967.12).

§ 967.15 *Handler*. "Handler" means (a) any person in his capacity as the operator of a pool plant(s), (b) any cooperative association with respect to producer milk caused to be delivered for the account of such association from the farms of producers to the pool plant(s) of another handler(s) and milk customarily received as producer milk at a pool plant which is diverted by such association for its account to a nonpool plant; or (c) any person in his capacity as the operator of any nonpool plant from which milk is disposed of as Class I milk within the marketing area on a route(s).

§ 967.16 *Producer-handler*. "Producer-handler" means any handler who produces milk eligible for sale in fluid

form as Grade A milk within the marketing area but receives no milk directly from other dairy farmers: *Provided*, That the maintenance, care and management of the dairy animals and other resources necessary to produce such milk and the processing, or distribution of such milk are his personal enterprise and at his personal risk.

§ 967.17 *Other source milk*. "Other source milk" means all skim milk and butterfat received in any form, except in a nonfluid milk product disposed of in the same form as received, from sources other than producer milk and a pool plant(s).

§ 967.18 *Base, base milk and excess milk*. (a) "Base" means a quantity of milk expressed in pounds per day computed pursuant to § 967.62.

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

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

MARKET ADMINISTRATOR

§ 967.20 *Designation*. The agency for the administration hereof 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.

§ 967.21 *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.

§ 967.22 *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 30 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon 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 in an amount and with surety thereon satisfactory to the Secretary a bond covering each employee who handles funds entrusted to the market administrator;

(d) Pay, out of the funds provided by § 967.85:

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

(2) His own compensation; and

(3) All other expenses, except those incurred under § 967.86, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

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

(f) Publicly announce, 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 10 days after the day upon which he is required to perform such acts, has not made (1) reports pursuant to §§ 967.30 and 967.31 or (2) payments pursuant to §§ 967.80 to 967.87;

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

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

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

(1) On or before the 7th day after the end of such month, the minimum class prices for milk (rounded to the nearest cent) and the butterfat differentials computed pursuant to §§ 967.53, 967.54, 967.55, and 967.57;

(2) On or before the 14th day after the end of such month, the uniform price computed pursuant to § 967.71 and the butterfat and location differentials computed pursuant to § 967.81;

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

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

REPORTS, RECORDS AND FACILITIES

§ 967.30 *Monthly reports of receipts and utilization*. (a) On or before the 9th day of each month and in the detail and on forms prescribed by the market administrator, each person who is a handler pursuant to § 967.15 (a) or (b) shall report to the market administrator for the preceding month with respect to all milk and milk products, except any milk product defined as Class III milk which is disposed of in the form in which received without further processing or packaging by the handler, received at each pool plant, the following:

(1) The quantities of skim milk and the quantities of butterfat contained in milk received from producers (including such handler's own production)

producer-handlers, and other handlers.

(2) The quantities of skim milk and quantities of butterfat contained in other source milk, with the sources thereof;

(3) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph, including the quantities of skim milk and butterfat on hand at the beginning and end of each month as milk and milk products;

(4) The aggregate quantities of base milk and excess milk received (for April through July); and

(5) Such other information with respect to all receipts and utilization as the market administrator may prescribe.

(b) Except as provided in § 967.31 (a), each handler who operates a nonpool plant as referred to in § 967.15 (c) shall report to the market administrator, on or before the 9th day after the end of each month, his total receipts, his total utilization of milk and milk products, his total disposition of Class I milk, including as a separate figure the quantity of Class I milk disposed of within the marketing area on routes, and such other information with respect to all receipts and utilization for such month as the market administrator may prescribe.

§ 967.31 *Other reports.* (a) Each producer-handler who handles during the month only milk of his own production shall make reports to the market administrator at such times and in such manner as the market administrator shall prescribe.

(b) On or before the 25th day of each month, each handler shall submit to the market administrator such handler's producer payroll for the preceding month which shall show for each producer and cooperative association (1) the total pounds of milk delivered with the average butterfat test thereof, (2) the net amount of the payment to each producer and to each cooperative association, together with the prices, deductions and charges involved, (3) for the months of September through December, the number of days on which milk was received from each producer, and (4) for the months of April through July, the number of days on which milk was received from each producer and the amount of his base and excess milk.

§ 967.32 *Records and facilities.* Each handler shall permit the market administrator to make such examination of his operations, equipment and facilities as the market administrator deems necessary and shall maintain and make available to the market administrator during the usual hours of business, such accounts and records of operations and such facilities as the market administrator deems necessary to verify or to establish the correct data with respect to

(a) the receipts and utilization in whatever form of all skim milk and butterfat received, including nonfluid milk products disposed of in the form in which received without further processing or packaging; (b) the weights, and tests for butterfat and for other content, of all other skim milk or butterfat handled; (c) payments to producers and cooperative associations; and (d) the pounds of

skim milk and butterfat contained in or represented by all milk, skim milk, cream, and each milk product on hand at the beginning and at the end of each month.

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

§ 967.40 *Skim milk and butterfat to be classified.* All skim milk and butterfat, in any form, received within the month by a handler, in producer milk, in other source milk and from another handler shall be classified by the market administrator pursuant to the provisions of §§ 967.41 to 967.46, inclusive.

§ 967.41 *Classes of utilization.* Subject to the conditions set forth in §§ 967.43 and 967.44, the skim milk and butterfat described in § 967.40 shall be classified by the market administrator on the basis of the following classes:

(a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat (1) disposed of (except as provided in paragraph (c) (1) of this section) in the form of milk, skim milk, flavored milk, flavored milk drink, and buttermilk; (2) disposed of as cream (sweet or sour) and any fluid mixture of cream and milk (or skim milk) containing not less than 6 percent butterfat (but not including ice cream or other frozen dessert mixes disposed of to a commercial processor, or any mixture disposed of in containers or dispensers under pressure for the purpose of dispensing a whipped or aerated product); (3) disposed of in fluid or frozen form as concentrated milk, flavored milk, flavored milk drink not sterilized and not otherwise specified under paragraph (c) of this section, and as eggnog; (4) in shrinkage of receipts of producer milk computed pursuant to § 967.42 which is in excess of 2 percent of such receipts; and (5) not specifically accounted for as any item named in this paragraph or as Class II milk or Class III milk.

(b) Class II milk shall be all skim milk and butterfat used to produce cottage cheese.

(c) Class III milk shall be all skim milk and butterfat (1) disposed of in bulk in the form of milk, skim milk, buttermilk, and cream to any manufacturer of candy, soup or bakery products and

used in such products; (2) in condensed milk or skim milk (sweetened or unsweetened) disposed of to commercial food processors; (3) disposed of (or used to produce, in the case of ice cream and frozen desserts and mixes (liquid or powdered) for such products, and aerated cream products) as sweetened condensed milk in hermetically sealed cans, evaporated milk, ice cream, ice cream mix, other frozen desserts and mixes, storage cream, butter, cheese and nonfat dry milk; (4) dumped or disposed of for livestock feed as skim milk (including that in whole milk dumped), flavored milk, flavored milk drink and buttermilk; (5) disposed of as a milk product other than any of those specified in paragraph (a) (1), (2) and (3) in paragraph (b), and in paragraphs (c) (1), (2), (3) and (4) of this section; (6) contained in monthly inventory variations; (7) in actual shrinkage of receipts of producer milk computed pursuant to § 967.42 but not in excess of 2 percent of such receipts; and (8) in actual shrinkage of other source milk computed pursuant to § 967.42.

§ 967.42 *Shrinkage.* The market administrator shall determine the shrinkage of skim milk and butterfat, respectively, in producer milk and in other source milk in the following manner:

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

(b) Prorate the total shrinkage of skim milk and butterfat, respectively, computed pursuant to paragraph (a) of this section between that in producer milk and in other source milk.

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

(b) Any skim milk or butterfat classified (except that transferred to a producer-handler) in one class shall be reclassified if used or reused by such handler or by another handler in another class.

§ 967.44 *Transfers.* Skim milk or butterfat disposed of by a handler in the form of any item named in § 967.41 (a) (1), (2), or (3) shall be classified;

(a) As Class I milk if transferred from the pool plant of a handler to the pool plant of another handler (except a producer-handler), unless utilization in another class is mutually indicated in writing to the market administrator by both handlers on or before the 9th day after the end of the month within which such transaction occurred: *Provided*, That skim milk or butterfat so assigned to a particular class shall be limited to the amount thereof remaining in such class at the plant of the transferee-handler after the subtraction of other source milk pursuant to § 967.46, and any excess of such skim milk or butterfat, respectively, shall be assigned to Class I milk;

(b) On the basis of ratable apportionment to each class according to the use of skim milk and butterfat in the pool plant of the transferee-handler if caused

to be delivered to such plant by a cooperative association in the manner described in § 967.15 (b);

(c) As Class I milk if transferred or diverted to the plant of a producer-handler;

(d) As Class I milk if transferred or diverted to a nonpool plant, unless (1) the transferor-handler claims use in another class on the basis of utilization in the nonpool plant in his report submitted to the market administrator pursuant to § 967.30 for the month within which such transaction occurred, (2) the receiver maintains books and records showing the utilization of all skim milk and butterfat at his plant which are made available if requested by the market administrator for the purpose of verification, and (3) in such receiver's plant there actually had been used during such month in the use indicated in such report, not less than an equivalent amount of skim milk and butterfat derived by him from milk or cream: *Provided*, That if upon inspection of such receiver's records of such plant, there had not been used in such indicated use an equivalent amount of skim milk and butterfat so derived, the remaining pounds shall be classified as Class I milk.

§ 967.45 *Computation of skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical and for other obvious errors the monthly report submitted by each handler and compute the total pounds of skim milk and butterfat, respectively in each class for such handler.

§ 967.46 *Allocation of skim milk and butterfat classified.* The pounds of skim milk and butterfat, respectively, remaining in each class after the following computations shall be the pounds in each class allocated to producer milk;

(a) Subtract, respectively, from the pounds of skim milk and butterfat in Class I milk (to the extent Class I milk is available) the pounds of skim milk and butterfat in other source milk which is (1) received in consumer packages as any item specified in § 967.41 (a) (1), (2) or (3) from a plant where milk is subject to the class price provisions of a Federal marketing agreement or order issued pursuant to the act for another fluid milk marketing area, and (2) disposed of without repackaging;

(b) Subtract, respectively, from the remaining pounds of skim milk and butterfat in each class (other than the pounds in inventory variations and plant shrinkage of skim milk and butterfat pursuant to § 967.41 (c) (7)), in series beginning with Class III milk, the pounds of skim milk and butterfat in other source milk excluding that subtracted pursuant to paragraph (a) of this section.

(c) Subtract, respectively, from the remaining pounds of skim milk and butterfat in each class the pounds of skim milk and butterfat received from other handlers and assigned to such class pursuant to § 967.44; and

(d) Subtract, respectively, from the remaining pounds of skim milk and butterfat in each class in series beginning

with Class III milk, the pounds by which such pounds of skim milk and butterfat in all classes exceed, respectively, the total pounds of skim milk and butterfat received in milk from producers.

MINIMUM PRICES

§ 967.50 *Class prices.* Each handler shall pay, at the time and in the manner set forth in §§ 967.80 to 967.84, not less than the prices per hundredweight computed pursuant to §§ 967.51 to 967.59 for all milk received during each month from producers and cooperatives associations: *Provided*, That with respect to skim milk and butterfat transferred from the pool plant of, or caused to be delivered as producer milk by, a cooperative association which is a handler to the pool plant of another handler, the applicable class price shall be that for the location of the latter plant.

§ 967.51 *Basic formula price.* The basic formula price to be used in determining the prices of Class I milk and Class II milk shall be the higher of the prices computed by the market administrator for the month immediately preceding from the formulas set forth in paragraphs (a) and (b) of this section.

(a) The arithmetical 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 during the month at the following plants or places for which prices are reported to the market administrator by the listed companies or by the Department:

Companies and Locations

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

(b) Compute a price per hundredweight by adding together the amounts resulting pursuant to subparagraphs (1) and (2) of this paragraph;

(1) Multiply by 8.2 the weighted average of carlot prices per pound for spray process nonfat dry milk, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department and from the result thus obtained deduct 64.2 cents;

(2) Multiply by 4.24 the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade AA (93-score) bulk creamery butter per pound at Chicago, as reported by the Department during the month: *Provided*, That if no price is reported for Grade AA (93-score) butter, the highest of the Grade A (92-score) butter prices for that day shall be used in lieu of the price for Grade AA (93-score) butter, and from the result thus obtained deduct 11 cents.

§ 967.52 *Supply and demand adjustment.* On or before the 7th working day of each month the market administrator shall make the following computations based upon information obtained from handlers' reports of receipts and utilization:

(a) Determine the sum of the receipts of milk from all producers (including receipts from own farm production) during the second and third preceding months;

(b) Determine the sum of the pounds of milk and milk products disposed of from pool plants as Class I (excluding shrinkage and unaccounted for milk) during the same preceding months, and

(c) Divide the amount obtained in paragraph (b) of this section by the amount obtained in paragraph (a) of this section and adjust to the nearest full percentage point. The resulting percentage shall be known as the "current supply-demand ratio."

§ 967.53 *Class I price.* Except as provided in § 967.56, the price for Class I milk of 3.5 percent butterfat content shall be the basic formula price computed pursuant to § 967.51, plus \$1.30 for the months of August through November; plus \$1.10 for December, January, February and July; and plus \$0.90 for all other months: *Provided*, That whenever the current supply-demand ratio varies from that set forth in the table below for the applicable month, the Class I price shall be increased or decreased to a maximum amount of 24 cents at the rate of 2.0 cents for each full percentage point that the current supply-demand ratio is above or below that set forth in the table for such month, but such price, after adjustment, shall not be less than the minimum price per hundredweight for Class I milk for the same month as computed for the 55-70 mile zone under Order No. 41 for the Chicago, Illinois, marketing area.

Month to which applicable	Standard percentages	Months used in computing current supply-demand ratio
January.....	80	October-November.
February.....	79	November-December.
March.....	77	December-January.
April.....	76	January-February.
May.....	75	February-March.
June.....	73	March-April.
July.....	69	April-May.
August.....	67	May-June.
September.....	70	June-July.
October.....	74	July-August.
November.....	75	August-September.
December.....	76	September-October.

§ 967.54 *Class II price.* The price for Class II milk of 3.5 percent butterfat content shall be the basic formula price plus \$0.70 for the months of August through February; and plus \$0.45 for all other months.

§ 967.55 *Class III price.* The price for Class III milk of 3.5 percent butterfat content shall be that computed under § 967.51 (a).

§ 967.56 *Location differential credits to handlers on Class I milk.* In computing the value of each handler's milk pursuant to § 967.70, the following location differentials shall be credited with respect to each hundredweight of producer milk received at a pool plant or reload

point located more than 55 miles from the St. Joseph County Courthouse, South Bend, Indiana, and classified as Class I milk: 10 cents for distances at least 55 miles but not more than 60 miles, and an additional 1.6 cents for each 10 miles, or major fraction thereof, in excess of 60 miles, in all instances by the shortest hard-surfaced highway distance, as determined by the market administrator, from such pool plant or reload point to the St. Joseph County Courthouse, South Bend, Indiana: *Provided*, That for the purpose of computing the credits applicable pursuant to this section, the amount of milk transferred in bulk form from a pool plant(s) pursuant to § 967.10 (b) to a pool plant(s) pursuant to § 967.10 (a) and classified as Class I milk, shall not exceed the total amount of Class I milk disposed of from the latter plant less the total amount of any producer milk received at such plant from producers' farms and shall be assigned to pool plants under § 967.10 (b) in sequence beginning with the plant having the smallest allowable credit.

§ 967.57 *Class butterfat differentials—(a) Class I milk.* Multiply by 0.13 the simple average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) of Grade AA (93-score) bulk creamery butter at Chicago, as reported by the Department for the month, and round to the nearest one-tenth of a cent: *Provided*, That if no price is reported for Grade AA (93-score) butter, the highest of the prices reported for Grade A (92-score) butter for that day shall be used in lieu of the price for Grade AA (93-score) butter.

(b) *Class II milk.* Multiply by .125 the simple average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) of Grade AA (93-score) bulk creamery butter at Chicago, as reported by the Department for the month, and round to the nearest tenth of a cent: *Provided*, That if no price is reported for Grade AA (93-score) butter the highest of the prices reported for Grade A (92-score) butter for that day shall be used in lieu of the price for Grade AA (93-score) butter.

(c) *Class III milk.* Multiply by .12 the simple average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) of Grade AA (92-score) bulk creamery butter at Chicago, as reported by the Department for the month, and round to the nearest tenth of a cent.

§ 967.58 *Computation of prices of skim milk and butterfat.* The prices per hundredweight of skim milk and butterfat to be paid by each handler for milk in each class shall be computed as follows: For each class, respectively, the price per hundredweight of skim milk shall be the applicable class price for the month (§ 967.53, 967.54 and 967.55) less the result of multiplying the applicable class butterfat differential for the month (§ 967.57) by 35. For each class, respectively, the price per hundredweight of butterfat shall be the applicable class price for the month plus the result of

multiplying the applicable class butterfat differential for the month by 965.

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

APPLICATION OF PROVISIONS

§ 967.60 *Exempt milk.* (a) Milk received at a plant qualified as a pool plant under § 967.10 (a) shall be exempt from the provisions of this part if the conditions of subparagraphs (1) and (2) of this section are met: *Provided*, That the handler of such milk shall make reports to the market administrator with respect to his total receipts and utilization of skim milk and butterfat at such times and in such manner as the market administrator may require and allow verification of such reports by the market administrator in accordance with § 967.32:

(1) The Secretary determines that a greater quantity of milk is disposed of in fluid form from such plant to another regulated area as defined in another marketing agreement or order issued pursuant to the act either on a route(s) or through a plant(s) regulated by such other marketing agreement or order than is disposed of from such plant in the South Bend-La Porte-Elkhart marketing area either on a route(s) or through another pool plant(s); and

(2) Such milk would be subject to the class price and producer payment provisions of the other marketing agreement or order upon being made exempt from this part.

(b) Milk received at a plant qualified as a pool plant under § 967.10 (b) shall be exempt from the provisions of this part as producer milk if such milk is subject to class prices at a plant regulated under another marketing agreement or order issued pursuant to the act: *Provided*, That the proviso set forth in paragraph (a) of this section shall apply.

(c) In the case of producer milk received directly from a farm at a pool plant which milk (1) has been diverted (without being physically received therein) from a plant at which farm receipts of milk are subject to the class price provisions of another marketing agreement or order issued pursuant to the act, (2) is reflected on the producer-payroll of the plant from which diverted, and (3) is not specifically exempt from class pricing by the terms of such other marketing agreement or order, the Secretary shall make a determination as to the extent to which the terms of this part shall apply to such milk.

§ 967.61 *Producer-handlers.* Sections 967.40 to 967.46, 967.50 to 967.58, 967.70 to 967.72, 967.80 to 967.84 and 967.86 to 967.88 shall not apply to a producer-handler.

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

(a) Divide the total pounds of milk received by a handler from each producer during the months of September, October, November and December immediately preceding, by the number of days such milk was produced (not to be less than 90 days): *Provided*, That any producer for whom a base has been computed may, upon written notice to the market administrator, postmarked not later than February 15 preceding, relinquish his base and be allotted a base computed pursuant to paragraph (b) of this section.

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

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

(2) Determine the percentage that base milk was of the remaining pounds, and subtract 10.

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

§ 967.63 *Base rules.* Any base computed pursuant to § 967.62 (a) shall be subject to the following rules:

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

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

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

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

§ 967.70 *Computation of the value of milk.* (a) For each month the total value of milk received by each handler from producers or associations of producers (including any such milk caused to be delivered to such handler from the farms of producers for the account of a cooperative association) during such month shall be a sum of money computed by the market administrator by multiplying the pounds of skim milk and butterfat in each class by the applicable class prices pursuant to § 967.58, adding together the resulting amounts, adding any amounts computed for such handler

pursuant to subparagraphs (1) and (2) of this paragraph, and subtracting the total amount of any location differential credits computed pursuant to § 967.56.

(1) Add, with respect to other source milk (except other source milk classified and priced under the class price provisions of another marketing agreement or order issued pursuant to the act) received in fluid form as milk, skim milk or cream at each pool plant of such handler in excess of the total volume of his Class II milk and Class III milk at such plant, an amount computed by multiplying the hundredweight of skim milk and butterfat in such other source milk by the difference between the Class I milk and Class III prices for skim milk and butterfat, respectively, pursuant to § 967.58: *Provided*, That if the plant supplying such milk is located outside the marketing area and more than 55 miles from the St. Joseph County Courthouse, South Bend, Indiana, the payment per hundredweight of milk otherwise required by this subparagraph shall be reduced by the applicable location adjustment provided in § 967.56 for the distance such plant is located from the St. Joseph County Courthouse, but not to exceed an amount equal to the difference between the Class I and Class III prices.

(2) Multiply the pounds of skim milk and butterfat subtracted pursuant to § 967.46 (d) by the respective applicable class prices.

(b) For each month the total obligation to the producer-settlement fund for each handler who, during such month, disposed of Class I milk (except other source milk classified and priced under the class price provisions of another marketing agreement or order issued pursuant to the act) within the marketing area on routes from a nonpool plant shall be a sum of money computed by the market administrator by multiplying the hundredweight of skim milk and butterfat in other source milk so disposed of by the difference between the Class I and Class III prices for skim milk and butterfat, respectively, adjusted for the location of the plant at the rates applicable for pool plants pursuant to § 967.56: *Provided*, That a producer-handler shall not be obligated for payments under this paragraph with respect to that portion of other source milk represented by his own farm production.

§ 967.71 *Computation of uniform price*. For each of the months of August through March the market administrator shall compute a uniform price per hundredweight of producer milk as follows:

(a) Combine into one total the values computed pursuant to § 967.70 for all handlers who filed reports pursuant to § 967.30 and were not in violation of § 967.83 for the preceding month;

(b) Subtract, if the average butterfat content of milk included in these computations is greater than 3.5 percent, or add, if such average butterfat content is less than 3.5 percent, an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 967.81 (a), and

multiplying the resulting amount by the total hundredweight of milk included in these computations;

(c) Add an amount equal to the total value of the location differentials computed pursuant to § 967.81 (b);

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

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

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight, for the purpose of retaining in the producer-settlement fund a cash balance to provide against errors in reports or payments or delinquencies in payments by handlers. The result shall be known as the "uniform price" per hundredweight for milk of 3.5 percent butterfat content.

§ 967.72 *Computation of uniform prices for base milk and excess milk*. For each of the months of April through July the market administrator shall compute separate prices per hundredweight for base milk and excess milk of producers as follows:

(a) Make the same computations as required pursuant to § 967.71 (a), (b), (c), and (d);

(b) Compute the total value, on a 3.5 percent butterfat basis, of that portion of milk, included in the computations pursuant to paragraph (a) of this section, which is excess milk by: multiplying the quantity of such excess milk (but not more than an amount equal to the total quantity of Class III milk included in these computations) by the price for Class III milk of 3.5 percent butterfat content, and multiplying any quantity of such excess milk greater than such Class III milk, in series, by the prices for Class II milk and Class I milk of 3.5 percent butterfat content, respectively, and adding together the resulting amounts;

(c) Divide the total value of excess milk obtained in paragraph (b) of this section by the total hundredweight of such milk, and adjust to the nearest cent (the result shall be known as the "uniform price for excess milk" of 3.5 percent butterfat content);

(d) Subtract the value computed pursuant to paragraph (b) of this section from the total value of milk included in these computations, and divide the result by the total hundredweight of base milk represented; and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight, for the purpose of retaining in the producer-settlement fund a cash balance to provide against errors in reports of payments or delinquencies in payments by handlers. The result shall be known as the "uniform price for base milk" of 3.5 percent butterfat content.

PAYMENTS

§ 967.80 *Time and method of payment*. Each handler shall make payments as follows:

(a) On or before the 18th day after the end of each month, to each producer, except producers for whom payment is made to a cooperative association pursuant to paragraph (b) of this section,

at not less than the uniform price for the months of August through March and the uniform prices for base milk and excess milk for the months of April through July, adjusted by the producer butterfat and location differentials pursuant to § 967.81, for all milk received from such producer during such month and less payment to such producer made pursuant to paragraph (c) of this section: *Provided*, That if by such date such handler has not received full payment for such month pursuant to § 967.84, he may reduce such payments uniformly per hundredweight for all producers by an amount not in excess of the per hundredweight reduction in payment from the market administrator: *And provided further*, That such handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator.

(b) On or before the 15th day after the end of each month, to a cooperative association with respect to milk caused to be delivered from producers' farms to such handler by such association for its account during such month, not less than the value of skim milk and butterfat in such milk computed at the minimum class prices, less payments to such association made pursuant to paragraph (c) of this section. For the purpose of determining the classification of skim milk and butterfat in such milk, such skim milk and butterfat shall be ratably apportioned among the quantities of skim milk and butterfat in such handler's Class I milk, Class II milk and Class III milk allocated to producer milk pursuant to § 967.46.

(c) On or before the 4th day after the end of such month each handler shall pay to each producer, or to a cooperative association authorized to collect payment, not less than the amount per hundredweight provided in the schedule set forth in this paragraph, for milk received from such producer or caused to be delivered to such handler by such cooperative association during the first 15 days of such month: *Provided*, That in the event any producer or cooperative association discontinues shipping to such handler during any month, such partial payments shall not be made and full payment for all milk received from such producer or cooperative association during such month shall be made on or before the 18th day after the end of such month pursuant to paragraphs (a) and (b) of this section:

When the uniform price or base price for the preceding month is—	The amount of the partial payment shall be—
Under \$1.00.....	\$0.00
\$1.00 to \$1.99.....	1.00
\$2.00 to \$2.99.....	2.00
\$3.00 to \$3.99.....	3.00
\$4.00 to \$4.99.....	4.00
\$5.00 to \$5.99.....	5.00
\$6.00 to \$6.99.....	6.00
\$7.00 and over.....	7.00

§ 967.81 *Producer butterfat and location differentials*. (a) In making payments pursuant to § 967.80 (a) there shall be added to, or subtracted from, the uniform price, for each one-tenth of

one percent of butterfat content in such producer milk above or below 3.5 percent, an amount computed by multiplying the average of the daily wholesale prices per pound of 92-score butter at Chicago during the month, as reported by the Department, by 0.12 and rounding to the nearest tenth of a cent.

(b) In making payments to producers pursuant to § 967.80 for milk received at a pool plant at which a location adjustment is applicable pursuant to § 967.56, the uniform price per hundredweight for the months of August through March, and the uniform price per hundredweight for base milk for the months of April through July, shall be reduced by the zone rate per hundredweight for such plant prior to the proviso in § 967.56.

§ 967.82 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit payments made by handlers pursuant to § 967.83 and payments related thereto pursuant to § 967.87 and out of which he shall make all payments to handlers pursuant to § 967.84 and payments related thereto pursuant to § 967.87.

§ 967.83 *Payments to the producer-settlement fund.* (a) On or before the 16th day after the end of each month, each handler whose obligation is computed pursuant to § 967.70 (a) shall pay to the market administrator the amount by which the value of such handler's milk as determined pursuant to § 967.70 (a), minus the amount to be paid to a cooperative association pursuant to § 967.80 (b) is greater than the amount to be paid producers pursuant to § 967.80 (a); *Provided*, That with respect to milk for which a cooperative association receives payment from a handler pursuant to § 967.80 (b), such cooperative association shall pay to the market administrator, on or before the 16th day after the end of each month, the amount by which the utilization value of such milk is greater than the value computed at the uniform price pursuant to § 967.71 adjusted by the producer butterfat and location differentials pursuant to § 967.81.

(b) On or before the 16th day after the end of each month, each handler (including any handler who may also have an obligation pursuant to paragraph (a) of this section) who, during such month, disposed of milk as described in § 967.70 (b) shall pay the amount computed for him pursuant to such paragraph.

§ 967.84 *Payments out of the producer-settlement fund.* On or before the 17th day after the end of each month, the market administrator shall pay to each handler the amount by which the value of producer milk received by such handler during such month pursuant to § 967.70 minus the amount to be paid to a cooperative association pursuant to § 967.80 (b) is less than the amount to be paid producers pursuant to § 967.80 (a), less any unpaid obligation of such handler to the market administrator pursuant to §§ 967.83, 967.85, 967.86, and 967.87; *Provided*, That with respect to milk for which a cooperative association

receives payment from a handler pursuant to § 967.80 (b) the market administrator shall pay to such cooperative association, on or before the 17th day after the end of such month, the amount by which the utilization value of such milk is less than the value computed at the uniform price pursuant to § 967.71 adjusted by the producer butterfat and location differentials pursuant to § 967.81; *And provided further*, 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 per hundredweight such payments and shall complete such payments as soon as the necessary funds are available.

§ 967.85 *Expense of administration.* As his pro rata share of the expense incurred pursuant to § 967.22 (d), each handler (except a producer-handler) as defined in § 967.15 (a) or (b) shall pay the market administrator, on or before the 16th day after the end of each month, 4 cents per hundredweight, or such lesser amount as the Secretary from time to time may prescribe, with respect to skim milk and butterfat received within the month in producer milk (including such handler's own production) and in other source milk allocated to Class I milk; and each handler as defined in § 967.15 (c), including a producer-handler, shall make payment at the same rate per hundredweight with respect to other source milk disposed of as Class I milk within the marketing area on routes; *Provided*, That milk which is subject to administrative expense assessment under another marketing agreement or order issued pursuant to the act shall be exempt from payment under this section.

§ 967.86 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 967.80 (a) shall make a deduction of 4 cents per hundredweight of milk, or such lesser deduction as the Secretary from time to time may prescribe, with respect to the following:

(1) All milk received from producers (except milk of such handler's own production) at a plant not operated by a cooperative association; and

(2) All milk received at a plant operated by a cooperative association from producers who are not members of such association. Such deductions shall be paid by the handler to the market administrator on or before the 16th day after the end of each month. Such moneys shall be expended by the market administrator for verification of weights, samples and tests of milk received from such producers and in providing market information to such producers, such services to 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 each producer, except a producer for whom payments are collected by a cooperative association pursuant to § 967.80 (b), (1) who is a member of, or who has given written authorization for the rendering of marketing services and the taking of deduction therefor, to a cooperative associa-

tion, (2) whose milk is received at a plant not operated by such association, and (3) for whom the Secretary determines that such association is performing the services described in paragraph (a) of this section, each handler shall deduct, in lieu of the deduction specified under paragraph (a) of this section, from the payments made pursuant to § 967.80 (a) the amount per hundredweight on milk authorized by such producer and shall pay over, on or before the 16th day after the end of such month, such deduction to the association entitled to receive it under this paragraph.

§ 967.87 *Adjustments of accounts.*

(a) Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (1) the market administrator from such handler, (2) such handler from the market administrator, or (3) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due; and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred following the 5th day after such notice.

(b) An unpaid obligation of a handler or of the market administrator shall bear interest at the rate of one-half of one percent per month, such interest to accrue on the 1st day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

§ 967.88 *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 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 obligation are made available to the market administrator or his representatives.

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

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

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

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

§ 967.91 *Suspension or termination.* The Secretary shall, whenever he finds that this part or any provision thereof, obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this part or any such provision thereof.

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

§ 967.93 *Liquidation.* Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so desired by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If upon such liquidation, the funds on hand exceed the amounts required to pay out-

standing obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 967.100 *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.

§ 967.101 *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. 58-5469; Filed, July 16, 1958; 8:50 a. m.]

[7 CFR Part 1003]

[Docket No. AO-269-A1]

HANDLING OF DOMESTIC DATES PRODUCED OR PACKED IN LOS ANGELES AND RIVERSIDE COUNTIES OF CALIFORNIA

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

Pursuant to the rules of practice and procedure governing procedures to formulate 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 of Marketing Agreement No. 127, and Order No. 103 (7 CFR Part 1003), regulating the handling of domestic dates produced or packed in Los Angeles and Riverside Counties of California. The marketing agreement and order (hereinafter referred to as the "order") are effective 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 any amendment which may result from this proceeding also will be effective pursuant to said act. Interested persons may file written exceptions to this recommended decision with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington 25, D. C., not later than the close of business on the twelfth day after publication of this document in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. A public hearing, on the record of which the proposed amendment of the order is formulated, was held in Coachella, California, on April 10 and 11, 1958, pursuant to notice thereof which was published in the FEDERAL REGISTER (23 F. R. 1960) on March 25, 1958. The notice of hearing contained proposals received from the Date

Administrative Committee (hereinafter referred to as the "committee"), established pursuant to the order as the agency to administer the terms and provisions thereof.

Material issues. The material issues presented on the record of the hearing were concerned with amending the order to:

1. Redefine the term "area of production" so as to expand the area to include certain additional date packing and storage facilities.

2. Redefine the term "handle" so as to exclude from handling the movement of dates by a handler to storage for his account within the area of production.

3. Redefine the term "trade demand" so as to relate it to the aggregate quantity of whole dates and pitted dates, rather than to the quantity of marketable dates, for the crop year.

4. Redefine the term "marketable dates" so as to prescribe more specifically and in conformity with other proposals the minimum grade and size standards which whole or pitted dates must meet in order to qualify as "marketable dates."

5. Define the term "substandard dates" to mean those dates which are better than cull dates but which are not "marketable dates," and define the term "cull dates."

6. Define the term "graded dates" by specifying the requirements which dates must meet in order to qualify as graded dates.

7. Revise the provisions relating to the Date Administrative Committee with respect to establishment, membership representation, term of office, nominations and procedure.

8. Revise the provisions of § 1003.39 so as to provide minimum standards of quality for dates for further processing and clarify the giving of notice thereof to handlers.

9. Revise the provisions of § 1003.40 to provide for the establishment of size as well as grade regulations and for such regulations to govern dates eligible for restricted obligation as well as dates that may be handled.

10. Revise the provisions of § 1003.41 (a) so that inspection would cover size as well as grade and that dates be certified for handling at the time of the inspection.

11. Revise the provisions of § 1003.41 (b) to prescribe more specifically the requirements which dates for further processing shall meet, provide that inter-handler transfers of graded dates as well as field-run dates shall not be subject to the requirements with respect to inspection and certification, and provide that dates be certified for further processing at the time of the inspection.

12. Revise the provisions of § 1003.45 (a) and (c) so as to clarify handlers' obligations with respect to withholding restricted dates and paying assessments.

13. Add provisions to § 1003.45 to permit handlers (a) to meet their obligations to withhold restricted dates by the setting aside, or by making disposition in cull outlets of, appropriate quantities of field-run dates and (b) to defer meeting such obligations by setting aside graded dates.

14. Authorize container regulations.

15. Revise the provisions of § 1003.51 in connection with interhandler transfers of dates.

16. Revise the provisions of §§ 1003.55 and 1003.56, including a provision for the use or disposition, in conformity with such sections, of any dates which have not been certified for handling or for further processing, and authorize the committee to approve manufacturers for diversion of such dates.

17. Revise the provisions of § 1003.57 with respect to the terminal dates for the disposition or diversion of dates which have not been certified for handling or further processing.

18. Revise the provisions of § 1003.61 to bring handlers' reports of carryover in line with the requirements of order administration.

19. Revise the provisions of § 1003.64 to eliminate unnecessary reports with respect to the disposition of restricted dates and provide for disposition reports for other marketable, substandard, and cull dates.

20. Delete from § 1003.72 the sentence establishing the assessment rate for the initial crop year (1965-68).

21. Revise the provisions of § 1003.74 to provide a more appropriate formula for determining handlers' shares of excess assessment funds.

22. Add a general provision with respect to compliance.

23. Make such other changes in the marketing agreement and order as are necessary to make the entire marketing agreement and order conform with any amendment which may result from these proceedings.

Findings and conclusions. The findings and conclusions on the material issues, based upon the evidence adduced at the hearing and the record thereof, are as follows:

1. Section 1003.4 of the order now defines "area of production" as consisting of Los Angeles and Riverside Counties located within the State of California. According to the decision (20 F. R. 4301) issued with respect to the promulgation of the order, while practically all California dates are produced in Riverside County, large volumes of such dates are moved to nearby Los Angeles County where they are processed and packed, and sold through handlers located there. There is no commercial date production in Los Angeles County. Los Angeles County was included in the "area of production" so as to cover the processing facilities located there and utilized in preparing the dates for market. In this connection, §§ 1003.9, 1003.41 (b) and 1003.51 of the date order, and as such sections are proposed to be amended, contain provisions which distinguish between the movement of dates within the "area of production" and the shipment of dates from the area to points outside. Under marketing order programs of this type, regulation is usually such as to permit the commodity to move within the production area from growers to handlers, and among handlers, with a minimum of restriction, primarily prior to and for the purpose of, its preparation for market. Such relative freedom from

regulation is necessary because the more significant regulations are designed to be applicable to the commodity after it is prepared for market. Ascertaining compliance with these regulations could become unduly burdensome, if not impossible, if the commodity were allowed to move for such purposes to points outside the production area entirely free from the regulation.

As shown by the record of the hearing on the proposed amendment of the order, one date handler has packing (processing) facilities in Orange County, which adjoins the present "area of production"; and some of the handlers who have packing plants in the "area of production" have date storage facilities located in that part of San Bernardino County west of 116 degrees W. longitude, which also adjoins the area. Dates are not produced commercially in Orange County or the part of San Bernardino County that is west of 116 degrees W. longitude. The movement of dates within the entire area to or from these plants or facilities is not different from the movement within the present "area of production" to or from similar facilities. There appears to be no reason why the program requirements and regulations should not apply to dates received at the former facilities in the same manner as the dates processed or packed, or stored, in the present area of production.

Another compliance problem, that could be minimized by enlarging the present area of production, results from the fact that the two Counties (Riverside and Los Angeles) comprising the present area of production are not contiguous, i. e., they are separated by small portions of Orange County and the indicated part of San Bernardino County. In order to unite the area, and have the same regulations apply to the dates received at the packing (processing) or storage facilities located immediately outside of the present area of production in the same manner as those dates received at the facilities within the present area, § 1003.4 should be amended by adding to the present area of production all of Orange County and that part of San Bernardino County lying west of 116 degrees W. longitude. Such enlargement would result in an undivided area to which the order as proposed to be amended could be applied more effectively and with less burden on handlers in carrying out the declared policy of the act. The new area thus would become the smallest regional production area which is practicable consistently with carrying out the declared policy of the act. Since essentially no new date production or methods of marketing would be involved, the terms applicable to the present area would also be applicable to the enlarged area.

The counties comprising the area of production are specified in present § 1003.17 relating to the terms "part" and "subpart." Such section should be revised to conform to the proposed revision of § 1003.4.

2. Section 1003.9 should be amended to clearly exclude from the definition of "handle" the movement of dates by a handler to storage for his account when

such storage is within the area of production. It is common practice for date handlers in California to store large quantities of dates for their account within the area of production as now defined, and the immediately adjacent area which is proposed to be included in the area of production (issue 1). In some instances the facilities for storing the dates may be separated by varying distances from the handler's plant. In other instances handlers have storage facilities which are connected with or adjacent to the packing plant. In the latter instance, the movement of dates to such storage would not be considered an act of handling. It is unnecessary to differentiate between the movement of dates to storage by handlers in either instance provided such movement is for the handler's account and the storage is within the area of production. If any such movement of dates is considered as handling, assessments would have to be paid and grade, size, and volume regulations, including "withholding" would have to be observed prior to such movement. This would be an unnecessary burden on handlers. Therefore, the movement of dates to such storage should be excluded from the definition of "handle".

3. In the present provisions of § 1003.11, the term "trade demand" is defined in terms of the quantity of marketable dates which the trade will acquire from all handlers during the crop year. Under the current interpretation of the provisions of § 1003.12, and as such provisions are proposed to be amended, the definition of the term "marketable dates" is such that the minimum requirements for marketable dates may be below those of the dates which the trade will acquire. Hence, it would be incorrect to construe trade demand in terms of marketable dates. In recommending the free and restricted percentages for any crop year, the committee bases such percentages on the aggregate quantity of whole dates and pitted dates which can be disposed of in the free market. Regulations under the marketing program should be designed to provide the trade with the required quantity of dates of acceptable quality. Therefore, § 1003.11 should be amended so as to define the term "trade demand" in terms of the aggregate quantity of whole dates and pitted dates which will be acquired by the trade.

4. Section 1003.12, which defines marketable dates, is now interpreted to mean that marketable dates are those whole or pitted dates meeting the requirements of § 1003.39, namely, those which are certified as equal to or higher than U. S. Grade C of the effective United States Standards for Grades of Processed Dates. As hereinafter indicated, it is intended and proposed (issue 8) that dates for further processing (i. e., those meeting U. S. Grade C (Dry) as defined in such United States Standards) be covered in § 1003.39 and be included in marketable dates. It is provided in § 1003.45 that only marketable dates may become restricted dates so that the minimum requirements for marketable dates and restricted dates are the same.

Under § 1003.40 as proposed to be amended, size regulations, as well as grade regulations in addition to those contained in § 1003.39, could be established for any variety of restricted dates. Therefore, in order to establish the meaning of marketable dates more specifically and in conformity with other proposals, § 1003.12 should be amended to redefine the term "marketable dates" to mean those whole or pitted dates which are certified as equal to or higher than the applicable minimum grade then in effect pursuant to § 1003.39 and any additional, applicable requirements, pursuant to § 1003.40, which may then be in effect for restricted dates.

5. In the notice of hearing it was proposed that a new § 1003.15 be added which would define substandard dates as those dates which are not marketable dates. Section 1003.56 as proposed to be amended would limit the disposition of substandard and cull dates to products not destined for human consumption as food except that, in years when no additional requirements have been established for restricted dates pursuant to § 1003.40, substandard dates, but not cull dates, may be disposed of in such products destined for human consumption as food as may be approved by the Secretary upon recommendation of the committee. Hence, it is necessary that substandard dates be distinguished from cull dates which would never be used in products for human consumption. Therefore, substandard dates should be defined as dates which fail to meet the requirements for marketable dates but are not cull dates.

The term "cull dates" should be defined to permit a clear definition of substandard dates. The date industry in California generally considers as culls those dates which fail to meet the requirements, with respect to freedom from defects, prescribed in § 798 of the Agricultural Code of California. Such requirements as so prescribed are applicable to dates for use in products or by-products other than alcohol, brandy, and products not intended for human consumption. Thus, dates which fail to meet such requirements may be used only in alcohol, brandy, and products which are not intended for human consumption. Therefore, the term "cull dates" should be so defined.

6. Since the term "graded dates" is used in the order and in proposals included in the notice of hearing, it was proposed at the hearing that the term be defined. It is a common practice for handlers to have dates cleaned, and sorted (graded) and then later, which may be at the time of handling or disposition, have them inspected and certified. Handlers usually are aware, prior to the inspection, that these dates would meet the requirements under the program for marketable dates (which include dry dates for further processing) or perhaps the requirements for dates that may be handled if any needed moisture were added. As the term "graded dates" is used in the proposed order, it is sufficient that graded dates refer to dates which are eligible for certification as

marketable dates. Therefore, the order should be amended by adding a provision so to define the term "graded dates."

7. The provisions of § 1003.21 of the order relating to the establishment of the Date Administrative Committee should be amended to require that the committee shall be composed of seven members with an alternate for each such member, provided that the number of members and alternates may be changed consistent with findings made pursuant to § 1003.22.

Under the current provisions of the order, the Date Administrative Committee consists of seven members with an alternate for each member. Members and alternates are selected by the Secretary as follows:

(a) One to represent handlers each of whom produced not less than 40 percent of the volume he handled.

(b) One to represent cooperative handlers.

(c) Two to represent handlers not included in (a) or (b) above.

(d) One to represent producers who are members of a cooperative marketing association.

(e) Two to represent producers who are not members of a cooperative marketing association. The foregoing representation was based on each handler member representing approximately 25 percent of the tonnage handled and each producer member representing approximately one-third of the total number of commercial producers. Provision is made for the Secretary to realign the representation whenever he finds that changes in tonnage handled or producer membership in cooperatives are such as to warrant a realignment.

Since the effective date of the order in 1955, the tonnages of dates handled by the respective groups have changed substantially so that for the 1957-58 season the handlers in group (a) had handled well under 25 percent of the total, and handlers in group (b) had handled slightly more than those in group (c). A problem arose as to whether group (b) should be given another representative on the committee and if so, from which other handler group should the representative be taken. Since group (a) has only one member, to take a representative from it would leave that group with none. The difference in tonnage handled between groups (b) and (c) was not sufficient to indicate clearly that a representative should be taken from group (c) and given to group (b). To resolve this situation and provide each segment of the date industry having common interest, with representation in proportion to tonnage produced or handled, § 1003.22 should be amended to provide that members and alternate members shall, until such time as a realignment of the committee membership is effected, be selected by the Secretary from each of the following groups and on the following basis:

(a) One member from handlers, each of whom produced during the then current crop year to February 28 at least 51 percent of all of the dates handled by him during such period, and pro-

ducers, each of whom delivered during the then current crop year to February 28 at least 50 percent of his deliveries to such handlers;

(b) Three members from cooperative marketing associations of whom one shall be an employee and serve as a handler member of the committee, and two shall be from among the producer members of such associations; and

(c) Three members from all other handlers and producers, of whom two shall be handler members selected from among such other handlers and one shall be a producer member selected from among such other producers.

The producer-handlers in proposed group (a) and the cooperative marketing associations in proposed group (b) have interests both as handlers and as producers. The handler and the producer representations, therefore, should properly be grouped together in each case. The remaining handlers and the remaining producers in proposed group (c) have some interests in common in that the former handle the dates of the latter and, therefore, these handlers and producers should be grouped together for purposes of overall representation.

In order to be included in proposed group (a), a handler should produce at least 51 percent of all of the dates he handles to insure that his interest is primarily that of a producer, and thus provide a definite line of demarcation between such handlers and those in proposed group (c).

To insure that the committee is fully aware of the problems of producers and handlers at all times, producers themselves and handlers themselves should actually serve as members of the committee rather than people who might be hired to so serve. However, in the case of handlers, their employees who are engaged in the business of the handler, in handling dates should be eligible to serve. In the case of producers who are not actual persons, such as corporations, their employees who have responsible positions in the production of dates should be eligible to serve.

It should be set forth in § 1003.22 that the proposed representation is based on each member representing approximately 14.28 percent of the tonnage handled. The basic percentage of 14.28 percent for a member results from a seven member committee and represents one-seventh of the total tonnage handled. Also, provisions should be included for the Secretary to change the number of representatives for a group whenever he finds that any change in tonnage handled in any group is equivalent to more than one-half (i. e., 7.14 percent) of the basic percentage (i. e., 14.28 percent) for a member. In this way, a procedure would be provided for maintaining the same proportional representation when significant changes warrant realignment of committee membership and representation.

Applying the foregoing procedure, any group which has handled an amount which exceeds 21.42 percent (i. e., 7.14 percent plus the basic percentage for one member) of the total quantity of dates handled would be entitled to two members. When such amount exceeds

35.70 percent (i. e., 7.14 percent plus the basic percentage for two members) of the total, the group would be entitled to representation by three members. Likewise, if any group exceeds 49.98 percent of the total, it would be entitled to representation by four members. Similarly, if the quantity of dates handled by any group should decrease, the number of members to which it is entitled would be determined correspondingly but in an inverse manner. However, each group should be entitled to at least one member and one alternate even if the quantity handled should fall below one-half of the basic percentage of 14.28 percent of the total quantity handled. This is necessary to prevent a group from being without representation.

Any increase or decrease in the representation of a particular group should not be dependent upon a change in membership representation of any other group. This follows from the operation of the formula.

In order to have a fixed formula, and retain the same basic relation, the 14.28 percent as a guide for making changes should continue to be applicable, even though the committee membership may be changed from the initial seven members from which the 14.28 percent results.

In order that representation and any changes in representation reflect current relationships, data with respect to production, deliveries, and handlings should be for the then current crop year through February 28. The quantity certified for handling or further processing should be the basis for any realignment of the membership representation.

As stated above, the committee as proposed would consist initially of three producer representatives, three handler representatives, and one representative for producer-handlers and those producers delivering to such handlers. Such balance between producers and handlers is essentially the same as under current provisions of the order and has worked out well during the years the order has been in effect. Except for group (a), any change in the nomination and selection of members for any group should be made so as to keep producer members and handler members in balance insofar as possible.

Under the current provisions of § 1003.23, members and alternates serve for two-year terms. The terms of approximately one-half of the members and alternates expire each year. Since the representation for any group may be changed from year to year, the Secretary could be faced with the problem of having to determine, in case of a decrease, which of the positions of two members, one having a year to serve, and one whose term was expiring that particular year, should be abolished. Therefore, in order to prevent this problem from arising, the provisions of § 1003.23 should be amended to provide that the term of office for members and alternate members shall be one year ending on May 14 but each such member and alternate shall continue to serve until his successor has been selected and has qualified. By having the term of office commence on May 15, instead of April

15 as at present, the nomination meetings may be held later and ample time allowed for compiling the necessary current data.

The provisions with respect to the nomination of initial members in § 1003.24 should be deleted since they are no longer applicable.

In order to permit ample time for the compilation of the required data which would cover the then current crop year through February 28, the provisions of § 1003.23 should be amended to provide for nomination meetings to be held on or before April 15, rather than on or before March 15.

Since it is proposed to joint producer-handlers with producers delivering dates to them in the nomination of a member and alternate in proposed group (a) there would be no satisfactory common denominator for weighting the vote of any such person. Therefore, each such producer-handler and each such producer should be entitled to one vote for each position to be filled, and no one's vote should be weighted by the tonnage of dates handled or produced. However, in the nomination meetings the vote of each cooperative marketing association in proposed group (b) and each handler in proposed group (c) should be weighted by the tonnage of dates acquired by each from producers and certified, for handling or further processing, through February 28 of the then current crop year. There are only two such cooperatives and if the votes are not weighted, it is possible that no nominations would result from a meeting. Such weighting of the votes of the handlers in proposed group (c) is the same as at present for such handlers.

It was proposed at the hearing that the vote of each producer in proposed group (c) be weighted by his production. These are independent producers and they would vote in separate meetings from the handlers in the same group. However, it is not the practice under marketing orders to weight producers' votes in nomination meetings. The proposal, therefore, is denied. It is concluded that each such producer shall be entitled to one vote for each position to be filled.

The terms "cooperative handlers" and "cooperative marketing association" are used in the current provisions of the order in connection with the committee. The former term, reflecting the handler aspect of the association, is presently defined in § 1003.16 as meaning any handler which is a cooperative marketing association of growers organized under the laws of the State of California. The latter term has been used with reference to the producer aspect of the association. As the order is proposed to be amended, the term "cooperative handler" would be deleted while the term "cooperative marketing association" would remain in the order but reflect both the handler and producer aspects of the association. As previously stated, three members of the committee would be selected from cooperative marketing associations; and of these members one would be a handler member of the committee and two would be producer members of the com-

mittee. In view of the proposed changes with respect to such terms, § 1003.16 should be revised so that it defines the term "cooperative marketing association." Such term should continue to mean any cooperative marketing association of date growers organized under the laws of the State of California.

Under the current provisions of § 1003.31, at least five affirmative votes are required for all decisions of the seven member committee, and the presence of five members are required to constitute a quorum. Since it is proposed to amend § 1003.22 whereby the size of the committee may change, § 1003.31 should be amended to require that all decisions of the committee shall be by an affirmative vote of at least two-thirds of the committee, and that two-thirds of the members be present in order to constitute a quorum. The two-thirds requirement would make no change in the present requirements as long as there is a committee of seven.

8. Under the current provisions of § 1003.39, U. S. Grade C (as such grade is defined in the current United States Standards for Grades of Dates, § 52.1001 et seq. of this title) is established as the minimum standard of quality for whole dates and pitted dates handled under the program. As provided in § 1003.41 (b), dates for further processing (i. e., dry dates which have been graded and which require the addition of moisture) may be shipped if they have been inspected and certified as being equal to the minimum grade standards except for character associated with moisture. U. S. Grade C (Dry) was included in said United States Standards as a grade for dry dates for further processing subsequent to the effective date of the order in 1955. The requirements of U. S. Grade C (Dry) are the same as those of U. S. Grade C except for factors associated with moisture. Since U. S. Grade C (Dry) provides a specific minimum standard for dates for further processing, and its requirements are the same as those of the order for such dates, the provisions of § 1003.39 should be amended by specifying therein that all whole and pitted dates handled under the order, as proposed to be amended, shall meet the requirements of U. S. Grade C or, if for further processing, U. S. Grade C (Dry), of the effective United States Standards for Grades of Dates: *Provided*, That the Secretary may, upon recommendation of the committee, prescribe other minimum standards of quality. Since U. S. Grade C and U. S. Grade C (Dry) have to do with minimum quality, the prescribing of any other minimum standard of quality would, in effect, be replacing the existing minimum standards.

The provisions of § 1003.39 should be amended to make it clear that the committee's giving, or failure to give, notice to all handlers of record of the effective minimum standard regulation shall not affect or change the effective time of such regulations or any obligations to comply with such regulations.

9. Under the current provisions of § 1003.40, the committee may recommend, and the Secretary may establish,

grade regulations to govern shipments of any variety of dates, in addition to those regulations provided by the minimum standards prescribed in § 1003.39. Known outlets for marketable dates have been and are likely to continue for some time to be insufficient to absorb all of the dates available under the minimum standards of quality. If elimination of any dates is necessary it should be of the lower grades or less desirable sizes, or both; thereby placing in trade channels or products only the higher valued dates with consequent better returns to growers.

In order to provide further assurance that, when dates are to be so eliminated from the outlets for marketable dates, only dates of the poor qualities will be diverted, the provisions of § 1003.40 should be amended to authorize (a) additional grade regulation for restricted dates, as well as for dates that may be handled, and (b) size regulation for restricted dates and for dates that may be handled. With respect to both grade regulation and size regulation, it is intended that the regulations may differ for restricted dates and for dates that may be handled.

The current United States Standards for Grades of Dates require only that the dates be uniform in size. The record of the hearing shows that, with some exceptions, the smaller the date the lower is its quality. Hence, by size regulation, dates of the poorer qualities would, in the main, be removed from the supply of available dates; thus upgrading the remainder and providing opportunity for increased growers' returns from the outlets for marketable dates. It was testified that size is more readily ascertained than some of the quality factors of grade, and that it provides a uniform yardstick for inspection purposes.

According to the record, in some years the entire date crop may be on the small side, and some of the small dates that ripen late in the season may be of good quality. Hence, in some seasons it would be desirable to permit smaller sizes of dates to be included with the marketable dates. Some of these small dates of good quality could be used in specialty outlets and under size regulations, it may be necessary to exempt them pursuant to § 1003.52. As is now the case under the order, before establishing any additional regulation, the Secretary would need to find that such regulation would tend to effectuate the declared policy of the act.

10. Inasmuch as the proposed amendment to § 1003.40 would authorize the establishment of size regulations, it is also proposed that § 1003.41 (a) be amended to require inspection of dates prior to handling to determine if they meet the then current size regulation as well as grade regulation. Therefore, § 1003.41 (a) should be amended to provide for the inspection of dates as to their size.

It was proposed at the hearing that § 1003.41 (a) should be further amended to specify that when dates packed for handling are inspected and meet the effective regulations they should at that time be certified for handling. It was testified that handlers normally have

dates certified for handling at the time such dates are inspected because in most cases, shipment is made soon after the inspection. Moreover, at the time when dates are certified for handling, assessments under the order are paid and the required withholding of restricted dates under volume regulations is observed. It was also testified that the committee could foresee no problem that may arise in the future if the requirement as to certification at the time of inspection is set forth in the provisions of the order. Therefore, § 1003.41 (a) should also be amended to provide that when dates packed for handling are inspected and meet the effective regulations they shall be certified for handling.

11. The present provisions of § 1003.41 (b) provide that prior to shipment each handler shall, at his own expense, cause an inspection and certification to be made that dates handled for further processing are equal to the minimum grade standard except for character associated with moisture. Since § 1003.40 provides for the establishment of standards other than those prescribed in § 1003.39, it is not clear from the language of § 1003.41 (b) as to the minimum requirements such dates shall meet. Therefore, for clarification, § 1003.41 (b) should be amended to provide that prior to handling any dates for further processing each handler shall, at his expense, cause: (a) an inspection to be made to ascertain if such dates meet the applicable grade and size requirements effective pursuant to § 1003.39 or § 1003.40, except for character associated with moisture; and (b) a certification for further processing to be made of all such dates as meet such grade and size requirements.

Section 1003.41 (b) also provides that such inspection and certification requirements shall not apply to interhandler transfers of field-run dates within the area of production. It was testified that handlers also transfer graded dates to other handlers within the production area and that such transfers are essential to their operations. It is not necessary that either field-run or graded dates be inspected and certified when such transfer is wholly within the area of production because the receiving handler normally would obtain inspection and certification prior to the final shipment of such dates. Therefore, § 1003.41 (b) should also be amended to exempt from the inspection and certification requirements interhandler transfers, within the area of production, of graded dates as well as field-run dates.

12. The current provisions of the first sentence of § 1003.45 (a) provide that whenever volume regulation has been established for a crop year pursuant to § 1003.44, each handler, before or upon shipping dates, shall have withheld from shipment a quantity of marketable dates, or their equivalent in graded dates, having a weight equal to the restricted percentage referable to such shipment. Under the current provisions of § 1003.45 (c) dates may be certified for handling or for further processing at any time during the crop year, at which time the assessment requirements provided in § 1003.72 and such withholding obliga-

tion shall be met. Under these provisions, the practice has been for handlers to pay their assessments and meet their withholding obligations at the time of having dates so certified for handling or for further processing. As indicated in the record of the hearing, it was believed a handler's obligation under § 1003.45 (a) does not become firm until shipment is made. Moreover, it was believed that a handler would be entitled to an adjustment in assessments which he had previously paid at the time of certification and in the withholding obligation he had met, in the event he had more dates certified than he actually handled. However, under order operations up to the date of the hearing, no such adjustment had been requested or made.

In order to make the provisions of the order conform with practice, § 1003.45 (a) should be revised to provide that under volume regulation each handler shall, at the time of having dates of any variety certified for handling or for further processing, withhold from shipment a quantity of marketable dates of the same variety having a weight equal to the restricted percentage referable to the quantity of dates so certified. The practice of handlers meeting their withholding and assessment obligations at the time of certification facilitates compliance because a handler's obligation can be determined as soon as the inspection is completed and the certification is available to the committee, which is shortly after inspection. If the obligations were met only at the time of shipment or other disposition, it would be necessary for handlers to file with the committee reports of shipments and other dispositions more frequently than the monthly reports they now file.

As discussed below under issue 13, it is proposed to permit handlers to defer the meeting of, but not to meet, their withholding obligation by setting aside graded dates; and therefore, the phrase "or their equivalent in graded dates" included in the current provisions of § 1003.45 (a) should be deleted therefrom.

Handlers generally do not go to the expense of preparing dates and having them certified unless they have good reason for expecting to ship them. However, it is possible that a handler may not have available markets for all of such certified dates, or certified dates could thereafter become damaged or unsuitable for shipment. To take care of eventualities with respect to any excess of certified dates, a handler who has had more dates certified for handling or further processing than he subsequently shipped or otherwise handled should be permitted upon request to the committee and with its approval to have any of the excess quantity of such dates removed from certification and his withholding and assessment obligations adjusted in conformity therewith. Section 1003.45 (c) should, therefore, be amended accordingly.

Section 1003.45 (c) should be amended also to make it clear that the certification of dates for handling or further processing means the certification of dates provided in § 1003.41.

13. (a) As set forth in the notice of hearing, it was proposed to amend § 1003.45 so that a handler may (1) pledge graded dates or field-run dates with the committee in deferment of his restricted obligation, and (2) meet his restricted obligation by disposing of field-run dates in cull outlets. A substitute proposal was presented at the hearing under which dates would not be pledged with the committee but a handler would be permitted to set aside and hold graded dates or field-run dates subject to surveillance or control by the committee as a basis for a deferment in meeting a withholding obligation. As indicated in the record of the hearing, the setting aside of a quantity of field-run or graded dates which contain the required weight of marketable dates would insure that dates were available to meet the withholding obligation. The record also discloses that whether such setting aside of dates is treated as a deferment, an exception to § 1003.45 (a), or otherwise is immaterial so long as handlers are afforded an opportunity to use graded dates or field-run dates, in connection with withholding obligations.

Complete inspection by the inspection agency of graded dates which could be set aside under the substitute proposal would not occur at the time they are set aside. Moreover, until such time as the graded dates are inspected and certified as marketable dates, the extent of the handler's satisfaction of his restricted obligation would not be known. Hence, a handler's setting aside of graded dates should properly be considered as a deferment in meeting his obligation to withhold marketable dates from handling, rather than as a means of satisfying a withholding obligation.

However, with respect to the setting aside of field-run dates, the substitute proposal contemplates inspection of the dates by the inspection agency at the time they are set aside to determine the proportion of the field-run dates which would be eligible for certification as marketable dates. The quantity of such marketable dates being set aside in field-run dates (and thus withheld from handling) could thus be determined from an appropriate inspection certificate and credited against the handler's restricted obligation at that time. Therefore, the setting aside of such inspected, field-run dates should be treated as a special procedure by which a handler may meet his obligation to withhold restricted dates. Such procedure is closely related to the proposal to permit handlers to meet their restricted obligations by disposing of field-run dates in cull outlets and the two should be considered together, as hereinafter discussed.

(b) With respect to the setting aside of graded dates, the provisions of § 1003.45 should be amended so as to enable a handler, with the approval of the committee and in accordance with any rules and regulations which the committee may prescribe with the approval of the Secretary, to defer until any date not later than July 31 of the crop year his meeting of a withholding obligation. Such deferment should be accomplished by the handler setting aside and holding

such quantity of graded dates as will assure at the time of actual satisfaction of the withholding obligation a weight of marketable dates withheld from handling equal to that required to be withheld in order to meet the withholding obligation. The dates thus physically set aside would be removed from the market for free dates during the period of the deferment. Also, this mode of operation in meeting a withholding obligation would permit deferment without the handler incurring the cost of any bond; and as discussed in the next paragraph, could eliminate or reduce dual inspections.

Under the provisions of § 1003.45, dates withheld to meet the restricted obligation must be inspected. In most instances in the past when these dates were diverted or otherwise disposed of in the authorized outlets for restricted dates, another inspection and a certification, which are not required under the order, were obtained to insure that the dates were of the grade required by the outlet. Under the proposal to permit a handler to set aside graded dates in deferment of his meeting a restricted obligation, an inspection would not, as a general rule, be required at the time the dates are set aside. Thus, handlers would, in the main, be relieved of having one inspection.

It would be the responsibility of the handler who is afforded the privilege of setting aside graded dates under the deferment plan that the dates meet the requirements for marketable dates. However, in view of its responsibility in administering the program, the committee would, of course, need to assure itself that any such dates proposed to be, or which have been, set aside are, in fact, graded dates as such are proposed to be defined. Therefore, it should be provided that, if the committee has reason to believe any such dates do not meet such requirements, it shall require that the handler have an inspection of the dates at his expense as a condition to the deferment.

The period of any deferment by setting aside graded dates should not extend beyond July 31, which is the end of the crop year. Since diversions and other dispositions of restricted dates usually continue during June and July, it would be desirable that such deferments be permitted to continue through July so that disposition of such dates and termination of the deferment may coincide and one inspection serve for both.

As a condition to the committee approving the deferment, and to permit the committee to determine at any time whether the terms of the deferment are not being complied with, the handler who applies for any such deferment should be required to agree in writing that: (1) He will appropriately mark the set-aside, graded dates as such and hold them separate and apart from other dates; (2) the graded dates will not be removed from the stacks in which they are set aside without prior written permission from the committee; (3) any inspection of the dates by the committee will be permitted at any reasonable time; and (4) if the quantity, quality, or size

of the set-aside dates is found by the committee at any time to be deficient, he will promptly set aside such additional or other quantity as is necessary to correct the deficiency.

(c) Under the present provisions of the order, any restricted dates which cannot be disposed of in product form would, with few exceptions, need to be disposed of in outlets prescribed for cull dates. Although the markets for date products are being expanded, it is likely in some crop years handlers will be unable to dispose of all of their restricted dates in product outlets. A handler incurs considerable expense in grading field-run dates in order that they meet the requirements for marketable dates. Moreover, during the first part of the crop year such grading competes for the handler's time and facilities with his processing and handling of free dates. Obviously, it is unnecessary that dates be graded when they are disposed of in cull outlets. Since cull outlets are non-competitive with outlets for free dates, the disposition in cull outlets of marketable dates that are contained in field-run dates would conform with the diversion from the free market when any free and restricted percentages are established. Therefore, the provisions of § 1003.45 should be further amended so that a handler on request to the committee and with its approval may meet any of his restricted obligations by disposing of appropriate quantities of eligible (as explained in the next paragraph) field-run dates in cull outlets prescribed in § 1003.56 as proposed to be amended, or by withholding the necessary quantities of such field-run dates from handling.

According to the record of the hearing, field-run dates should contain at least 70 or 80 percent marketable dates in order to be eligible to be used by handlers in meeting their withholding obligations. Such a requirement, or a similar requirement with respect to the minimum quality of the dates, is necessary to prevent handlers from meeting their withholding obligations with field-run dates of a quality or a size such that they normally would dispose of such dates in cull outlets. If handlers used field-run dates of any quality in meeting their withholding obligations, there may be, in effect, no restriction in the quantity of dates handled, thus tending to defeat volume regulation. Therefore, the amendment should include provision for requiring that field-run dates which handlers may use in meeting their restricted obligations (by disposing of them in cull outlets or withholding them from handling) shall contain a minimum percentage of marketable dates or otherwise meet minimum standards of quality or size. Since such a minimum percentage or standards would need to be changed from time to time, depending on the general quality of the particular date crop and economic conditions, the specific minimum percentage or standards of quality or size should be specified in rules and regulations prescribed by the committee with the approval of the Secretary. Since the United States Standards for Grades of Dates are not applicable to field-run dates in all respects, the

committee would need to prescribe with the approval of the Secretary, minimum standards of quality or size for the inspection of field-run dates. Such rules and regulations and minimum standards should be prescribed and in effect before the committee grants permission to a handler to use field-run dates to meet his withholding obligation.

Upon such disposal of eligible field-run dates, or withholding such dates from handling, the handler should be credited with satisfaction of his restricted obligation to the extent of that proportion of the eligible field-run dates that meets the applicable minimum grade and size requirements for marketable dates. Prior to such disposal, or withholding from handling, the handler should, at his expense, have the field-run dates inspected; and that portion of such dates meeting the applicable minimum grade and size requirements for marketable dates should be determined pursuant to such inspection. The inspection would be the only inspection required and is necessary in order to determine the proportion of the eligible field-run dates that constitutes marketable dates. In any event, under the order all restricted dates have to be inspected in connection with handlers' meeting their withholding obligations.

In permitting the handler to so satisfy his withholding obligation, the committee should require the handler to agree in writing, as a condition for the committee's granting the permission, that: (a) Any such field-run dates set aside will be held separate and apart from other dates and appropriately marked; (b) such dates will not be removed from the stacks in which so set aside for substitution of other dates, disposition or for any other reason without prior written permission of the committee; and (c) inspection of such dates by the committee will be permitted at any reasonable time. Such an agreement is necessary so that the committee may ascertain whether the provisions of § 1003.45 (a) are being complied with. It should be specified in the order that, in order to satisfy a withholding obligation by direct disposal of field-run dates into cull outlets, the disposal shall be under the supervision of the committee and through persons on a committee approved list of feeders and manufacturers. This follows from the committee's responsibilities in the administration of the program and the requirements of the order with respect to the disposition of cull dates. It should also be specified in the order that any handler who sets aside field-run dates to meet his withholding obligation may, upon giving notice to the committee of any of the following proposed actions and obtaining its approval, (1) dispose of any such set-aside, field-run dates in the same manner as provided for direct disposal, (2) grade such dates and have the graded dates certified as marketable dates and withhold or dispose of the marketable dates as restricted dates, or (3) substitute for the set-aside, field-run dates an equivalent quantity of marketable dates which he shall withhold or dispose of as restricted dates. These

actions by the handler follow from or are indicated by, the provisions of the order, as proposed to be amended, with respect to withholding restricted dates from handling.

The handler's privilege of meeting any of his restricted obligation for a particular crop year by withholding from handling, or disposing of field-run dates in cull outlets, should not extend beyond the crop year (July 31). While any grading of the set-aside, field-run dates is likely to be accomplished by March 31, there is no reason for having the privilege of setting aside, or disposal in cull outlets, of field-run dates terminate earlier than July 31. As a necessary incident to its administration of the order, the committee should prescribe rules and regulations, with the approval of the Secretary, covering operation of this phase of the program. Among other operations, the inspection, disposition, and satisfaction of a handler's restricted obligation, should be pursuant to such rules and regulations.

14. Data presented at the hearing shows that dates were packed in more than 22 different packages of varying sizes and capacities during the 1956-57 crop year. Some of the containers differ in size from the next larger containers by a few ounces, and in a few cases by less than an ounce. It was testified that from an industry standpoint, the practice of packing dates in such an array of container sizes has caused packing costs to be increased through the necessity of purchasing additional equipment and packing materials and by time lost in changing packing lines to accommodate different package sizes; also, that the existence of such an array of package sizes causes confusion in marketing with respect to pricing and, at times, misunderstanding on part of the trade. As an example of the latter, the industry as a whole might be packing and selling a 12-ounce package, which is a size of package widely used at present, and some person could offer a 11½ or 11-ounce package at a little lower price. While the person offering the lighter package might specify the weight in his offer, the lighter weight probably would not be specified when information concerning the offer is passed among buyers and sellers. Thus, the trade could be confused as to the prices at which dates are being offered and this would not promote orderly marketing. By having uniformity as to the weights of the consumer packages, proponents believe less confusion would exist in the minds both of the trade and the consumer.

The record also indicates that the consumer could be assured more acceptable dates through the use of containers or packages which provide better sanitation or cause the dates to keep better.

At this time the committee does not have all of the necessary information to make decisions as to any container regulation, but needed information may be obtained in the operation of the program. To provide authority in the order to correct problems such as those indicated in the foregoing discussion of this issue, the order should be amended to provide that whenever the committee deems it advis-

able to establish a container regulation for any variety of dates, it shall recommend to the Secretary the size, capacity, weight, or pack of the container or containers, which may be used in the handling or packaging of dates, or both. It should be provided that if the Secretary should find upon the basis of such recommendation or other information available to him that such container regulation would tend to effectuate the declared policy of the act, he shall establish such regulation. Notice of the container regulation and of its effective date should be sent by the committee to all handlers of record, as is the case with other regulations under the order. Such notice to handlers would usually precede the effective date of a regulation and thereby afford handlers maximum time to prepare therefor and adjust their operations accordingly. According to the record of the hearing, any such regulation should be applicable to all types of date containers, including bags, and container size should be measured by weight of the contents and not by shape or dimension of the container. With research to provide a proper basis for decisions, container regulations could result in increased returns to producers.

There was considerable testimony at the hearing also to the effect: (a) Dates are more of a specialty item than some of the fruits and vegetables which are generally presented to the consumer more or less in bulk; (b) the date industry has a difficult task in trying to sell all of the tonnage it produces, and has to do that through the designing and promoting packs that the consumer will accept; (c) there have to be changes in style, changes in weights, and changes in the type of package to create or stimulate interest on the part of the consumer; and (d) exemptions pursuant to § 1003.52 would need to be granted for specialty packs, including, but not limited to, those for sale direct to consumers, for mail order, and to certain department stores. Witnesses testifying were almost unanimous in believing that appropriate container regulations could contribute to the solution of industry problems; and authority for establishing such regulations should be contained in the order.

15. The provisions of § 1003.51 relating to interhandler transfers of dates should be amended by removing therefrom the requirements that handlers give notice to, and obtain the permission of, the committee before transferring dates to another handler. In lieu of the deleted provisions, a reporting requirement should be included.

In past operations, the committee has found that the advance notice requirements are unnecessary for effective operation of the program and that removal of these requirements would simplify administration. However, it is necessary that the committee's records pertaining to the respective holdings of dates by handlers accurately reflect the actual holdings of each handler. This could be accomplished by simply requiring each handler who transfers any such dates to another handler to report to the committee the necessary identifying

information upon the completion of the transfer.

16. (a) Sections 1003.55 and 1003.56 presently and as proposed to be amended, prescribe outlets for the disposition of dates other than free dates. It is, of course, intended that the disposition by any person of such dates be limited to the prescribed outlets. In order to clarify the limitations on the disposition, including use, of such dates, a new section (§ 1003.54) should be added to the order which would prescribe that, except as provided in § 1003.55 and § 1003.56, dates other than free dates shall not be used or disposed of.

(b) This marketing program contemplates that a handler will dispose of all of his marketable dates (inspected and certified as such) other than free dates in specified outlets. It appears from the evidence that the present provisions of § 1003.55 do not clearly reflect this situation. A handler who has marketable dates which he does not use to meet any restricted obligation should be afforded an opportunity to dispose of such dates in the outlets prescribed for restricted dates. Since restricted dates may, pursuant to § 1003.55, be diverted or otherwise disposed of for use as human food and must be inspected and certified as meeting the requirements for marketable dates, it is consistent to require that other dates which may be disposed of the same as restricted dates also must be inspected and certified as meeting the requirements for marketable dates. This would preclude substandard and cull dates from being disposed of in such outlets. It is intended, of course, that no provisions should preclude any restricted dates or other dates inspected and certified as marketable dates from being disposed of in the prescribed outlets for substandard dates and cull dates in accordance with the requirements for such outlets.

(c) Whenever any additional grade or size regulation has been established for restricted dates pursuant to § 1003.40, as proposed to be amended (issue 9), it would be inconsistent to permit the disposition of substandard dates (as such term is proposed to be defined) in restricted outlets; and such substandard dates should be limited to feed, non-table syrup, alcohol or brandy outlets or such other outlets for non-human food products as the committee concludes are non-competitive with the outlets for free and restricted dates. Maceration is one of the outlets prescribed in § 1003.55 for restricted dates and is the only human food outlet now prescribed in § 1003.56 for substandard dates. Therefore, in order to accomplish the indicated limitation as to the outlets for substandard dates, § 1003.56 should be amended by deleting the word "macerated".

As discussed under issue 9, additional grade or size regulation for restricted dates would be established only when the quantity of restricted dates is expected to exceed the demand for dates in the outlets prescribed in § 1003.55 for such dates. The outlets for restricted dates are certain export outlets and the production of human food products. Under such additional regulations, the sale of

substandard dates for maceration would tend to pull down the average price received by growers for all restricted dates sold in authorized outlets. The exclusion of substandard dates from maceration outlets would not preclude the disposition of such dates in the authorized cull outlets.

However, in crop years when supplies are such that no additional requirements pursuant to § 1003.40 are established for restricted dates producer returns may be increased by permitting the disposition of substandard dates in outlets such as that of macerated dates. The committee, should, of course, be aware of the appropriate outlets which could result in growers getting increased returns by the use of substandard dates to such outlets; and its recommendation as to the particular outlets should be furnished the Secretary for his consideration and approval. Accordingly, § 1003.56 should be further amended to provide that, in such years, substandard dates may be disposed of by use in such products destined for human consumption as may be approved by the Secretary upon recommendation of the committee. In such case, and to insure that the dates are edible and not culls, all such dates for disposition in human food products should be inspected and certified prior to disposition to assure that the dates qualify as substandard dates.

The current provisions of § 1003.56 limit the disposition of cull dates to products not destined for human consumption as food. Since the proposed deletion of "maceration" from the prescribed outlets for substandard dates would leave only products which are not destined for human consumption as food, the amendment should provide for the disposition of substandard dates and cull dates in the same outlets and without inspection, except that at any time when the disposition of substandard dates is permitted in human food outlets as indicated in the preceding paragraph, any dates for use in such outlets shall be inspected and certified as substandard or better dates.

(d) The order should be amended by adding a new § 1003.57 (and renumbering existing § 1003.57 as § 1003.58) requiring that any diversion pursuant to § 1003.55 or § 1003.56 of restricted dates, other marketable dates, substandard dates or cull dates may be accomplished only by manufacturers or feeders (which may include handlers) approved by the committee. Since some of these persons may not be handlers, such requirement is needed to provide the necessary controls to insure that the dates to be diverted are actually diverted as prescribed and do not enter unauthorized channels. The approval of such manufacturers or feeders by the committee should be in accordance with such rules, regulations and safeguards as may be prescribed by the committee pursuant to § 1003.58 of the order (to be renumbered as § 1003.59), especially since the exercise of such approval or disapproval would, in effect, be one of the safeguards against unauthorized disposition.

The new section should include a provision that, in order to become an approved manufacturer or feeder, any

person shall submit an application to the committee in which he agrees, as a condition to approval, to furnish to the committee such information as it may require and to comply with all program requirements and restrictions relative to the use and disposition of such dates.

The committee needs to obtain information from approved manufacturers, concerning diversion of dates, for use in determining marketing policy and otherwise doing necessary planning in the administration of the program. Information as to the demand for date products is important in establishing free and restricted percentages. Since substantial industry effort is being made to develop new outlets for date products, it is essential that the committee be informed as to the progress that is made in all approved outlets and the quantity of dates needed in such outlets.

17. It is proposed that the present § 1003.57 be renumbered as § 1003.58 and amended to provide that by September 30 of the subsequent crop year all dates covered by § 1003.55 and § 1003.56 shall, in accordance with such section: (a) Be converted from their whole or pitted form, or otherwise disposed of; or (b) set aside and marked for disposition pursuant to the applicable requirements of such sections. In addition, the committee should prescribe with the approval of the Secretary, such rules and regulations as are needed to assure the disposition of such dates.

Present § 1003.57 provides that dates covered by §§ 1003.55 and 1003.56 shall be converted from their whole or pitted form or sold under firm contracts to manufacturers of approved products by September 30 of the subsequent crop year. According to the record of the hearing, a number of date handlers have the necessary facilities in which to manufacture approved products from the dates covered by § 1003.55 and § 1003.56. These handlers are, in fact, also manufacturers of date products, and they have avoided difficulty in complying with the provision of present § 1003.57 by selling such dates under firm contracts to their manufacturing operations. However, other date handlers who do not carry on date manufacturing operations have found it difficult to comply with the provisions of such section. Although at the present time the outlets for date products are being expanded, such outlets are not able to use all of the dates available for the manufacture of date products.

It was testified that since, in general, almost all dates covered by §§ 1003.55 and 1003.56 are converted from their whole or pitted form within a year from the time they are produced, it would be an unnecessary burden to require handlers to dispose of, or contract for the disposal of, dates covered by such sections into approved outlets by September 30. Rather, handlers should, by September 30 of the subsequent crop year, set aside and mark for disposition in the prescribed outlets any such dates then on hand. In this way, all handlers should have no difficulty in complying with the disposition requirements; and the set-aside should keep such dates out of the usual channels of trade for packed dates.

Therefore, § 1003.57 should be amended accordingly.

18. The provisions relating to "Report of handler carry-over" (§ 1003.61) should be amended by listing two new dates and deleting the May 15 date for handler carry-over reports. The three expressed dates should be January 1, June 1, and August 1.

Section 1003.61 now provides, among other things, that handler carry-over reports shall be as of January 1 and May 15 of each crop year. The purpose of the May 15 date was to provide carry-over information early enough for the committee to use such information as a basis for developing its marketing policy for the subsequent crop year. However, in practice the marketing policy meeting has never been held prior to the middle of June. Further, handlers have at times found it difficult to report actual carry-over information as of the middle of a month because records are kept on a calendar month basis. The proposed June 1 date would recognize this record keeping practice and provide ample time for the committee to correlate the carry-over data so reported to it with other information prior to the marketing policy meeting.

In past program operations, the committee obtained from handlers on a voluntary basis, their carry-over information as of August 1—the beginning of the crop year. This information has been used by the committee in determining whether its previously recommended marketing policy for such crop year should be modified and in developing the marketing policy for the subsequent crop year. The August 1 carry-over report, therefore, is of significant value for the committee and should be expressly required.

19. The provisions of § 1003.64 should be amended by deleting therefrom paragraph (a) which requires handlers to notify the committee of their intentions to dispose of restricted dates prior to making such dispositions and by revising paragraph (b) so that the reports required upon completion of disposition cover all dates for which disposition is prescribed in §§ 1003.55 and 1003.56. Such dates, include, in addition to restricted dates (for which the report is now required), other marketable dates, substandard dates and cull dates. According to the record of the hearing, requiring handlers to report their intention to dispose of restricted dates prior to making such disposition serves no useful purpose inasmuch as all such dates are disposed of only to manufacturers which are approved by the committee. The revision of paragraph (b) so as to specify all of the dates for which disposition is prescribed in §§ 1003.55 and 1003.56 is necessary to make it clear that the reports cover all dates for which outlets are prescribed pursuant to such sections.

Pursuant to other provisions of the order, handlers now submit reports of dispositions of substandard dates and cull dates on a monthly basis. By requiring handlers to report such dispositions promptly following completion of the individual disposition, the committee will be aided in determining if such dispo-

sitions were proper and actually made as reported.

20. The provisions of § 1003.72, which relates to assessments, should be amended by deleting therefrom that sentence which established the rate of assessment for the initial crop year. Inasmuch as the initial crop year was 1955-56 that sentence is no longer applicable.

21. Section 1003.74, which relates to refunds of excess assessments paid by handlers should be amended to provide that a handler's share of the excess funds shall be the amount of assessments he paid in excess of his actual pro rata share of the committee's expenses. The present provisions of § 1003.74 provide that a handler be refunded or credited with his share of such excess funds on the basis of the ratio of the total amount paid by him to the total amount paid by all handlers. Under such language it would appear that if a handler should pay only part of his total assessments, or less than his pro rata share of committee expenses, he would nevertheless be entitled to receive a refund or credit. In such an event, those handlers who had paid the full amount of their assessments would then receive smaller refunds or credits than they would have received if all handlers had been refunded or credited the respective amounts they had paid in excess of their pro rata shares of the committee's expenses. Under the proposal, the matter of refunds or credits would be clarified and each handler would receive that part of the excess to which he is entitled.

22. The various provisions of the order (as proposed to be amended) prescribe or provide for, grade, size, and volume regulations, and the use or other disposition of restricted dates and other dates which are not certified for handling or further processing. It is, of course, intended that handlers will comply with all such regulations, and use or dispose of the restricted dates and such other dates only in authorized outlets. Therefore, it would be appropriate that a new section (§ 1003.76) be added to the order reflecting this matter of compliance. Such section should provide that no handler shall handle dates (including dates for further processing) except in conformity with, and as authorized by, or pursuant to, the applicable provisions of the part, including but not limited to the regulations relating to grade, size, and volume; and no handler shall use or otherwise dispose of restricted dates or any other dates which have not been certified for handling or for further processing, except in conformity with, and as authorized by, or pursuant to, the applicable provisions of the part.

23. As proposed in the notice of hearing and testified at the hearing, changes should be made in such other provisions of the order as are necessary to make such other provisions conform with any amendment which may result from this proceeding. The making of such changes is, of course, desirable. The proposed amendment of § 1003.40 (issue 9) would provide for the establishment of size regulations. In the proposed amendment of § 1003.45 (issue 12) the word "handling" rather than "shipping" would be

used, and following the words "certified for handling" the words "or for further processing" would be inserted. While the changes in connection with the word "handle," or its various forms, are themselves to some extent changes to bring about conformity to existing provisions of the order, nevertheless other changes should be made in the order to conform the provisions to all of such revisions, as follows: (a) Insert in § 1003.34 (a) after the word "grades", the words "and sizes"; (b) insert in § 1003.34 (e) after the word "grade", the words "and size"; (c) change the word "shipped" to "handled" wherever such word appears in §§ 1003.41 (c) and 1003.44 (b); and (d) insert "or for further processing" immediately after the words "handled or certified for handling" wherever such words appear in §§ 1003.46, 1003.50, 1003.72 and 1003.73.

Ruling on proposed findings and conclusions. The period during which interested parties might file briefs with the Hearing Clerk of the Department with respect to testimony presented at the hearing and the conclusions to be drawn therefrom expired on April 24, 1958. No briefs were filed.

General findings. (1) The marketing agreement and order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The marketing agreement and order, as hereby proposed to be amended, regulate the handling of domestic dates (produced or packed in the Counties of Riverside, Orange and Los Angeles, and that portion of San Bernardino County lying west of 116 degrees W. longitude, located within the State of California) in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The marketing agreement and order, as hereby proposed to be amended, are limited in their application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act and the issuance of several orders applicable to subdivisions of the area of production would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of dates in the area of production covered by the marketing agreement and order, as hereby proposed to be amended, which would require different terms applicable to different parts of such area; and

(5) All handling of dates produced or packed in the area of production, as hereby proposed to be amended, is either in the current of interstate or foreign commerce, or directly burdens, obstructs or affects such commerce.

Recommended amendment of the marketing agreement and order. The following amendment of the marketing agreement and order is recommended as the detailed means by which the aforesaid conclusions may be carried out:

1. Revise the provisions of § 1003.4 to read as follows:

§ 1003.4 *Area of production.* "Area of production" means the Counties of Riverside, Orange and Los Angeles, and that portion of San Bernardino County lying west of 116 degrees W. longitude, located within the State of California.

2. Insert in § 1003.9, between the words "production" and "shall", the phrase "or the movement of dates by a handler to storage for his account within the area of production".

3. Delete from § 1003.11 the words "the quantity of marketable" and insert, in lieu thereof, the words "the aggregate quantity of whole dates and pitted".

4. Delete from § 1003.12 the phrase, "minimum grade permitted to be handled by the regulations imposed by this part", and insert, in lieu thereof, the phrase, "applicable minimum grade then in effect pursuant to § 1003.39 and any additional, applicable requirements, pursuant to § 1003.40, which may then be in effect for restricted dates."

5. Add a new § 1003.15 as follows:

§ 1003.15 *Substandard dates.* "Substandard dates" means those dates which fail to meet the requirements for marketable dates but are not cull dates.

6. Add a new § 1003.16 as follows:

§ 1003.16 *Cull dates.* "Cull dates" means dates which fail to meet the requirements (with respect to freedom from defects) prescribed in section 798 of the Agricultural Code of California for dates for use in products or by-products other than alcohol, brandy, and products not intended for human consumption.

7. Add a new § 1003.17 as follows:

§ 1003.17 *Graded dates.* "Graded dates" means those dates which are eligible for certification as marketable dates.

8. Renumber present § 1003.15 as § 1003.18.

9. Renumber present § 1003.16 as § 1003.19 and revise its provisions to read as follows:

§ 1003.19 *Cooperative marketing association.* "Cooperative marketing association" means a cooperative marketing association of date growers organized under the laws of the State of California.

10. Renumber § 1003.17 as § 1003.20 and amend said section by deleting "and Riverside Counties of California", and inserting in lieu thereof, ", Riverside and Orange Counties, and that portion of San Bernardino County lying west of 116 degrees W. longitude located within the State of California".

11. Delete §§ 1003.21, 1003.22, 1003.23 and 1003.24, and insert, in lieu thereof, the following:

§ 1003.21 *Establishment of Date Administrative Committee.* A Date Administrative Committee, composed of seven members with an alternate member for each such member, is hereby established to administer the terms and conditions of this part: *Provided*, That the number of members and alternates may be changed consistent with findings made pursuant to § 1003.22 (b).

§ 1003.22 *Membership representation.* (a) Members and alternate members shall, until such time as a realignment of the committee membership is effected pursuant to paragraph (b) of this section, be selected by the Secretary from each of the following groups and on the following basis:

(1) One member from handlers, each of whom produced during the then current crop year to February 28 at least 51 percent of all of the dates handled by him during such period, and producers, each of whom delivered to such handlers during the then current crop year to February 28 at least 50 percent of his deliveries to all handlers during such period;

(2) Three members from cooperative marketing associations of whom one shall be an employee and serve as a handler member of the committee, and two shall be from among the producer members of such associations;

(3) Three members from all other handlers and producers of whom two shall be handler members selected from among such other handlers, and one shall be a producer member selected from among such other producers.

The foregoing representation is based on each member representing approximately 14.28 percent of date tonnage handled.

(b) Whenever the Secretary finds that any change in tonnage handled in any group is equivalent to more than one-half of the basic 14.28 percent for a member, he shall so notify the committee and thereafter nominations and selections of members and alternates in that group shall be in such numbers and follow such alignment as the Secretary may determine: *Provided*, That each group shall be entitled to at least one member and alternate. Any such realignment shall be based on the tonnage of dates acquired from producers and certified for handling or further processing during the then current crop year to February 28. Any increase or decrease in the number of members representing a particular group shall not be dependent upon a change in membership representation of any other group nor shall any increase or decrease in the total number of members on the committee change the basic percentage herein established for tonnage representation for members. Except for group (a), any change in the nomination and selection of members for any group shall be made so as to keep producer members and handler members in balance insofar as possible.

§ 1003.23 *Term of office.* The term of office for members and alternate members shall be one year ending on May 14 but each such member and alternate member shall continue to serve until his successor has been selected and has qualified.

§ 1003.24 *Nominations.* (a) Each group specified in § 1003.22 may nominate, at a nomination meeting or meetings held on or before April 15 of each year, members and alternates to represent the group. With respect to the group specified in § 1003.22 (c), separate meetings of handlers and of producers

shall be held to nominate the handler representatives and producer representatives, respectively.

(b) At any meeting of the group specified in § 1003.22 (a), each producer and each producer-handler shall be entitled to one vote for each position to be filled. At the respective meetings of the cooperative marketing associations in the group specified in § 1003.22 (b), and of the handlers in the group specified in § 1003.22 (c), each such association and each such handler shall be entitled to vote for each position to be filled as a representative for the particular group; and each such vote shall be weighted by the tonnage of dates acquired from producers and certified, for handling or for further processing, through February 28 of the then current crop year. At any meeting of the producers in the group specified in § 1003.22 (c), each such producer shall be entitled to one vote for each position to be filled. The individual receiving the highest number of votes for a position shall be the nominee. Immediately after the completion of the meetings covered by this section, the committee shall report to the Secretary the nominees for each position together with a certificate of all necessary tonnage data and other information deemed by the committee to be pertinent or which is requested by the Secretary. The Secretary shall select, in his discretion, members and alternates from such nominees or from other qualified persons; but any such selection shall be from the groups, and on the basis, prescribed in § 1003.22. However, the Secretary shall allow a reasonable time for nominations to be received before proceeding with any selection without regard to nominations.

12. Delete from § 1003.31 the second and third sentences and insert, in lieu thereof, the following two sentences: "All decisions of the committee shall be by an affirmative vote of at least two-thirds (in case of fractional numbers, rounded to the nearest whole number) of the members of the committee. The presence of two-thirds, determined in the same way, of the members of the committee shall be required to constitute a quorum."

13. Amend § 1003.34 (a) to read as follows:

(a) Its estimate of the total date production separated as to marketable dates and dates of other grades and, when applicable, sizes, which will be produced in such crop year;

14. Amend § 1003.34 (e) by inserting the words "and size" after the word "grade".

15. Delete from § 1003.39 the first sentence and insert, in lieu thereof, the following sentence: "In order to effectuate the declared policy of the act all whole dates and pitted dates handled under this subpart shall meet the requirements of U. S. Grade C, or, if for further processing, U. S. Grade C (Dry), of the effective United States Standards for Grades of Dates: *Provided*, That the Secretary may, upon recommendation of the committee, prescribe other minimum standards of quality."

16. Delete from § 1003.39 the last sentence and insert, in lieu thereof, the fol-

lowing two sentences: "Notice of the minimum standard regulation shall be sent by the committee to all handlers of record. On and after the effective date of such regulations no handler shall handle dates except in accordance with such minimum standard."

17. Delete § 1003.40 and insert, in lieu thereof, the following:

§ 1003.40 *Additional grade or size regulations.* Whenever the committee deems it advisable to establish grade or size requirements for any variety of dates, in addition to the minimum standard provided pursuant to § 1003.39, to govern dates of such variety to be handled or to be withheld to meet restricted obligation, or both, it shall recommend to the Secretary requirements as to grade based on the effective United States Standards for Grades of Dates or any modification thereof, and such size requirements as it may deem appropriate. If the Secretary finds, upon the basis of such recommendation or other information available to him, that such additional grade or size regulation, or both such regulations, will tend to effectuate the declared policy of the act, he shall establish such regulations. Notice thereof, showing the effective date, shall be sent by the committee to all handlers of record. On and after the effective date no handler shall handle dates of such variety or withhold such dates to meet withholding obligation except in accordance with such regulations.

18. Amend § 1003.41 in the following respects: (1) Revise § 1003.41 (a) and (b) to read as follows:

§ 1003.41 *Inspection*—(a) *Packed dates.* Prior to handling any dates packed for handling each handler shall, at his own expense, cause: (1) An inspection to be made of such dates in order to ascertain if such dates meet the applicable grade and size regulations prescribed or provided for in this part; and (2) a certification for handling to be made of all such dates as meet such grade and size regulations.

(b) *Dates for further processing.* Prior to handling any dates for further processing each handler shall, at his own expense, cause: (1) An inspection to be made to ascertain if such dates meet the applicable grade and size requirements effective pursuant to § 1003.39 or § 1003.40, except for character associated with moisture; and (2) a certification for further processing to be made of all such dates as meet such grade and size requirements; *Provided,* That such inspection and certification requirements shall not apply to inter-handler transfers within the area of production of field-run dates or graded dates.

(2) Change in the first sentence of § 1003.41 (a), the word "shipped" to the word "handled".

19. Change in § 1003.44 (b) the word "shipped" to "handled".

20. Delete § 1003.45 (a) and insert, in lieu thereof, the following:

(a) Whenever free and restricted percentages for any variety of dates have been established for a crop year by the

Secretary in accordance with § 1003.44, each handler shall, at the time of having dates of such variety certified for handling or for further processing, withhold from handling a quantity of marketable dates of such variety having a weight equal to the restricted percentage for such variety referable to the dates so certified. The weight required to be withheld shall be determined by dividing the restricted percentage by the free percentage and applying the resultant withholding percentage, rounded to the nearest one-tenth of one percent, to the weight of dates so certified. The withholding percentage, computed as aforesaid, shall be established by the Secretary. When pitted dates are certified, the weight to be withheld shall be determined by dividing the weight of the pitted dates certified for handling or further processing by 0.90 and applying the withholding percentage.

21. Delete § 1003.45 (c) and insert, in lieu thereof, the following:

(c) At any time during the crop year dates may be inspected and certified for handling or for further processing as provided in § 1003.41. Dates so certified shall, at the time of certification, be identified by appropriate seals, stamps, or tags to be furnished by the committee and to be affixed to the containers by the handler under the direction and supervision of the committee or its designated inspectors. The assessment requirements in § 1003.72 as well as the withholding obligation prescribed in paragraph (a) of this section shall be met at the time of certification. However, a handler who has had more dates certified for handling or further processing than he subsequently shipped or otherwise handled may, upon request to the committee and with its approval, have any of such excess quantity of the certified dates removed from certification and his withholding and assessment obligations adjusted accordingly. A handler who has had dates certified for handling or further processing and has not had them removed from certification, may carry such certified dates over into the new crop year and need not pay the assessment nor meet the requirements of any withholding percentages established for such year.

22. Insert after § 1003.45 (d) new paragraphs (e) and (f) as follows:

(e) On request to the committee and with its approval, a handler may, in accordance with the provision of this paragraph and any applicable rules and regulations which the committee may prescribe with the approval of the Secretary, defer until any date not later than July 31 of the crop year the meeting of any portion of his obligation to withhold restricted dates by setting aside such amount of graded dates as will assure a quantity of marketable dates equal at least to the quantity needed to be withheld from handling to meet his withholding obligation. With respect to any such dates the handler may set aside in connection with such a deferment, the committee may require, if it deems it necessary, the handler to have made, at

his own expense, such inspection as may be necessary for a determination as to whether such dates conform to the applicable requirements for dates that may be set aside under this paragraph. As a condition to the committee approving the deferment, the handler shall agree in writing that: (1) He will adequately mark and identify the set-aside graded dates as such and hold them separate and apart from other dates; (2) the graded dates will not be removed from the stacks in which so set aside without the prior written permission of the committee; (3) inspection of the dates by the committee will be permitted at any reasonable time; and (4) if the quantity, quality, or size of the set-aside dates is found by the committee at any time to be deficient, the handler will promptly set aside such additional or substitute quantity of graded dates as is necessary to correct the deficiency.

(f) Upon the committee prescribing, with the approval of the Secretary, minimum standards for inspection of field-run dates and appropriate administrative rules and regulations, a handler may, in accordance therewith and the provisions of this paragraph, satisfy all or any part of his obligation to withhold restricted dates by setting aside field-run dates or by disposing of field-run dates in outlets prescribed in, or pursuant to, § 1003.56. The field-run dates shall be of such quality or size as shall be prescribed in such rules and regulations. The setting aside, direct disposal, and disposal of any field-run dates set aside shall occur prior to July 31 of the crop year in which the withholding obligation occurs. Prior to the disposal or setting aside of the field-run dates, the handler shall have had them inspected to determine the weight of dates eligible to satisfy withholding obligation. Upon such disposal or setting aside of the field-run dates, the handler shall be credited with satisfaction of his restricted obligation to the extent of the eligible weight of dates. In permitting the handler to so satisfy his withholding obligation the committee shall require the handler to agree in writing that: (1) Any field-run dates set aside will be held separate and apart from other dates and appropriately marked; (2) such dates will not be removed from the stacks in which so set aside for substitution of other dates, disposition, or for any other reason without prior written permission of the committee; and (3) inspection of said dates by the committee will be permitted at any reasonable time. In order to satisfy a withholding obligation by direct disposal of field-run dates into cull outlets, the disposal shall be under the supervision of the committee and through persons on a committee approved list of feeders and manufacturers. The handler may, upon giving prior notice to the committee of any of the following proposed actions with respect to field-run dates withheld and obtaining its approval, (i) dispose of any such set-aside, field-run dates in the same manner as provided for direct disposal (ii) grade such dates and have the graded dates certified as marketable dates and withhold or dispose of such marketable dates

as restricted dates, or (iii) substitute for the set-aside, field-run dates an equivalent quantity of marketable dates which he shall withhold or dispose of as restricted dates.

23. Add a new § 1003.48 as follows:

§ 1003.48 *Container regulation.* Whenever the committee deems it advisable to establish a container regulation for any variety of dates, it shall recommend to the Secretary the size, capacity, weight, or pack of the container, or containers, which may be used in the handling or packaging of dates, or both. If the Secretary finds upon the basis of such recommendation or other information available to him that such container regulation would tend to effectuate the declared policy of the act he shall establish such regulation and notice thereof showing the effective date shall be sent by the committee to all handlers of record. After the effective date of such regulation, no handler shall handle dates of such variety except in accordance with such regulation and all other applicable requirements in effect pursuant to this part.

24. Delete from § 1003.51 the first sentence and insert, in lieu thereof, the following: "Transfers of dates may be made from one handler to another, and each handler who so transfers any such dates shall immediately upon the completion of the particular transfer notify the committee of the transfer, specifying the date of the transfer, the quantity and variety of dates involved, and the name of the receiving handler."

§ 1003.54 *Disposition of other than free dates.* Dates other than free dates shall not be used or otherwise disposed of except as provided in §§ 1003.55 and 1003.56.

26. Delete §§ 1003.55, 1003.56, and 1003.57 and insert, in lieu thereof, the following:

§ 1003.55 *Outlets for restricted and other marketable dates.* Restricted dates may be disposed of only through the exportation to such countries as the committee may approve or by diversion in such form as rings, chunks, pieces, butter, macerated, or paste, or any other products which the committee concludes to be appropriate and which will result in the dates moving into consumption in a form other than that of whole dates or pitted dates. Dates other than restricted dates may also be so disposed of if they are inspected and certified as meeting the requirements for marketable dates. However, the provisions of this section shall not preclude any such dates from being disposed of in the outlets for substandard dates and cull dates prescribed in § 1003.56.

§ 1003.56 *Outlets for substandard and cull dates.* Substandard dates and cull dates may be disposed of without inspection, but only in feed, non-table syrup, alcohol, or brandy outlets, or in such other outlets for non-human food products as the committee concludes are non-competitive with the outlets for free and restricted dates: *Provided,* That in crop years when no additional

requirements have been established for restricted dates of a particular variety pursuant to § 1003.40, substandard dates of that variety which have been inspected and certified as such may also be disposed of by diversion into such products for human consumption as may be approved by the Secretary upon recommendation of the committee.

§ 1003.57 *Approved manufacturers or feeders for diversion of restricted, other marketable, substandard, and cull dates.* (a) Diversion, pursuant to § 1003.55 or § 1003.56, of restricted dates, other marketable dates, substandard dates, or cull dates shall be accomplished only by such persons (which may include handlers) as are approved manufacturers or feeders. Any person may become an approved manufacturer or feeder if he (1) submits an application to the committee in which he agrees, as a condition to approval of his application, to furnish to the committee such information as it may require and to comply with the requirements and restrictions relative to the use and disposition of such dates, as set forth in this part, and (2) receives from the committee written approval of his application. The application and approval shall be in accordance with such rules, regulations and safeguards as may be prescribed pursuant to § 1003.59.

§ 1003.58 *Terminal dates.* Dates covered by §§ 1003.55 and 1003.56 shall, by September 30 of the subsequent crop year (a) in accordance with the applicable requirements of such sections, be disposed of, or be converted from their whole or pitted form; or (b) be set aside and marked for disposition pursuant to the applicable requirements of such sections. The committee may prescribe, with the approval of the Secretary, such rules, regulations and safeguards, pursuant to § 1003.59, as may be necessary to prevent dates covered by §§ 1003.55 and 1003.56 from interfering with the objectives of this part.

27. Renumber existing § 1003.58 as § 1003.59.

28. Amend § 1003.61 to read as follows:

§ 1003.61 *Reports of handler carry-over.* Each handler shall file each year with the committee written reports of his carry-over of dates as of January 1, June 1, and August 1, and at such other times as the committee may prescribe. Such reports shall be filed within 15 days of the respective dates.

29. Amend § 1003.64 to read as follows:

§ 1003.64 *Reports on disposition of restricted, other marketable, substandard and cull dates.* Each handler disposing of any quantity of restricted dates or other marketable dates, substandard dates, or cull dates for which disposition is prescribed in §§ 1003.55 and 1003.56 shall promptly thereafter report such disposition to the committee in such form as the committee may prescribe.

30. Delete from § 1003.72 the fourth sentence.

31. Amend § 1003.74 to read as follows:

§ 1003.74 *Refunds.* Excess funds held by the committee at the conclusion of a crop year may be used to defray expenses

for no more than the ensuing four months and thereafter, within a reasonable time, the committee shall credit or, upon demand, refund the aforesaid excess to handlers who contributed to such excess. A handler's share of the excess funds shall be the amount of assessments he paid in excess of his actual pro rata share of the expenses of the committee.

32. Add a new § 1003.76 as follows:

§ 1003.76 *Compliance.* No handler shall handle any dates (including dates for further processing) except in conformity with, and as authorized by or pursuant to, the applicable provisions of this part, including but not being limited to the regulations relating to grade, size, and volume; and no handler shall use or otherwise dispose of restricted dates or any other dates which have not been certified for handling or for further processing except in conformity with, and as authorized by or pursuant to, the applicable provisions of this part.

33. Insert "or for further processing" immediately after the words "handled or certified for handling" wherever such words appear in §§ 1003.46, 1003.50, 1003.72 and 1003.73.

Dated: July 11, 1958.

[SEAL] F. R. BURKE,
Acting Deputy Administrator,
Marketing Services.

[F. R. Doc. 58-5446; Filed, July 16, 1958;
8:45 a. m.]

[7 CFR Part 1020]

HANDLING OF APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

APPROVAL OF EXPENSES AND FIXING OF RATE OF ASSESSMENT FOR 1958-59 FISCAL YEAR

Consideration is being given to the following proposals by the Washington Apricot Marketing Committee established under the marketing agreement and Order No. 120 (7 CFR Part 1020; 22 F. R. 3514) regulating the handling of apricots grown in designated counties in Washington, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 691 et seq.), as the agency to administer the terms and provisions thereof:

(a) That the Secretary of Agriculture find that expenses not to exceed \$10,306 will be necessarily incurred by said committee during the fiscal period (April 1, 1958, through March 31, 1959), for its maintenance and functioning under the aforesaid marketing agreement and order; and

(b) That the Secretary of Agriculture fix, as the share of such expenses which each handler who first handles apricots shall pay during such fiscal period in accordance with the aforesaid marketing agreement and order, the rate of assessment of \$1.50 per ton of apricots so handled by such handler during such fiscal period.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals should

PROPOSED RULE MAKING

file the same with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D. C., not later than the 7th day after the publication of this notice in the FEDERAL REGISTER.

Terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order.

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

Dated: July 11, 1958.

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

[F. R. Doc. 58-5467; Filed, July 16, 1958;
8:49 a. m.]

[7 CFR Part 1022]

HANDLING OF SWEET CHERRIES GROWN IN
DESIGNATED COUNTIES IN WASHINGTONAPPROVAL OF EXPENSES AND FIXING OF RATE
OF ASSESSMENT FOR 1958-59 FISCAL
YEAR

Consideration is being given to the following proposals by the Washington Cherry Marketing Committee established under the marketing agreement and Order No. 122 (7 CFR Part 1022; 22 F. R. 3835) regulating the handling of sweet cherries grown in Designated Counties in Washington, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), as the agency to administer the terms and provisions thereof:

(a) That the Secretary of Agriculture find that expenses not to exceed \$10,340.00 will be necessarily incurred by said committee during the fiscal period (April 1, 1958, through March 31, 1959) for its maintenance and functioning under the aforesaid marketing agreement and order; and

(b) That the Secretary of Agriculture fix, as the share of such expenses which each handler who first handles cherries shall pay during such fiscal period in accordance with the aforesaid marketing agreement and order, the rate of assessment of \$1.50 per ton of cherries so handled by such handler during such fiscal period.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals should file the same with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D. C., not later than the 7th day after the publication of this notice in the FEDERAL REGISTER.

Terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order.

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

Dated: July 11, 1958.

[SEAL] FLOYD F. HEDLUND,
Deputy Director, Fruit and Veg-
etable Division, Agricultural
Marketing Service.

[F. R. Doc. 58-5468; Filed, July 16, 1958;
8:50 a. m.]

FEDERAL POWER COMMISSION

[18 CFR Part 2]

[Docket No. R-168]

GENERAL POLICY AND INTERPRETATIONS
NONACCEPTABILITY OF RATE FILINGS BASED
UPON STATE-PREScribed MINIMUM PRICES
ORDER FIXING DATE OF ORAL ARGUMENT

JULY 11, 1958.

By notice of proposed rulemaking issued April 28, 1958, in docket No. R-168, published in the FEDERAL REGISTER on May 2, 1958 (23 F. R. 2973), the Commission proposed to take certain actions with respect to certain rate filings based upon State-prescribed minimum prices.

Interested persons were advised that they could submit data, views, and comments in writing concerning these proposals not later than May 27. On or before that date, the Commission received such views and comments, to-

gether with several requests for an opportunity to present the views orally with respect to the proposed action.

The Commission finds: It is reasonable and appropriate for the purposes of the administration of the Natural Gas Act and for carrying out the provisions thereunder that interested persons be afforded an opportunity to present their views orally with respect to the proposals as hereinafter ordered.

The Commission orders:

(A) Oral argument in the above-entitled matter be had before the Commission on July 29, 1958, commencing at 10:00 a. m., e. d. s. t., in the Hearing Room of the Commission, 441 G Street NW., Washington, D. C., for the purpose of affording interested persons an opportunity to present their views orally with respect to the proposed action by the Commission as set forth in the notice of April 28.

(B) On or before July 25, 1958, interested persons intending to participate in the oral argument shall advise the Secretary of such intention and shall state the amount of time they wish to have allotted to them for such purpose.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-5469; Filed, July 16, 1958;
8:48 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

IDAHO

NOTICE OF PROPOSED WITHDRAWAL AND
RESERVATION OF LANDS

JULY 9, 1958.

The Bureau of Reclamation has filed an application, Serial No. Idaho 09230, for the withdrawal of the lands described below, from all forms of appropriation under the Public Land Laws but not from the mining and mineral leasing laws subject to prior approval of the Bureau of Reclamation. The applicant desires the land for enlarging Little Wood River Reservoir.

For a period of thirty days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, P. O. Box 2237, Boise, Idaho.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

BOISE MERIDIAN, IDAHO

T. 1 N., R. 20 E.,
Sec. 13; NW $\frac{1}{4}$ SE $\frac{1}{4}$.

This area includes 40 acres located north of Carey in Blaine County, Idaho.

DONALD I. BAILEY,
Acting State Supervisor.

[F. R. Doc. 58-5450; Filed, July 16, 1958;
8:46 a. m.]

IDAHO

NOTICE OF PROPOSED WITHDRAWAL AND
RESERVATION OF LANDS

JULY 9, 1958.

The City of Sandpoint, Idaho has filed an application, Serial No. Idaho 09191, for the withdrawal of the lands described below, from all forms of appropriation under the Public Land Laws, including the general mining laws and mineral leasing laws. The applicant desires the land for preservation and protection of the city water shed and water supply.

For a period of thirty days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, P. O. Box 2237, Boise, Idaho.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

BOISE MERIDIAN, IDAHO

T. 57 N., R. 2 W.,
Sec. 4; Lots 1, 6, 7, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 6; Lot 8.

This area includes 300.67 acres located in Bonner County, Idaho.

DONALD I. BAILEY,
Acting State Supervisor.

[F. R. Doc. 58-5451; Filed, July 16, 1958;
8:46 a. m.]

[Misc. 1064; 2082358]

ALASKA

REVOCATION OF ORDERS OPENING LANDS
UNDER THE FOREST HOMESTEAD ACT

JULY 11, 1958.

Upon request of the Department of Agriculture, and pursuant to the authority delegated by Departmental Order No. 2583, section 2.22 (a) of August 16, 1950, it is ordered as follows:

Subject to valid existing rights, the orders of August 10, 1948 and April 18, 1949, opening lands in the Tongass National Forest for entry under the Act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506-509) as amended, are hereby revoked so far as they affect the lands hereafter described:

a. List No. 10-11:

Land: A tract of 69.81 acres, described by metes and bounds, located on the north bank of Anchor Slough, a part of Chickamin River, approximate latitude 55°49' N., longitude 130°54'30" W.

b. List No. 10-12:

Land: A tract of 125.61 acres, described by metes and bounds, located on the north bank of Anchor Slough, a part of Chickamin River, approximate latitude 55°50'00" N., longitude 130°55'00" W.

c. List No. 10-13:

Land: A tract of 99.79 acres, described by metes and bounds, located on the south bank of Anchor Slough, and on an island between Anchor Slough and the main Chickamin River, approximate latitude 55°50' N., longitude 130°55' W.

d. List No. 10-14:

Land: A tract of 129.83 acres, described by metes and bounds, located on the shore of an unnamed island between Anchor Slough and Chickamin River, approximate latitude 55°50' N., longitude 130°55' W.

e. List No. 10-15:

Land: A tract of 126.66 acres, described by metes and bounds, located on the shore of an unnamed island between Anchor Slough and Chickamin River, approximate latitude 55°50' N., longitude 130°55' W.

f. List No. 10-16:

Land: A tract of 138.75 acres, described by metes and bounds, located on the shore of an unnamed island between Anchor Slough and Chickamin River, approximate latitude 55°50' N., longitude 130°55' W.

g. List No. 10-17:

Land: A tract of 85.94 acres, described by metes and bounds, located on the east shore of an island between Anchor Slough and Chickamin River, approximate latitude 55°50' N., longitude 130°55' W.

EARL J. THOMAS,
Acting Director,
Bureau of Land Management.

[F. R. Doc. 58-5452; Filed, July 16, 1958;
8:46 a. m.]

Bureau of Reclamation

JOHN DAY PROJECT, OREGON

ORDER OF REVOCATION

By virtue of the authority vested in the Secretary of the Interior by section 3 of the Act of June 17, 1902 (32 Stat. 388; 43 U. S. C. 416), and pursuant to Departmental Order No. 2765 of July 30, 1954, I hereby revoke Departmental order of March 21, 1917, insofar as said order affects the following-described lands; provided, however, that such revocation shall not affect the withdrawal of any other lands by said order, or affect any other order withdrawing or reserving the land hereinafter described:

WILLAMETTE MERIDIAN

T. 12 S., R. 26 E.,
Sec. 20, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 26, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 30, NE $\frac{1}{4}$ NE $\frac{1}{4}$;
Sec. 34, NE $\frac{1}{4}$ SE $\frac{1}{4}$.
T. 12 S., R. 27 E.,
Sec. 5, S $\frac{1}{2}$ SE $\frac{1}{4}$.

The areas described aggregate 360 acres.

WILLIAM I. PALMER,
Acting Associate Commissioner.

[Oregon 06048]

JULY 11, 1958.

I concur.

The records of the Bureau of Land Management will be noted accordingly.

1. The S $\frac{1}{2}$ SE $\frac{1}{4}$ of Sec. 5, T. 13 S., R. 27 E., has been patented without a mineral reservation to the United States. The lands in Sec. 20 T. 12 S., R. 26 E., are included in Power Site Reserve No. 65, and those in Secs. 30 and 34 are withdrawn for stock driveway purposes.

2. The lands, which are located 3 to 6 miles west of Dayville, Grant County, Oregon are generally rough and covered by a stand of cheat and bunch grass.

3. No application for the lands may be allowed under the homestead, desertland, small tract, or any other nonmineral public-land law unless the lands have already been classified as valuable or suitable for such type of application, or shall be so classified upon the consideration of an application. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

4. Subject to any valid existing rights, the provision of existing withdrawals, and the requirements of applicable law, the vacant public lands are hereby opened to filing of applications, selections, and locations in accordance with the following:

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

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

(2) All valid applications under the Homestead, Desert Land, and Small Tract Laws by qualified veterans of World War II or of the Korean Conflict, and by others entitled to preference rights under the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279-284 as amended), presented prior to 10:00 a. m. on August 16, 1958, will be considered as simultaneously filed at that hour. Rights under such preference right applications filed after that hour and before 10:00 a. m. on November 15, 1958, will be governed by the time of filing.

(3) All valid applications and selections under the nonmineral public-land laws, other than those coming under paragraphs (1) and (2) above, presented prior to 10:00 a. m. on November 15, 1958, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

5. The restored lands excepting those described in paragraphs 6 and 7 of this order, have been open to applications and offers under the mineral-leasing laws. They will be open to location under the United States mining laws beginning at 10:00 a. m. on November 15, 1958.

6. The lands withdrawn for power purposes have been open to location under the United States mining laws pursuant to the provisions of the act of August 11, 1955 (69 Stat. 681; 30 U. S. C. 621).

7. The lands withdrawn for stock driveway purposes have been open to applications and offers under the mineral-leasing laws. They will be open to location under the United States mining laws and the regulations in 43 CFR 185.35, at 10:00 a. m. on August 16, 1958.

8. Persons claiming veterans preference rights must enclose with their applications proper evidence of military or naval service, preferably a complete photostatic copy of the certificate of honorable discharge. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning the lands shall be addressed to the Manager, Land Office,

Bureau of Land Management, Portland, Oregon.

EARL J. THOMAS,
Acting Director,
Bureau of Land Management.

[F. R. Doc. 58-5453; Filed, July 16, 1958
8:47 a. m.]

DEPARTMENT OF AGRICULTURE

Commodity Stabilization Service and Agricultural Marketing Service

J. R. FAULKNER

NOTICE OF PUBLIC HEARING REGARDING APPLICATION

Notice is hereby given of a public hearing to be held at Room 404 U. S. Post Office and Courthouse Building, Bull & York Streets, Savannah, Georgia, beginning at 10:00 a. m., e. s. t., on July 23, 1958, upon the application of J. R. Faulkner, T/A 301 Tobacco Warehouse, Savannah, Georgia, for permissive tobacco inspection and price support services. Such public hearing will be conducted and evidence received pursuant to the concurrent and identical policy statements and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (23 F. R. 5109, 5112).

Done at Washington, D. C., this 15th day of July 1958.

[SEAL] DON PAARLBERG,
Assistant Secretary.

[F. R. Doc. 58-5516; Filed, July 16, 1958;
9:04 a. m.]

Office of the Secretary

ILLINOIS

DESIGNATION OF AREA FOR PRODUCTION EMERGENCY LOANS

For the purpose of making production emergency loans pursuant to section 2 (a) of Public Law 38, 81st Congress (12 U. S. C. 1148a-2 (a)), as amended, it has been determined that in the following counties in the State of Illinois a production disaster has caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

ILLINOIS

Clerk.	Lawrence.
Crawford.	Wabash.
Edwards.	White.
Gallatin.	

Pursuant to the authority set forth above, production emergency loans will not be made in the above-named counties after June 30, 1959, except to applicants who previously received such assistance and who can qualify under established policies and procedures.

Done at Washington, D. C., this 11th day of July 1958.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 58-5473; Filed, July 16, 1958;
8:51 a. m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

PACIFIC/STRAITS CONFERENCE AND PRINCE LINE, LTD.

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 5680-E, between the member lines of the Pacific/Straits Conference and Prince Line, Limited, covers the admission of that company to associate membership in said conference. As an associate member, Prince Line, Limited, will be obligated to abide by all the rates, rules, regulations and decisions of the conference; will be permitted to participate in conference contracts with shippers; but will have no vote on conference affairs.

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: July 14, 1958.

By order of the Federal Maritime Board.

[SEAL] GEO. A. VIEHMANN,
Assistant Secretary.

[F. R. Doc. 58-5475; Filed, July 16, 1958;
8:52 a. m.]

H. L. ZIEGLER, INC., AND DUMONT SHIPPING 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. 8316 between H. L. Ziegler, Inc., Cotton Exchange Building, Houston, Texas, and Dumont Shipping Co., Inc., 11 Broadway, New York 4, New York, is a cooperative working arrangement under which the parties will 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: July 14, 1958.

By order of the Federal Maritime Board.

[SEAL] GEO. A. VIEHMANN,
Assistant Secretary.

[F. R. Doc. 58-5476; Filed, July 16, 1958;
8:52 a. m.]

H. L. ZIEGLER, INC., AND BERRY AND MC CARTHY SHIPPING CO.

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. 8317 between H. L. Ziegler, Inc., Houston, Texas, and Berry & McCarthy Shipping Co., San Francisco, Calif., is a cooperative working arrangement under which the parties will 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: July 14, 1958.

By order of the Federal Maritime Board.

[SEAL] GEO. A. VIEHMANN,
Assistant Secretary.

[F. R. Doc. 58-5477; Filed, July 16, 1958;
8:52 a. m.]

CIVIL AERONAUTICS BOARD

[Public Notice PN 12, Amdt. 1]

DELEGATIONS OF FINAL AUTHORITY RE- LATED TO SUBSTANTIVE PROGRAM MATTERS

The Civil Aeronautics Board hereby amends Public Notice PN 12, dated May 1, 1958, as follows:

1. By amending the entire section 5, Chief, Office of Carrier Accounts and Statistics to read as follows:

Sec. 5. Chief, Office of Carrier Accounts and Statistics. The Chief, Office of Carrier Accounts and Statistics, in administering the accounting, reporting, and record-keeping requirements of Parts 241, 242, 243, 244, 248, and 249 of the Economic Regulations, is authorized to:

.01 Waive any of the accounting, reporting, and record-keeping requirements, as warranted to meet temporary or local conditions.

.02 Interpret the Board's accounting, reporting, and record-keeping requirements.

.03 Require submission by carriers of special statements necessary to an explanation of any carrier accounting and reporting practice.

123 F. R. 2946.

04 Establish detailed standard accounting, reporting, and record-keeping practices required to achieve conformance with policies promulgated by the Board.

05 Grant or deny individual requests for extension of time for filing reports.

2. By amending subsection 11.01C to read as follows:

C. Chief, Office of Carrier Accounts and Statistics—The authorities recited in section 5, except subsection 5.02.

3. By adding a new section 11.02C1, as follows:

C. By the Chief, Office of Carrier Accounts and Statistics.

1. To the Chief, Regulations and Reports Division—The authority cited in subsection 5.05.

Effective: June 24, 1958.

[SEAL] JOHN B. RUSSELL,
Acting Secretary and Comptroller.

[F. R. Doc. 58-5481; Filed, July 16, 1958; 8:53 a. m.]

[Docket No. 9090]

SHULMAN, INC.; ENFORCEMENT PROCEEDING
NOTICE OF HEARING

Notice is hereby given, pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended, that a hearing in the above-entitled proceeding is assigned to be held on July 28, 1958, at 10:00 a. m., e. d. s. t., in Room 5855, Commerce Building, 14th Street and Constitution Avenue NW., Washington, D. C., before Examiner Herbert K. Bryan.

Dated at Washington, D. C., July 14, 1958.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 58-5482; Filed, July 16, 1958; 8:54 a. m.]

[Docket Nos. 9703, 9714]

U. S. AIRCOACH AND MELVIN N. CHAPMAN
NOTICE OF PREHEARING CONFERENCE

In the matter of the application of U. S. Aircoach for an exemption (to lease an airplane from a person engaged in a phase of aeronautics) for approval of interlocking relationships, and, in the alternative, for a waiver, Docket No. 9703.

In the matter of the application of Melvin N. Chapman for approval of control under section 408 of the Civil Aeronautics Act of 1938, as amended, Docket No. 9714.

Notice is hereby given, pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended, that a prehearing conference in the above-entitled proceeding is assigned to be held on July 18, 1958, at 10:00 a. m., e. d. s. t., in Room 1509, Temporary Building No. 4, 17th Street and Constitution Avenue NW., Washington, D. C., before Examiner Leslie G. Donahue.

Dated at Washington, D. C., July 14, 1958.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 58-5483; Filed, July 16, 1958; 8:54 a. m.]

[Docket No. 9523]

EASTERN AIR LINES, INC., ET AL.; PUERTO RICO PASSENGER FARES

NOTICE OF PREHEARING CONFERENCE

In the matter of the fares of Eastern Air Lines, Inc.; Pan American World Airways, Inc., and Trans Caribbean Airways, Inc., between San Juan, Puerto Rico, on the one hand, and Miami, Florida, and New York, New York, on the other.

Notice is hereby given, pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended, that a prehearing conference in the above-entitled proceeding is assigned to be held on July 25, 1958, at 10:00 a. m., e. d. s. t., in Room 1509, Temporary Building No. 4, 17th Street and Constitution Avenue NW., Washington, D. C., before Examiner Thomas L. Wrenn.

Dated at Washington, D. C., July 14, 1958.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 58-5484; Filed, July 16, 1958; 8:54 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 12416-12419; FCC 58M-749]

NICK J. CHACONAS ET AL.

ORDER CONTINUING HEARING

In re applications of Nick J. Chaconas, Gaithersburg, Maryland, Docket No. 12416, File No. BP-10996; I. T. Cohen and Anne H. Cohen, d/b as Tri-County Broadcasting Company, Laurel, Maryland, Docket No. 12417, File No. BP-11309; The Eleven Fifty Corp., Capitol Heights, Maryland, Docket No. 12418, File No. BP-11379, TCA Broadcasting Corporation, College Park, Maryland, Docket No. 12419, File No. BP-11741; for construction permits.

The Hearing Examiner having under consideration a Joint Motion for Postponement of Hearing filed by the above-captioned applicants on July 9, 1958, requesting that the hearing now scheduled for July 14, 1958 be continued to September 16, 1958; and

It appearing that the only other party to the proceeding, the Broadcast Bureau, has no objection to the grant of the motion;

It is ordered, This 10th day of July 1958, that the motion is granted and the hearing of July 14 is continued to Tuesday, September 16, 1958; and it is further ordered, On the Examiner's own motion, that a prehearing conference will be held on Tuesday, September 2, 1958 at 10

a. m., in the offices of the Commission, Washington, D. C.

Released: July 11, 1958.

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

[F. R. Doc. 58-5488; Filed, July 16, 1958; 8:55 a. m.]

[Docket Nos. 12445-12450; FCC 58M-747]

FLORIDA GULFCOAST BROADCASTERS, INC.

ORDER CONTINUING HEARING
ET AL.

In re applications of Florida Gulfcoast Broadcasters, Incorporated, Largo, Florida, Docket No. 12445, File No. BPCT-2371; City of St. Petersburg, Florida (WSUN-TV), St. Petersburg, Florida, Docket No. 12446, File No. BPCT-2373; Suncoast Cities Broadcasting Corporation, St. Petersburg, Florida, Docket No. 12447, File No. BPCT-2389; Tampa Telecasters, Inc., Tampa, Florida, Docket No. 12448, File No. BPCT-2432; WTSP-TV, Inc., St. Petersburg, Florida, Docket No. 12449, File No. BPCT-2437; Bay Area Telecasting Corporation, St. Petersburg, Florida, Docket No. 12450, File No. BPCT-2445; for construction permits for new television broadcast stations (Channel 10).

The Hearing Examiner having under consideration (1) a Joint Petition for Leave to Amend, filed on June 30, 1958, by Bay Area Telecasting Corporation; City of St. Petersburg, Florida (WSUN-TV); Suncoast Cities Broadcasting Corporation; Tampa Telecasters, Inc., and WTSP-TV, Inc.; (2) an Opposition of Florida Gulfcoast Broadcasters, Inc., to Joint Petition for Leave to Amend, filed on July 7, 1958; and (3) a request for oral argument;

It is ordered, This 10th day of July 1958, that oral argument on the Joint Petition for Leave to Amend and the Opposition thereto, is hereby scheduled to be held at 10:00 a. m., July 18, 1958, in the offices of the Commission, Washington, D. C.;

It is further ordered, That the hearing presently scheduled for July 28, 1958, is hereby continued to a date to be set by subsequent order; and

It is further ordered, That a prehearing conference will be held on July 18, 1958, immediately following the oral argument referred to above.

Released: July 11, 1958.

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

[F. R. Doc. 58-5489; Filed, July 16, 1958; 8:55 a. m.]

[Docket Nos. 12501-12508; FCC 58M-752]

COMMUNITY TELECASTING CORP. ET AL.

ORDER SCHEDULING PRE-HEARING CONFERENCE

In re applications of Community Telecasting Corporation, Moline, Illinois,

Docket No. 12501, File No. BPCT-2339; Frederick Epstein, Roy B. Cohen, Burt H. Cohen, Milton H. Cohen and Marvin Borman d/b as KSTT Telecasting Company, Davenport, Iowa, Docket No. 12502, File No. BPCT-2356; Tele-Views News Company, Inc., Moline, Illinois, Docket No. 12503, File No. BPCT-2367; Midland Broadcasting Co., Moline, Illinois, Docket No. 12504, File No. BPCT-2370; Illiway Television, Inc., Moline, Illinois, Docket No. 12505, File No. BPCT-2428; Moline Television Corp., Moline, Illinois, Docket No. 12506, File No. BPCT-2440; Public Service Broadcasting Company, Moline, Illinois, Docket No. 12507, File No. BPCT-2442; Iowa-Illinois Television Co., Moline, Illinois, Docket No. 12508, File No. BPCT-2496; for construction permits for new television broadcast stations.

It is ordered, This 11th day of July 1958, that a prehearing conference, in accordance with § 1.111 of the rules, will be held in the above-entitled matter at 10:00 a. m., September 11, 1958, in the Commission's offices in Washington, D. C.

Released: July 14, 1958.

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

[F. R. Doc. 58-5490; Filed, July 16, 1958;
8:55 a. m.]

[Docket Nos. 12518, 12519; FCC 58M-751]

CLARION BROADCASTING CO. AND COUNTY
BROADCASTING CO.

ORDER SCHEDULING HEARING

In re applications of Victor D. Lindeman, Jr., and Robert Z. Morrison, d/b as Clarion Broadcasting Company, Clarion, Pennsylvania, Docket No. 12518, File No. BP-11332; W. E. Sheridan, Thomas Culbertson, Harriet Hearst, W. C. Hearst, W. J. McKnight III and Punxsutawney Broadcasting Company, d/b as County Broadcasting Company, Clarion, Pennsylvania, Docket No. 12519, File No. BP-11843; for construction permits.

It is ordered, This 11th day of July 1958, that Annie Neal Huntling will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on October 10, 1958, in Washington, D. C.

Released: July 14, 1958.

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

[F. R. Doc. 58-5491; Filed, July 16, 1958;
8:55 a. m.]

[Docket Nos. 12520-12523; FCC 58M-750]

LEAVENWORTH BROADCASTING CO. (KCLO)
ET AL.

ORDER SCHEDULING HEARING

In re applications of George Basil Anderson and Florence L. Anderson, d/b as Leavenworth Broadcasting Company

(KCLO), Leavenworth, Kansas, Docket No. 12520, File No. BP-11195; Wichita Beacon Broadcasting Company, Inc. (KWBB), Wichita, Kansas, Docket No. 12521, File No. BP-11207; Willie Ray Harlowe and Carroll C. Lee, d/b as Bowie-Nocona Broadcasting Company, Bowie, Texas, Docket No. 12522, File No. BP-11241; Bert F. Dimock, Jr., and Elmer Covey, d/b as Montague County Broadcasting Company, Bowie, Texas, Docket No. 12523, File No. BP-11890; for construction permits.

It is ordered, This 11th day of July 1958, that Basil P. Cooper will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on October 10, 1958, in Washington, D. C.

Released: July 14, 1958.

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

[F. R. Doc. 58-5492; Filed, July 16, 1958;
8:55 a. m.]

[Docket No. 12524]

SAMUEL JAMES ROLEY

ORDER DESIGNATING MATTER FOR HEARING
ON STATED ISSUES

In the matter of Samuel James Roley, Beverly Hills, California, suspension of amateur radio operator license (W6YUP).

The Commission having under consideration the request of Samuel James Roley, Beverly Hills, California for a hearing in the above-entitled matter;

It appearing that the said Samuel James Roley, acting in accordance with the provisions of section 303 (m) (2) of the Communications Act of 1934, as amended, filed with the Commission within the time provided therefor an application requesting a hearing on the Commission's Order of June 16, 1958, which suspended his Extra Class Amateur Radio Operator License for a period of six months; and

It appearing that under the provisions of section 303 (m) (2) of the Communications Act of 1934, as amended, said licensee is entitled to a hearing in the matter and that, upon the filing of a timely written application therefor, the Commission's Suspension Order is held in abeyance until the conclusion of proceedings in the said hearing;

It is ordered, This 10th day of July 1958, under authority contained in section 303 (m) (2) of the Communications Act of 1934, as amended, and section 0.292 (f) of the Commission's rules, that the matter of the suspension of the Extra Class Amateur Radio Operator License of Samuel James Roley be designated for hearing before a Commission Examiner, at a time and place later to be specified, upon the following issues:

1. To determine whether the licensee committed the violations of the Commission's rules as set forth in the Commission's Order of Suspension;
2. If the licensee committed such violations, to determine whether the facts

or circumstances in connection therewith would warrant any change in the Commission's Order of Suspension.

It is further ordered, That a copy of this order be transmitted by Certified Mail—Return Receipt Requested, to Mr. Samuel James Roley, 2840 North Beverly Drive, Beverly Hills, California.

Released: July 11, 1958.

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

[F. R. Doc. 58-5493; Filed, July 16, 1958;
8:55 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-15448]

MAGNOLIA PETROLEUM CO. ET AL.

ORDER FOR HEARING AND SUSPENDING
PROPOSED CHANGES IN RATES

JULY 11, 1958.

Magnolia Petroleum Company (Operator) et al. (Magnolia) on June 13, 1958, tendered for filing proposed changes in its present effective rate schedules¹ for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of Change, undated. Purchaser: El Paso Natural Gas Company. Rate schedule designation: Supplement No. 10 to Magnolia's FPC Gas Rate Schedule No. 20. Supplement No. 4 to Magnolia's FPC Gas Rate Schedule No. 48.

Effective date: July 14, 1958 (effective date is the first day after expiration of the required thirty days notice).

In support of the proposed favored-nation rate increases, Magnolia submits general statements stating that the gas sales contracts resulted from arm's-length negotiations in good faith, seller would not have committed the gas for the contractual term without price adjustment, and the proposed price is just and reasonable and is not in excess of the current field price. Magnolia also cites the increasing costs of exploration, production and gathering of gas and avers that increased prices are necessary as an incentive to continue such operations.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that Supplement No. 10 to Magnolia's FPC Gas Rate Schedule No. 20, and Supplement No. 4 to Magnolia's FPC Gas Rate Schedule No. 48, be suspended and the use thereof deferred as hereinafter ordered.

¹ Supplement No. 8 to Magnolia's FPC Gas Rate Schedule No. 20 and Supplement No. 2 to Magnolia's FPC Gas Rate Schedule No. 48 are in effect subject to refund in Docket No. G-12961.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 10 to Magnolia's FPC Gas Rate Schedule No. 20, and Supplement No. 4 to Magnolia's FPC Gas Rate Schedule No. 48.

(B) Pending such hearing and decision thereon, said supplements be and they are each hereby suspended and the use thereof deferred until December 14, 1958, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended nor the rate schedules sought to be altered thereby shall be changed until this proceeding has been disposed of, or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-5460; Filed, July 16, 1958;
8:48 a. m.]

[Docket No. G-15449]

MAGNOLIA PETROLEUM CO.

ORDER FOR HEARING AND SUSPENDING
PROPOSED CHANGES IN RATES

JULY 11, 1958.

Magnolia Petroleum Company (Magnolia) on June 13, 1958, proposed changes in its presently effective rate schedules¹ for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of Change, undated. Purchaser: El Paso Natural Gas Company. Rate schedule designation: Supplement No. 8 to Magnolia's FPC Gas Rate Schedule No. 26; Supplement No. 6 to Magnolia's FPC Gas Rate Schedule No. 76; Supplement No. 9 to Magnolia's FPC Gas Rate Schedule No. 101; Supplement No. 8 to Magnolia's FPC Gas Rate Schedule No. 102; Supplement No. 9 to Magnolia's FPC Gas Rate Schedule No. 103; Supplement No. 3 to Magnolia's FPC Gas Rate Schedule No. 119.

¹ Supplement No. 7 to Magnolia's FPC Gas Rate Schedule No. 26; Supplement No. 8 to Magnolia's FPC Gas Rate Schedule No. 101; Supplement No. 6 to Magnolia's FPC Gas Rate Schedule No. 102; Supplement No. 7 to Magnolia's FPC Gas Rate Schedule No. 103; and Supplement No. 1 to Magnolia's FPC Gas Rate Schedule No. 119 are in effect subject to refund in Docket No. G-12982 and Supplement No. 4 to Magnolia's FPC Gas Rate Schedule No. 76 is in effect subject to refund in Docket No. G-13030.

Effective date: July 14, 1958 (effective date is the first day after expiration of the required thirty days notice).

In support of the proposed favored-nation rate increases, Magnolia submits general statements stating that the gas sales contracts resulted from arm's-length negotiations in good faith; seller would not have committed the gas for the contractual term without price adjustments, and the proposed price is just and reasonable and is not in excess of the current field price. Magnolia also cites the increasing costs of exploration, production and gathering of gas and avers that the increased prices are necessary as an incentive to continue such operations.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that Supplement No. 8 to Magnolia's FPC Gas Rate Schedule No. 26; Supplement No. 6 to Magnolia's FPC Gas Rate Schedule No. 76; Supplement No. 9 to Magnolia's FPC Gas Rate Schedule No. 101; Supplement No. 8 to Magnolia's FPC Gas Rate Schedule No. 102; Supplement No. 9 to Magnolia's FPC Gas Rate Schedule No. 103; and Supplement No. 3 to Magnolia's FPC Gas Rate Schedule No. 119, be suspended and the use thereof be deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 8 to Magnolia's FPC Gas Rate Schedule No. 26; Supplement No. 6 to Magnolia's FPC Gas Rate Schedule No. 76; Supplement No. 9 to Magnolia's FPC Gas Rate Schedule No. 101; Supplement No. 8 to Magnolia's FPC Gas Rate Schedule No. 102; Supplement No. 9 to Magnolia's FPC Gas Rate Schedule No. 103; and Supplement No. 3 to Magnolia's FPC Gas Rate Schedule No. 119.

(B) Pending such hearing and decision thereon, said supplements be and they are each hereby suspended and the use thereof deferred until December 14, 1958, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended nor the rate schedules sought to be altered thereby shall be changed until this proceeding has been disposed of, or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37

(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-5461; Filed, July 16, 1958;
8:49 a. m.]

[Docket No. G-15450]

SUN OIL CO.

ORDER FOR HEARING AND SUSPENDING
PROPOSED CHANGE IN RATES

JULY 11, 1958.

Sun Oil Company (Sun) on June 11, 1958, tendered for filing a proposed change in its rate schedule for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filings:

Description: (1) Letter, dated October 31, 1957. (2) Contract, dated January 5, 1953. (3) Letter, dated April 27, 1955. (4) Supplemental Agreement, dated January 31, 1956. (5) Letter, dated February 13, 1958.

Purchaser: United Fuel Gas Company.

Rate schedule designation: (1) Sun's FPC Gas Rate Schedule No. 98. (2) Supplement No. 1 to Sun's FPC Gas Rate Schedule No. 98. (3) Supplement No. 2 to Sun's FPC Gas Rate Schedule No. 98. (4) Supplement No. 3 to Sun's FPC Gas Rate Schedule No. 98. (5) Supplement No. 4 to Sun's FPC Gas Rate Schedule No. 98.

Effective date: Date of initial delivery.

Sun submitted as a rate schedule an agreement adopting the terms and conditions of a contract dated January 5, 1953, between The Atlantic Refining Company (Atlantic) and United Fuel Gas Company (United Fuel) for the sale of gas to United Fuel from Sun's interest in the Midland-Estherwood Field, Acadia Parish, Louisiana. Sun states that its portion of the gas from the units not committed under other sales arrangements has heretofore been disposed of by Atlantic under the terms of a joint operation agreement. Atlantic's filed rate schedule for the sales in the subject field is its FPC Gas Rate Schedule No. 63, and the presently effective rate of 18.2 cents per Mcf is in effect subject to refund in suspension Docket No. G-13440. The rate schedule is also involved in two previous suspension proceedings, Docket Nos. G-9443 and G-11247. Sun has filed a certificate application to cover the sale in Docket No. G-15267.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Sun's FPC Gas Rate Schedule No. 98, and Supplement Nos. 1, 2, 3 and 4 thereto, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Sun's FPC Gas Rate Schedule No. 98, and Supplement Nos. 1, 2, 3 and 4 thereto.

(B) Pending such hearing and decision thereon, said rate schedule and the supplements thereto be and they are each hereby suspended and the use thereof deferred until July 13, 1958, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the rate schedule or supplements hereby suspended shall be changed until this proceeding has been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-5462; Filed, July 16, 1958;
8:49 a. m.]

[Docket No. 10396 etc.]

AMERICAN LOUISIANA PIPE LINE CO. ET AL.
ORDER FIXING DATE FOR ORAL ARGUMENT

JULY 11, 1958.

In the matters of American Louisiana Pipe Line Company, Docket No. G-10396; Gulf Refining Company, Docket No. G-10400; Panhandle Eastern Pipe Line Company, Docket No. G-11061.

Numerous exceptions have been filed to the initial decision issued June 12, 1958, by the Presiding Examiner in the above-entitled proceedings, and requests for oral argument thereon have been submitted in connection with the exceptions.

The Commission finds: It is appropriate in the public interest that oral argument be held on the exceptions filed to the Examiner's decision as hereinafter ordered.

The Commission orders:

(A) Oral argument before the Commission in this matter be held on August 4, 1958, 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.

(B) Parties desiring to participate in the oral argument shall advise the Secretary on or before July 22, 1958, and shall

specify the amount of time requested for presentation of argument.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-5463; Filed, July 16, 1958;
8:49 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 27-88]

TRIUMPH MINES, LTD.

ORDER TEMPORARILY SUSPENDING EXEMPTION, STATEMENT OF REASONS THEREFOR, AND NOTICE OF OPPORTUNITY FOR HEARING

JULY 10, 1958.

I. Triumph Mines, Limited ("Issuer") a Canadian corporation, filed with the Commission on May 24, 1955 a notification and offering circular relating to a proposed offering of 450,000 shares of its nonassessable common voting stock at 50 cents per share, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3 (b) thereof and Regulation D promulgated thereunder.

II. The Commission has reasonable cause to believe that Regulation D is unavailable pursuant to Rule 501 (c) (2) in that officers of the issuer, Samuel Arthur Liening and Robert Roy Armstrong, are subject to a permanent injunction issued by the United States District Court for the Western District of Washington, Northern Division on April 18, 1958 enjoining, among other things, their activities in connection with the purchase and sale of securities.

III. It is ordered, Pursuant to Rule 509 (a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under section 3 (b) and Regulation D be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for a hearing; that, within 20 days after receipt of such request, the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place for said hearing will be promptly given by the Commission.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F. R. Doc. 58-5464; Filed, July 16, 1958;
8:49 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

WERNER GÜNTHER KLEIN AND GERHARD HORST KLEIN

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

Werner Günther Klein, Thielallee 36, Berlin-Dahlem, Germany, \$50.00 in the Treasury of the United States.

Gerhard Horst Klein, Thielallee 36, Berlin-Dahlem, Germany, \$50.00 in the Treasury of the United States.

Vesting Order No. 4234; Claim Nos. 63118 and 63117.

Executed at Washington, D. C., on July 9, 1958.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 58-5478; Filed, July 16, 1958;
8:52 a. m.]

JEAN LECLABART

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

Mr. Jean Leclabart; 29 bis Rue d'Astori, Paris 8, France; Property described in Vesting Order No. 298 (7 F. R. 9636, November 26, 1942; amendment, 8 F. R. 10,517, July 28, 1943) relating to Patent Application Serial No. 283,283 (now United States Letters Patent No. 2,344,097). Claim No. 59969; Vesting Order No. 293.

Executed at Washington, D. C., on July 9, 1958.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 58-5479; Filed, July 16, 1958;
8:53 a. m.]