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## Title 5—ADMINISTRATIVE PERSONNEL

### Chapter III—Foreign and Territorial Compensation

[Dept. Reg. 108.407]

### PART 325—ADDITIONAL COMPENSATION IN FOREIGN AREAS

#### Designation of Differential Posts

Section 325.15 *Designation of differential posts*, is amended as follows, effective on the dates indicated:

1. Effective as of the beginning of the first pay period following June 27, 1959, paragraph (b) is amended by the deletion of the following:

Colombia, all posts except Barranquilla, Bogota, Cali and Medellin.

2. Effective as of the beginning of the first pay period following June 27, 1959, paragraph (a) is amended by the addition of the following:

San Andres Island, Colombia.

3. Effective as of the beginning of the first pay period following June 27, 1959, paragraph (b) is amended by the addition of the following:

Colombia, all posts except Barranquilla, Bogota, Cali, Medellin and San Andres Island.

4. Effective as of the beginning of the first pay period following December 27, 1958, paragraph (c) is amended by the addition of the following:

Ismailia, United Arab Republic.

(Secs. 102, 401, E.O. 10000, 13 F.R. 5453, 3 CFR, 1948 Supp., E.O. 10623, E.O. 10636, 20 F.R. 5297, 7025, 3 CFR, 1955 Supp.)

For the Acting Secretary of State.

LOY W. HENDERSON,
*Deputy Under Secretary for Administration.*

JUNE 19, 1959.

[F.R. Doc. 59-5502; Filed, July 1, 1959; 8:48 a.m.]

## Title 7—AGRICULTURE

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

### PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION AND STANDARDS)

### Subpart—United States Standards for Oranges (Texas and States Other Than Florida, California and Arizona) [1]

On May 8, 1959, a notice of proposed rule making was published in the FEDERAL REGISTER (24 F.R. 3731) regarding proposed amendments to the United States Standards for Oranges (Texas and States other than Florida, California and Arizona).

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, the following United States Standards for Oranges (Texas and States other than Florida, California and Arizona) are hereby promulgated pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627).

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Sec.
51.680 General.

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51.689 Unclassified.

[1] Packing of the product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

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FEDERAL REGISTER

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AUTHORITY: §§ 51.680 to 51.712 issued under secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627.

GENERAL

### § 51.680 General.

These standards apply only to the common or sweet orange group and varieties belonging to the Mandarin group, except tangerines for which separate U.S. Standards are issued. These standards do not apply to Florida, or to California and Arizona for which separate United States Standards are issued.

GRADES

### § 51.681 U.S. Fancy.

"U.S. Fancy" consists of oranges of similar varietal characteristics which are well colored, firm, well formed, mature, and of smooth texture; free from ammoniation, bird pecks, bruises, buckskin, creasing, cuts which are not healed, decay, growth cracks, scab, split navels, sprayburn, and undeveloped or sunken segments, and free from injury caused by green spots or oil spots, pitting, rough and excessively wide or protruding navels, scale, scars, thorn scratches, and free from damage caused by dirt or other foreign material, dryness or mushy condition, sprouting, sunburn, riciness or woodiness of the flesh, disease, insects or mechanical or other means.

(a) In this grade not more than one-tenth of the surface in the aggregate may be affected by discoloration. (See § 51.690.)

### § 51.682 U.S. No. 1.

"U.S. No. 1" consists of oranges of similar varietal characteristics which are firm, well formed, mature, and of fairly smooth texture; free from bruises, cuts which are not healed, decay, growth cracks, sprayburn, undeveloped or sunken segments, and free from damage caused by ammoniation, bird pecks, buckskin, creasing, dirt or other foreign material, dryness or mushy condition, green spots or oil spots, pitting, scab, scale, scars, split or rough or protruding navels, sprouting, sunburn, thorn scratches, riciness or woodiness of the flesh, disease, insects or mechanical or other means.

(a) Oranges of the early and mid-season varieties shall be fairly well colored.

(b) With respect to Valencia and other late varieties, not less than 50 percent, by count, of the oranges shall be fairly well colored and the remainder reasonably well colored.

(c) In this grade not more than one-third of the surface in the aggregate may be affected by discoloration. (See § 51.690.)

### § 51.683 U.S. No. 1 Bright.

The requirements for this grade are the same as for U.S. No. 1 except that no fruit may have more than one-tenth of its surface in the aggregate affected by discoloration. (See § 51.690.)

### § 51.684 U.S. No. 1 Bronze.

The requirements for this grade are the same as for U.S. No. 1 except that more than 10 percent but not more than 75 percent, by count, of the fruit shall have in excess of one-third of the surface in the aggregate affected by discoloration: *Provided*, That when the predominating discoloration on each of 75 percent or more, by count, of the fruit is caused by rust mite, all fruit may have in excess of one-third of the surface affected by discoloration. (See § 51.690.)

### § 51.685 U.S. Combination.

Any lot of oranges may be designated "U.S. Combination" when not less than 50 percent, by count, of the fruit in each container meets the requirements of U.S. No. 1 grade, and each of the remainder of the oranges meets the requirements of U.S. No. 2 grade, except that the fruit shall meet the following requirements for color:

(a) In this grade the U.S. No. 1 oranges shall be fairly well colored and the U.S. No. 2 oranges shall be reasonably well colored. (See § 51.690.)

### § 51.686 U.S. No. 2.

"U.S. No. 2" consists of oranges of similar varietal characteristics which are mature, fairly firm, not more than slightly misshapen, not more than slightly rough, which are free from bruises, cuts which are not healed, decay, growth cracks, and free from serious damage caused by ammoniation, bird pecks, buckskin, creasing, dirt or other foreign material, dryness or mushy condition, green spots or oil spots, pitting, scab, scale, scars, split or rough or protruding navels, sprayburn, sprouting, sunburn, thorn scratches, undeveloped or sunken segments, riciness or woodiness of the flesh, disease, insects or mechanical or other means.

(a) Each orange of this grade shall be reasonably well colored.

(b) In this grade not more than one-half of the surface in the aggregate may be affected by discoloration. (See § 51.690.)

### § 51.687 U.S. No. 2 Russet.

The requirements for this grade are the same as for U.S. No. 2 except that more than 10 percent, by count, of the fruits shall have in excess of one-half

of their surface, in the aggregate, affected by discoloration. (See § 51.690.)

**§ 51.688 U.S. No. 3.**

"U.S. No. 3" consists of oranges of similar varietal characteristics which are mature; which may be misshapen, slightly spongy, rough but not seriously lumpy for the variety or seriously cracked, which are free from cuts which are not healed and from decay, and free from very serious damage caused by bruises, growth cracks, ammoniation, bird pecks, caked melanose, buckskin, creasing, dryness or mushy condition, pitting, scab, scale, split navels, sprayburn, sprouting, sunburn, thorn punctures, riciness or woodiness of the flesh, disease, insects or mechanical or other means.

(a) Each fruit may be poorly colored but not more than 25 percent of the surface of each fruit may be of a solid dark green color. (See § 51.690.)

UNCLASSIFIED

**§ 51.689 Unclassified.**

"Unclassified" consists of oranges which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

TOLERANCES

**§ 51.690 Tolerances.**

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:

(a) *U.S. Fancy Grade.* Not more than 10 percent, by count, of the fruits in any lot may be below the requirements of this grade, but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided,* That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. None of the foregoing tolerances shall apply to wormy fruit.

(b) *U.S. No. 1 Grade.* Not more than 10 percent, by count, of the fruits in any lot may be below the requirements of this grade, other than for discoloration, but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided,* That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. In addition, not more than 20 percent, by count, of the fruits in any lot may have discoloration in excess of one-third of the fruit surface. None of the foregoing tolerances shall apply to wormy fruit.

(c) *U.S. No. 1 Bright Grade.* Not more than 10 percent, by count, of the fruits in any lot may be below the requirements of this grade, other than for discoloration, but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided,* That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. In addition, not more than 10 percent, by count, of the fruits in any lot may fail to meet the requirements relating to discoloration. None of the foregoing tolerances shall apply to wormy fruit.

(d) *U.S. No. 1 Bronze Grade.* Not more than 10 percent, by count, of the fruits in any lot may be below the requirements of this grade, but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided,* That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. No part of any tolerance shall be allowed to reduce or to increase the percentage of fruits having in excess of one-third of their surface in the aggregate affected with discoloration which is required in the grade, but individual containers may vary not more than 10 percent from the percentage required: *Provided,* That the entire lot averages within the percentage specified. None of the foregoing tolerances shall apply to wormy fruit.

(e) *U.S. Combination Grade.* Not more than 10 percent, by count, of the fruits in any lot may be below the requirements of this grade, other than for discoloration, but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage other than that caused by dryness or mushy condition, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided,* That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. In addition, not more than 10 percent, by count, of the fruits in any lot may have more than the amount of discoloration specified. No part of any tolerance shall be allowed to reduce for the lot as a whole the percentage of U.S. No. 1 required in the combination, but individual containers may have not more than a total of 10 percent less than the percentage of U.S. No. 1 required or specified: *Provided,* That the entire lot averages within the percentage specified. None of the foregoing tolerances shall apply to wormy fruit.

(f) *U.S. No. 2 Grade.* Not more than 10 percent, by count, of the fruits in any lot may be below the requirements of this grade, other than for discoloration, but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage other than that caused by dryness or mushy condition, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided,* That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. In addition, not more than 10 percent, by count, of the fruits in any lot may fail to meet the requirements relating to discoloration. None of the foregoing tolerances shall apply to wormy fruit.

(g) *U.S. No. 2 Russet Grade.* Not more than 10 percent, by count, of the fruits in any lot may be below the requirements of this grade but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage other than that caused by dryness or mushy condition, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided,* That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. Individual containers may have less than the required percentage of fruits having in excess of one-half of their surface, in the aggregate, affected by discoloration: *Provided,* That the entire lot averages within the percentage required. None of the foregoing tolerances shall apply to wormy fruit.

(h) *U.S. No. 3 Grade.* Not more than 15 percent, by count, of the fruits in any lot may be below the requirements of this grade, but not more than one-third of this amount, or 5 percent, shall be allowed for defects other than dryness or mushy condition, and not more than one-fifth of this amount, or 1 percent, shall be allowed for decay at shipping point: *Provided,* That an additional tolerance of 2 percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. None of the foregoing tolerances shall apply to wormy fruit.

APPLICATION OF TOLERANCES

**§ 51.691 Application of tolerances.**

The contents of individual packages in the lot, based on sample inspection, are subject to the following limitations: *Provided,* That the averages for the entire lot are within the tolerances specified for the grade:

(a) For packages which contain more than 10 pounds, and a tolerance of 10 percent or more is provided, individual packages in any lot shall have not more than one and one-half times the tolerance specified. For packages which contain more than 10 pounds and a tolerance of less than 10 percent is provided, individual packages in any lot shall have not more than double the tolerance specified, except that at least one decayed or very seriously damaged fruit may be permitted in any package.

(b) For packages which contain 10 pounds or less, individual packages in any lot are not restricted as to the percentage of defects: *Provided,* That not more than one orange which is seriously damaged by dryness or mushy condition or very seriously damaged by other means may be permitted in any package, and in addition, en route or at destination, not more than 10 percent of the packages may have more than one decayed fruit.

STANDARD PACK

**§ 51.692 Standard pack for oranges except Temple variety.**

(a) Oranges shall be fairly uniform in size, unless specified as uniform in size, and when packed in boxes or cartons, shall be arranged according to the approved and recognized methods. Each wrapped fruit shall be fairly well enclosed by its individual wrapper.

(b) All such containers shall be tightly packed and well filled but the contents shall not show excessive or unnecessary bruising because of overfilled containers. When oranges are packed in standard nailed boxes, each box shall have a minimum bulge of 1¼ inches; when packed in cartons or in wire-bound boxes, each container shall be at least level full at time of packing.

(c) "Fairly uniform in size" means that not more than 10 percent, by count, of the fruit in any container are outside the range of diameters given in the following tables for various packs and different sizes of containers.

TABLE I

[When packed in 1⅘ bushel containers or half-1⅘ bushel containers]

| Count in box pack | Count in half box pack | Diameter in inches | |
|---|---|---|---|
| | | Minimum | Maximum |
| 126's | 63 | 3 2/16 | 3 9/16 |
| 150's | 75 | 2 15/16 | 3 4/16 |
| 176's | 88 | 2 14/16 | 3 1/16 |
| 200's | 100 | 2 10/16 | 2 15/16 |
| 216's | 108 | 2 8/16 | 2 13/16 |
| 252's | 126 | 2 7/16 | 2 12/16 |
| 288's | 144 | 2 4/16 | 2 9/16 |
| 324's | 162 | 2 3/16 | 2 8/16 |

TABLE II

[When packed in 1⅘ bushel containers or half-1⅘ bushel containers]

| Count in box pack | Count in half box pack | Diameter in inches | |
|---|---|---|---|
| | | Minimum | Maximum |
| 96's | 48 | 3 6/16 | 3 13/16 |
| 126's | 63 | 3 3/16 | 3 10/16 |
| 150's | 75 | 3 | 3 7/16 |
| 176's | 88 | 2 14/16 | 3 1/16 |
| 200's | 100 | 2 12/16 | 3 2/16 |
| 216's | 108 | 2 10/16 | 3 |
| 252's | 126 | 2 8/16 | 2 14/16 |
| 288's | 144 | 2 6/16 | 2 12/16 |
| 324's | 162 | 2 4/16 | 2 10/16 |

(d) "Uniform in size" means that for either 1⅖ bushel or 1⅘ bushel containers when oranges are packed for 150 box count or smaller size, or equivalent sizes when packed in other containers, not less than 90 percent, by count, of fruits in any container shall be within a diameter range of four-sixteenths inch; when packed for 126 box count or larger size, or equivalent sizes when packed in other containers, not less than 90 percent, by count, of the fruits in any container shall be within a diameter range of five-sixteenths inch.

(e) In order to allow for variations, other than sizing, incident to proper packing, not more than 5 percent of the packages in any lot may fail to meet the requirements of standard pack.

STANDARD SIZING AND FILL

**§ 51.693 Standard sizing and fill.**

(a) Boxes or cartons in which oranges are not packed according to a definite pattern do not meet the requirements of standard pack, but may be certified as meeting the requirements of standard sizing and fill: *Provided*, That the oranges in the containers are at least fairly uniform in size as defined in § 51.692: *And provided further*, That the contents have been properly shaken down and the container is at least level full at time of packing.

(b) In order to allow for variations incident to proper packing, not more than 5 percent of the containers in any lot may fail to meet the requirements of standard sizing and fill.

DEFINITIONS

**§ 51.694 Similar varietal characteristics.**

"Similar varietal characteristics" means that the fruits in any container are similar in color and shape.

**§ 51.695 Well colored.**

"Well colored" means that the fruit is yellow or orange in color with practically no trace of green color.

**§ 51.696 Firm.**

"Firm" as applied to common oranges, means that the fruit is not soft, or noticeably wilted or flabby; as applied to oranges of the Mandarin group (Satsuma, King, Mandarin), means that the fruit is not extremely puffy, although the skin may be slightly loose.

**§ 51.697 Well formed.**

"Well formed" means that the fruit has the shape characteristic of the variety.

**§ 51.698 Smooth texture.**

"Smooth texture" means that the skin is thin and smooth for the variety and size of the fruit.

**§ 51.699 Injury.**

"Injury", unless otherwise specifically defined in this section, means any defect which more than slightly affects the appearance, or the edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as injury:

(a) Green spots or oil spots when appreciably affecting the appearance of the individual fruit;

(b) Rough and excessively wide or protruding navels when protruding beyond the general contour of the orange; or when flush with the general contour but with the opening so wide, considering the size of the fruit, and the navel growth so folded and ridged that it detracts noticeably from the appearance of the orange;

(c) Scale when more than a few adjacent to the "button" at the stem end, or when more than 6 scattered on other portions of the fruit;

(d) Scars which are depressed, not smooth, or which detract from the appearance of the fruit to a greater extent than the maximum amount of discoloration allowed in the grade; and,

(e) Thorn scratches when the injury is not slight, not well healed, or more unsightly than discoloration allowed in the grade.

**§ 51.700 Discoloration.**

"Discoloration" means russeting of a light shade of golden brown caused by rust mite or other means. Lighter shades of discoloration caused by smooth or fairly smooth, superficial scars or other means may be allowed on a greater area, or darker shades may be allowed on a lesser area, provided no discoloration caused by melanose or other means may affect the appearance of the fruit to a greater extent that the shade and amount of discoloration allowed for the grade.

**§ 51.701 Fairly smooth texture.**

"Fairly smooth texture" means that the skin is not materially rough or coarse and that the skin is not thick for the variety.

**§ 51.702 Damage.**

"Damage", unless otherwise specifically defined in this section, means any defect which materially affects the appearance, or the edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(a) Ammoniation when not occurring as light speck type similar to melanose;

(b) Creasing when causing the skin to be materially weakened;

(c) Dryness or mushy condition when affecting all segments of common oranges more than one-fourth inch at the stem end, or all segments of varieties of the Mandarin group more than one-eighth inch at the stem end, or more than the equivalent of these respective amounts, by volume, when occurring in other portions of the fruit;

(d) Green spots or oil spots when the aggregate area exceeds the area of a circle seven-eighths inch in diameter on an orange of 200-size. Smaller sizes shall have lesser areas of green spots or oil spots and larger sizes may have greater areas: *Provided*, That the appearance of the orange is not affected to a greater extent than the area permitted on a 200-size orange;

(e) Scab when it cannot be classed as discoloration, or appreciably affects shape or texture;

(f) Scale when the appearance of the fruit is affected to a greater extent than that of a 200-size orange which has a blotch the area of a circle five-eighths inch in diameter;

(g) Scarring which exceeds the following aggregate areas of different types of scars, or a combination of two or more types of scars, the seriousness of which exceeds the maximum allowed for any one type:

(1) Scars when the appearance of the fruit is affected to a greater extent than that of a 200-size orange which has a

deep, rough or hard scar aggregating the area of a circle one-fourth inch in diameter;

(2) Scars when the appearance of the fruit is affected to a greater extent than that of a 200-size orange which has a slightly rough scar with slight depth aggregating the area of a circle seven-eighths inch in diameter;

(3) Scars when the appearance of the fruit is affected to a greater extent than that of a 200-size orange which has a smooth or fairly smooth scar with slight depth aggregating the area of a circle 1¼ inches in diameter; and,

(4) Scars which are smooth or fairly smooth with no depth and affect the appearance of the orange to a greater extent than the amount of discoloration permitted. (Smooth or fairly smooth scars with no depth shall be scored against the discoloration tolerance);

(h) Split, rough or protruding navels when there are more than three splits, or when any split is unhealed or more than one-fourth inch in length; or when any navel opening is so wide or navel growth so folded or ridged that it materially affects the appearance of the fruit; or when the navel flares, bulges or protrudes beyond the general contour of the orange to the extent that it is subject to mechanical injury in the process of proper grading, packing and handling;

(i) Sunburn when the area affected exceeds 25 percent of the fruit surface, or when the skin is appreciably flattened, dry, darkened or hard;

(j) Thorn scratches when the injury is not well healed, or concentrated light colored thorn injury which has caused the skin to become hard and the aggregate area exceeds the area of a circle one-fourth inch in diameter, or slight scratches when light colored and concentrated and the aggregate area exceeds the area of a circle 1 inch in diameter, or dark or scattered thorn injury which detracts from the appearance of the fruit to a greater extent than the amounts specified above; and,

(k) Riciness or woodiness when the flesh of the fruit is so ricey or woody that excessive pressure by hand is required to extract the juice.

**§ 51.703 Fairly well colored.**

"Fairly well colored" means that except for one inch in the aggregate of green color, the yellow or orange color predominates over the green color on that part of the fruit which is not discolored.

**§ 51.704 Reasonably well colored.**

"Reasonably well colored" means that the yellow or orange color predominates over the green color on at least two-thirds of the fruit surface in the aggregate which is not discolored.

**§ 51.705 Fairly firm.**

"Fairly firm" as applied to common oranges, means that the fruit may be slightly soft, but not bruised; as applied to oranges of the Mandarin group (Satsuma, King, Mandarin) means that the fruit is not extremely puffy or the skin extremely loose.

**§ 51.706 Slightly misshapen.**

"Slightly misshapen" means that the fruit is not of the shape characteristic of the variety but is not appreciably elongated or pointed or otherwise deformed.

**§ 51.707 Slightly rough texture.**

"Slightly rough texture" means that the skin is not smooth or fairly smooth but is not excessively rough or excessively thick, or materially ridged, grooved or wrinkled.

**§ 51.708 Serious damage.**

"Serious damage", unless otherwise specifically defined in this section, means any defect which seriously affects the appearance, or the edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:

(a) Ammoniation when scars are cracked, or when dark and the aggregate area exceeds the area of a circle three-fourths inch in diameter, or when light colored and the aggregate area exceeds the area of a circle 1¼ inches in diameter;

(b) Buckskin when aggregating more than 25 percent of the fruit surface, or when the fruit texture is seriously affected;

(c) Creasing when so deep or extensive that the skin is seriously weakened;

(d) Dryness or mushy condition when affecting all segments of common oranges more than one-half inch at the stem end, or all segments of varieties of the Mandarin group more than one-fourth inch at the stem end, or more than the equivalent of these respective amounts, by volume, when occurring in other portions of the fruit;

(e) Green spots or oil spots when seriously affecting the appearance of the individual fruit;

(f) Scab when it cannot be classed as discoloration, or when materially affecting shape or texture;

(g) Scale when the appearance of the fruit is affected to a greater extent than that of a 200-size orange which has a blotch the area of a circle seven-eighths inch in diameter;

(h) Scarring which exceeds the following aggregate areas of different types of scars, or a combination of two or more types of scars, the seriousness of which exceeds the maximum allowed for any one type:

(1) Scars when the appearance of the fruit is affected to a greater extent than that of a 200-size orange which has a deep or rough scar aggregating the area of a circle one-half inch in diameter;

(2) Scars when the appearance of the fruit is affected to a greater extent than that of a 200-size orange which has a slightly rough scar with slight depth aggregating the area of a circle 1¼ inches in diameter; and,

(3) Scars which are slightly rough, smooth or fairly smooth with no depth and affect the appearance of the orange to a greater extent than the amount of discoloration permitted. (Slightly rough, smooth or fairly smooth scars with no depth shall be scored against the discoloration tolerance);

(i) Split, rough or protruding navels when there are more than four splits, or when any split is unhealed or more than one-half inch in length, or when the aggregate lengths of all splits exceed one inch; or when any navel opening is so wide or navel growth so badly folded or ridged that it seriously affects the appearance of the fruit; or when the navel protrudes beyond the general contour of the orange to the extent that it is subject to mechanical injury in the process of proper grading, packing or handling;

(j) Sprayburn which seriously affects the appearance of the fruit, or is hard, or when light brown in color and the aggregate area exceeds the area of a circle 1¼ inches in diameter;

(k) Sunburn which affects more than one-third of the fruit surface, or is hard, or the fruit is decidedly one-sided, or when light brown in color and the aggregate area exceeds the area of a circle 1¼ inches in diameter;

(l) Thorn scratches when the injury is not well healed, or concentrated light colored thorn injury which has caused the skin to become hard and the aggregate area exceeds the area of a circle one-half inch in diameter, or slight scratches, when light colored and concentrated and the aggregate area exceeds the area of a circle 1½ inches in diameter, or dark or scattered thorn injury which detracts from the appearance of the fruit to a greater extent than the amounts specified above;

(m) Undeveloped or sunken segments, in navel oranges, when such segments are so sunken or undeveloped that they are readily noticeable; and,

(n) Riciness or woodiness when the flesh of the fruit is so ricey or woody that excessive pressure by hand is required to extract the juice.

**§ 51.709 Misshapen.**

"Misshapen" means that the fruit is decidedly elongated, pointed or flat-sided.

**§ 51.710 Slightly spongy.**

"Slightly spongy" means that the fruit is puffy or slightly wilted but not flabby.

**§ 51.711 Very serious damage.**

"Very serious damage", unless otherwise specifically defined in this section, means any defect which very seriously affects the appearance, or the edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as very serious damage:

(a) Growth cracks that are seriously weakened, gummy or not healed;

(b) Ammoniation when aggregating more than the area of a circle 2 inches in diameter, or which has caused serious cracks;

(c) Bird pecks when not healed;

(d) Caked melanose when more than 25 percent in the aggregate of the surface of the fruit is caked;

(e) Buckskin when rough and aggregating more than 50 percent of the surface of the fruit;

(f) Creasing when so deep or extensive that the skin is very seriously weakened;

(g) Dryness or mushy condition when affecting all segments of common oranges more than one-half inch at the stem end, or all segments of varieties of the Mandarin group more than one-fourth inch at the stem end, or more than the equivalent of these respective amounts, by volume, when occurring in other portions of the fruit;

(h) Scab when aggregating more than 25 percent of the surface of the fruit;

(i) Scale when covering more than 25 percent of the surface of the fruit;

(j) Split navels when not healed or the fruit is seriously weakened;

(k) Sprayburn when seriously affecting more than one-third of the fruit surface;

(l) Sunburn when seriously affecting more than one-third of the fruit surface;

(m) Thorn punctures when not healed or the fruit is seriously weakened; and,

(n) Riciness or woodiness when the flesh of the fruit is so ricey or woody that excessive pressure by hand is required to extract the juice.

**§ 51.712 Diameter.**

"Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end of the fruit.

The United States Standards for Oranges (Texas and States other than Florida, California and Arizona) contained in this subpart shall become effective 30 days after publication hereof in the FEDERAL REGISTER, and will thereupon supersede the United States Standards for Oranges (Texas and States other than Florida, California and Arizona) which have been in effect since 1954 (§§ 51.680 to 51.717).

Dated: June 29, 1959.

ROY W. LENNARTSON,
*Deputy Administrator,*
*Marketing Services.*

[F.R. Doc. 59-5521; Filed, July 1, 1959; 8:51 a.m.]

## PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

### Subpart—United States Standards for Grades of Canned Carrots [1]

MISCELLANEOUS AMENDMENTS

Pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202–208, 60 Stat. 1087 as amended; 7 U.S.C. 1621–1627) the United States Standards for Grades of Canned Carrots (§§ 52.671–52.686) are hereby amended as follows:

1. In § 52.682(a), delete subparagraph (3) and substitute therefor the following:

(3) *Sliced carrots.* The individual slice is not more than ⅜ inch in thickness when measured at the thickest portion; the diameter of each slice is not more than 2½ inches, measured as aforesaid; and of all the sliced carrots, in the 90 percent, by count, that are most uniform in diameter, the diameter of the slice with the greatest diameter does not exceed the diameter of the slice with the smallest diameter by more than 50 percent: *Provided,* That the overall appearance of the product is not materially affected.

2. In § 52.682(b), delete subparagraph (3) and substitute therefor the following:

(3) *Sliced carrots.* The individual slice is not more than ⅜ inch in thickness when measured at the thickest portion; the diameter of each slice is not more than 2½ inches, measured as aforesaid; and of all the sliced carrots, in the 90 percent, by count, that are most uniform in diameter, the diameter of the slice with the greatest diameter is not more than twice the diameter of the slice with the smallest diameter: *Provided,* That the overall appearance of the product is not seriously affected.

Notice of proposed rule making, publice procedure thereon, and the postponement of the effective date of these amendments for 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001 et seq.) are unnecessary and contrary to the public interest, in that: (1) Such amendments will operate to liberalize and clarify existing provisions of the grade standards for canned carrots, (2) will not cause the making of any substantial changes in the present processed product packing and handling operations, and (3) any changes necessary with respect to such packing and handling operations can be readily made without inconvenience to the industry.

Dated June 29, 1959, to become effective upon date of publication in the FEDERAL REGISTER.

(Sec. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627)

ROY W. LENNARTSON,
*Deputy Administrator,*
*Marketing Services.*

[F.R. Doc. 59-5522; Filed, July 1, 1959; 8:51 a.m.]

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

## Chapter III—Agricultural Research Service, Department of Agriculture

## PART 330—FEDERAL PLANT PEST REGULATIONS

### Holding of Means of Conveyance Arriving in the United States; Postponement of Effective Date

On June 9, 1959, there was published in the FEDERAL REGISTER (24 F.R. 4650) a notice stating that effective at 12:01 a.m., local time, July 1, 1959, means of conveyance subject to the inspection and release requirements of § 330.105(a) of the Federal Plant Pest Regulations (7 CFR 1958 Supp., 330.105(a)) and arriving at any port of entry outside the regularly assigned hours of duty of the Federal plant quarantine inspector, will be held for such inspection and release, until the regularly assigned hours of duty. The notice also provided for reimbursable inspection and release outside the regularly assigned hours of duty.

The affected industry has requested a postponement of the effective date of this notice in order that they may make a thorough review of the requirements and appraise their effects on their operations. Accordingly, notice is here given that inspection and release will continue to be provided outside the regularly assigned hours of duty as heretofore until September 1, 1959. Therefore, the effective date of the notice published June 9, 1959 is postponed until 12:01 a.m., local time, September 1, 1959.

(Sec. 106, 71 Stat. 33, 64 Stat. 561; 7 U.S.C. 150ee, 5 U.S.C. 576)

Done at Washington, D.C., this 29th day of June 1959.

M. R. CLARKSON,
*Acting Administrator,*
*Agricultural Research Service.*

[F.R. Doc. 59-5524; Filed, July 1, 1959; 8:51 a.m.]

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

## SUBCHAPTER F—DETERMINATION OF NORMAL YIELDS AND ELIGIBILITY FOR ABANDONMENT AND CROP DEFICIENCY PAYMENTS

[Sugar Determination 845.2, Amdt. 1]

## PART 845—MAINLAND CANE SUGAR AREA

### 1958 and Subsequent Crops

Pursuant to the provisions of section 303 of the Sugar Act of 1948, as amended, paragraph (c) of § 845.2 (23 F.R. 9255) is hereby amended in two particulars, as follows:

1. Under subparagraph (4) *Local Producing Areas,* subdivision (ii) *Louisiana,* the designation of local producing areas for St. James Parish appearing therein is amended to read "St. James: Area 1—Wards 1, 9 and 10; Areas 2 through 8—Wards 2 through 8, respectively."

2. Under subparagraph (4) *Local Producing Areas,* a new subdivision (iii) is added at the end thereof to read as follows:

(iii) *1958 crop.* For purposes of considering eligibility of farms for abandonment and crop deficiency payments on 1958-crop sugarcane, the local ASC parish committees in Louisiana and the local ASC county committees in Florida have determined that the extent of crop damage as specified and provided in subparagraph (1)(iii) of this paragraph has occurred in the following parishes and local-producing areas:

LOUISIANA

Parishes approved in their entirety:

| | |
|---|---|
| Ascension. | St. John. |
| Avoyelles. | St. Landry. |
| Iberville. | St. Martin. |
| Lafayette. | St. Mary. |
| Pointe Coupee. | Terrebonne. |
| Rapides. | West Baton Rouge. |

Individual local-producing areas approved: Areas 1 and 3 in Assumption Parish.

FLORIDA

Indian River County.

STATEMENT OF BASES AND CONSIDERATIONS

In the designation of local producing areas contained in the original determination, Ward (1) of St. James Parish was inadvertently omitted in the specification of Area 1. This amendment corrects this omission.

This amendment also provides public notice of the parishes and local producing areas in Louisiana and Florida where due to drought, flood, storm, freeze, disease or insects, the 1958 sugarcane crop has been damaged to the extent that farms located in whole or in part in such parishes or local producing areas will be considered (as to location) for abandonment or deficiency payments. The producers on these farms may file applications for Sugar Act payments with respect to acreage abandonment or crop deficiencies for which they may otherwise be eligible before June 30, 1960, as provided in 7 CFR 855.5 (22 F.R. 8112).

Accordingly, I hereby find and conclude that the aforestated amendment will effectuate the applicable provisions of the Sugar Act of 1948, as amended.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies Secs. 301, 302, 61 Stat. 929, 930, as amended; 7 U.S.C. 1131, 1132)

Issued this 29th day of June, 1959.

TRUE D. MORSE,
*Acting Secretary.*

[F.R. Doc. 59-5525; Filed, July 1, 1959; 8:52 a.m.]

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## SUBCHAPTER H—DETERMINATION OF WAGE RATES

[Sugar Determination 863.12]

## PART 863—SUGARCANE, FLORIDA

### Wage Rates

Pursuant to the provisions of section 301(c)(1) of the Sugar Act of 1948, as amended (herein referred to as "act"), after investigation and consideration of the evidence obtained at the public hearing held in Clewiston, Florida on May 14, 1959, the following determination is hereby issued:

**§ 863.12 Fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugarcane in Florida.**

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

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

(i) *For work performed on a time basis.*

| | Cents per hour |
|---|---|
| (a) Tractor drivers and operators of mechanical harvesting or loading equipment | 90.0 |
| (b) All other workers | 80.0 |

(ii) *For work performed on a piecework basis.* The piecework rate for any operation shall be as agreed upon between the producer and the worker: *Provided,* That the hourly rate of earnings of each worker employed on piecework during each pay period (such pay period not to be in excess of two weeks) shall average for the time involved not less than the applicable hourly rate prescribed in subdivision (i) of this subparagraph.

(2) *Compensable working time.* For work performed under subparagraph (1) of this paragraph, compensable working time includes all time which the worker spends in the performance of his duties except time taken out for meals during the work day. Compensable working time commences at the time the worker is required to start work and ends upon completion of work in the field. However, if the producer requires the operator of mechanical equipment, driver of animals or any other class of worker to report to a place other than the field, such as an assembly point or tractor shed, located on the farm, the time spent in transit from such place to the field and from the field to such place is compensable working time. Any time spent in performing work directly related to the principal work performed by the workers, such as servicing equipment, is compensable working time. Time of the worker while being transported from a central recruiting point or labor camp to the farm is not compensable working time.

(3) *Equipment necessary to perform work assignment.* The producer shall furnish without cost to the worker any equipment required in the performance of any work assignment. However, the worker may be charged for the cost of such equipment in the event of its loss or destruction through negligence of the worker. Equipment includes, but is not limited to, hand and mechanical tools and special wearing apparel, such as boots and raincoats, required to discharge the work assignment.

(b) *Applicability.* The requirements of this determination are applicable to all persons employed on the farm, except as provided in paragraph (c) of this section, in the production, cultivation, or harvesting of sugarcane grown on the farm for the extraction of sugar or liquid sugar: *Provided,* That such requirements shall not apply to any person engaged in such work with respect to sugarcane grown on acreage in excess of the proportionate share for the farm, which is marketed (or processed) for the production of sugar or liquid sugar for livestock feed or for the production of livestock feed, if the producer furnishes to the appropriate County Agricultural Stabilization and Conservation Committee acceptable and adequate proof which satisfies the Committee that the work performed was related solely to such sugarcane.

(c) *Workers not covered.* The requirements of this determination are not applicable to workers performing services which are indirectly connected with the production, cultivation, or harvesting of sugarcane, including but not limited to mechanics, welders, and other maintenance workers and repairmen.

(d) *Proof of compliance.* The producer shall furinsh, upon request, to the appropriate Agricultural Stabilization and Conservation County Committee acceptable and adequate proof which satisfies the Committee that all workers have been paid in accordance with the requirements of this determination.

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

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

(g) *Effective period.* The provisions of this section shall become effective on July 1, 1959, or the date of publication in the FEDERAL REGISTER, whichever date is later, and shall remain in effect until amended, superseded, or terminated.

STATEMENT OF BASES AND CONSIDERATIONS

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

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

c. *Wage determination.* This determination differs from the 1958–59 determination in that the minimum time wage rates are increased 10 cents per hour and that the determination will remain in effect until amended, superseded, or terminated, instead of being applicable to a specific 12-month period. The rate established for tractor drivers and operators of mechanical loading equipment is 90 cents per hour and for all other workers is 80 cents per hour.

A public hearing was held in Clewiston, Florida, on May 14, 1959 at which interested persons were afforded the opportunity to present testimony with respect to fair and reasonable wage rates during the period July 1, 1959, to June 30, 1960. Representatives of producers recommended that wage rates established by the 1958–59 determination be continued for the 1959–60 period. The representative of one large producer testified that there had been an increase in the yield of sugarcane per acre resulting from new varieties of sugarcane and that technological improvements in the loading and transporting of sugarcane had enabled workers to handle more sugarcane per hour of labor although the efficiency of the individual worker has not increased; that most hand labor is performed on a piecework or task basis; and that the hourly earnings of workers were higher than the minimum wage rates fixed by the determination. An independent producer stated that producers have been faced with increasing costs and a relatively stable price of sugar; that there had been no significant improvements in mechanization during the past year and that he believed the level of minimum wage rates should not be based upon the profit position of the large producer-processors. Two other producer representatives testified that most field work was performed on a piecework or task basis and that wages and earnings of workers were substantially above the determination rates.

A representative of the United Packinghouse Workers of America, AFL–CIO, recommended that wage rates be increased to $1.25 per hour. The witness stated that Florida producers have the lowest labor cost per ton of sugar of any domestic sugar-producing area and that since 1953 increased yields of sugarcane have more than offset wage increases which have taken place in that period. The witness cited the published profits of one large producer-processor as an indication of producers' ability to pay higher wages.

The witnesses generally favored the concept of a continuing wage determination provided changes in wage rates were not made during the harvest season and producers and workers were afforded the opportunity to have a hearing if warranted because of changed conditions.

Consideration has been given to the recommendations made at the hearing, to the results of studies and investigations of the sugarcane industry, to the returns, costs, and profits of producing sugarcane obtained by field survey in a prior year and recast to reflect 1959 prospective crop conditions, and to other pertinent factors. This analysis indicates that under prospective price and production conditions for the 1959 crop the wage rates established in this determination are within producers' ability to pay. Increased yields of sugarcane, higher recoveries of sugar per ton of cane and improved production practices have resulted in an improvement in the economic position of producers in recent years. Substantial gains in overall labor productivity also have occurred as a result of these factors.

The majority of unskilled sugarcane fieldworkers are imported from the British West Indies for hand work such as hoeing and cutting sugarcane which is usually performed on a task or piecework basis. These workers have provided producers with a selective and dependable labor supply. Producers have been unable to obtain sufficient numbers of domestic workers who are willing to accept employment on sugarcane farms at the wage rates offered unskilled workers. Most of the semi-skilled work such as the operation of mechanical equipment is performed by domestic workers.

The earnings of unskilled workers during the 1958–59 season ranged from about 78 cents to $1.17 per hour compared with the minimum rate of 70 cents per hour. Tractor drivers and other equipment operators were paid basic wage rates ranging from the determination minimum of 80 cents to $1.85 per hour.

This determination will continue in effect until it is amended, superseded, or terminated. However, the Department will reappraise the economic position of producers and workers as additional information becomes available and will hold public hearings at such times as conditions may warrant. A public hearing may also be held upon request of producers or of workers or their representatives, accompanied by a statement of justification or need for such a hearing.

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

(Sec. 403, 61 Stat. 932; 7 U.S.C. Sup. 1153. Interprets or applies sec. 302, 61 Stat. 929, as amended; 7 U.S.C. Sup. 1132)

Issued this 29th day of June 1959.

TRUE D. MORSE,
*Acting Secretary.*

[F.R. Doc. 59–5526; Filed, July 1, 1959; 8:52 a.m.]

# Title 16—COMMERCIAL PRACTICES

## Chapter I—Federal Trade Commission

[Docket 7319 c.o.]

## PART 13—DIGEST OF CEASE AND DESIST ORDERS

### Kestenbaum & Rennert, Inc., et al.

Subpart—*Invoicing products falsely:* § 13.1108 *Invoicing products falsely:* Fur Products Labeling Act. Subpart—*Misrepresenting oneself and goods*—Prices: § 13.1805 *Exaggerated as regular and customary;* § 13.1810 *Fictitious marking.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Kestenbaum & Rennert, Inc. (Brooklyn, N.Y.), et al., Docket 7319, June 2, 1959]

*In the Matter of Kestenbaum & Rennert, Inc., a Corporation, and George Rennert, Individually and as Secretary-Treasurer of Said Corporation, and Julius Gasper, Individually and as Vice President of Said Corporation, and Jack Kaufman, Individually and as Salesman of Said Corporation*

This proceeding was heard by a hearing examiner on the complaint of the Commission charging furriers in Bronx, N.Y., with violating the Fur Products Labeling Act by representing prices of fur products on invoices as having been reduced from regular prices which were in fact fictitious.

After acceptance of an agreement containing a consent order, the hearing examiner made his initial decision and order to cease and desist which became on June 2 the decision of the Commission.

The order to cease and desist is as follows:

*It is ordered,* That respondents Kestenbaum & Rennert, Inc., a corporation, and its officers, and George Rennert and Julius Gasper, individually and as officers of said corporation, and Jack Kaufman, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or the manufacture for introduction, into commerce, or the sale, advertising, or offering for sale, or transportation or distribution in com-

merce, of any fur product, or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of fur products showing:

(1) The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(2) That the fur product contains or is composed of used fur, when such is the fact;

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

(4) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(5) The name and address of the person issuing such invoice;

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

B. Setting forth certain prices as the regular or usual prices of certain fur products when such prices are in fact in excess of the price at which the respondents have regularly or usually sold said certain fur products in the recent regular course of their business.

By "Decision of the Commission", etc., report of compliance was required as follows:

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

Issued: June 1, 1959.

By the Commission.

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

[F.R. Doc. 59-5496; Filed, July 1, 1959; 8:47 a.m.]

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[Docket 7348 c.o.]

## PART 13—DIGEST OF CEASE AND DESIST ORDERS

### Bernard J. Simmons

Subpart—*Advertising falsely or misleadingly:* § 13.20 *Comparative data or merits;* § 13.85 *Government approval, action, connection or standards;* § 13.170 *Qualities or properties of product or service;* § 13.195 *Safety;* § 13.205 *Scientific or other relevant facts;* § 13.235 *Source or origin:* Place: *Domestic product as imported.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Bernard J. Simmons, Philadelphia, Pa., Docket 7348, May 26, 1959]

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a seller of contact lenses in Philadelphia, Pa., with advertising falsely that his lenses were imported from Germany, were never irritating, could be worn all day with complete comfort by all, stayed in place under all conditions including violent exercise and swimming, were unbreakable, better than eyeglasses, were a new type of contact lenses and could not damage the eye; and that his summary of an Army Medical Research Laboratory Report set out all the disadvantages of contact lenses contained therein.

After acceptance of an agreement containing a consent order, the hearing examiner made his initial decision and order to cease and desist which became on May 26 the decision of the Commission.

The order to cease and desist is as follows:

*It is ordered,* That Bernard J. Simmons, individually or trading under any name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of his contact lenses, do forthwith cease and desist from, directly or indirectly:

A. Disseminating, or causing to be disseminated, any advertisement, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

(1) That respondent's said contact lenses:

(a) Are imported from Germany;

(b) Are never irritating or will be comfortable to all persons;

(c) Can be worn all day by all persons in complete comfort;

(d) Stay in place under all conditions and cannot be displaced during swimming and other activities involving violent exercise;

(e) Are unbreakable outside the eye;

(f) Provide better vision in all cases than eyeglasses;

(g) Can completely replace eyeglasses;

(h) Are a new type of contact lenses;

(i) Cannot damage the eye.

(2) That respondent's summary of U.S. Army Medical Research Laboratory report No. 99 sets out all the disadvantages of contact lenses contained in said report.

(3) Through the use of a summary made by respondent of a report of any group, organization, or individual, that said summary contains all of the material facts set out in the report, unless such is the fact.

B. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said contact lenses, which advertisement contains any of the representations prohibited in paragraph A hereof.

By "Decision of the Commission", etc., report of compliance was required as follows:

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

Issued: May 26, 1959.

By the Commission.

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

[F.R. Doc. 59-5497; Filed, July 1, 1959; 8:47 a.m.]

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# Title 19—CUSTOMS DUTIES

## Chapter 1—Bureau of Customs

[T.D. 54884]

## PART 1—CUSTOMS DISTRICTS, PORTS, AND STATIONS

### Extension of Limits of Port of Racine, Wisconsin

By virtue of the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623 (19 U.S.C. 2), which was delegated to the Secretary of the Treasury by the President by Executive Order No. 10289, September 17, 1951 (3 CFR, 1951 Supp., Ch. II), the limits of the customs port of entry of Racine, Wisconsin, in Customs Collection District No. 37 (Wisconsin), comprising the territory within the corporate limits of that city, are hereby extended to include the territory within the corporate limits of the city of Kenosha, and the townships of Mt. Pleasant and Somers, all in the State of Wisconsin, effective on the date of publication of this Treasury decision in the FEDERAL REGISTER.

Section 1.1(c), Customs Regulations, is amended by deleting the period after "Racine" in the column headed "Ports of Entry" in District No. 37 (Wisconsin), and by adding "(including the city of Kenosha and the townships of Mt. Pleasant and Somers). (T.D. 54884).

(R.S. 161 as amended, sec. 1, 37 Stat. 434, sec. 1, 38 Stat. 623, as amended; 5 U.S.C. 22, 19 U.S.C. 1, 2)

[SEAL] A. GILMORE FLUES, *Acting Secretary of the Treasury.*

[F.R. Doc. 59-5511; Filed, July 1, 1959; 8:50 a.m.]

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[T.D. 54886]

## PART 2—MEASUREMENT OF VESSELS

### Recognition of Admeasurement Rules of Israel

The Department of State has confirmed notification received in the Bureau of Customs that the International Convention for a Uniform System

of Tonnage Admeasurement of Ships, signed at Oslo, Norway, on June 10, 1947, was ratified by the State of Israel on July 29, 1958, and that the convention entered into force on October 29, 1958. Further information received indicates that the work of issuing international tonnage certificates has started and that pending completion of that work, the tonnages of Israeli vessels indicated on their registers are those computed in general in accordance with the British rules. Therefore, pursuant to the authority contained in section 4154 of the Revised Statutes, as amended (46 U.S.C. 81), vessels flying the flag of the State of Israel shall be taken in ports of the United States to be of the tonnages denoted in their certificates of registry or other national papers.

The first sentence of § 2.63 of the customs regulations is amended by the insertion of "Israel" immediately after "Iceland."

(R.S. 161, 4154, as amended, sec. 3, 23 Stat. 119, as amended; 5 U.S.C. 22, 46 U.S.C. 3, 81)

[SEAL] RALPH KELLY,
*Commission of Customs.*

Approved: June 24, 1959.

A. GILMORE FLUES,
*Acting Secretary of the Treasury.*

[F.R. Doc. 59-5512; Filed, July 1, 1959; 8:50 a.m.]

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[T.D. 54887]

## PART 31—CUSTOMHOUSE BROKERS

### Duties and Obligations

Section 31.10(c) of the customs regulations prohibits the employment by a customhouse broker of a person whose application for a license as a customhouse broker has been denied for a cause involving moral turpitude. In view of the degree of responsibility for the acts or omissions of its employees imposed on customhouse brokers by § 31.8(d) of the regulations, it is deemed advisable to eliminate this prohibition. To accomplish this purpose, the customs regulations are amended as set forth below:

Section 31.10(c) is amended to read:

(c) No customhouse broker shall knowingly and directly or indirectly (1) accept employment to effect a customs transaction as associate, correspondent, officer, employee, agent, or subagent from any person whose license as a customhouse broker shall have been revoked for any cause, or whose license is under suspension, or who is notoriously disreputable, or (2) assist the furtherance of any customs business or transaction of such person, or (3) employ, or accept such assistance from, any such person, or (4) share fees with any such person, or (5) permit any such person directly or indirectly to participate, whether through ownership or otherwise, in the promotion, control, or direction of the business of the broker: *Provided*, That nothing herein shall be deemed to prohibit any customhouse broker from acting as a customhouse broker for any bona fide importer or exporter, notwithstanding such importer or exporter may have had his license as a customhouse broker revoked or suspended, or may be disreputable.

(R.S. 161, 251, secs. 624, 641, 46 Stat. 759, as amended; 5 U.S.C. 22, 19 U.S.C. 66, 1624, 1641)

Notice of proposed rule making was published in the FEDERAL REGISTER of May 2, 1959 (24 F.R. 3535). No data, views, or arguments relating thereto have been received and the amendment is hereby adopted. This order, which is deemed to be one relieving restriction within the meaning of section 4 of the Administrative Procedure Act (5 U.S.C. 1003), shall be effective upon publication in the FEDERAL REGISTER.

[SEAL] D. B. STRUBINGER,
*Acting Commissioner of Customs.*

Approved: June 24, 1959.

A. GILMORE FLUES,
*Acting Secretary of the Treasury.*

[F.R. Doc. 59-5513; Filed, July 1, 1959; 8:50 a.m.]

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# Title 21—FOOD AND DRUGS

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

## PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

### Definition of Term "Insulin"

The Food and Drug Administration does not consider that pancreas glands and certain materials derived from pancreas glands, from which the refined insulin drugs are derived, are subject to the certification provisions of sections 502(k) and 506 of the Federal Food, Drug, and Cosmetic Act. Therefore, pursuant to section 701(a) of that act (52 Stat. 1055, as amended; 21 U.S.C. 371(a)), and under the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (22 F.R. 1045), the following order is promulgated:

Section 1.115 of the regulations for the enforcement of the Federal Food, Drug, and Cosmetic Act (21 CFR 1.115) is amended to read as follows:

§ 1.115 Definition of term "insulin."

For the purposes of sections 502(k) and 506 of the act:

(a) The term "insulin" as used therein means the active principle of pancreas which affects the metabolism of carbohydrate in the animal body and which is of value in the treatment of diabetes mellitus.

(b) The following substances, when they are intended for use in the manufacture of insulin-containing drugs that will subsequently be submitted for certification, shall not be considered to be subject to certification as "drugs composed wholly or partly of insulin":

(1) Pancreas glands; and

(2) Materials prepared from pancreas glands, such as "salt cake" and "isoelectric precipitate," which materials must be subjected to further purification in order to meet the standards of purity established by Part 164 of this chapter.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since its application is merely interpretative; since the amendment relieves the affected industry of an unnecessary burden; and since adequate protection to the public health is afforded by the certification procedure applicable to drugs prepared from these materials.

*Effective date.* This order shall become effective upon publication in the FEDERAL REGISTER, since the affected industry will benefit by the earliest effective date, and I so find.

(Sec. 701(a), 52 Stat. 1055, as amended; 21 U.S.C. 371(a). Interprets or applies secs. 502(k), 506(a), 55 Stat. 851; 21 U.S.C. 352(k), 356(a))

Dated: June 25, 1959.

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

[F.R. Doc. 59-5498; Filed, July 1, 1959; 8:47 a.m.]

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# 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 (Public Law 404, 79th Congress, 60 Stat. 238) and authority contained in the acts of Congress approved August 1, 1914; May 18, 1916; and March 7, 1928 (38 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 Feb-

ruary 27, 1929; March 28, 1934; August 26, 1936, and April 5, 1950, there is hereby fixed for the season of 1960 an assessment of $241,468.00 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 74,136.3 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 1960 an assessment of $44,597.54 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 13,815.5 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 1960 an assessment of $17,836.00 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 6,274.7 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. 59-5483; Filed, July 1, 1959; 8:45 a.m.]

# Title 26—INTERNAL REVENUE, 1954

## Chapter I—Internal Revenue Service, Department of the Treasury

[T.D. 6394]

## PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

### Miscellaneous Amendments

On February 26, 1959, notice of proposed rule making with respect to an amendment of the Income Tax Regulations (26 CFR Part 1) under sections 1231, 1234, and 1235 of the Internal Revenue Code of 1954 to reflect the changes made by sections 49, 53, and 54 of the Technical Amendments Act of 1958 (72 Stat. 1642, 1644) was published in the FEDERAL REGISTER (24 F.R. 1420). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as so published is hereby adopted, subject to the change set forth below:

Paragraph (e)(4) of § 1.1234–1, as set forth in paragraph 4 to the notice of proposed rule making, is revised.

[SEAL] DANA LATHAM,
*Commissioner of Internal Revenue.*

Approved: June 26, 1959.

FRED C. SCRIBNER, Jr.,
*Acting Secretary of the Treasury.*

The amendments adopted to conform regulations under sections 1231, 1234, and 1235 of the 1954 Code to sections 49, 53, and 54 of the Technical Amendments Act of 1958 (72 Stat. 1642, 1644), read as follows:

**§ 1.1231 [Amendment]**

PARAGRAPH 1. Section 1.1231 is amended:

(A) By inserting at the end of section 1231(a) as set out in § 1.1231 the following new sentence: "In the case of any property used in the trade or business and of any capital asset held for more than 6 months and held for the production of income, this subsection shall not apply to any loss, in respect of which the taxpayer is not compensated for by insurance in any amount, arising from fire, storm, shipwreck, or other casualty, or from theft."

(B) By inserting the following historical note immediately after section 1231(b)(4), as set out in § 1.1231:

[Sec. 1231 as amended by sec. 49, Technical Amendments Act of 1958 (72 Stat. 1642)]

**§ 1.1231–1 [Amendment]**

PAR. 2. Section 1.1231–1 is amended:

(A) By inserting at the end of paragraph (c) the following new sentence: "Notwithstanding any of the provisions of this paragraph, section 1231(a) does not apply to losses described in paragraph (e)(2) of this section."

(B) By inserting the following immediately after the heading of paragraph (e): "(1) *General rule.*"

(C) By inserting before the period at the end of the second sentence of paragraph (e)(1), as redesignated, the following: "unless subparagraph (2) of this paragraph applies".

(D) By inserting immediately after the second comma in the third sentence of paragraph (e)(1) the following: "but not held for the production of income,".

(E) By inserting at the end of paragraph (e)(1) the following new subparagraph:

(2) *Certain uninsured losses.* Notwithstanding the provisions of subparagraph (1) of this paragraph, losses sustained during a taxable year beginning after December 31, 1957, with respect to both property used in the trade or business and any capital asset held for more than 6 months and held for the production of income, which losses arise from fire, storm, shipwreck, or other casualty, or from theft, and which are not compensated for by insurance in any amount, are not losses to which section 1231(a) applies. Such losses shall not be taken into account in applying the provisions of this section.

(F) By inserting the following sentences at the end of example (1) in paragraph (g): "For any taxable year ending after December 31, 1957, the $5,000 loss upon theft of bonds (item 6) would not be taken into account under section 1231. See paragraph (e)(2) of this section."

PAR. 3. Section 1.1234 is amended to read as follows:

**§ 1.1234 Statutory provisions; options to buy or sell.**

SEC. 1234. *Options to buy or sell*—(a) *Treatment of gain or loss.* Gain or loss attributable to the sale or exchange of, or loss attributable to failure to exercise, a privilege or option to buy or sell property shall be considered gain or loss from the sale or exchange of property which has the same character as the property to which the option or privilege relates has in the hands of the taxpayer (or would have in the hands of the taxpayer if acquired by him).

(b) *Special rule for loss attributable to failure to exercise option.* For purposes of subsection (a), if loss is attributable to failure to exercise a privilege or option, the privilege or option shall be deemed to have been sold or exchanged on the day it expired.

(c) *Non-application of section.* This section shall not apply to—

(1) A privilege or option which constitutes property described in paragraph (1) of section 1221;

(2) In the case of gain attributable to the sale or exchange of a privilege or option, any income derived in connection with such privilege or option which, without regard to this section, is treated as other than gain from the sale or exchange of a capital asset;

(3) A loss attributable to failure to exercise an option described in section 1233 (c); or

(4) Gain attributable to the sale or exchange of a privilege or option acquired by the taxpayer before March 1, 1954, if in the hands of the taxpayer such privilege or option is a capital asset.

[Sec. 1234 as amended by sec. 53, Technical Amendments Act of 1958 (72 Stat. 1644)]

**§ 1.1234–1 [Amendment]**

PAR. 4. Paragraph (e) of § 1.1234–1 is amended by inserting the following new subparagraph at the end thereof:

(4) Acquired by the taxpayer before March 1, 1954, if in the hands of the taxpayer such option is a capital asset (whether or not the property to which the option relates is, or would be if acquired by the taxpayer, a capital asset in the hands of the taxpayer).

**§ 1235 [Amendment]**

PAR. 5. Section 1.1235 is amended:

(A) By revising paragraph (d) of section 1235 to read as follows:

(d) *Related persons.* Subsection (a) shall not apply to any transfer, directly or indirectly, between persons specified within any one of the paragraphs of section 267(b); except that, in applying section 267(b) and (c) for purposes of this section—

(1) The phrase "25 percent or more" shall be substituted for the phrase "more than 50 percent" each place it appears in section 267(b), and

(2) Paragraph (4) of section 267(c) shall be treated as providing that the family, of an individual shall include only his spouse, ancestors, and lineal descendants.

(B) By inserting the following historical note at the end of section 1235:

[Sec. 1235 as amended by sec. 54, Technical Amendments Act of 1958 (72 Stat. 1644)]

§ 1.1235–2 [Amendment]

PAR. 6. Paragraph (f) of § 1.1235–2 is amended:

(A) By striking all of subparagraph (1) after the first two sentences and inserting in lieu thereof the following two new subparagraphs:

(2) If, prior to September 3, 1958, a holder transferred all his substantial rights to a patent to a corporation in which he owned more than 50 percent in value of the outstanding stock, he is considered as having transferred such rights to a related person for the purpose of section 1235. On the other hand, if a holder, prior to September 3, 1958, transferred all his substantial rights to a patent to a corporation in which he owned 50 percent or less in value of the outstanding stock and his brother owned the remaining stock, he is not considered as having transferred such rights to a related person since the brother relationship is to be disregarded for purposes of section 1235.

(3) If, subsequent to September 2, 1958, a holder transfers all his substantial rights to a patent to a corporation in which he owns 25 percent or more in value of the outstanding stock, he is considered as transferring such rights to a related person for the purpose of section 1235. On the other hand if a holder, subsequent to September 2, 1958, transfers all his substantial rights to a patent to a corporation in which he owns less than 25 percent in value of the outstanding stock and his brother owns the remaining stock, he is not considered as transferring such rights to a related person since the brother relationship is to be disregarded for purposes of section 1235.

(B) By redesignating subparagraph (2) as subparagraph (4) and, in the first sentence thereof, changing the reference to subparagraph (1) to "subparagraphs (1), (2), and (3)".

(68A Stat. 917; 26 U.S.C. 7805)

[F.R. Doc. 59–5509; Filed, July 1, 1959; 8:50 a.m.]

# Title 33—NAVIGATION AND NAVIGABLE WATERS

## Chapter II—Corps of Engineers, Department of the Army

## PART 202—ANCHORAGE REGULATIONS

## PART 203—BRIDGE REGULATIONS

### Miscellaneous Amendments Relating to Portland Harbor, Maine; Hampton Roads, Va.; Charles River, Mass.

1. Pursuant to the provisions of section 1 of an Act of Congress approved April 22, 1940 (54 Stat. 150; 33 U.S.C. 180), § 202.6 is hereby prescribed designating a special anchorage area in Portland Harbor, Maine, wherein vessels not more than 65 feet in length, when at anchor, shall not be required to carry or exhibit anchor lights, as follows:

**§ 202.6 Portland Harbor, Portland, Maine (between Little Diamond Island and Great Diamond Island).**

Beginning at the southeasterly corner of the wharf, at the most southerly point of Great Diamond Island at latitude 43°40'13", longitude 70°12'00"; thence extending southwesterly to the northeasterly corner of the wharf on the easterly side of Little Diamond Island at latitude 43°40'03", longitude 70°12'15"; thence extending along the northerly side of the wharf to its shoreward end at latitude 43°40'03", longitude 70°12'17"; thence extending along the shoreline of Little Diamond Island to latitude 43°-40'11", longitude 70°12'20"; thence extending northeasterly to the shoreline of the southerly side of Great Diamond Island at latitude 43°40'21", longitude 70°12'06"; thence extending along the shoreline of Great Diamond Island to the shoreward end of a wharf at latitude 43°40'15", longitude 70°12'02"; thence extending along the southwesterly side of the wharf to the point of beginning.

NOTE. The area is principally for use by yachts and other recreational craft. Temporary floats or buoys for marking anchors will be allowed. Fixed mooring piles or stakes are prohibited. The anchoring of vessels and placing of temporary moorings will be under the jurisdiction, and at the discretion of the local Harbor Master. All moorings shall be so placed that no moored vessels will extend beyond the limit of the area.

[Regs., June 18, 1959, 285/91 (Portland, Maine)—ENGWO] (Sec. 1, 54 Stat. 150; 33 U.S.C. 180)

2. Pursuant to the provisions of section 7 of the River and Harbor Act of March 4, 1915 (38 Stat. 1053; 33 U.S.C. 471), § 202.168 establishing and governing the use and navigation of anchorages in Hampton Roads, Virginia, and adjacent waters, is hereby amended redesignating the boundaries of the anchorages in paragraph (a) (4) and (6), as follows:

**§ 202.168 Hampton Roads, Va., and adjacent waters.**

(a) *Hampton Roads.* * * *

(4) *Anchorage D.* Beginning at a point west of Norfolk Harbor Channel at latitude 36°57'33.5", longitude 76°20'31.7"; thence south to latitude 36°57'26", longitude 76°20'31.7"; thence to latitude 36°56'08", longitude 76°22'23"; thence to latitude 36°56'00", longitude 76°22'50"; thence to latitude 36°56'00", longitude 76°23'34"; thence to latitude 36°56'09.5", longitude 76°23'33.5"; thence to a point on the south side of Newport News Channel at latitude 36°57'27.5",longitude 76°21'41"; and thence along the south side of Newport News Channel and a line in prolongation thereof to the point of beginning.

* * * * *

(6) *Anchorage H.* Beginning at a point west of Norfolk Harbor Channel at latitude 36°57'26", longitude 76°20'-31.7"; thence southerly to latitude 36°57'07.7", longitude 76°20'31.9"; thence southeasterly to a point on the west side of Norfolk Harbor Channel at latitude 36°57'01'5", longitude 76°20'-22.3"; thence along the west side of Norfolk Harbor Channel to latitude 36°56'-00", longitude 76°20'27"; thence to latitude 36°56'00", longitude 76°22'50"; thence to latitude 36°56'08", longitude 76°22'23"; thence to the point of beginning.

[Regs., June 17, 1959, 285/91 (Hampton Roads, Va.)—ENGWO] (Sec. 7, 38 Stat. 1053; 33 U.S.C. 471)

3. Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499), paragraph (h) (2) of § 203.75 governing the operation of drawbridges in Boston Harbor and adjacent waters, Massachusetts, is hereby amended revising the temporary special regulations for the Charlestown Bridge across Charles River, Massachusetts, as follows:

**§ 203.75 Boston Harbor, Mass.; and adjacent waters; bridges.**

* * * * *

(h) *Charles River.* * * *

(2) *Charlestown Bridge.* The draw of the Charlestown Bridge may remain closed each day between 6:00 a.m. and 11:00 p.m. Monday through Friday. The draw may remain closed on week ends from 6:00 a.m. Saturday to 11:00 p.m. Sunday (to include local holidays when they fall on a Friday or Monday). At all other times, navigation interests shall give at least 10 hours' advance notice of a required bridge opening during October through May, inclusive, and 24 hours' advance notice during June through September, inclusive.

NOTE: The temporary special regulations contained in paragraph (h) (2), and paragraphs (i) and (j), are on a trial basis and are subject to review and amendment at any time by the Department of the Army.

[Regs., June 17, 1959, 285/91 (Charles River, Mass.)—ENGWO] (Sec. 5, 28 Stat. 362; 33 U.S.C. 499)

R. V. LEE,
*Major General, U.S. Army,*
*The Adjutant General.*

[F.R. Doc. 59–5482; Filed, July 1, 1959; 8:45 a.m.]

# Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

## Chapter I—Veterans Administration

## PART 3—VETERANS CLAIMS

### Instructions Relating to Computation of Annuities or Pensions Received From Railroad Retirement Board as Income for Pension Purposes

A new § 3.1532 is added to read as follows:

**§ 3.1532 Instructions relating to the computation of annuities or pensions received from the Railroad Retirement Board as income for pension purposes.**

(a) *Provisions of the law.* (1) Section 4, Public Law 86–28 amends section 20

of the Railroad Retirement Act of 1937 to provide that "Pensions and annuities under this Act or the Railroad Retirement Act of 1935 shall not be considered as income for the purposes of section 522 of Title 38 of the United States Code."

(2) Section 6(a) further provides that section 4 will be "* * * effective only with respect to pensions due in calendar months after the month next following the month of enactment of this Act and annuities accruing for months after the month of enactment of this Act."

(b) *Scope of coverage*—(1) *Pensions.* Benefits received by former railroad employees as pensions, accrued or current, on and after July 1, 1959, will not be counted as income for the purposes of determining entitlement to pension under the provisions of 38 U.S.C. 522. Pension is a term used by the Railroad Retirement Board to identify the monetary benefit paid to former railroad employees who were on the gratuity rolls of the employer by reason of their employment and were on such rolls on March 1, 1937, when the administrative function of paying this benefit was assumed by the Railroad Retirement Board. Persons receiving pension made no contribution under the Railroad Retirement Act to the pension fund.

(2) *Annuity.* Accrued annuities due for any period prior to June 1, 1959, but paid on or after July 1, 1959, will be counted as income. Annuities accruing for periods on and after June 1, 1959, and paid on or after July 1, 1959, will not be counted as income under 38 U.S.C. 522. Annuity is defined for the purposes of payment of Railroad Retirement benefits as that benefit paid to individuals who are retired under the provisions of the Railroad Retirement Act of 1935 or the Railroad Retirement Act of 1937.

(3) *Survivor annuities.* Survivor annuities will not be counted as income under 38 U.S.C. 522. However, such annuities will be considered as income under 38 U.S.C. 545.

(c) *Effective date.* No payments by virtue of this bill may be effective prior to July 1, 1959. (Instruction 1, Public Law 86-28)

(72 Stat. 1114; 38 U.S.C. 210)

This regulation is effective July 2, 1959.

[SEAL] BRADFORD MORSE,
*Deputy Administrator.*

[F.R. Doc. 59-5514; Filed, July 1, 1959; 8:50 a.m.]

## PART 36—LOAN GUARANTY

### Miscellaneous Amendments

1. Section 36.4301(f) is amended to read as follows:

**§ 36.4301 Definitions.**

* * * * *

(f) "Date of first uncured default" means the due date of the earliest payment not fully satisfied by the proper application of available credits or deposits.

2. In § 36.4303, that portion of paragraph (a) preceding subparagraph (1) is amended to read as follows:

**§ 36.4303 Reporting requirements.**

(a) With respect to loans automatically guaranteed under 38 U.S.C. 1803(a)(1), evidence of the guaranty will be issuable to a lender of a class described under 38 U.S.C. 1802(d) if the loan is reported to the Administrator within 30 days following full disbursement, and upon the certification of the lender that:

3. Section 36.4311(a) is amended to read as follows:

**§ 36.4311 Interest rates.**

(a) Excepting non-real estate loans insured under 38 U.S.C. 1815, the interest rate on any loan guaranteed or insured wholly or in part may not exceed 5¼ per centum per annum on the unpaid principal balance: *Provided,* That if a certificate of commitment was issued by the Administrator prior to April 1, 1958, the interest rate chargeable on the loan to which the certificate relates may not exceed 4½ per centum per annum.

4. In § 36.4331, paragraphs (a), (e) and (i) are amended to read as follows:

**§ 36.4331 Disqualification of lenders.**

(a) A lender or holder may be suspended from obtaining guaranty or insurance of loans or from the right to the guaranty or insurance in respect to any loan purchased after the date of its suspension, except as provided in paragraph (h) of this section, whenever any of the employees designated in § 36.4342(b) finds that the lender or holder (hereinafter referred to as lender) has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgment, or has willfully or negligently engaged in practices otherwise detrimental to the interests of veterans or of the Government, or has been refused the benefits of participation under the National Housing Act pursuant to a determination of the Federal Housing Commissioner under section 512 of that Act. Suspension of a lender shall be effected only when specifically authorized by the Administrator, the Deputy Administrator, or by the Chief Benefits Director, Department of Veterans Benefits. In any case in which suspension has been so authorized and (1) and indictment has been secured or a criminal information has been filed against the lender in connection with a transaction involving 38 U.S.C. Ch. 37, or (2) is based upon action taken by the Federal Housing Commissioner, an immediate suspension may be effected. In any other case in which the Manager of a regional office has obtained Central Office authorization to initiate suspension proceedings, prior written notice of intention to apply the suspension sanction shall be furnished to the lender concerned.

* * * * *

(e) Where suspension is effected, the lender will be advised in writing of the effective date of the suspension and, unless such was previously furnished, will be given written notice of the charges against the lender and the specifications on which such charges are based. Any lender who is suspended shall have the right to apply to the Chief Benefits Director for termination or modification of the suspension and, except when the suspension is based upon action taken by the Federal Housing Commissioner, shall also have the right to apply to the Chief Benefits Director for a formal hearing at which opportunity shall be afforded to show why suspension should be modified or terminated. The Chief Benefits Director may postpone the holding of a hearing for a reasonable period in any case in which the Department of Justice or United States Attorney advises or requests postponement pending the trial of a criminal or civil case or the institution of criminal or civil proceedings against the lender. In the absence of such request, the Chief Benefits Director, as soon as he may deem it feasible to do so, shall designate such time and place as he may deem appropriate for such hearing, shall notify the lender thereof, and shall appoint not less than three persons, who shall constitute the board, to conduct the hearing. The Chief Attorney or his designee shall represent the Veterans Administration. Authority is hereby delegated to the Chairman of the board designated to conduct such hearing to administer oaths to witnesses. The Manager may issue subpenas for witnesses or records as provided in 38 U.S.C. 3311. The lender shall have the right to appear at such hearing in person or by attorney, or both, and to introduce evidence showing why such suspension should be modified or terminated. If the Veterans Administration has knowledge of a pending or contemplated civil or criminal action by the United States against the lender, arising from the facts on which the suspension of the lender was based, the Chief Attorney of the regional office concerned will inform the responsible United States Attorney of the date and place of hearing and keep him advised of all developments.

* * * * *

(i) If after determination by the Chief Benefits Director or the Administrator, as provided in paragraph (g) of this section, the suspension is terminated, all rights and interest of the lender shall be restored. However, any lender suspended by reason of action taken by the Federal Housing Commissioner is not afforded the rights under paragraph (g) of this section and the suspension in any such case will be terminated by the Chief Benefits Director only if the lender furnishes satisfactory evidence of his reinstatement by the Federal Housing Commissioner.

5. In § 36.4361, paragraphs (a) and (b) are amended and paragraph (e) is added to read as follows:

**§ 36.4361 Right of the Administrator to refuse to appraise residential properties.**

(a) The Administrator may refuse to appraise dwellings to which a request for appraisal relates if he determines that any party or parties involved or financially interested in the construction or sale of such units (1) have theretofore participated in the construction or sale of units sold to veterans which involved (i) substantial deficiencies in the construction, or (ii) a failure or indicated inability to discharge contractual obligations to the veterans who contracted for the construction or purchase of such units, or (iii) the use of a contract of sale or of methods or practices in marketing such units of a type which under standards promulgated by the Administrator was unfair or unduly prejudicial to the veterans concerned, or (2) have been refused the benefits of participation under the National Housing Act pursuant to a determination of the Federal Housing Commissioner under section 512 of that Act. Upon any such refusal to appraise, the Administrator shall give written notice thereof to the person or firm submitting the appraisal request and shall state the basis for such refusal.

(b) Except when the refusal to appraise is based upon action taken by the Federal Housing Commissioner, any person or persons affected by such refusal to appraise shall have the right within ten (10) days after receipt of written notice of such refusal to file with the Administrator, by registered mail, a request for a hearing. Upon receipt of such request, the Chief Benefits Director shall, as promptly as he deems it feasible to do so, designate a time and place as he deems appropriate for such hearing and shall appoint one or more persons who shall constitute a board to conduct the hearing. The person or persons requesting such hearing shall be afforded full opportunity to appear at the hearing in person, or by counsel, or both, and to introduce evidence showing why the sanction should be terminated or modified. Authority is hereby granted to the persons designated to conduct the hearing to administer oaths to witnesses.

* * * * *

(e) Where the refusal to appraise is based solely on action taken by the Federal Housing Commissioner the sanction will be lifted upon presentation to the Veterans Administration by the builder concerned of satisfactory evidence of his reinstatement as a participant in the programs administered by the Federal Housing Administration.

6. Section 36.4503(a) is amended to read as follows:

**§ 36.4503 Amount and amortization.**

(a) The original principal amount of any loan made on or after April 4, 1958, shall not exceed an amount which bears the same ratio to $13,500 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $7,500, nor may any veteran obtain direct loans aggregating more than $13,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Loans made by Veterans Administration shall bear interest at the rate of 5¼ percent per annum, except (1) where a commitment to make the loan was issued prior to April 4, 1958, in which case the rate of interest shall be 4½ percent per annum, and (2) where a commitment to make the loan was issued on or after April 4, 1958, but prior to July 2, 1959 in which case the rate of interest shall be 4¾ percent per annum.

(72 Stat. 1114; 38 U.S.C. 210)

This regulation is effective July 2, 1959.

[SEAL] BRADFORD MORSE,
*Deputy Administrator.*

[F.R. Doc. 59-5586; Filed, July 1, 1959; 11:00 a.m.]

# Title 43—PUBLIC LANDS: INTERIOR

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

### APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 1885]

[Oregon 06727]

### OREGON

### Modifying Boundaries of Willamette National Forest

By virtue of the authority vested in the President by the Act of June 4, 1897 (30 Stat. 34, 36; 16 U.S.C. 473), and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. So much of the following-described lands as were not eliminated from the Willamette National Forest by the joint order of the Secretaries of Agriculture and of the Interior, signed respectively on June 12, 1956, and June 21, 1956 (21 F.R. 4525-30), and as subsequently amended and modified, are hereby eliminated from the area now within the said forest:

WILLAMETTE MERIDIAN

T. 20 S., R. 1 W.,
Secs. 1, 2, 12, 13, and 24.
T. 20 S., R. 1 E.,
Sec. 19;
Sec. 20, SW¼ and S½SE¼;
Secs. 29 and 30;
Sec. 31, lots 1 and 2, that part of lot 3 within the Willamette National Forest, N½NE¼, NE¼NW¼, and those parts of SE¼NW¼ and NE¼SW¼ within the Willamette National Forest.
T. 11 S., R. 2 E.,
Secs. 4 to 9, Incl.;
Secs. 17 to 19, Incl.
T. 12 S., 2 E.,
Secs. 22, 26, 27, 28, and 34.
T. 14 S., R. 2 E.,
Secs. 1 and 2;
Sec. 10, lots 1 through 4, Incl., S½NE¼, SW¼NW¼, and W½SW¼;
Sec. 11, lots 1 through 4, Incl., and S½N½;
Sec. 12, lots 1 through 4, Incl., S½NE¼, SE¼NW¼, and N½SE¼;
Sec. 14, E½SE¼;
Sec. 15, W½SE¼, and SE¼SE¼;
Sec. 21, N½N½, SW¼NW¼, W½SW¼, SE¼SW¼, and SE¼;
Sec. 22, N½NE¼, SE¼NE¼, NW¼, and SE¼;
Sec. 24, SE¼.
T. 11 S., R. 3 E.,
Secs. 7, 17, 20, 22, 25, and 33.
T. 14 S., R. 3 E.,
Secs. 4 to 8, Incl.;
Sec. 10, E½;
Sec. 11;
Sec. 12, W½;
Sec. 14, 17, and 18;
Sec. 20, N½;
Sec. 22, NW¼;
Sec. 24, W½;
Sec. 28, NW¼;
Sec. 34, NE¼;
Sec. 35.
T. 16 S., R. 3 E.,
Sec. 27, SW¼NE¼, E½W½, and SE¼;
Sec. 28;
Sec. 30, lots 3, 4, 8, 9, 10, 11, 12, E½SW¼, and W½SE¼;
Sec. 32, lots 5 through 12, Incl., SW¼NE¼, and S½NW¼;
Sec. 34, N½ and NE¼SE¼.
T. 17 S., R. 3 E.,
Sec. 4, lots 5, 6, 7, and NW¼NW¼;
Sec. 6, lot 7, SE¼NE¼, E½SW¼, and SE¼;
Sec. 8;
Sec. 10, SW¼SW¼;
Sec. 18, lots 1, 2, 3, NE¼, and NE¼NW¼.
T. 11 S., R. 4 E.,
Secs. 31 and 32.

The areas described aggregate 36,090.75 acres.

2. The boundaries of the Willamette National Forest are hereby adjusted to the extent necessary to conform with the exclusions made by paragraph 1 of this order, and with the joint order in 21 F.R. 4525-30 referred to in paragraph 1 hereof.

3. The lands eliminated by paragraph 1 of this order are either privately-owned, or revested Oregon and California Railroad grant lands. The revested lands shall continue to be subject to such forms of appropriation as may by law be made of such lands.

ROGER ERNST,
*Assistant Secretary of the Interior.*

JUNE 25, 1959.

[F.R. Doc. 59-5484; Filed, July 1, 1959; 8:45 a.m.]

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[Public Land Order 1886]

[Colorado 028288]

### COLORADO

### Partly Revoking Departmental Order of April 12, 1946 (Blue River—South Platte Project)

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), it is ordered as follows:

The departmental order of April 12, 1946, reserving lands in the first form for reclamation purposes in connection with the Blue River—South Platte Project, is hereby revoked so far as it affects the following-described lands:

SIXTH PRINCIPAL MERIDIAN

T. 7 S., R. 73 W.,
Sec. 21, N½SW¼ and SW¼SE¼.

Containing 120 acres.

The lands are a part of the Pike National Forest. At 10:00 a.m. on July 31, 1959, they shall be open to such forms of disposition as may by law be made of national forest lands.

ROGER ERNST,
*Assistant Secretary of the Interior.*

JUNE 25, 1959.

[F.R. Doc. 59-5485; Filed, July 1, 1959; 8:45 a.m.]

# PROPOSED RULE MAKING

# DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## [ 7 CFR Part 52 ]

## U.S. STANDARDS FOR GRADES OF FROZEN FIELD PEAS AND FROZEN BLACK-EYE PEAS [1]

### Proposed Miscellaneous Amendments

Notice is hereby given that the U.S. Department of Agriculture is considering an amendment to the United States Standards (7 CFR §§ 52.1661–52.1670) for Grades of Frozen Field Peas and Frozen Black-Eye Peas, pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202–208, 60 Stat. 1087 as amended; 7 U.S.C. 1621–1627). The amendment as hereinafter set forth provides for the inclusion of snaps (succulent immature unshelled pods of the pea plant) in the product as an optional ingredient.

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposed amendment would file the same with the Chief, Processed Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington 25, D.C., not later than 30 days after publication hereof in the FEDERAL REGISTER.

The proposed amendment is as follows:

1. Delete § 52.1661 and substitute therefor the following:

**§ 52.1661 Product description.**

(a) "Frozen field peas" is the product prepared from the clean and sound immature seed of the field pea plant (Vigna sinensis), other than the black-eye pea plant, by shelling, sorting, washing, and blanching, and the product may contain succulent immature unshelled pods (snaps) of the pea plant as an optional ingredient as a garnish, and is frozen and maintained at temperatures necessary for the preservation of the product.

(b) "Frozen black-eye peas" is the product prepared from the clean and sound immature seed of the black-eye pea plant (Vigna sinensis) by shelling, sorting, washing, and blanching, and the product may contain succulent immature unshelled pods (snaps) of the pea plant as an optional ingredient as a garnish, and is frozen and maintained at temperatures necessary for the preservation of the product.

2. Delete § 52.1662 and substitute therefor the following:

**§ 52.1662 Definitions.**

(a) "Frozen peas" means frozen field peas or frozen black-eye peas.

(b) "Snap" or "snaps" means a piece or pieces of immature unshelled pods of the field pea plant or of the black-eye pea plant.

(c) "Unit" means an individual field pea or black-eye pea or a piece of immature unshelled pod of either.

**§ 52.1667 [Amendment]**

3. In § 52.1667(a), delete subparagraph (1) and substitute therefor the following:

(1) "Extraneous vegetable matter" means hulls or pieces of hulls; unshelled pods or pieces of unshelled pods (except in peas frozen with snaps as a garnish), leaves, stems, and other similar vegetable matter.

Dated: June 29, 1959.

ROY W. LENNARTSON,
*Deputy Administrator,*
*Marketing Services.*

[F.R. Doc. 59-5520; Filed, July 1, 1959; 8:51 a.m.]

[1] The requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

## [ 7 CFR Part 925 ]

[Docket No. AO-226-A6]

## MILK IN PUGET SOUND, WASHINGTON, MARKETING AREA

### Decision on 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 Seattle, Washington, on October 1–6, 1958, pursuant to notice thereof issued on September 11, 1958 (23 F.R. 7135).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on April 23, 1959 (24 F.R. 3284) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

*Preliminary statement.* A proposal was contained in the hearing notice to revise the method of computing producer prices and producer payrolls by using a "uniform bonus for base milk and a uniform price with a singly weighted average butterfat differential" for producer milk instead of using base and excess prices with a butterfat differential for each. Proponents abandoned this proposal at the hearing; therefore no further comment is necessary and the proposal is denied.

Another proposal in the hearing notice would amend § 925.41(b) of the order so as to enable any handler, with the prior approval, or in the presence, of the market administrator or his authorized representative, to dump skim milk or butterfat unsuitable for human consumption and not otherwise usable as a Class II milk product, whether or not degraded by any local health authority, such dumpage to be Class II milk not subject to the 25-cent location adjustment pursuant to § 925.54 of the order. Proponent did not appear at the hearing in support of such proposal. However, a representative of producer cooperatives testified in opposition to the inclusion of such provision without more comprehensive criteria to determine when and under what conditions milk might be unsuitable for human consumption. It is concluded that the proposal should be denied for lack of sufficient evidence of the conditions under which such a provision would facilitate orderly marketing.

A proposal to revoke the entire order was offered. Proponent failed to show in what manner the order is failing to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended. A representative of producer organizations testified that the concentration of the market's reserve milk supply in relatively few hands at this time, as was also the case when the order was first introduced, would be immediately effective in disrupting the market if the order were removed. It was contended by the latter witness that the order, with its marketwide pooling mechanism for distributing producer returns, had corrected the chaotic marketing condition for producers which had prevailed prior to the order and, further, that any potential for disruption is not cause to cancel the order but instead to amend it so as to make it even more effective in maintaining orderly marketing conditions. In view of the above, the proposal to revoke the order is denied.

A proposal to provide individual-handler pools in lieu of the marketwide pool was considered also. Proponent suggested that introduction of this plan would assist producers to receive higher returns. Although some producers undoubtedly would be benefited, it is equally true that other producers would find their prices reduced substantially. In view of the unequal sharing among producers of the burden of reserve milk supplies which would result from individual-handler pools under present circumstances in the market, it is concluded that such pooling plan should not be adopted at this time.

The remaining material issues on the record of the hearing, discussed below, relate to:

1. Revision of provisions defining and otherwise relating to the handling of milk by "producer-handlers".

2. Expansion of the "marketing area", as defined in the order, to include Kitsap and Mason Counties, Washington.

3. Revision of location adjustments applicable to Class I milk and to "base milk".

4. Modification of the provisions governing the classification of milk moved between plants by transfer or diversion.

5. Revision of the provisions relating to the pricing of producer milk diverted from a plant in one price district to a plant in another price district.

6. The reclassification from Class I milk to Class II milk of milk utilized in cocoa mixes and milk or milk products sterilized and packaged in hermetically sealed containers; the classification of milk into three classes rather than the present two classes.

7. Revision of the delivery performance requirements for a "country plant" to acquire pooling status; redefinition of the term "plant" to include reload points for pricing purposes.

8. The computation of producer "bases" and the rules governing transfers of such bases.

9. Introduction of an "economic-type" formula for the purpose of determining Class I prices, in lieu of the basic formula price plus a differential.

10. Several proposed changes in other provisions for the purpose of clarification, and to improve order administration.

*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) Producer-handlers (as re-defined) should continue to be exempt from the pricing and pooling provisions of the order, but should be required to file monthly reports of milk receipts and utilization.

Producer organizations proposed that all producer-handlers be regulated as to their handling operations in the same manner as other handlers and that they be treated as producers in the production of milk on their own farms. As an alternative plan, proponent producers suggested regulation on such basis be applied at least to those producer-handlers with larger than family-sized operations who make sales directly to consumers.

In support of their position proponents contended that the exempt position of producer-handlers under the order provides a competitive buying advantage which has contributed to a steady growth in business for the latter, and has resulted in difficult resale competition for regulated handlers because of lower resale prices offered consumers by the also by proponents that (a) producer-handlers continue to avoid regulation by furnishing milk to each other, or by purchasing supplemental supplies from regulated handlers, as needed, (b) several producer-handlers conduct operations which require considerable hired labor and may no longer be classified as family-sized operations, and (c) some producer-handler businesses are larger than those of several regulated handlers. The general position of producers was supported in testimony of a representative of the handlers' committee.



The producer-handlers' association opposed such extension of the regulation, contending primarily that (1) such proposal to regulate producer-handlers was proposed and supported principally by big handlers as a device for eliminating legitimate retail competition of producer-handlers, (2) adoption of such proposal would cause economic ruin of most producer-handlers in the marketing area, (3) there has been no substantial change in circumstances since promulgation of the order or since its last amendment that would justify adoption of the proposal, (4) the exemption does not afford producer-handlers a competitive advantage at retail, (5) the price paid to producers, as pegged by proponents of the proposal, makes it impossible to measure the effect of the order and contributes to surplus, (6) Congress did not delegate to the Secretary power to regulate producer-handlers' milk because producer-handlers' milk is not "purchased", and (7) the Constitution does not grant Congress the power to regulate intrastate milk of Puget Sound producer-handlers.

Generally, under a Federal order it has not been necessary, in order to achieve the purposes of the statute, to regulate fully a person who processes in his own plant milk from his own farm production and does not receive milk from other dairy farmers. The administrative difficulties and expense of regulating such persons on the same basis as other persons operating plants and distributing milk in the marketing area has warranted their limited or complete exemption from pricing and pooling, depending upon circumstances in the particular market. As a dairy farmer such person maintains control of his milk until ultimate disposition and therefore his situation is quite different from the regular producer whose milk is marketed through a handler. The protection of the minimum price provisions of the order have little significance to the producer-handler in his capacity as a dairy farmer.

On the other hand, in his capacity as a handler, the producer-handler competes in the retail market with regulated handlers. It is problems arising from this competition which prompted producer groups (some of whom indirectly are handlers also) to request the full regulation of producer-handlers. Whether or not such competitive situation presents sufficient reason for fully regulating producer-handlers as a means of removing or mitigating the difficulties complained of should be appraised in light of certain facts.

The buying advantage for producer-handlers, claimed by proponents, approximates the difference between the market blend and Class I prices plus the amount over the Class I price in effect under the negotiated purchase and sale arrangements between cooperative associations and handlers. The latter element in the price structure is not required by the minimum price provisions of the order, but nevertheless affects the cost of milk to handlers buying regulated milk. This premium, which has prevailed in varying amounts for more than three years, was $0.40 per hundredweight at the time of the hearing and at times has exceeded $0.70 per hundredweight. The average difference between the weighted average (market blend) and Class I prices under the order was $0.77 per hundredweight in 1958 and is directly affected by the total receipts of milk in relation to Class I sales. Receipts have increased more rapidly than Class I sales during recent years at the effective price level.

If warranted, the application of the pricing and pooling provisions to milk of producer-handlers, in their capacity as handlers, undoubtedly would overcome in part the difficulties to which complaint is directed. It would not remove, however, any advantage in buying at the Class I price established by the order as compared with the associations' "negotiated" price to other handlers. The presence of a negotiated Class I price over a period of time in the market prevents a realistic appraisal of whether the simple fact of exemption from pricing and pooling for the producer-handler has been an important factor in the competitive problem between handlers and producer-handlers. Certainly the problem did not reach its present proportion in the period of regulation preceding the negotiated price levels. It is concluded that in this situation producer-handlers who operate as such, each relying solely, or nearly so, on his own production and distribution facilities, should not be regulated in the same manner as other handlers.

It is not appropriate, however, to permit the producer-handler, through his exemption from pooling, to shift to other producers any portion of the burden of carrying the reserve supply associated with his fluid milk business. For this reason he should be required to be primarily dependent upon his own capacity to produce milk to fulfill his fluid milk requirements and necessary reserves, to earn an exemption from pricing and pooling. Dependence of the producer-handler on other sources, including regulated plants or other producer-handlers, for supplemental supplies would disadvantage other producers since their burden of carrying total market reserves would be increased by such means without a share in the benefits accruing from the fluid sales of the producer-handler. Unless the producer-handler produces on his own the fluid milk he distributes he is basically a handler and not a dairy farmer selling his own milk. Further, the opportunity to rely upon others for a significant portion of his supply provides an unwarranted incentive for producers to become distributors of milk and to employ numerous practices to qualify for exemption from pricing and pooling at the expense, or to the detriment, of other producers. The exemption granted the dairy farmer who handles his own milk should not provide an advantage for this type of dairy farmer of such magnitude that the stability of the market, and the effectiveness of the order in achieving its primary objectives, are threatened.

These unintended and undesirable consequences already have developed to some degree and their further development is in prospect under the prevailing

economic conditions and existing order provisions unless action is taken to remove such tendency. Considerable incentive has been afforded for (a) producers to become producer-handlers, (b) producer-handlers to avoid the expense associated with the maintenance of a full reserve supply of milk, and (c) producer-handlers to take advantage of opportunities afforded under existing provisions of the order to increase volume handled outside the order by entering into contractual arrangements or otherwise adjusting their operations.

In order to mitigate the above consequences it is concluded that to maintain an exemption from pricing and pooling on his own milk, the producer-handler should be required to depend solely, or nearly so, on milk of his own production for a full supply, without purchasing supplemental supplies from other sources, including other producer-handlers, or by leasing farms or herds from other persons. In order to insure this condition, it is necessary that the producer-handler be more specifically defined in terms of the functions he performs and the basis upon which he may maintain an exemption. This requires also that he file reports of receipts and utilization on a monthly basis as any other handler and provide such other information as will enable the market administrator to determine the proper status of such person in relation to the order requirements.

The further provision that a producer-handler whose designation as such has been cancelled cannot obtain redesignation as a producer-handler sooner than 12 months following such cancellation is necessary to prevent producer-handlers from relying on pool sources of milk to carry the necessary reserve supplies associated with the producer-handler operation throughout the entire year. Without this requirement, a producer-handler could choose to become fully regulated during periods when additional supplies of milk are required and revert to full exemption from pricing and pooling during any month when his own production is adequate to supply the demand for fluid milk, or, in the alternative, release production resources and facilities when they are not needed. Also, in order to guard against the delivery of producer-handler milk to another handler as pooled milk (rather than as other source milk), provision is made for cancellation of a producer-handler's designation if milk from his designated production resources and facilities is delivered in the name of some other person as pooled milk to another handler.

It was indicated in the exceptions that emergency conditions and conditions of an unusual nature may arise in which a designated producer-handler may find it necessary to receive quantities of whole milk or fluid milk by-products in limited amounts, or for limited periods of time, from sources other than his own production unit. In view of the specific requirements to be fulfilled for designation as a producer-handler and the provisions requiring that a producer-handler cannot regain designation for 12 months once it is cancelled, it is reasonable to permit a producer-handler to receive temporarily some milk and fluid milk by-products from regulated plants to meet emergency or unusual conditions. It also is reasonable to permit a producer-handler to receive limited quantities of packaged fluid milk by-products on a regular basis to supply retail routes without losing designation as a producer-handler. The latter type of provision will make it possible for the small producer-handler operation to handle products which it might not be economical for him to process in his own plant. Accordingly, provision is made that a designated producer-handler will not lose his designation if he receives not more than an average of 100 product pounds per day in the aggregate of specified fluid milk by-products derived from regulated plants. It is provided also that purchases from regulated plants may be made in unlimited quantities over a period of up to 45 consecutive days once in any 12-month period without loss of designation. This provision recognizes the possibility of unforeseen occurrence beyond the producer-handler's control which might cause significant interruption of his production or distribution facilities. These limited exceptions to the requirement that a producer-handler handle only milk and products derived from his designated production resources and facilities will provide needed flexibility but at the same time will not permit producer-handlers to balance out of the pool to an extent detrimental to the interests of other producers.

The provisions of the order are amended in a manner to implement the above conclusions.

(2) The marketing area should not be expanded to include Kitsap and Mason Counties, Washington.

A handler proposed the inclusion of Kitsap County, Washington, in the regulated marketing area. Another handler proposed the addition of not only Kitsap County but also Mason County, Washington. Certain local milk distributors in such counties, who are not now subject to regulation, expressed opposition to such proposals.

The hearing developed the following information.

Kitsap County, in which the city of Bremerton is located, lies directly west of Seattle on the Olympic (Kitsap) Peninsula, separated from Seattle by Puget Sound. Mason County, also on the Olympic Peninsula, is located across Puget Sound from the city of Tacoma, Washington. Seattle and Tacoma are the largest cities in which the handling of milk is covered by Order No. 25.

Principal means of access to Kitsap and Mason Counties from such cities are by toll bridge or ferry across Puget Sound. A longer route, by roadway, may be taken via Olympia, Washington. Such Peninsula counties are readily accessible also by roadway from neighboring Grays Harbor County, a portion of which county is presently included in the regulated marketing area.

Kitsap and Mason Counties represent a substantial market for milk regulated by the order. There is regular and continuing competition between regulated and unregulated distributors both in commercial channels and in connection with Government contract purchases by the Bremerton Navy Yard. About 37 percent of the fluid milk distributed in Kitsap County is bottled in three plants subject to the order and is distributed on routes in such county in resale competition with milk produced on the Peninsula and bottled in local plants. One regulated handler maintains a distributing plant at Bremerton to serve local outlets, and one local distributor in Kitsap County distributes bottled milk in Tacoma. The latter (currently a producer-handler) customarily purchases milk from regulated plants in amounts up to 88 percent of his total requirements and produces the remainder. Pursuant to the Washington State Uniform Fluid Milk Act, sanitary requirements in Kitsap and Mason Counties are similar to those applicable to milk distributed in the present marketing area.

The local association from time to time holds the contract to supply fluid milk to the Bremerton Navy Yard but does not have a supply adequate to fulfill the contract needs on a year-round basis without purchasing supplemental milk from regulated plant sources. Other bidders for the contract are regulated handlers.

In addition, local distributors frequently purchase milk supplies in bulk, particularly in the season of lowest production, from regulated plants for bottling to supplement supplies from their own dairy farms. Supplemental purchases of regulated milk by the local cooperative association have ranged between 624,000 and 3.2 million pounds per year in the period 1952–1957. Taking into account all supplemental supplies furnished, regulated milk constitutes approximately 50 percent of the total fluid milk disposition in such counties.

Also, regulated plants, which provide ready outlets for temporary week-end and seasonal surpluses of milk, have been utilized regularly by Kitsap-Mason distributors to dispose of unwanted milk since very limited facilities for handling milk for purposes other than bottling are maintained locally. The bulk of such milk, however, has not been used in any way to "ride the pool" since it has been transferred by the local cooperative as "other source milk" without effect on the uniform prices computed under the order.

While Kitsap and Mason Counties considered alone are deficit in supply, the Olympic Peninsula as a whole is not a deficit-producing area (more than 62 million pounds produced annually as compared with fluid requirements of about 40 million pounds in Kitsap and Mason Counties, according to most recent data available). More than 40 million pounds of milk per year, qualified for fluid use in Kitsap and Mason Counties, are moved across Puget Sound from Clallam and Jefferson Counties on the Peninsula as part of the regular receipts of regulated plants even though distances are less, and per hundredweight cost lower, to move milk from such producing areas to the local plants serving Kitsap and Mason Counties.

Although the recommended decision indicated that application of the order

to Kitsap and Mason Counties would provide a broader framework for uniform pricing throughout the Puget Sound area, there is no apparent desire by the local producers for an order as a means of improving their marketing conditions. They take exception to the institution of a regulatory program to improve their marketing situation. The exceptions filed by the principal organizations representing producers whose milk is currently subject to the order strongly deny that they are "subsidizing" the local producers in such counties. It is their position that marketing conditions for producers under the order are not made more difficult by the omission of such counties from the marketing area and that such conditions would not be appreciably improved by the extension of the regulation to include the Kitsap-Mason milk. Since the case for the marketing area extension rests primarily upon the premise of subsidization by pool producers of the Kitsap-Mason produced milk, and the pool producers deny any disadvantage to themselves, it is concluded in these circumstances that insufficient basis for such an extension of the marketing area is present at this time. It is true that proponents presented additional testimony to show that there are differences in retail and wholesale price levels, discount schedules, and contract bid prices between the regulated and the Kitsap-Mason areas. This testimony was offered to demonstrate competitive disadvantage to the regulated handlers doing business in the unregulated counties. There are many factors, of course, which influence wholesale and retail price levels, discount schedules and bid prices in different areas. The existence of such differences does not in itself demonstrate, however, that they have resulted from marketing conditions of the kind that this type of regulation can correct. No specific examples of competitive disadvantage resulting from the operation of the order were shown by proponents.

The scope of the marketing area is related to the particular problems involved. Since a milk marketing order is a type of regulation requiring specific boundaries for the area to be covered, some competition between regulated handlers and others hardly can be avoided at points outside the regulated area. A regulated handler who distributes outside the regulated area so established incurs voluntarily whatever risks are involved in doing business in competition with persons unregulated. In the absence of compelling reason to extend the marketing area for the purpose of establishing or maintaining orderly marketing conditions either inside or outside the presently defined marketing area, it is concluded that the counties of Kitsap and Mason should not be included in the marketing area.

(3) The price adjustments on Class I and base milk according to the location of the plant should be revised.

The present order provisions provide for location adjustments of 30 cents, 40 cents and 20 cents per hundredweight in Districts 2, 3, and 4, of the marketing area, respectively. A location adjustment of 45 cents per hundredweight is provided for milk received at plants in Clallam and Jefferson Counties, and a 40-cent per hundredweight location adjustment applies at any other plant located outside District 1 and the counties of Kitsap and Mason. Producer associations which market large volumes of milk from various segments of the milkshed and Kittitas County proposed a new schedule of location differentials, as follows:

45 cents in Clallam and Jefferson Counties;
25 cents in District 2 and Kittitas County;
20 cents in District 3;
15 cents in District 4; and
40 cents at any other plant located outside the marketing area.

Consideration also was given to a location differential for that portion of Pierce County not included in the marketing area. Proponents suggest that the differential for such area should be no higher than the rate for District No. 3, and preferably should be treated on the same basis as District No. 1.

Technological changes and efficiencies in the handling and transportation of milk have taken place which have reduced the costs of moving milk from farms to the principal communities in the marketing area in the period since the present location differentials were established. In those areas where the conversion from can to bulk handling of milk virtually has been completed, it is frequently possible to move milk directly from farms to District 1 plants, by-passing country plants in the production area whenever the milk is needed at the city. However, processing plants in the production area are still required to handle Grade A milk supplies when not needed for Class I uses.

Contractual agreements between the producer associations and transport companies which haul milk from plants in the various districts and Kittitas County to District 1 plants provide for hauling charges in line with the per hundredweight rates proposed. One association which owns and operates its own tank trucks submitted cost figures incurred in transporting milk substantially similar to the contract carrier charges.

While hauling charges vary depending upon the size of the load, the schedule of location differentials proposed by producer organizations are representative of the costs experienced under present circumstances for moving milk from various plant locations in the milkshed to the main centers of consumption in the marketing area.

Producer milk from Clallam and Jefferson Counties is moved to plant outlets in Seattle. The present location differential applicable at plants located in such counties is 45 cents per hundredweight. Proponent producers suggested the continuation of such differential although reductions in plant-to-plant hauling costs generally throughout the milkshed have taken place and no segment of the regulated market is dependent upon such Olympic Peninsula milk, which is relatively costly to move to market outlets, as a source of supply. As shown above, rates proposed for other segments of the milkshed are primarily in the range of 15–25 cents per hundredweight, depending on the location of the plant with reference to the segment of the marketing area served by the plant.

The recommended decision proposed a reduction in the Clallam County and Jefferson County rate from 45 to 35 cents per hundredweight. Exceptions filed cast certain doubts, however, on the particular comparison of the respective costs of moving milk to Bremerton and Seattle, indicated by the hearing record and referred to in such decision as an appropriate basis for the proposed reduction in rate.

In any event the amount of the rate to apply for a given plant location must be considered in relation to the lowest-cost alternative method of moving milk to market from the same general area. Consideration on such basis tends to minimize charges assessed against the pool price for transportation, and thus insures producers generally that their price will not be diluted by transportation charges higher than are actually necessary to service the market adequately. It is difficult to recognize lower hauling costs, and thus reduced differential rates, for the remainder of the milkshed, occasioned by the growth and relative efficiencies of moving milk by bulk tank, and not to observe the effect of the latter in Clallam and Jefferson Counties, even though all milk does not yet move in bulk tanks from such counties. Obviously, a number of producers in such counties have found it preferable to deliver their milk by bulk tank. If this is the more economical means of moving milk to market (and it has proved so in other parts of the milkshed), then its importance should not be overlooked in the establishment of a proper rate for plant-to-plant hauls in these two counties. It is infeasible, of course, to establish individual rates for producers, or groups of producers, based upon the size of their respective operations.

The exceptions filed by the Clallam-Jefferson producers did not allege the presence of a plant-to-plant transportation rate from such counties higher than that proposed in the recommended decision. In fact, the exceptions state the prevailing rate to be 35 cents per hundredweight, the same as contained in such decision, although it was contended that such rate "subsidizes" to some extent the rates applied for the haul from farms to the local plant. Since this order does not contemplate the fixing of a rate which allows for plant handling costs of the farm to local plant cost of hauling, the latter expenses, incurred by the excepting producers in moving milk from such counties to the consuming center of the marketing area, are properly chargeable to the individual producers receiving the service rather than to producers generally.

However, an immediate reduction in location differential to 35 cents (equivalent to the conditional figure referred to as the current plant-to-plant rate by the excepting producers who operate the plant in Clallam County), could work temporary hardship in the particular circumstances alleged. For this reason,

a more gradual reduction is appropriate to permit an orderly adjustment in net returns to the Clallam-Jefferson producers shipping through the local plant, as they decide the most advantageous plan for handling their milk in competition with the bulk tank delivery system. It is concluded, therefore, that the reduction in rate should be limited to 5 cents per hundredweight at this time, making a per hundredweight rate for this location of 40 cents.

A portion of Pierce County is included in District No. 1 of the marketing area. The remainder of such county is outside the marketing area. Failure to eliminate the location differential insofar as Pierce County is concerned would provide for a lesser cost (by 40 cents per hundredweight) to any handler whose plant is in such county but who distributes milk in the marketing area in competition with handlers having no location adjustment. Likewise, producers at a plant in such county would receive 40 cents less than other producers in the county who ship to plants located in District No. 1. Uniformity of pricing and orderly marketing will be promoted by treating Pierce County on the same pricing basis as District No. 1.

It is concluded that the schedule of location differentials be revised in order to reflect actual costs in transporting milk under current conditions and by efficient means.

(4) The order should be revised to permit Class II classification of milk transferred from a fluid milk plant or a country plant to a plant regulated by another Federal milk order.

Under the present provisions of the order, milk moved from a plant under this order to a nonpool plant outside the marketing area or certain other counties, including any plant regulated under another Federal order, is classified and priced as Class I milk. A handler who operates plants under both the Puget Sound and Inland Empire orders proposed that milk transferred or diverted from a plant regulated under the Puget Sound order to a plant regulated under the Inland Empire order be classified and priced as Class II milk.

Proponent testified in support of the proposal that: (1) There have been occasions when the Inland Empire market has been short of milk for the manufacture of cottage cheese and ice cream while at the same time there were plentiful supplies of milk in the Puget Sound market; and (2) Puget Sound milk could have been purchased by Inland Empire handlers for use in cottage cheese and ice cream during such periods, if the provision which requires that such purchases be classified and priced as Class I milk in the Puget Sound market had not made such purchases infeasible.

While proponent stated that he could foresee no immediate need for the proposed provision, he further stated that the Inland Empire market might at some time again be short of milk for use in such products at the same time that extra supplies are available in the Puget Sound market.

A witness representing certain producer groups testified in opposition to the proposal. This witness stated that the present provision of the order is based on the fact that there are adequate facilities within the Puget Sound marketing area to handle milk in excess of fluid requirements and that, except in an emergency situation, it is not necessary to transport milk outside the marketing area for Class II disposition. Such witness pointed out also that the Spokane ordinance requires the use of Grade A milk for the manufacture of cottage cheese and contended that to permit milk to move from the Puget Sound market at the Class II price to meet the Grade A requirements of another market is not warranted.

In drafting the present provisions governing interplant movements consideration was given not only to the extent of facilities within the milkshed for utilizing milk in excess of fluid requirements, but also to a system which would minimize administrative costs and difficulties of determining the ultimate use of the milk. To permit milk to move to nonpool plants normally would require the market administrator to perform verification and audit at the nonpool plant, sometimes at a relatively high cost. However, when milk is moved from a Puget Sound plant to a plant which is regulated under another Federal order, such verification and audit is readily feasible inasmuch as the handler under the other order receiving such milk must submit monthly reports to the market administrator of such other order, and such reports are subject to verification and audit as a regular function of order administration. Therefore, little additional administrative cost or difficulty is incurred in verifying the use of such milk in terms of the classification and allocation sequence provided by the other order.

It is noted further that under present provisions of the Puget Sound and Inland Empire orders it is possible for a Puget Sound handler to manufacture such Class II products as nonfat dry milk, unsalted butter, or condensed milk in his regulated plant and move such products to the Inland Empire market for conversion into other Class II products.

In view of the above considerations, it is concluded that the order should be amended to provide that milk be classified as Class II milk if transferred from an Order No. 25 plant to another Federally regulated market and assigned to Class II milk under the classification and allocation provisions of the other order. However, as to milk moved to outside plants not regulated by any Federal order, the reasons for treatment as Class I of any transfers from the Puget Sound market are still applicable and the provisions governing such types of transfers should not be changed.

(5) The provisions relating to the pricing of producer milk diverted from a plant in one price district to a plant in another price district should be revised.

The present definition of "producer milk" provides that milk received at a plant in one price district on 60 percent of the days of delivery during the month may be delivered directly from farms to a plant in a different price district on the remaining days of such month and, for pricing purposes, be deemed to have been received at the former plant.

It was proposed by the cooperative associations testifying at the hearing that producer milk be priced, in all cases, at the location of the plant where it is physically received.

In numerous instances producers have been assigned to District 1 plants but their milk has been diverted, within the prescribed limitations as to the number of days, to plants in other price districts where, by virtue of location adjustment provisions, lower prices prevail under the order. For accounting and payment purposes, such diverted deliveries of producer milk are regarded as received at the District 1 plant, where no location adjustment is deductible, and the handler is credited, in the computation of his obligations to producers, with payment to such producers at the full District 1 uniform price, although up to 40 percent of the milk was physically received and utilized in another price district where the lower price obtains. Thus, under present order language, the handler may draw from the pool sufficient money to pay the producer of such diverted milk a uniform price higher than that applicable to other milk customarily delivered to the location to which such milk was diverted.

In certain other cases, milk has been hauled from the farm to a District No. 1 plant, received there, and then re-hauled to a plant in a lower-priced district. By this means also, the producers involved receive the District No. 1 uniform price and the handler is so credited in the determination of his pool obligation, even though the milk may not be needed at the District No. 1 location.

The diversion privilege is intended primarily to permit efficiency in the marketing of milk not needed at fluid milk plants for bottling purposes. On days when the milk is moved by the handler from the farm to a plant in District 1 the cost of transportation is allowed the handler through a hauling deduction from the producer's check. On days when the milk does not move to such plant but is diverted by the handler to a plant in another district a cost of hauling less than that contemplated by the customary hauling deduction may be incurred by the handler. Thus, the diversion of milk in such circumstances jeopardizes the proper distribution of producer returns and offers opportunity for competitive advantage to the handler, thereby impeding the orderly marketing of milk.

Pricing milk in all cases at the location of the plant where it is first physically received rather than at the plant from which it is diverted will reflect more nearly the economic value of producer milk at the location where it is utilized. Likewise, producer returns will be more in accord with this value and the actual costs involved in transportation of the milk.

The practice of hauling milk from the farm to a District No. 1 plant, receiving it, and then hauling the same milk, or an equivalent quantity, to a plant in a lower-priced district likewise may lead to advantage to the handler if location ad-

justments do not properly reflect actual hauling costs from country plant locations to District No. 1. Problems of this kind also will be minimized as the result of the above pricing mechanism and the reduced location adjustments discussed elsewhere in this decision.

In view of the above considerations, it is concluded that the proposal should be adopted.

(6) The classification provisions should be modified so as to classify milk utilized in "cocoa mixes" and in sterilized milk and milk products in hermetically sealed metal containers as Class II milk; the classification of milk into two classes should be continued.

The present language of the order provides for the classification of milk as either Class I milk or Class II milk. It was proposed by a handler that the order be amended to include milk for "cocoa mixes" in Class II milk rather than in Class I milk, as presently classified. Another handler proposal would remove all milk and milk products sterilized and packaged in hermetically sealed containers from Class I milk and provide for their classification in Class II milk.

A handler manufactures a "cocoa mix" which is disposed of under a trade name to a distributing company which, in turn, disposes of the product to restaurants to be served, by the addition of water or skim milk, as a hot cocoa drink. The product (which must be continously agitated) is dispensed at restaurants by means of a special dispenser. It has a body and viscosity similar to low-fat ice cream mix. The butterfat and nonfat milk solids used in the manufacture of the product are usually in the form of sweetened condensed milk and nonfat dry milk. Butter, milk and cream also are used at times in its manufacture. The applicable health authorities do not require that the product be made from milk meeting the Grade A standards and, therefore, it is in competition with cocoa powders made from ungraded milk which are mixed with water and sold as hot chocolate.

Since this product is not required to be made from Grade A milk and is in direct competition, from a procurement standpoint, with supplies of ungraded whole milk and nonfat dry milk, it should be included in Class II milk. However, since it does not constitute a residual outlet for Grade A milk, any milk so utilized should be subject to the Class II location adjustment as provided in § 925.54 of the order. The order is so revised.

A proposal was made to provide for the classification in Class II milk of milk disposed of as milk or milk products sterilized and packaged in hermetically-sealed containers. The proponent handler operates a plant in East Stanwood, Washington, where sterilized whole milk and ice cream mixes are processed and packaged in containers of various sizes. At times sterilized cream and other milk products, including cocoa mixes, also are processed and packaged. Disposition of milk and products processed in the plant is made mainly to military and export outlets. The minimum ingredient specification is milk of manufacturing grade.

Some handlers in the Puget Sound market regularly package and distribute Class I milk both at retail and wholesale in paper containers which are advertised as hermetically-sealed. Under consideration here, however, are only those products which are packaged in hermetically-sealed metal containers.

The regular milk supply at proponent's plant is primarily manufacturing-grade milk purchased from dairy farmers in Snohomish County. The available supply of ungraded milk from dairy farms in the milkshed has been dwindling at a rapid rate and is insufficient to fill the needs of the plant. The classification and pricing of producer milk in Class I makes its use in this product prohibitive. While the proposed classification will not insure the availability of producer milk for such uses, it will permit producer milk to move to such plant as Class II milk, providing an additional outlet for producer milk in excess of handlers' fluid requirements.

It is concluded that the classification provisions should be modified to provide for classification in Class II milk of all milk and milk products disposed of in hermetically-sealed metal containers. As in the case of cocoa mixes, this product does not represent a residual use and, therefore, it is concluded further that the milk so utilized should be subject to the Class II location adjustment as provided in § 925.54.

As stated above, the present order provides for two classes of milk. Class I milk includes milk used for those products which the health regulations require to be made from Grade A milk and milk for any product not specifically accounted for as Class II milk. Class II milk is that milk used for products not required under the applicable health regulations to be processed from Grade A milk.

A producer association proposed that a three-class classification system be established. Proponent's proposal would continue to classify in Class I milk that milk and butterfat used for products required by the health regulations to be processed from Grade A milk. Class II milk would include "skim milk and butterfat used to produce cottage cheese, ice cream mix and all other perishable products that cannot be shipped long distances". Class III would include "skim milk and butterfat used to produce butter, hard cheeses, powdered milk and milk utilized for purposes other than human consumption . . ." Proponent indicated further that classification in Class II milk should be sufficiently flexible to permit the market administrator to reclassify to the lowest classification, milk for any Class II milk product whenever handlers encounter a competitive condition tending to limit its sale.

Proponent further proposed that the price for Class II milk be established at a level 50 cents below the Class I price, and that Class III milk be priced the same as present Class II milk.

The Agricultural Marketing Agreement Act of 1937, as amended, under which Federal orders are promulgated and issued, requires "that milk be classified in accordance with the form in which or the purpose for which it is used, * * *". Classification of milk on the basis of whether or not the milk can be transported long distances fails to meet the criteria of classification established by the Act. Likewise, the proposal to have the market administrator establish a lower classification whenever a handler encounters a competitive situation which would tend to limit sales of a Class II product is not practicable in terms of the classification requirements of the Act. The authority to classify and price milk is vested in the Secretary. While the market administrator may recommend amendments to the Secretary, it is beyond the powers which may be delegated to the market administrator to either permit or require him to classify or price milk on any basis other than as determined by the Secretary and provided by the terms of the order.

While the named products, cottage cheese and ice cream, proposed for Class II milk, in many cases may contain Grade A (producer) milk, they are not products required under the applicable health regulations to be made from Grade A milk. Such products must be disposed of at this time in the same competitive market as products made from factory, or manufacturing, milk.

It is necessary to provide pricing which will permit excess milk to move readily into manufacturing channels when producer milk receipts are in excess of the market's fluid milk requirements. Proponent of the three-class classification proposed a Class II price 50 cents below the Class I price but presented no testimony as to the feasibility of moving milk at the proposed price in those products which conceivably would be covered by the proposed Class II milk. Attaching a price at the level proposed to milk and butterfat utilized in such a product as evaporated milk, which is a product eligible for long-distance shipment, raises serious question as to the continued operation of certain plants which are significant outlets for reserve milk supplies.

In view of the above considerations, it is concluded that the proposal for a three-class classification plan should not be adopted at this time.

(7) No revision should be made in the delivery performance requirements for a "country plant" to acquire pool status; the definition of plant should be modified to cover "reload points" in order to facilitate the proper pricing of milk according to location.

The present order provisions require that not less than 50 percent of the receipts of milk from dairy farmers at a country plant be shipped in fluid form to a fluid milk plant in each of the months October through December, and not less than 20 percent of such receipts in each of the months of January through September, for the plant to acquire pool status as a country plant. However, if such plant performance re-

quirements are met for the period October through December, no further performance is required in the months of January through September. A proposal was made to include milk received from other regulated plants as well as milk received from dairy farmers in the total receipts to which such shipping percentages apply.

Proponents' proposal was intended primarily to prevent possible abuse of the diversion privilege foreseen under the present provision. They contended that it would be possible for the operator of some plant (currently a nonpool plant) to assign a substantial portion of the dairy farmers at the plant to a regulated plant for the months when the 50 percent shipping percentage is applicable, and subsequently divert the milk from the regulated plant to the nonpool plant. Since the shipping percentage applies only to receipts from dairy farmers and the diverted milk is considered as received as producer milk at the regulated plant, proponents envisioned that the operator of the nonpool plant might avoid the shipping requirements for country plant status by shipping 50 percent of a reduced volume of receipts.

The potential abuses to which testimony was directed are not a serious threat to orderly marketing at this time. Further, other amendments recommended elsewhere in the decision, particularly with respect to the reduction in location adjustments and the pricing of diverted milk at the plant where it is physically received, will minimize any potential problem. Under the latter provision, any milk "diverted" to a plant for which qualification as a country plant is desired would become receipts from dairy farmers at such plant for the month and, therefore, the shipping percentage for such month would be applicable to the "diverted" milk as well as to other dairy farmer milk at the plant.

The order should be amended also to redefine the term "plant" to include "reload points" and, for purposes of pricing and pooling, provide for possible qualification of any reload point as a "country plant".

The present order definition of a "plant" means the land, buildings, surroundings, facilities, and equipment whether owned or operated by one or more persons constituting a single operating unit or establishment which is maintained and operated primarily for the receiving, handling and processing of milk or milk products. A witness representing producer cooperative associations supported a proposal to revise the definition of plant to include stations at which reloading is done even though no processing is carried on at such location.

The present definition of plant was adopted before bulk milk handling became a major consideration. Reload stations at which milk is transferred from one tank truck to another for forwarding to the market developed with the conversion from can to bulk handling of milk. At the time the definition was incorporated, the language of the provision "receiving, handling and processing" adequately described the functions of a plant. The function of assembly of milk for movement to the market may be performed, however, by a reload station as well as by plants where some processing takes place.

The health authorities having jurisdiction in the market have prescribed certain sanitary requirements which a reload station must meet to qualify as a milk handling establishment. They require that the reload station be equipped with a covered area where the milk can be transferred from one road vehicle to another and with facilities for washing tanks which are emptied. Such facility must be under the control of the handler.

Since a reload point under the bulk handling method serves a major function similar to that of a country plant under the can-handling method, treatment under the order in the same manner insofar as pricing, location differentials to handlers, and performance requirements for pool status are concerned, will facilitate the orderly marketing of milk. The term "plant" then should be expanded to include any structure in which are maintained facilities for washing tanks and at which milk of any producer moved from the farm in a tank truck is commingled with milk of other producers before delivery to a fluid milk plant or country plant. A reloading operation on the premises of a processing plant would be considered, of course, as a part of such plant's operation.

(8) The provisions relating to producer bases should not be revised as to the number of months during the year when bases are established; the provisions governing new producer bases should be revised; and the provisions relating to transfers of base should be modified.

The present order provides for the computation of a daily base for each producer whose milk was received by a handler on not less than 120 days during the months of August through December, inclusive. The daily base is an amount computed by dividing such producer's total pounds of milk delivered in such five-month period by the number of days from the date of his first delivery to the end of such five-month period. The base so computed, which is recomputed each year, becomes effective on the first day of February next following, and remains in effect through the month of January of the next succeeding year. Any producer who is not eligible to receive a base as described above, or relinquishes his base under prescribed limitations, is allotted a base computed by multiplying his deliveries to a handler during the month by an appropriate percentage, ranging from 45 percent in May to 80 percent in November and December.

A proposal was made by a producer association to amend the base computation provisions so that the base-earning period would be any nine months during the calendar year when producer receipts and Class I sales are in nearest balance, in lieu of the five consecutive fall months as presently provided. Other producer associations, making no proposal for change with respect to the base-making period, proposed, however, that the order be amended to adjust the new producer schedule of delivery percentages used in computing base, to conform to a changed seasonal pattern of production. The latter associations also proposed that the order be amended to remove all restrictions on transfers of base between the original holder and a member of his immediate family and, in case of death, to permit such transfer to a member of the immediate family, or between the holder's estate and one outside party.

Proponent for the revised base-earning period testified that it is beneficial to the producer, the handler and the consumer to have a uniform monthly production of milk, avoiding wide seasonal variations. It was stated further that although the current base plan has proved to be an effective means of adjusting production seasonally to periods when most needed, two "peaks" of production occur during the year. It was also contended that hardship is incurred by any producer who is not able to adjust precisely to the present base-earning period, and that if producers were not given advance notice of the base-earning months, there would be greater incentive for uniform production throughout the year.

The witness for other cooperative associations expressed agreement with the general objectives of the proposed revision of the plan, pointing out that producers had succeeded in increasing their production during the present base-earning months, particularly during August and September, and that if the base-earning months were continued without change, an eventual result likely would be even greater production in the base-earning period, with January and February becoming more pronounced as low production months relative to other months. As previously indicated, such associations made no specific proposal for modifying the base-earning period at this time.

The base and excess plan of payment to producers was incorporated in the initial order which became effective in 1951. Both the base-earning period and the period to which payments on base milk were applicable were revised in 1952. The percentage of delivery schedule for computing new producer bases was modified in 1952 and 1954. Other modifications of the base plan have been minor in their effect. The limited purpose of the plan is to encourage a more even seasonal production pattern.

Milk delivery figures for the period January 1952 through August 1958 are contained in the hearing record. Official notice is taken of the monthly statistical summary for each of the months of September through December 1958, inclusive, released by the market administrator. These releases, together with record information, afford comparisons of monthly data with respect to milk receipts for the full year 1958 with those for prior years. Producer receipts of milk in May, usually the month of highest production seasonally, have shown a considerable decrease in relation to receipts in November, normally the month of lowest production, since the

base and excess plan has been in effect. For example, receipts of producer milk in May 1952 were 131.6 percent of the monthly average for the year while November 1952 receipts were 84.5 percent of such average. Even though there was a substantial annual increase in producer milk receipts from 1952 to 1958, receipts of producer milk in May 1958 were only 122 percent of the monthly average for such year and receipts in November were 94 percent of such average. November historically has been the month of lowest seasonal deliveries, but in recent years January and February receipts have been below the November level. Improvements in the production pattern have occurred primarily in the spring and early fall months. In 1952 there were only three months in which monthly receipts were within 10 percent of the monthly average for the year, whereas in 1958 receipts were within 10 percent of the monthly average during nine months of the year. Although the revised pattern of production which has developed over the past several years probably may be attributable to a number of circumstances, and not solely to the operation of the base plan, these data demonstrate marked progress toward accomplishment of the stated purpose of the plan, i.e., development of a more even pattern of production throughout the year. In view of the above, it is concluded that the base-earning months should remain unchanged.

The opportunity to be allotted base in the regular manner, as described above, should be extended, however, in all cases where the information is made available for the base computation, to those producers who enter the market through the choice of the distributor to whom they sell. This is necessary in order that such producers will not suffer undue hardship as the result of an action over which they had no control. The producer-handler who becomes a producer should have similar treatment as to base if his Class I sales accrue to the pool.

The provisions relating to establishment of bases for producers entering the market on their own volition for the first time, and an alternative method for establishing base for the producer who desires to cancel his base and be treated as a new producer under the limitations prescribed, should be revised also.

Since the percentage of delivery schedule on which new producer bases are computed was last revised, the pattern of production has changed seasonally, and both total production and total base milk have increased in relation to Class I sales. A greater number of producers has made use of earned base in the spring months while such earned base was relatively favorable as compared with their bases computed under the new producer schedule, but have cancelled earned base in favor of the new producer schedule whenever the latter provided a more favorable return. This has occurred mainly in August and subsequent months. The privilege of relinquishing base made in the regular manner was included to relieve possible cases of hardship, but was not intended to provide a producer the means of general avoidance of the regular method of base computation, in order to gain an increased return at the expense of other producers. Unless revised, the new producer base provisions would make the base plan relatively ineffective. It is concluded that such delivery percentages should be revised as provided in § 925.60(b) of the amendments made a part of this decision.

A provision should be incorporated in the "base rules" to remove restriction on transfers of base to a member of the immediate family of the base-holder and, in case of the base-holder's death, to a member of his family, or to the estate of the base-holder and in turn to one outside party.

A witness representing several cooperative associations testified that while it is their position that transfers of earned bases should be held to a minimum, application of the present rules has caused hardship in some cases. It also was pointed out that on occasion the rules have made difficult an orderly transfer of property, particularly when made necessary by the death of a producer. In order to facilitate transfers of base in such circumstance, it was proposed by such witness that the order be amended to remove all restrictions on transfers of base where the recipient is a member of the immediate family of the base holder, and in case of death, to permit the transfer to a member of his immediate family, or to his estate and then to one outside party. Proponent testified that the provision requiring that the market administrator must be satisfied that the conveyance of the herd is bona fide, and not for the purpose of evading any provisions of the base rules, provides adequate safeguard against abuses where transfers of base are involved in settling estates.

Adoption of the proposal would not have adverse effect on the orderly operation of the base plan and would provide relief from hardship in some instances. In view of the above, it is concluded that the proposal should be adopted.

(9) No change should be made in the method of determining Class I prices.

The order provides that Class I prices shall be determined by the use of a basic formula price plus a differential of $1.65 per hundredweight. The basic formula price is the highest of the prices computed from (1) a butter-powder formula, (2) a butter-cheese formula, or (3) the average of prices paid at selected midwest condenseries. The Class I price formula also contains a contra-seasonal provision which provides that the Class I price for the months of April through June, inclusive, shall not be higher than the Class I price computed for the month of March immediately preceding, and the Class I price for the months of October through January, inclusive, shall not be lower than the Class I price computed for the month of September immediately preceding.

A producer association introduced a proposal to establish Class I prices by an "economic-type" formula of the same general type as the Class I price formula in use in the Boston, Massachusetts, market. The formula would reflect the following factors: (1) Consumer purchasing power in the State of Washington, (2) the wholesale price level in the United States, (3) changes in the cost of producing milk in the State of Washington, and (4) beef prices in the State of Washington. A seasonally adjusted index of department store sales in western Washington (or the index of per capita disposable personal income in the State) was offered as the measure of consumer purchasing power; the monthly index of U.S. wholesale prices as the measure of general economic conditions; an index of mixed dairy feed, hay, and labor, weighted in the proportion of the respective share of each in milk production costs, as the reflector of changes in the cost of producing milk; and the beef price index for the State of Washington as the indicator of changes taking place in a principal agricultural industry competing for factors used in the production of milk.

Proponent testified that the proposed formula was based on a study made at the Washington State College, published in January 1952 as Station Circular No. 178 titled "The Pricing of Class I Milk in the Puget Sound, Washington, Milk Marketing Area". A supplement to Circular No. 178 containing statistical data basic to the study and relating to more recent years was published in November 1957 and also was offered in evidence.

Proponent contended that the present Class I price formula does not appear to be the most efficient pricing mechanism available and the following reasons were presented for its revision: (1) The basic price formula is based on prices paid to dairymen in Wisconsin and Michigan and does not reflect supply and demand conditions for milk in the Puget Sound market; (2) any change in the method of computing Class I prices requires a public hearing in order to adduce testimony from the industry and the public; (3) time is required for study and approval by the Secretary; and finally (4) a vote is necessary to secure producer approval for amending price provisions. It was stated further that the proposal was not offered for the purpose of establishing a higher Class I price level; nevertheless, proponents expressed the view that producers are not receiving adequate compensation for producing milk, the uniform price being reduced by relatively large volumes of producer milk in Class II milk uses.

A witness representing several cooperative associations which are responsible for receiving, handling or marketing substantial amounts of producer milk in the Puget Sound market, including a large proportion of the market's reserve supplies, testified that if an economic-type formula were to be considered for use in the Puget Sound market, a period of study and preparation should be allowed the industry, and that the various elements in the formula should be selected from a complete review of all factors affecting supply and demand conditions in the Puget Sound area to find those movers which have specific application in such region, and not simply to adopt elements because they are similar to those contained in an existing formula having

local significance in a distant area. Such witness further stated that the several cooperative organizations on whose behalf he was testifying were familiar with the 1952 pricing study offered by proponent, and also with the operation of the formula in effect in the Boston, Massachusetts, market, but considered the present Order No. 25 formula preferable for the Puget Sound area at this time.

The circular published in 1952 on which proponent's proposal was based states that the purpose of the study was to present an alternative Class I price formula for the Puget Sound market which would (1) create greater stability in pricing, and (2) bring forth a milk supply pattern more in line with Class I utilization. The circular itself recommended that further study and appraisal be given by the industry to the use of an economic formula before its adoption. It is reasonable to conclude that the pertinent considerations and conclusions set forth in the circular, relating to the pricing of Class II milk in the Puget Sound market, were based on concern over possible shortages of supply in relation to potential needs and the relatively wide seasonal fluctuations in production then prevailing.

Since the study was published several important changes have taken place in the Puget Sound market. Milk supplies have increased substantially in relation to Class I sales to eliminate any fear of shortages and the seasonal pattern of production, discussed elsewhere in this decision, has changed significantly. Producers virtually have completed the conversion from can to bulk handling of milk and milk supplies for the marketing area are procured from a more widespread area at decreased transportation rates.

The statute under which orders are issued requires that class prices for milk must be established on the basis of evidence adduced at a public hearing, and that they shall be at levels which will reflect economic conditions affecting the market supply and demand for milk in the area, insure a sufficient supply of pure and wholesome milk, and be in the public interest. There is no indication of any marketing condition in the area which is likely to reduce milk supplies for the market below adequate levels in the foreseeable future. In this connection it is noted that in 1958 as a whole Class I utilization was only 55 percent of producer milk receipts.

The type of basic price formula in effect which is in general use in many other fluid markets also, provides a basis for relating prices in this market to general economic conditions in the dairy industry, and the differential added to the basic formula price has induced a sufficient quantity of milk under local production conditions. In the absence of testimony indicating in what manner the proposed formula under present marketing conditions might facilitate price stability, or further improve the relatively even production pattern which has been achieved under the present formula operating in conjunction with the base and excess plan, it is concluded that no change should be made in the basis of establishing minimum Class I prices at this time.

(10) Several changes of order language should be made for the purposes of clarification and of improving order administration.

Problems of administration have arisen which suggest clarification of language in certain provisions of the order. In this connection the language of the proviso of § 925.45(a) should be revised. The present wording of the section provides that the milk equivalent of nonfat milk solids be computed when such solids used to fortify Class I milk products or for reconstituting purposes come from products derived from skim milk. The proposal would provide similar treatment with respect to computing the quantity of nonfat milk solids derived from milk as well as from skim milk. The question of accounting for nonfat milk solids on a skim milk equivalent basis when so utilized was discussed in the decision of the Assistant Secretary September 10, 1953, Docket No. AO–226–A3, official notice of which is taken. Incorporating the suggested language of the proposed amendment will clarify the intent of the prior decision and continue the application of the provision in the manner in which it has applied by administrative interpretation. It is concluded that the proposals on this matter should be adopted.

The Puget Sound marketing area covers a wide territory geographically and embraces a number of rural areas where the consuming population is scattered and not served by regulated handlers. In order not to inhibit continued service to those consumers who purchase their milk supply directly from the farms of their neighbors, it is concluded that the definition of "handler" should be revised to exempt persons if their sales of milk do not exceed 3,400 pounds during the month. This is an average amount of about 50 quarts per day, and the exemption will enable the dairy farmer selling to his neighbors to remain a producer of milk rather than become a handler subject to regulation as such.

Other minor changes are appropriate in connection with pricing and location adjustments to bring such provisions up-to-date. Certain portions of order language have become obsolete and are deleted. These changes are self-explanatory and do not change the general intent of the provisions involved.

*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 Puget Sound, Washington, marketing area", and "Order amending the order regulating the handling of milk in the Puget Sound, Washington, 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 amending the order regulating the handling of milk in the Puget Sound, Washington, 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 1959 is hereby determined to be the representative period for the conduct of such referendum.

Paul L. Buchanan 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 (15 F.R. 5177), such referendum to be completed on or before the 30th day from the date this decision is issued.

Issued at Washington, D.C., this 26th day of June 1959.

MARVIN L. MCLAIN,
*Acting Secretary.*

*Order[1] Amending the Order Regulating the Handling of Milk in the Puget Sound, Washington, Marketing Area*

Sec.

925.0 Findings and Determinations.

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[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.

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AUTHORITY: §§ 925.0 to 925.102 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

### § 925.0 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 Puget Sound, Washington, 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 sufficent 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 all receipts within such month of other source milk classified as Class I milk and milk received from producers, including such handler's own production.

*Order relative to handling.* It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Puget Sound, Washington, 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

### § 925.1 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.).

### § 925.2 Secretary.

"Secretary" means the Secretary of Agriculture, or other officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

### § 925.3 Department.

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

### § 925.4 Person.

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

### § 925.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers, duly organized as such under the laws of any state, which includes members who are producers as defined in § 925.12 and which the Secretary determines, after application by the association:

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

(b) To have its entire organization and all of its activities under the control of its members; and

(c) To be currently engaged in making collective sales of or marketing milk or its products for its members.

### § 925.6 Puget Sound, Washington, marketing area.

"Puget Sound, Washington, marketing area" (hereinafter called the "marketing area") means all territory lying west of range 8E in Whatcom, Skagit, Snohomish, and King Counties; all territory lying within townships 23N and 24N within range 8E in King County; all territory lying west of range 8E and north of township 18N in Pierce County, except Fox, McNeil, and Anderson Islands and the peninsula on which Lake Bay and Gig Harbor are located northward to the Kitsap County line; all territory lying within Thurston County; all territory, except the town of Vader, lying west of range 5E in Lewis County; all territory lying east of range 10W and north of township 12N in Pacific County; and all territory lying south of township 19N in Grays Harbor County; all in the State of Washington. As used in this section, "territory" shall include all municipal corporations, Federal military reservations, facilities and installations, and state institutions lying wholly or partly within the above described area. "District No. 1" of the marketing area shall include that part of the marketing area lying within the counties of King, Pierce, Snohomish, Thurston, and Grays Harbor. "District No. 2" of the marketing area shall include that part of the marketing area lying within Whatcom County. "District No. 3" of the marketing area shall include that part of the marketing area lying within the counties of Lewis and Pacific, and "District No. 4"

of the marketing area shall include that part of the marketing area lying within Skagit County.

**§ 925.7 Plant.**

"Plant" means the land, building, surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment which is maintained and operated primarily for the receiving, handling and processing of milk and milk products: *Provided,* That this definition shall include any building with its premises, equipment and facilities including facilities for washing tanks, (hereinafter also referred to as "reload point") which is used primarily as a location at which milk is transferred from one bulk tank farm pick-up truck to another or to an over-the-road tank truck, and which is approved by an appropriate health authority for such use.

**§ 925.8 Fluid milk plant.**

"Fluid milk plant" means any plant, other than the plant of a producer-handler, located in the marketing area which is approved by any health authority having jurisdiction in the marketing area as a plant from which milk may be distributed for consumption as fluid milk in the marketing area, and from which during the month skim milk or butterfat in any of the forms specified in § 925.41 (a) is disposed of (including sales at such plant, plant store or eating place) within the marketing area.

**§ 925.9 Country plant.**

"Country plant" means any plant (including any reload point), other than a fluid milk plant or the plant of a producer-handler, which is approved by any health authority having jurisdiction within the marketing area for the receiving of milk qualified for consumption as fluid milk within the marketing area: *Provided,* That any such plant located outside of the marketing area other than the plant at Sequim operated by the Sequim Creamery Association shall not be a country plant if the percentage of either butterfat or skim milk in milk so qualified which is received at the plant from dairy farmers and moved in fluid form as milk to a fluid milk plant, or disposed of within the marketing area in any of the forms specified in § 925.41(a), is less than:

(a) 50 percent in the current month during the period October through December; or

(b) 20 percent in the current month during the period January through September, except that if the percentage was more than 50 percent for the entire period of October through December immediately preceding no percentage shall be required for such months for January through September: *And provided further,* That any plant which otherwise meets the requirements of this section may withdraw from country plant status for any month in the January-September period if the operator of the plant files with the market administrator, prior to the first day of such month, a written request for such withdrawal.

**§ 925.10 Nonpool plant.**

"Nonpool plant" means any plant other than a fluid milk plant or a country plant.

**§ 925.11 Dairy farmer.**

"Dairy farmer" means any person who is engaged in the production of milk.

**§ 925.12 Producer.**

"Producer" means any dairy farmer, other than a producer-handler, who produces milk of dairy cows under a dairy farm permit or rating issued by an appropriate health authority having jurisdiction in the marketing area, for the production of milk qualified for disposition to consumers in fluid form within the marketing area.

**§ 925.13 Producer milk.**

"Producer milk" or "milk received from producers" means milk qualified as described in § 925.12, other than that produced by a producer-handler, which either is received directly from a farm at a fluid milk plant or country plant, or is caused to be diverted by a handler for his account from such plant to a nonpool plant: *Provided,* That any such milk diverted to a nonpool plant shall be deemed to have been received by the diverting handler at the location of the plant to which it was diverted.

**§ 925.14 Other source milk.**

"Other source milk" means:

(a) All skim milk and butterfat received from a producer-handler (or the plant of a producer-handler) in any form (including bottled products), and

(b) All other skim milk and butterfat other than in:

(1) Producer milk, and

(2) Milk and milk products in any of the forms specified in § 925.41(a) received from fluid milk plants and country plants.

**§ 925.15 Handler.**

"Handler" means: (a) Any person engaged in the handling of milk in his capacity as the operator of a fluid milk plant, a country plant or any other plant from which, during the month, more than 3,400 pounds of skim milk and butterfat in any of the forms specified in § 925.41(a) are disposed of to any place or establishment within the marketing area other than a plant: *Provided,* That this paragraph shall not be deemed to include any such person with respect to any of the items specified in § 925.41 (a) disposed of to a military or other ocean transport vessels leaving the marketing area if the items so disposed of originated at a plant located outside the marketing area and were not received or processed at any fluid milk plant or country plant; and

(b) Any cooperative association, which is not a handler pursuant to paragraph (a) of this section, with respect to producer milk caused to be diverted for the account of such cooperative association from a fluid milk plant or a country plant to a nonpool plant.

**§ 925.16 Producer-handler.**

"Producer-handler" means a person who is both a dairy farmer and a handler, and who has been so designated by the market administrator upon his determination that all of the requirements of § 925.102 have been met, and that none of the conditions therein for cancellation of such designation exists. Such designation shall be effective on the first day of the month after receipt by the market administrator of the application required by § 925.102(a)(4), except that the effective date of designation shall be the same as the effective date of this provision if the application therefor is filed not later than 15 days after such effective date. The effective date of designation shall be governed by the date of filing new applications in instances where applications previously filed have been denied. All designations shall remain in effect until cancelled pursuant to § 925.102(d).

**§ 925.17 Base.**

"Base" means a quantity of milk, expressed in pounds per day or per month, computed pursuant to § 925.60(a) and (b) respectively.

**§ 925.18 Base milk.**

"Base milk" means milk delivered by a producer during the month which is not in excess of:

(a) His daily base computed pursuant to § 925.60(a) multiplied by the number of days of delivery in such month, or

(b) His base computed pursuant to § 925.60(b): *Provided,* That with respect to any producer on "every-other-day" delivery to a fluid milk plant or country plant, the days of non-delivery shall be considered as days of delivery for the purposes of this section and of § 925.60(a).

**§ 925.19 Excess milk.**

"Excess milk" means milk delivered by a producer in excess of base milk.

MARKET ADMINISTRATOR

**§ 925.20 Designation.**

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

**§ 925.21 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.

**§ 925.22 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 a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 925.88 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 925.87) necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

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

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

(g) Audit all reports and payments by 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 or butterfat for such handler depends;

(h) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 10 days after the day upon which he is required to perform such acts, has not:

(1) Made reports pursuant to §§ 925.30 to 925.32, inclusive, or

(2) Made one or more of the payments pursuant to §§ 925.80 to 925.88, inclusive.

(i) On or before the 13th day after the end of each month, report to each cooperative association (or its duly designated agent) which so requests the class utilization of milk caused to be delivered by such cooperative association directly from farms of producers who are members of such cooperative association to each handler to whom the cooperative association sells milk. For the purpose of this report, the milk caused to be so delivered by such a cooperative association shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class;

(j) On or before the 13th day after the end of each month, notify:

(1) Each handler whose total value of milk is computed pursuant to § 925.70(a) of:

(i) The amounts and values of his producer milk in each class and the totals of such amounts and values;

(ii) The amount of any charge made pursuant to § 925.70(a)(6);

(iii) The uniform prices for base milk and excess milk;

(iv) The totals of the amounts computed in the manner provided by § 925.80(a);

(v) The amount due such handler from the producer-settlement fund or the amount to be paid by such handler to the producer-settlement fund, as the case may be; and

(vi) The totals of the amounts required to be paid by such handler pursuant to §§ 925.87 and 925.88.

(2) Each handler whose total value of milk is computed pursuant to § 925.70(b) of the pounds of other source milk on which payment is required to be made and the amounts due the producer-settlement fund and pursuant to § 925.88 from such handler.

(k) 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 5th day of each month the minimum price for Class I milk pursuant to § 925.51(a) and the Class I butterfat differential pursuant to § 925.52(a), both for the current month; and the minimum price for Class II milk pursuant to § 925.51(b) and the Class II butterfat differential pursuant to § 925.52(b), both for the preceding month; and

(2) On or before the 13th day of each month, the uniform price(s) computed pursuant to § 925.71 and the butterfat differential(s) computed pursuant to § 925.82, both applicable to producer milk received during the preceding month; and

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

REPORTS, RECORDS, AND FACILITIES

**§ 925.30 Monthly reports of receipts and utilization.**

On or before the 8th day of each month and in the detail and on forms prescribed by the market administrator, each person who is a handler pursuant to § 925.15(a) shall submit to the market administrator a separate report for each of such handler's fluid milk plants, country plants, and plants from which skim milk or butterfat in any of the forms specified in § 925.41(a) is disposed of to any place or establishment within the marketing area other than a plant, and each cooperative association which is a handler pursuant to § 925.15(b) shall submit to the market administrator a report with respect to milk diverted on its account, containing the following information for the preceding month:

(a) The quantities of skim milk and butterfat contained in milk received from producers, including as a separate amount any milk of own farm production;

(b) The quantities of skim milk and butterfat contained in milk and milk products specified in § 925.41(a) received from other handlers;

(c) The quantities of skim milk and butterfat contained in other source milk received (except manufactured Class II milk products:

(1) Disposed of in the form in which received without further processing by the handler, or

(2) Used to produce other Class II milk products).

(d) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including the pounds of skim milk and butterfat on hand at the beginning and end of each month as milk and milk products specified in § 925.41(a);

(e) The aggregate quantities of base milk and excess milk received; and

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

**§ 925.31 Payroll reports.**

On or before the 20th day of each month, each handler shall submit to the market administrator his producer payroll for deliveries (other than his own farm production) of the preceding month which shall show:

(a) The total pounds of base milk and the total pounds of excess milk received from each producer, the pounds of butterfat contained in such milk, and the number of days on which milk was delivered by such producer in such month;

(b) The amount of payment to each producer and cooperative association; and

(c) The nature and amount of any deductions or charges involved in such payments.

**§ 925.32 Other reports.**

At such times and in such manner as the market administrator may prescribe, each handler shall report to the market administrator such information in addition to that required under § 925.30 as may be requested by the market administrator with respect to milk and milk products handled by him.

**§ 925.33 Records and facilities.**

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or to establish the correct data with respect to the information required to be reported pursuant to §§ 925.30, 925.31, 925.32, and 925.102 and payments required to be made pursuant to §§ 925.80 to 925.88.

**§ 925.34 Retention of records.**

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

ministrator. 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.

**§ 925.35 Handler report to producers.**

(a) In making payments to producers pursuant to § 925.80, each handler, on or before the 19th day of each month, shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show for the preceding month:

(1) The identification of the handler and the producer;

(2) The total pounds of milk delivered by the producer and the average butterfat test thereof, the pounds of base and excess milk, and the pounds per shipment if such information is not furnished to the producer each day of delivery;

(3) The minimum rate(s) at which payment to the producer is required under the provisions of § 925.80;

(4) The rate per hundredweight and amount of any premiums or payments above the minimum prices provided by the order;

(5) The amount or rate per hundredweight of each deduction claimed by the handler, together with a description of the respective deductions; and

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

(b) In making payment to a cooperative association in aggregate each handler upon request shall furnish to the cooperative association with respect to each producer for whom such payment is made, any or all of the above information specified in paragraph (a) of this section.

CLASSIFICATION

**§ 925.40 Skim milk and butterfat to be classified.**

All skim milk and butterfat received within the month by a handler which is required to be reported pursuant to § 925.30 shall be classified by the market administrator pursuant to the provisions of §§ 925.41 to 925.45, inclusive.

**§ 925.41 Classes of utilization.**

Subject to the conditions set forth in §§ 925.42, 925.43 and 925.44, the classes of utilization shall be as follows:

(a) Class I milk shall be all skim milk (including reconstituted and fortified skim milk) and butterfat;

(1) Disposed of in fluid or frozen form as milk, skim milk, skim milk drinks, buttermilk, flavored milk, flavored milk drink, and cream (sweet or sour), and used in the production of concentrated milk, skim milk, flavored milk and flavored milk drinks (but not including:

(i) Those products commonly known as evaporated milk, condensed milk, and condensed skim milk;

(ii) Any milk or milk product sterilized and packaged in hermetically sealed metal containers; and

(iii) Any item named in this subparagraph disposed of pursuant to paragraph (b) (3) of this section),

(2) Disposed of as any fluid mixture containing cream and milk or skim milk (but not including ice cream and other frozen dessert mixes disposed of to a commercial processor, cocoa mixes, any mixture disposed of in containers or dispensers under pressure for the purpose of dispensing a whipped or aerated product, evaporated or condensed products, eggnog and yogurt);

(3) Contained in monthly inventory variations,

(4) Shrinkage of producer milk in excess of that pursuant to paragraph (b) (4) of this section and shrinkage allocated to receipts from other handlers pursuant to § 925.42(b), and

(5) Not specifically accounted for under paragraph (b) of this section.

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

(1) Disposed of (i) as (or used to produce, in the case of ice cream and frozen desserts and mixes for such products (liquid or powder), cottage cheese, cocoa mixes, and aerated cream products) any product other than those included under paragraph (a) (1) and (2) of this section; or (ii) as milk or any milk product sterilized and packaged in hermetically sealed metal containers,

(2) Disposed of for livestock feed,

(3) Disposed of in bulk in any of the forms specified in paragraph (a) of this section to bakeries, soup companies and candy manufacturing establishments in their capacity as such and to nonpool plants subject to the conditions of § 925.44(c) (2) and (3),

(4) In actual shrinkage of producer milk computed pursuant to § 925.42 but not in excess of 2 percent of the quantities of skim milk and butterfat, respectively, in producer milk, and

(5) In actual shrinkage of other source milk computed pursuant to § 925.42.

**§ 925.42 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, among the pounds of producer milk, other source milk, and receipts from other handlers: *Provided*, That if milk is transferred from a fluid milk plant or a country plant to a nonpool plant located on the same premises as the transferor plant, the transfer to the nonpool plant shall be reduced by an amount determined by multiplying the total shrinkage in such nonpool plant by the percentage which the amount so transferred is to the total receipts at such nonpool plant.

**§ 925.43 Responsibility of handlers and reclassification of milk.**

(a) All skim milk and butterfat shall be Class I milk unless the handler who first received such skim milk or butterfat proves that such skim milk and butterfat should be classified as Class II milk.

(b) The burden shall rest upon each handler to establish the sources of milk and milk products required to be reported by him pursuant to § 925.30.

(c) Except as provided in § 925.44(c) (1), any skim milk or butterfat classified in one class shall be reclassified if used or reused by any handler in another class.

**§ 925.44 Interplant movements.**

Skim milk and butterfat moved by transfer, and by diversion under paragraph (c), of this section, as any item specified in § 925.41(a) from a fluid milk plant or country plant shall be assigned (separately) to each class in the following manner:

(a) To a fluid milk plant: As Class I milk to the extent Class I milk is available at the transferee-plant, subject to the following provisions:

(1) In the event the quantity transferred exceeds the total of receipts from producers and other handlers at the transferor-plant, such excess shall be assigned last to the Class I available at the transferee-plant;

(2) If more than one transferor-plant is involved, the available Class I milk shall be assigned to the transferor-plants in the following order:

(i) To fluid milk plants located in District No. 1;

(ii) To country plants located in District No. 1 or in the counties of Pierce, Kitsap and Mason;

(iii) To fluid milk plants located in District No. 4;

(iv) To country plants located in District No. 4;

(v) To fluid milk plants in District No. 3;

(vi) To country plants located in District No. 3;

(vii) To fluid milk plants located in District No. 2;

(viii) To country plants located in District No. 2 or Kittitas County;

(ix) To country plants located in Clallam County or Jefferson County; and

(x) To country plants not located in the marketing area, Kitsap County, Mason County, Kittitas County, Clallam County, Jefferson County or Pierce County.

(3) If Class I is not available in amounts equal to the sum of the quantities to be assigned pursuant to subparagraph (2) of this paragraph, the transferee-handler may designate, within each of the ten categories of plants listed in such subparagraph, the plant(s) to which the available Class I milk shall be assigned.

(4) If at a fluid milk plant any receipts of skim milk or butterfat from any fluid milk plant(s) or country plant(s) located in District No. 1 or in the counties of Kitsap, Mason, or Pierce are assigned to Class II milk, they shall be allocated, as designated by the transferee-handler, to the uses stated in § 925.54(a) insofar as such uses are available at the transferee-plant after allocating to such uses the other source milk at such plant; and

(5) Notwithstanding the prior provisions of this paragraph any such skim milk and butterfat caused to be moved in bulk by a handler during any month

from any fluid milk plant or country plant by transfer to a fluid milk plant in which facilities are maintained and used during the same month to receive milk or milk products required by applicable health authority regulations to be kept physically separate from milk qualified as described in § 925.12 shall be deemed to have been transferred by such handler to a country plant, and shall be classified in accordance with the provisions of paragraph (b) of this section.

(b) To a country plant: As Class II milk, subject to the following conditions:

(1) The skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in Class II milk in the transferee-plant after the subtraction pursuant to § 925.45(b)(2) of other source milk at such plant and after the subtraction of producer shrinkage classified as Class II milk pursuant to § 925.41(b)(4), and any additional amounts of such skim milk or butterfat shall be assigned to Class I milk;

(2) If more than one transferor-plant is involved, the available Class II milk shall be assigned to the transferor-plants in the following order:

(i) To country plants not located in the marketing area, Kitsap County, Mason County, Clallam County, Jefferson County, Kittitas County or Pierce County;

(ii) To country plants located in Clallam County or Jefferson County;

(iii) To country plants in District No. 2 or Kittitas County;

(iv) To fluid milk plants in District No. 2;

(v) To country plants in District No. 3;

(vi) To fluid milk plants in District No. 3;

(vii) To country plants in District No. 4;

(viii) To fluid milk plants in District No. 4;

(ix) To country plants located in District No. 1, Kitsap County, Mason County, or Pierce County; and

(x) To fluid milk plants located in District No. 1.

(3) If Class II milk is not available in amounts equal to the sum of the quantities to be assigned pursuant to subparagraph (2) of this paragraph, the transferee-handler may designate, within each of the ten categories of plants listed in such subparagraph the plant(s) to which the available Class II milk shall be assigned; and

(4) If at a country plant any receipts of skim milk or butterfat from any fluid milk plant(s) or country plant(s) located in District No. 1, Kitsap County, Mason County, or Pierce County are assigned to Class II milk, they shall be allocated, as designated by the transferee-handler, to the uses stated in § 925.54(a) insofar as such uses are available at the transferee-plant after allocating to such uses the other source milk at such plant.

(c) To a nonpool plant:

(1) As Class I milk if the transfer or diversion is to a nonpool plant located outside the marketing area or to the plant of a person holding designation as a producer-handler at the time of the transfer or diversion, except as provided for in subparagraphs (2) and (3) of this paragraph.

(2) As Class II milk if the transfer or diversion is to a nonpool plant located in the marketing area or within any of the counties of Kitsap, Mason, Clallam, Jefferson, Grays Harbor, Pierce and Island, in the State of Washington, which is not engaged in the distribution of milk for consumption in fluid form: *Provided*, That if such nonpool plant disposes of skim milk or butterfat in any of the forms specified in § 925.41(a) to any other nonpool plant distributing milk in fluid form, such disposition up to the quantity of milk transferred or diverted to the first nonpool plant shall be classified as Class I milk: *Provided further*, That if the preceding proviso does not apply the transferred or diverted quantity shall be allocated to uses other than those covered by § 925.54(a) to the extent that such other Class II milk uses are available at such nonpool plant: *And provided also*, That if the market administrator is not permitted to audit the records of such nonpool plant for the purpose of use verification, the entire transfer shall be classified as Class I milk.

(3) As Class II milk to the extent of milk available in equivalent uses in the transferee-plant pursuant to the classification and allocation provisions applicable to milk therein, if the transfer or diversion is made in bulk form to a plant fully regulated under another Federal order.

### § 925.45 Computation of the quantity of producer milk in each class.

For each handler the market administrator shall:

(a) Correct for mathematical and for other obvious errors the monthly report submitted by such handler and compute the total pounds of skim milk and butterfat in each class: *Provided*, That when nonfat milk solids derived from nonfat dry milk solids, condensed skim milk, or any other product condensed from milk or skim milk, are utilized by such handler either:

(1) To fortify (or as an additive to) fluid milk, flavored milk, skim milk or any other Class I milk product, or

(2) For disposition in reconstituted form as skim milk or a milk drink, the total pounds of skim milk computed for the appropriate class of use shall reflect a volume equivalent to the skim milk used to produce such nonfat milk solids;

(b) Allocate skim milk in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk shrinkage allowed pursuant to § 925.41(b)(4);

(2) Subtract from the pounds of skim milk in Class II milk the pounds of skim milk in other source milk received and in overage allocated to other source milk (§ 925.70(a)(5)): *Provided*, That if the receipts of skim milk in other source milk plus the overage allocated to other source milk are greater than the pounds of skim milk in Class II milk, an amount equal to the difference shall be subtracted from the pounds of skim milk in Class I milk;

(3) Subtract from the remaining pounds of skim milk in each class, respectively, the skim milk received from other fluid milk plants and country plants and assigned to such class pursuant to § 925.44;

(4) Add to the remaining pounds of Class II milk, the amount subtracted pursuant to subparagraph (1) of this paragraph; and

(5) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk in milk received from producers, subtract such excess (hereinafter referred to as "overage") from the remaining pounds of skim milk in each class beginning with Class II milk.

(c) Allocate butterfat in accordance with the procedure prescribed for skim milk in paragraph (b) of this section.

(d) Add together for each class the quantities of skim milk and butterfat in such class computed pursuant to paragraphs (b) and (c) of this section and compute the weighted average butterfat content of such class.

## Minimum Prices

### § 925.50 Basic formula price to be used in determining Class I prices.

The basic formula price to be used in computing the price per hundredweight of Class I milk for the current month shall be the highest of the prices computed pursuant to paragraphs (a), (b), and (c) of this section for the preceding month.

(a) Divide by 3.5 and then multiply by 4.0 the average of the basic, or field, prices per hundredweight reported to have been paid, or to be paid, for milk of 3.5 percent butterfat content received from 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:

*Present Operator and Location*

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

(b) The price per hundredweight computed by the market administrator from the following formula:

(1) Multiply the simple average of the daily average wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the Department during the month, by 6;

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

(3) Divide by 7;

(4) Add 30 percent thereof; and

(5) Multiply by 4.

(c) The price per hundredweight computed by the market administrator from the following formula:

(1) Multiply by 4.8 the simple average 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 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;

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

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph, subtract 67 cents.

**§ 925.51 Class prices.**

Subject to the differentials provided in § 925.52 the following are the minimum prices per hundredweight to handlers for Class I milk and Class II milk:

(a) *Class I milk.* The price for Class I milk shall be the basic formula price plus $1.65: *Provided*, That the price for Class I milk for the months of April through June, inclusive, of any year shall not be higher than the price computed pursuant to the above provisions of this paragraph for the month of March immediately preceding, and the price for Class I milk for any October through January period, inclusive, shall not be lower than the price computed pursuant to the provisions of this paragraph for the month of September immediately preceding.

(b) *Class II milk.* The price for Class II milk shall be that computed by the market administrator from the following formula:

(1) Add 3 cents to the simple average 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, and multiply the result by 4.8: *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.

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

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph, subtract 80 cents.

**§ 925.52 Butterfat differentials to handlers.**

If the average butterfat content of Class I milk or Class II milk, computed pursuant to § 925.45, for any handler for any month differs from 4.0 percent, there shall be added to, or subtracted from, the applicable class price (§ 925.51) for each one-tenth of 1 percent that the average butterfat content of such class is respectively above, or below, 4.0 percent, a butterfat differential computed by the market administrator as follows:

(a) *Class I milk.* Add 3 cents to 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 during the preceding month, multiply the result by 0.120, 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.

(b) *Class II milk.* Add 3 cents to 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 during the month, multiply the result by 0.115, 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.

**§ 925.53 Location adjustments on Class I milk.**

The price of Class I milk at each plant not located in District No. 1 or in the counties of Kitsap, Mason or Pierce shall be, regardless of point of disposition within or outside the marketing area, the Class I price pursuant to § 925.51 less a location differential for such plant shown in the table below:

| Plant location: | *Class I price differentials (cents per hundredweight)* |
|---|---|
| District No. 1 or Kitsap, Mason or Pierce Counties | 0 |
| District 4 | 15 |
| District 3 | 20 |
| District 2 or Kittitas Co | 25 |
| Other locations outside the marketing area | 40 |

**§ 925.54 Location adjustments on Class II milk.**

In computing each handler's value of milk there shall be added with respect to each fluid milk plant and country plant located in District No. 1 or in the counties of Kitsap, Mason or Pierce, an amount of money computed as follows:

(a) Compute the sum (in pounds) of:

(1) The total utilization at such plant (including any disposition of skim milk and butterfat from such plant for similar uses at nonpool plants) of skim milk and butterfat, respectively, in evaporated milk in hermetically sealed cans, butter, non-fat dry milk solids, powdered whole milk, all cheeses except "baker's," "pot," cottage (including that creamed) cream and neufchatel, and shrinkage allowable as Class II milk pursuant to § 925.41(b) (4) and (5), and

(2) The total quantity of skim milk and butterfat transferred to other fluid milk plants and country plants and allocated to the uses specified in subparagrap (1) of this paragraph (as provided in § 925.44(a)(4) and (b)(4));

(b) Subtract such sum from the total quantity of Class II milk for such plant, including that resulting from the disposition of skim milk or butterfat from such plant to nonpool plants;

(c) Subtract from the net amounts of skim milk and butterfat, respectively, resulting from paragraph (b) of this section to the extent of such amounts, the amounts of skim milk and butterfat received at such plant from fluid milk plants and country plants not located in District No. 1 or in the counties of Kitsap, Mason or Pierce and assigned to Class II milk pursuant to § 925.44 (but exclusive of the quantity by which transfers received from a transferor-plant exceeds the total of receipts from producers and other handlers at such transferor-plant); and

(d) Multiply by 25 cents per hundredweight the lesser of the following quantities:

(1) The net amount resulting from paragraph (c) of this section, or

(2) The total amount of producer milk received at such plant directly from farms which is available for Class II milk after the assignment of transfers pursuant to § 925.44.

**§ 925.55 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.

DETERMINATION OF BASE

**§ 925.60 Computation of producer bases.**

Subject to the rules set forth in § 925.61, the market administrator shall determine bases for producers in the manner provided in paragraphs (a) and (b) of this section:

(a) The daily base of each producer whose milk was received by a handler(s) on not less than one hundred twenty (120) days during the months of August through December, inclusive, shall be an amount computed by dividing such producer's total pounds of milk delivered in such five-month period by the number of days from the date of his first delivery to the end of such five-month period. The base so computed, which shall be recomputed each year, shall become effective on the first day of February next following and shall remain in effect through the month of January of the next succeeding year: *Provided*, That for any dairy farmer for whom information concerning deliveries during the base-earning period is available to the market administrator and who becomes a producer as a result of (1) the plant to

which his milk was delivered during the base-earning period subsequently being qualified as a fluid milk plant or country plant, or (2) cancellation of a producer-handler's designation as such, a daily base shall be computed pursuant to this paragraph.

(b) Any producer who is not eligible to receive a base computed pursuant to paragraph (a) of this section, shall have a monthly base computed by multiplying his deliveries to a handler(s) during the month by the appropriate monthly percentage in the following table:

| | | | |
|---|---|---|---|
| January | 70 | July | 55 |
| February | 70 | August | 60 |
| March | 65 | September | 60 |
| April | 55 | October | 65 |
| May | 45 | November | 70 |
| June | 50 | December | 70 |

**§ 925.61 Base rules.**

The following rules shall be observed in determination of bases:

(a) A base may be transferred upon written notice to the market administrator on or before the last day of the month of transfer, but under the following circumstances only: If a producer who earned a base pursuant to § 925.60(a) sells, leases, or otherwise conveys his herd to another producer, the latter may receive the transferor's base, pursuant to the conveyance and utilize such base for the remainder of the period for which such base is effective pursuant to § 925.60(a), subject to the following conditions:

(1) Such base shall apply to deliveries of milk by the transferee-producer from the same farm only;

(2) If such conveyance takes place subsequent to August 1 of any year, all milk delivered to a handler(s) between August 1 and the last day of the base-earning period as specified in § 925.60 (a), inclusive, from the same farm (whether by the transferor or transferee-producer) shall be utilized in computing the base of the transferee-producer pursuant to § 925.60(a);

(3) It is established to the satisfaction of the market administrator that the conveyance of the herd was bona fide and not for the purpose of evading any provision of this order; and

(4) Notwithstanding subparagraphs (1) and (2) of this paragraph, but in compliance with subparagraph (3) of this paragraph,

(i) A base, whether earned pursuant to § 925.60(a) or received by transfer, may be transferred to a member of a baseholder's immediate family, and

(ii) In the case of a baseholder's death, a base earned pursuant to § 925.60(a) by the baseholder or by a member of his immediate family may be further transferred to an outside party: *Provided*, That for purposes of this subparagraph a transfer to an estate shall not be considered as a transfer to an outside party.

(b) A producer who ceases deliveries to a fluid milk plant or country plant for more than 45 days shall lose his base if computed pursuant to § 925.60(a) and if he resumes deliveries to such a plant he shall be paid on a base determined pursuant to § 925.60(b) until he can establish a new base in the manner provided in § 925.60(a).

(c) By notifying the market administrator in writing on or before the 15th day of any month, a producer holding a base established pursuant to § 925.60(a) may relinquish such base by cancellation. Such producer's base shall be computed in the manner provided by § 925.60(b) and shall be effective from the first day of the month in which notice is received by the market administrator until the close of the period, pursuant to § 925.60 (a), for which such base was computed.

(d) As soon as bases computed by the market administrator are allotted, notice of the amount of each producer's base shall be given by the market administrator to the handler receiving such producer's milk and to the cooperative association of which the producer is a member. Each handler, following receipt of such notice, shall promptly post in a conspicuous place at each of his plants a list or lists showing the base of each producer whose milk is received at such plant.

(e) If a producer operates more than one farm he shall establish a separate base with respect to producer milk delivered from each such farm.

(f) Only producers as defined in § 925.12 may establish or earn a base pursuant to the provision of § 925.60, and only one base shall be allotted with respect to milk produced by one or more persons where the land, buildings, and equipment used are jointly owned or operated.

DETERMINATION OF UNIFORM PRICE

**§ 925.70 Computation of value of milk.**

(a) Except as provided in paragraph (b) of this section, the total value of milk received during any month at each plant by each handler, including a cooperative association, shall be a sum of money computed by the market administrator as follows:

(1) Multiply the pounds of producer milk in each class for such month by the class price (§ 925.51) and add together the resulting amounts;

(2) Deduct the total amount of all location adjustment credits computed in accordance with § 925.53;

(3) Add the total amount of all location adjustments computed pursuant to § 925.54;

(4) Add or subtract, as the case may be, the amount necessary to correct errors as disclosed by the verification of reports of such handler of his receipts and utilization of skim milk and butterfat in previous months for which payment has not been made;

(5) Add, if such handler had overage, an amount computed by multiplying the pounds of such overage (except overage prorated to other source milk) deducted from each class pursuant to § 925.45 by the applicable class price: *Provided*, That if:

(i) Overage results in a fluid milk plant or country plant having receipts of other source milk, the total overage shall be prorated between other source milk and all other receipts, and

(ii) Overage results in a nonpool plant located on the same premises as a fluid milk plant or country plant, such overage shall be prorated between the quantity transferred from the fluid milk plant or country plant and other source milk in such nonpool plant, and the transferor-handler shall be charged at the applicable class price for the amount of overage allocated to the transferred quantity.

(6) Add, with respect to other source milk (including overage allocated to other source milk) received at each fluid milk plant and country plant of such handler in excess of the total pounds of his Class II milk (except allowable shrinkage) at such plant, an amount computed by multiplying the hundredweight of such other source milk by the difference between the Class I milk and Class II milk prices adjusted, respectively, by the butterfat differentials provided in § 925.52 (based on the butterfat test of such other source milk), and in the case of a fluid milk plant or country plant not located in District 1 or in the counties of Kitsap, Mason or Pierce, such difference shall be reduced in accordance with the per hundredweight rates specified for Class I milk in the table set forth in § 925.53.

(b) The value of milk of each handler at any plant where only other source milk was received and from which, during the month, some other source milk was disposed of within the marketing area as Class I milk pursuant to § 925.41 (a) shall be a sum of money computed by the market administrator by multiplying the hundredweight of such other source milk so disposed of by the difference between the Class I milk and Class II milk prices adjusted, respectively, by the butterfat differentials provided in § 925.52 (based on the butterfat test of such other source milk), and, in the event disposition within the marketing area was restricted to Districts Nos. 2, 3, or 4, such difference shall be reduced in accordance with the respective per hundredweight rates specified for Class I milk in the table set forth in § 925.53.

**§ 925.71 Computation of uniform price.**

For each month the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk received from producers as follows:

(a) Combine into one total the values computed pursuant to § 925.70 for all handlers who made the reports prescribed in § 925.30 and who made the payments pursuant to § 925.84 for the preceding month;

(b) Add the aggregate of the values of the location adjustments on base milk allowable pursuant to § 925.81(a);

(c) Deduct the aggregate of the values of the location adjustments on excess milk computed pursuant to § 925.81(b);

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

(e) Subtract, if the average butterfat content of the milk represented by the values 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 by multiplying the amount by

which the average butterfat content of such milk varies from 4.0 percent by the butterfat differential computed pursuant to § 925.82 and multiplying the resulting figure by the total hundredweight of such milk;

(f) Multiply the hundredweight of excess milk by the Class II price for 4.0 percent milk, rounded to the nearest one-tenth cent;

(g) Compute the total value of base milk by subtracting the amount computed pursuant to paragraph (f) of this section from the net amount computed pursuant to paragraph (e) of this section: *Provided,* That if such result is greater than an amount computed by multiplying the hundredweight of base milk by the Class I milk price (for 4.0 percent milk) plus 4 cents such amount in excess thereof shall be substracted from the result obtained prior to this proviso;

(h) Divide the net amount obtained in paragraph (g) of this section by the total hundredweight of base milk and subtract not less than 4 cents but less than 5 cents. This result shall be known as the uniform price per hundredweight of base milk of 4.0 percent butterfat content; and

(i) Divide the amount obtained in paragraph (f) of this section plus any amount subtracted pursuant to the proviso of paragraph (g) of this section by the hundredweight of excess milk, and subtract any fractional part of one cent. This result shall be known as the uniform price per hundredweight of excess milk of 4.0 percent butterfat content.

PAYMENTS

**§ 925.80 Time and method of payment to producers and to cooperative associations.**

(a) On or before the 19th day after the end of each month, each handler, including a cooperative association which is a handler, shall make payment to each producer, for milk received at his plant from such producer during such month pursuant to subparagraphs (1) and (2) of this paragraph: *Provided,* That such payment shall be made, upon request, to a cooperative association, or to its duly authorized agent, qualified under § 925.5 with respect to milk received from each producer who has given such association authorization by contract or by other written instrument to collect the proceeds from the sale of his milk, and any payment made pursuant to this proviso shall be made on or before the 17th day after the end of such month: *And provided further,* That if by such date such handler has not received full payment for such month pursuant to § 925.85, he shall not be deemed to be in violation of this paragraph if he reduces uniformly for all producers his payments per hundredweight pursuant to this paragraph by a total amount not in excess of the reduction in payment from the market administrator; however, the handler shall make such balance of payment uniformly 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 payments is received from the market administrator:

(1) At not less than the uniform price for base milk for the quantity of base milk received, adjusted by the butterfat differential computed pursuant to § 925.82 and by any location adjustment applicable under § 925.81; and

(2) At not less than the uniform price for excess milk for the quantity of excess milk received, adjusted by the butterfat differential computed pursuant to § 925.82 and by any location adjustment applicable under § 925.81.

(b) On or before the 17th day after the end of each month each handler shall pay to each cooperative association which operates a fluid milk plant or country plant, for skim milk and butterfat received from such cooperative association during such month, an amount of money computed by multiplying the total pounds of such skim milk and butterfat in each class (pursuant to § 925.41) by the class price taking into account any location adjustment, as provided by §§ 925.53 and 925.54, applicable at the plant at which payment for such skim milk and butterfat is required under the provisions of § 925.70.

(c) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c(5)(F) of the act from making payment for milk to its producers in accordance with such provision of the act.

**§ 925.81 Location adjustments to producers.**

In making payments to producers pursuant to § 925.80(a) and subject to the application of § 925.13 the following adjustments for location are applicable:

(a) Deductions may be made per hundredweight of base milk received from producers at respective plant locations at the same per hundredweight rates as specified for Class I milk in the table set forth in § 925.53.

(b) 25 cents per hundredweight shall be added to the uniform price for excess milk received from producers at plants located in District No. 1 or in the counties of Kitsap, Mason or Pierce.

**§ 925.82 Producer butterfat differential.**

In making payments pursuant to § 925.80(a) for base milk and for excess milk, there shall be added to, or subtracted from, the uniform prices thereof for each one-tenth of 1 percent that the average butterfat content of the milk received from the producer is above or below 4.0 percent, a butterfat differential computed by the market administrator as follows:

(a) The butterfat differential for base milk shall be computed by multiplying the butterfat differential for Class I milk by the percentage of the butterfat contained in base milk that is allocated to Class I, and by multiplying the remaining percentage of butterfat within base milk by the butterfat differential for Class II milk, adding together the resulting amounts, and rounding to the nearest tenth of a cent.

(b) The butterfat differential for excess milk shall be the same as the butterfat differential for Class II milk.

**§ 925.83 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to § 925.84 and out of which he shall make all payments to handlers pursuant to § 925.85.

**§ 925.84 Payments to the producer-settlement fund.**

On or before the 15th day after the end of the month during which the milk was received, each handler, including a cooperative association which is a handler, shall pay to the market administrator the amount, if any, by which the total value of such handler's milk as determined pursuant to § 925.70 is greater than the value of such handler's producer milk computed at the minimum uniform prices as specified in § 925.80(a).

**§ 925.85 Payments out of the producer-settlement fund.**

On or before the 17th day after the end of the month during which the milk was received, the market administrator shall pay to each handler, including a cooperative association which is a handler, the amount, if any, by which the total value of such handler's milk as determined pursuant to § 925.70 is less than the value of such handler's producer milk computed at the minimum uniform prices as specified in § 925.80(a), and less any unpaid obligations of such handler to the market administrator pursuant to §§ 925.84, 925.86, 925.87 and 925.88: *Provided,* That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

**§ 925.86 Adjustments of accounts.**

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due:

(a) The market administrator from such handler,

(b) Such handler from the market administrator, or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred following the 5th day after such notice.

**§ 925.87 Marketing services.**

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than with respect to milk of such handler's own production) pursuant to § 925.80(a), shall make a deduction of 5 cents per hundredweight of milk, or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, with respect to the following:

(1) All milk received from producers at a plant not operated by a cooperative association;

(2) All milk received at a plant operated by a cooperative association from producers who are not members of such association; and

(3) All milk received at a plant operated by a cooperative association(s) from producers who are members thereof but for whom any of the services set forth below in this paragraph is not being performed by such association(s), as determined by the market administrator.

Such deduction shall be paid by the handler to the market administrator on or before the 15th day after the end of the month. Such moneys shall be expended by the market administrator for the verification of weights, sampling, and testing of milk received from producers and in providing for market information to 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:

(1) Who is a member of, or who has given written authorization for the rendering of marketing service and the taking of deduction therefore to, a cooperative association,

(2) Whose milk is received at a plant not operated by such association, and

(3) For whom the market administrator 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 § 925.80(a) the amount per hundredweight on milk authorized by such producer and shall pay over, on or before the 15th day after the end of the month, such deduction to the association entitled to receive it under this paragraph.

### § 925.88 Expense of administration.

As his pro rata share of the expense of administration of this order, each handler shall pay to the market administrator on or before the 15th day after the end of each month 4 cents per hundredweight, or such amount not exceeding 4 cents per hundredweight as the Secretary may prescribe, with respect to all receipts within such month of:

(a) Other source milk classified as Class I milk, and

(b) Milk received from producers, including such handler's own production.

### § 925.89 Termination of obligations.

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

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

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this order shall terminate two years after the end of the month during which the milk involved in the claims 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

### § 925.90 Effective time.

The provisions of this part or any amendment to this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 925.91.

### § 925.91 Suspension or termination.

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

### § 925.92 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.

### § 925.93 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 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 expense of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

## Miscellaneous Provisions

### § 925.100 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.

### § 925.101 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.

### § 925.102 Producer-handlers.

(a) *Requirements for designation.* (1) The producer-handler has and exercises (in his capacity as a handler) complete and exclusive control over the operation and management of a plant at which he handles and processes milk received from his milk production resources and facilities (designated as such pursuant to paragraph (c)(1) of this section), the operation and management of which are under the complete and exclusive control of the producer-handler (in his capacity as a dairy farmer).

(2) The producer-handler neither receives at his designated milk production resources and facilities nor receives, handles, processes, or distributes at or through any of his milk handling, processing or distributing resources and facilities (designated as such pursuant to paragraph (c)(2) of this section) skim milk or butterfat in any of the forms specified in § 925.41(a) derived from any source other than (i) his designated milk production resources and facilities,

(ii) fluid milk plants or country plants within the limitations specified in paragraph (d)(5) of this section, or (iii) nonfat milk solids as described in the first proviso of § 925.45(a) which are used to fortify items specified in § 925.41(a).

(3) The producer-handler is neither directly or indirectly, associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(4) Any person claiming to meet the foregoing requirements must file with the market administrator, on forms prescribed by the market administrator, an application for designation as a producer-handler, pursuant to paragraph (b) of this section: *Provided*, That any subsequent addition to, or elimination from, such resources and facilities so listed and described, made by a person designated as a producer-handler, shall be reported to the market administrator on or before the date for the filing of reports pursuant to § 925.30 next following such addition or elimination, for his determination as to whether the producer-handler continues, in the revised circumstance, to meet the requirements for designation as such.

(5) Designation of any person as a producer-handler following a cancellation of his prior designation shall be preceded by performance in accordance with subparagraphs (1), (2), and (3) of this paragraph for a period of 12 consecutive months, and shall require the filing of a new application as required by subparagraph (4) of this paragraph. The sale or other transfer of the milk production, handling, processing, or distributing resources and facilities of such person to another person shall not remove the performance requirement provided herein in connection with the operation of any such resources and facilities.

(b) *Application.* Each application for designation as producer-handler must provide complete information concerning the following:

(1) A list and description of the applicant's milk production resources and facilities as defined in paragraph (c)(1) of this section, and of those milk production resources and facilities which the applicant desires not to be determined a part of his designated production resources and facilities pursuant to the proviso in such subparagraph;

(2) A list of the applicant's milk handling, processing, and distributing resources and facilities as defined in paragraph (c)(2) of this section;

(3) The names of any other person(s) having or exercising any degree of direct, indirect, or partial ownership, operation, or control of, or with whom there exists any contractural arrangement with respect to, the applicant's operation either as a dairy farmer or a handler; and

(4) Such other information as may be required by the market administrator.

(c) *Resources and facilities.* Designation of a person as a producer-handler shall include the determination and designation of the milk production, handling, processing and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(1) As milk production resources and facilities: all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk:

(i) Which are directly, indirectly, or partially owned, operated, or controlled by the producer-handler;

(ii) In which the producer-handler in any way has an interest, including any contractual arrangement; and

(iii) Which are directly, indirectly, or partially owned, operated, or controlled by any partner or stockholder of the producer-handler: *Provided*, That for purposes of this subparagraph any such milk production resources and facilities which the producer-handler proves to the satisfaction of the market administrator do not constitute an actual or potential source of milk supply for the producer-handler's operation as such, shall not be considered a part of his milk production resources and facilities; and

(2) As milk handling, processing, and distributing resources and facilities: all resources and facilities (including store outlets) used for handling, processing, and distributing within the marketing area skim milk and butterfat in any of the forms specified in § 925.41(a):

(i) Which are directly, indirectly, or partially owned, operated or controlled by the producer-handler; or

(ii) In which the producer-handler in any way has an interest, including any contractual arrangement, or with respect to which the producer-handler directly or indirectly exercises any degree of management or control.

(d) *Cancellation.* The designation as a producer-handler shall be cancelled under any of the conditions set forth in subparagraphs (1), (2), (3), (4), or (5) of this paragraph, or upon determination by the market administrator that any of the requirements of subparagraphs (1), (2) and (3) of paragraph (a) or this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellation occurred.

(1) Milk from the designated milk production resources and facilities of the producer-handler is delivered in the name of another person as producer milk to another handler.

(2) Except in the months of August through February, and with prior notice to the market administrator, a dairy herd, cattle barn or milking parlor currently designated a part of the producer-handler's milk production resources and facilities is transferred to another person who uses such resources or facilities for producing milk which is delivered as producer milk to another handler: *Provided*, That the provisions of this subparagraph shall not be deemed to preclude the occasional sale of individual cows from the herd.

(3) Except in the months of March through July, and with prior notice to the market administrator, a dairy herd, cattle barn or milking parlor previously used for the production of milk delivered as producer milk to another handler is added to the designated milk production resources and facilities of the producer-handler: *Provided*, That the provisions of this subparagraph shall not be deemed to preclude the occasional purchase of individual cows for the herd.

(4) A dairy herd, cattle barn, or milking parlor which at any time during any of the preceding 12 months was a part of the producer-handler's designated milk production resources and facilities and was subsequently during that period used by another person for producing milk delivered as milk to another handler is added to the producer-handler's milk production resources and facilities.

(5) Except as provided in subdivisions (i) and (ii) of this subparagraph, the producer-handler handles skim milk or butterfat in any of the forms specified in § 925.41(a) derived from sources other than the designated milk production facilities and resources:

(i) Purchases in the form of packaged fluid or frozen skim milk, skim milk drinks, buttermilk, flavored milk, flavored milk drinks, and cream from fluid milk plants or country plants which do not exceed an average amount of 100 product pounds per day in the aggregate during the month, and

(ii) Any other purchases of skim milk or butterfat, bulk or packaged, in any of the forms specified in § 925.41(a) from fluid milk plants or country plants which are effected within a single span of 45 consecutive days in any 12-month period.

(e) *Public announcement.* The market administrator shall publicly announce the name, plant location and farm location(s) of persons designated as producer-handlers, of those whose designations have been cancelled, and the effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for milk received from any producer-handler.

(f) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler (and upon the applicant for such designation) to establish through records required pursuant to § 925.33 that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (d) of this section for cancellation of designation do not exist.

(g) *Inapplicability of certain provisions.* Sections 925.40 to 925.45, inclusive, §§ 925.50 to 925.55, inclusive, §§ 925.60 and 925.61, §§ 925.70 and 925.71, and §§ 925.80 to 925.89, inclusive, shall not apply to a producer-handler.

[F.R. Doc. 59-5505; Filed, July 1, 1959; 8:49 a.m.]

[7 CFR Part 933]

## LIMITATION OF SHIPMENTS OF FLORIDA GRAPEFRUIT

### Notice of Proposed Rule Making

Consideration is being given to the following recommendation, submitted by the Growers Administrative Committee, established under the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674):

(1) During the period beginning at 12:01 a.m., e.s.t., August 3, 1959, and ending at 12:01 a.m., e.s.t., September 7, 1959, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any grapefruit, grown in the production area, which are not mature and do not grade at least U.S. No. 1: *Provided*, That such grapefruit which grade U.S. No. 1 Russet, U.S. No. 2 Bright, U.S. No. 2, or U.S. No. 2 Russet, may be shipped if such grapefruit meet the requirements as to form (shape) and color specified in the U.S. No. 1 grade;

(ii) Any seeded grapefruit, grown in the production area, which are smaller than $3\frac{12}{16}$ inches in diameter, measured midway at a right angle to a straight line running from the stem to the blossom end of the fruit, except that a tolerance of 10 percent, by count, of seeded grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit; or

(iii) Any seedless grapefruit, grown in the production area, which are smaller than $3\frac{7}{16}$ inches in diameter, measured midway at a right angle to a straight line running from the stem to the blossom end of the fruit, except that a tolerance of 10 percent, by count, of seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit.

(2) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade and diameter, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Grapefruit (7 CFR 51.750–51.790); and the term "mature" shall have the same meaning as set forth in section 601.16 Florida Statutes, Chapters 26492 and 28090, known as the Florida Citrus Code of 1949, as supplemented by section 601.17 (Chapters 25149 and 28090) and also by section 601.18, as amended June 22, 1955 (Chapter 29760).

All persons who desire to submit written data, views, or arguments for consideration in connection with the aforesaid proposal may do so by submitting the same to the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., not later than the 10th day following publication of this notice in the FEDERAL REGISTER. Shipments of grapefruit grown in Florida are currently subject to Grapefruit Regulation 310 (7 CFR 933.971; 24 F.R. 4374). This regulation extends to August 3, 1959.

Dated: June 26, 1959.

S. R. SMITH,
*Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[F.R. Doc. 59-5504; Filed, July 1, 1959; 8:48 a.m.]

# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## Food and Drug Administration

[21 CFR Part 46]

## NUT FOOD PRODUCTS; DEFINITIONS AND STANDARDS OF IDENTITY

### Peanut Butter; Notice of Proposal To Establish Definition and Standard of Identity

Notice is given that the Commissioner of Food and Drugs, on his own initiative, and pursuant to authority delegated to him by the Secretary of Health, Education, and Welfare, proposes that there be established a definition and standard of identity for peanut butter.

Pursuant to the authority of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055 as amended 70 Stat. 919; 21 U.S.C. 341, 371) and in accordance with the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (22 F.R. 1045, 23 F.R. 9500), all interested persons are invited to present their views in writing regarding the proposal published below. Such views and comments should be submitted in quintuplicate, addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., prior to the thirtieth day following the date of publication of this notice in the FEDERAL REGISTER.

It is proposed that a new part designated "Part 46—Nut Food Products; Definitions and Standards of Identity" be added to Chaper I of Title 21, Code of Federal Regulations, and that a definition and standard of identity for peanut butter be established as follows:

§ 46.1 **Peanut butter; definition and standard of identity.**

(a) Peanut butter is the food made by grinding shelled, roasted, and blanched peanuts. The germs may or may not be included. Peanut butter may contain one or more of the optional ingredients specified in paragraph (b) of this section, but the quantity of such ingredients does not, in the aggregate, amount to more than 5 percent by weight of the finished food.

(b) The optional ingredients referred to in paragraph (a) of this section are:

(1) Salt for seasoning.
(2) Sugar.
(3) Dextrose.
(4) Honey.
(5) Hydrogenated or partially hydrogenated peanut oil.

(c) The label of peanut butter shall name the optional ingredients used by the names set out in paragraph (b) of this section. Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the names of the optional ingredients used shall immediately and conspicuously precede or follow the name "peanut butter," without intervening written, printed, or graphic matter.

Dated: June 25, 1959.

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

[F.R. Doc. 59-5469; Filed, July 1, 1959; 8:45 a.m.]

[21 CFR Part 130]

## CERTAIN CHLORCYCLIZINE HYDROCHLORIDE AND CERTAIN METHOXYPHENAMINE HYDROCHLORIDE PREPARATIONS

### Exemption From Prescription-Dispensing Requirements

Notice is given that the Commissioner of Food and Drugs, in accordance with the Federal Food, Drug, and Cosmetic Act (secs. 503(b)(3), 505(c), 701(a); 65 Stat. 649, 52 Stat. 1055; 21 U.S.C. 353(b)(3), 355(c), 371(a)) and the authority delegated to him by the Secretary of Health, Education, and Welfare (21 CFR, 1958 Supp., 130.101(b)) hereby offers an opportunity to all interested persons to submit their views in writing to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., within 30 days from the date of publication of this notice in the FEDERAL REGISTER on the proposed amendments set forth below.

It is proposed to amend paragraph (a) of § 130.102 *Exemption for certain drugs limited by new-drug applications to prescription sale* (21 CFR, 1958 Supp., 130.102(a)) by adding thereto the following new subparagraphs:

(—) Chlorcyclizine hydrochloride (1-(*p*-chlorobenzhydryl)-4-methylpiperazine hydrochloride) preparations meeting all the following conditions:

(i) The chlorcyclizine hydrochloride is prepared, with or without other drugs, in tablet or other dosage form suitable for oral use in self-medication, and containing no drug limited to prescription sale

under the provisions of section 503(b)(1) of the act.

(ii) The chlorcyclizine hydrochloride and all other components of the preparation meet their professed standards of identity, strength, quality, and purity.

(iii) If the preparation is a new drug, an application pursuant to section 503(b) of the act is effective for it.

(iv) The preparation contains not more than 25 milligrams of chlorcyclizine hydrochloride per dosage unit.

(v) The preparation is labeled with adequate directions for use in the temporary relief of the symptoms of hay fever and/or symptoms of other minor conditions in which it is indicated.

(vi) The dosages recommended or suggested in the labeling do not exceed: For adults, 25 milligrams of chlorcyclizine hydrochloride per dose or 75 milligrams of chlorcyclizine hydrochloride per 24-hour period; for children 6 to 12 years of age, one-half of the maximum adult dose or dosage.

(vii) The labeling bears, in juxtaposition with the dosage recommendations:

(*a*) Clear warning statements against administration of the drug to children under 6 years of age, or exceeding the recommended dosage unless directed by a physician, and against driving a car or operating machinery while taking the drug, since it may cause drowsiness.

(b) If the article is offered for the temporary relief of symptoms of colds, a statement that continued administration for such use should not exceed 3 days, unless directed by a physician.

(—) Methoxyphenamine hydrochloride (β-(*o*-methoxyphenyl)-isopropylmethylamine hydrochloride; 1-(*o*-methoxyphenyl) - 2 - methlyaminopropane hydrochloride) preparations meeting all the following conditions:

(i) The methoxyphenamine hydrochloride is prepared with appropriate amounts of a suitable antitussive, with or without other drugs, in a dosage form suitable for oral use in self-medication, and containing no drug limited to prescription sale under the provisions of section 503(b)(1) of the act.

(ii) The methoxyphenamine hydrochloride and all other components of the preparation meet their professed standards of identity, strength, quality, and purity.

(iii) If the preparation is a new drug, an application pursuant to section 505(b) of the act is effective for it.

(iv) The preparation contains not more than 3.5 milligrams of methoxyphenamine hydrochloride per milliliter.

(v) The preparation is labeled with adequate directions for use in the temporary relief of cough due to minor conditions in which it is indicated.

(vi) The dosages recommended or suggested in the labeling do not exceed: For adults, 35 milligrams of methoxyphenamine hydrochloride per dose or 140 milligrams of methoxyphenamine hydrochloride per 24-hour period; for children 6 to 12 years of age, one-half of the maximum adult dose or dosage.

(vii) The label bears a conspicuous warning to keep the drug out of the reach of children, and the labeling bears, in juxtaposition with the dosage recommendations:

(*a*) A clear warning statement against administration of the drug to children under 6 years of age, unless directed by a physician.

(*b*) A clear warning statement to the effect that frequent or prolonged use may cause nervousness, restlessness, or drowsiness, and that individuals with high blood pressure, heart disease, diabetes, or thyroid disease should not use the preparation unless directed by a physician.

(*c*) A clear warning statement against use of the drug in the presence of high fever or if cough persists, since persistent cough as well as high fever may indicate the presence of a serious condition.

The proposed amendments will remove the drugs mentioned therein from the prescription-dispensing requirements of the Federal Food, Drug, and Cosmetic Act (sec. 503(b)(1)(C), 52 Stat. 1052, 65 Stat. 649; 21 U.S.C. 353(b)(1)(C)). These drugs were previously limited by their new-drug applications to use under professional supervision because the scientific data establishing the toxic potential of the drugs and their intended use showed only that they were safe if used under professional supervision.

Pursuant to the regulations in § 130.-101(b) (21 CFR, 1958 Supp., 130.101(b)), a petition has been submitted to remove the prescription restrictions from these drugs. Evidence now available through investigation and marketing experience shows that the drugs can be safely used by the laity in self-medication if they are used in accordance with the proposed labeling. The restriction to prescription sale is no longer necessary for the protection of the public health.

This action in removing the prior restriction limiting these drugs to prescription sale is taken under the authority of the Federal Food, Drug, and Cosmetic Act (secs. 503(b)(3), 505(c), 52 Stat. 1052, 65 Stat. 649; 21 U.S.C. 353(b)(3), 355(c)), which provides for and requires the removal of such restrictions if they are not necessary for the protection of the public health.

Dated: June 26, 1959.

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

[F.R. Doc. 59-5499; Filed, July 1, 1959; 8:47 a.m.]

# NOTICES

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### NEVADA

### Notice of Proposed Withdrawal and Reservation of Lands

JUNE 23, 1959.

The Department of Navy has filed an application, Serial No. Nevada-051096, for the withdrawal of the lands described below, from all forms of appropriation, including the mining and mineral leasing laws. The applicant desires the land as an instrumented target area for the training of naval aircraft pilots in the use of special weapons. The land described in Parcel 1 below will be used for the control building and living quarters of the operating crew. The land described in Parcel 2 below will be used for the actual target area.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, P.O. Box 1551, Reno, Nevada.

If circumstances warrant it, a public hearing wil 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:

MOUNT DIABLO MERIDIAN, NEVADA

PARCEL NO. 1

T. 21 N., R. 34 E.,
Sec. 22, NE¼SW¼NE¼.

Parcel No. 1 contains 10 acres.

PARCEL NO. 2

Beginning at a point on unsurveyed land from which the standard corner of Township 21 N., Ranges 34 and 35 E. bears N. 55°30'17" W., 5065.33 feet;

Thence S. 53°25'44" E., 2½ miles to a point;

Thence S. 36°34'16" W., 3 miles to a point;

Thence N. 53°25'44" W., 2½ miles to a point;

Thence N. 36°34'16" E., 3 miles to the point of beginning.

Parcel No. 2 contains 4,800 acres more or less.

CHARLES E. HANCOCK,
*Acting State Supervisor.*

[F.R. Doc. 59-5486; Filed, July 1, 1959; 8:45 a.m.]

### NEVADA

### Notice of Proposed Withdrawal and Reservation of Lands

JUNE 23, 1959.

The Federal Aviation Agency has filed an application, Serial No. Nevada-051663, for the withdrawal of the lands described below, from all forms of appropriation, including the mining and mineral leasing laws. The applicant desires the land

for an air-to-ground radio communication facility.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, P.O. Box 1551, Reno, Nevada.

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:

MOUNT DIABLO MERIDIAN, NEVADA

T. 3 N., R. 43 E.,
Sec. 19, SE¼NE¼, NE¼SE¼;
Sec. 20, SW¼NW¼, NW¼SW¼.

The area described contains 160 acres.

CHARLES E. HANCOCK,
*Acting State Supervisor.*

[F.R. Doc. 59-5487; Filed, July 1, 1959; 8:46 a.m.]

[II-6]

## UTAH

### Small Tract Classification (Veterans' Drawing Card)

JUNE 23, 1959.

1. Pursuant to authority delegated to me by Bureau Order No. 541, dated April 21, 1954, (19 F.R. 2473), I hereby classify the following-described public lands totaling 96.84 acres in Carbon County, Utah, as suitable for lease and sale for residence or business site purposes under the Small Tract Act of June 1, 1938 (52 Stat. 609, 43 U.S.C. 682a), as amended:

SALT LAKE MERIDIAN

T. 15 S., R. 10 E.,
Sec. 5: Lots 5-38, 40-43, inclusive.

2. Classification of the above-described lands by this order segregates them from all appropriation, including location under the mining laws, except as to applications under the Small Tract Act and applications under the mineral leasing laws.

3. The lands are located approximately 2½ miles south of Price, Utah, and are bordered on the east by State Highway Utah 10. The topography is gently sloping toward the north, with a low ridge along the west edge of the area and steep Four Mile Hill along the south edge. A power line ends at the north end of the area. Culinary water is not available from any presently developed source. Schools, stores, and other public facilities are available in the town of Price. The vegetation consists of shadscale with a sparse understory of galleta grass, cheat grass, and other annual grasses and weeds. There is no evidence of metallic or non-metallic minerals.

4. The individual tracts vary in size from 2.27 acres to 5 acres and are all rectangular in shape. A plat of survey showing the location of each tract can be secured for $1.00 from the Manager, Land Office, Bureau of Land Management, P.O. Box 777, Salt Lake City 10, Utah. The appraised value of each tract is $250.00, and the advance rental for three years is $37.50. Lots 5, 11, 12, 19, 20, 27, 28, 35, 36, 41, 42, and 43 are affected by the right-of-way for Utah Highway No. 10. In addition, rights-of-way, 33 feet in width, for streets, roads, and public utilities, will be reserved as shown below. All minerals in the lands will be reserved to the United States.

| Tract No. | Acres | Right-of-way (width and location) |
|---|---|---|
| 5 [1] | 2.29 | 33' S. side. |
| 6 | 2.28 | 33' W. and S. sides. |
| 7 | 2.27 | 33' E. and S. sides. |
| 8 | 4.47 | None. |
| 9 | 2.50 | 33' E. and N. sides. |
| 10 | 2.50 | 33' W. and N. sides. |
| 11 | 2.50 | 33' N. side. |
| 12 | 2.50 | 33' S. side. |
| 13 | 2.50 | 33' W. and S. sides. |
| 14 | 2.50 | 33' E. and S. sides. |
| 15 | 2.50 | 33' S. side. |
| 16 | 2.50 | 33' N. side. |
| 17 | 2.50 | 33' E. and N. sides. |
| 18 | 2.50 | 33' W. and N. sides. |
| 19 | 2.50 | 33' N. side. |
| 20 [1] | 2.50 | 33' S. side. |
| 21 | 2.50 | 33' W. and S. sides. |
| 22 | 2.50 | 33' E. and S. sides. |
| 23 | 2.50 | 33' S. side. |
| 24 | 2.50 | 33' N. side. |
| 25 | 2.50 | 33' E. and N. sides. |
| 26 [1] | 2.50 | 33' W. and N. sides. |
| 27 [1] | 2.50 | 33' N. side. |
| 28 [1] | 2.50 | 33' S. side. |
| 29 | 2.50 | 33' W. and S. sides. |
| 30 | 2.50 | 33' E. and S. sides. |
| 31 | 2.50 | 33' S. side. |
| 32 | 2.50 | 33' N. side. |
| 33 | 2.50 | 33' E. and N. sides. |
| 34 | 2.50 | 33' W. and N. sides. |
| 35 [1] | 2.50 | 33' N. side. |
| 36 [1] | 2.50 | 33' S. side. |
| 37 | 2.50 | 33' W. and S. sides. |
| 38 | 2.50 | 33' E. and S. sides. |
| 40 | 2.50 | 33' W. and N. sides. |
| 41 [1] | 2.50 | 33' N. side. |
| 42 [1] | 5.00 | 33' W. side. |
| 43 | 5.00 | 33' W. side. |

[1] Covered by applications from persons entitled to preference under 43 CFR 257.5(a).

5. Leases will be issued for a term of three years and will contain an option to purchase in accordance with 43 CFR 257.13. Lessees who comply with the general terms and conditions of their leases will be permitted to purchase their tracts at the prices listed above, providing that during the period of their leases they either (a) construct the improvements specified in paragraph 7 or (b) file a copy of an agreement in accordance with 43 CFR 257.13(d). Leases will be renewable at the discretion of the Bureau of Land Management, and the renewal lease will be subject to such terms and conditions as are deemed necessary in the light of the circumstances and the regulations existing at the time of the renewal. However, a lease will not be renewable unless failure to construct the required improvements is justified under the circumstances and nonrenewal would work an extreme hardship on the lessee.

6. Persons who have previously acquired a tract under the Small Tract Act are not qualified to secure a tract unless they can make a showing satisfactory to the Bureau of Land Management that the acquisition of another tract is warranted in the circumstances.

7. The improvements referred to in paragraph 5, above, must conform with health, sanitation, and construction requirements of local ordinances and must, in addition, meet the following standards: (a) The home or business must be suitable for year-round use, on a permanent foundation, and with a minimum of 500 square feet of floor space; (b) the buildings must be built in a workmanlike manner out of attractive, properly finished, materials with no rough, unpainted lumber siding or no tarpaper siding; and (c) adequate disposal and sanitation facilities must be installed.

8. The lands are now open to filing of drawing-entry cards (Form 4-775) only, by persons entitled to Veterans' preference. In brief, persons entitled to such preference are (a) honorably discharged Veterans who served in the armed forces of the United States for a period of at least 90 days after September 15, 1940, (b) surviving spouse or minor orphan children of such Veterans, and (c) with the consent of the Veteran, the spouse of living Veterans. The 90-day requirement does not apply to Veterans who were discharged on account of wounds or disability incurred in the line of duty. Drawing-entry cards (Form 4-775) are available upon request from the Manager, Land Office, Bureau of Land Management, P.O. Box 777, Salt Lake City 10, Utah.

Drawing-entry cards will be accepted if filled out in compliance with the instructions on the form and filed with the above-named official prior to 10:00 a.m. October 5, 1959. A drawing will be held on that date or shortly thereafter. Any person who submits more than one card will be declared ineligible to participate in the drawing. Tracts will be assigned to entrants in the order that their names are drawn. All entrants will be notified of the results of the drawing. Successful entrants will be sent copies of the lease forms (Form 4-776) with instructions as to their execution and return and as to payment of fees and rentals.

9. All valid applications filed prior to February 21, 1958, will be granted the preference right provided for by 43 CFR 257.5(a).

10. Inquiries concerning these lands shall be addressed to Manager, Land Office, Bureau of Land Management, P.O. Box 777, Salt Lake City 10, Utah.

EVAN L. RASMUSSEN,
*Acting State Supervisor.*

[F.R. Doc. 59-5488; Filed, July 1, 1959; 8:46 a.m.]

## NEW MEXICO

### Notice of Proposed Withdrawal and Reservation of Lands

JUNE 26, 1959.

The United States Forest Service has filed an application, Serial Number NM 056534 for the withdrawal of the lands described below, from location and entry under the General Mining Laws, subject to existing valid claims. The applicant desires the land for recreational facilities and to protect the water supply for

the towns of Ruidoso, Hollywood and Greentree, New Mexico.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, P.O. Box 1251, Santa Fe, New Mexico.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

NEW MEXICO PRINCIPAL MERIDIAN

LINCOLN NATIONAL FOREST

*White Mountain Recreation Area*

T. 10 S., R. 11 E.,
Sec. 33, all, unsurveyed;
Sec. 34, all, unsurveyed.

The area described above aggregates approximately 1280 acres.

E. R. SMITH,
*State Supervisor.*

[F.R. Doc. 59-5489; Filed, July 1, 1959; 8:46 a.m.]

## OREGON

### Redelegation of Authority by Land Office Manager to Chiefs, Mineral and Land Adjudication Units

JUNE 25, 1959.

Pursuant to authority contained in Bureau of Land Management Order No. 541, as amended, authority is hereby redelegated to the Chief, Minerals Adjudication Unit, to take action for the Manager in all matters listed in section 3.6 of Part III-A, and to the Chief, Lands Adjudication Unit, in all matters listed in section 3.9 of Part III-A.

VIRGIL O. SEISER,
*Land Office Manager, Portland Land Office.*

Approved:

VIRGIL T. HEATH,
*Oregon State Supervisor.*

[F.R. Doc. 59-5490; Filed, July 1, 1959; 8:46 a.m.]

## Fish and Wildlife Service

### ANNOUNCEMENT OF UNITS OF FISHING GEAR

### Bristol Bay Area; Cook Inlet Area

1. In accordance with 50 CFR 104.9(c), announcement is made that the number of units of fishing gear registered by 6 p.m. Friday, June 26, 1959, for fishing during the week ending July 4 by districts is as follows:

| | *Units* |
|---|---|
| Kvichak-Naknek | 149 |
| Nushagak | 294 |
| Egegik | 60 |
| Ugashik | 49 |

2. In accordance with the gear timetable contained in § 109.9(a)(1), announcement is made that the number of units of gear registered for fishing in 1959 was 1,274 units which will permit 2 days fishing per week in the period July 1 to July 27, inclusive.

Dated: June 29, 1959.

A. W. ANDERSON,
*Acting Director, Bureau of Commercial Fisheries.*

[F.R. Doc. 59-5516; Filed, July 1, 1959; 8:50 a.m.]

# DEPARTMENT OF STATE

[Public Notice 163; Delegation of Authority 85-6]

### ADMINISTRATION OF MUTUAL SECURITY ACT OF 1954 AND DELEGATION OF CERTAIN RELATED FUNCTIONS

By virtue of the authority vested in me by Executive Order No. 10610, as amended, the Mutual Security Act of 1954 (68 Stat. 832), as amended, section 4 of the Act of May 26, 1949 (63 Stat. 111, 5 U.S.C. 151c), as amended, and as Secretary of State, Delegation of Authority No. 85 of June 30, 1955 (20 F.R. 4825), as heretofore amended, is amended as follows:

Sections 1, 2, 3, and 4 are amended by substituting "Under Secretary of State" for "Under Secretary of State for Economic Affairs" wherever that phrase appears.

Dated: June 12, 1959.

[SEAL] CHRISTIAN A. HERTER,
*Secretary of State.*

[F.R. Doc. 59-5518; Filed, July 1, 1959; 8:51 a.m.]

# DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

[P. & S. Docket No. 435]

### MARKET AGENCIES AT UNION STOCK YARDS, DENVER, COLO.

### Notice of Petition for Modification of Rate Order

Pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), an order was issued on August 25, 1958 (17 A.D. 737), continuing in effect to and including September 23, 1959, an order issued on September 14, 1956 (15 A.D. 1050), as modified by an order issued on November 4, 1957 (16 A.D. 1097), authorizing the respondents, Market Agencies at Union Stock Yards, Denver, Colorado, to assess the current schedule of rates and charges.

By petitions filed on June 10, and June 19, 1959, the respondents requested authority to modify the current schedule of rates and charges as indicated below:

ARTICLE 2

| | Rates per head | |
|---|---|---|
| | Present | Proposed |
| SECTION D | | |
| Hogs—Irrespective of the mode of arrival or departure: | | |
| Consignments of one head and one head only | $0.60 | $0.65 |
| Consignments of more than one head: | | |
| First 10 head in each consignment | .45 | .47 |
| Next 15 head in each consignment | .40 | .42 |
| Each head over 25 in each consignment | .30 | .37 |
| SECTION E | | |
| Sheep: | | |
| Consignments of one head and one head only | .50 | .50 |
| Consignments of more than one head: | | |
| First 10 head in each 225 head (presently 250 head) in each consignment | .40 | .40 |
| Next 50 head in each 225 head (presently 250 head) in each consignment | .22 | .22 |
| Next 60 head in each 225 head (presently 250 head) in each consignment | .18 | .18 |
| Next 105 head (presently 130 head) in each 225 head (presently 250 head) in each consignment | .10 | .14 |

The modifications, if authorized, will produce additional revenue for the respondents and increase the cost of marketing livestock. Accordingly, it appears that this public notice of the filing of the petitions and their contents should be given in order that all interested persons may have an opportunity to indicate a desire to be heard in the matter.

All interested persons who desire to be heard in the matter shall notify the Hearing Clerk, United States Department of Agriculture, Washington 25, D.C., within 15 days after the publication of this notice.

Done at Washington, D.C., this 26th day of June 1959.

JOHN C. PIERCE,
*Acting Director, Livestock Division, Agricultural Marketing Service.*

[F.R. Doc. 59-5523; Filed, July 1, 1959; 8:51 a.m.]

# DEPARTMENT OF COMMERCE

## Office of the Secretary

### FEDERAL HIGHWAY ADMINISTRATOR

### Delegation of Authority to Negotiate Certain Contracts

1. Pursuant to the authority vested in the Secretary of Commerce by law and by delegation from the Administrator of General Services, the Federal Highway Administrator is hereby authorized to exercise the authority of the Secretary of Commerce to negotiate contracts without advertising under the provisions of section 302(c)(4) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended.

2. This authority shall be exercised only with respect to procurement of those supplies and services which are required in connection with authorized activities, other than administrative programs, conducted by the Bureau of Public Roads.

3. This authority shall be exercised in accordance with applicable limitations and requirements of the act, particularly sections 304, 305 and 307 thereof, and in accordance with policies, procedures and controls prescribed by the General Services Administration.

4. Subject to the provisions of 3 above, the authority herein delegated may be redelegated to any officer or employee of the Bureau of Public Roads.

5. This delegation is effective as of July 1, 1959.

Dated: June 30, 1959.

FREDERICK H. MUELLER,
*Acting Secretary of Commerce.*

[F.R. Doc. 59-5560; Filed, June 30, 1959; 3:02 p.m.]

## DIRECTOR, NATIONAL BUREAU OF STANDARDS

### Delegation of Authority to Negotiate Certain Contracts

1. Pursuant to authority vested in the Secretary of Commerce by law and by delegation from the Administrator of General Services, the Director, National Bureau of Standards is hereby authorized to exercise the authority of the Secretary of Commerce to negotiate contracts without advertising under the provisions of section 302(c) (5) and (11) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended.

2. This authority shall be exercised only with respect to procurement of those supplies and services which are required in connection with authorized activities, other than administrative programs, conducted by the National Bureau of Standards.

3. This authority shall be exercised in accordance with applicable limitations and requirements of the act, particularly sections 304, 305 and 307 thereof, and in accordance with policies, procedures and controls prescribed by the General Services Administration.

4. Subject to the provisions of 3 above, the authority herein delegated may be redelegated to any officer or employee of the National Bureau of Standards. Attention is invited to that part of section 307 of the act which provides that the power to make the determinations or decisions specified in section 302(c)(11) is delegable only to a chief officer responsible for procurement and only with respect to contracts which will not require the expenditure of more than $25,000. Each determination or decision required by section 302(c)(11) shall be based upon written findings, a copy of which shall be furnished the General Accounting Office with the contract.

5. A summary statement listing all contracts entered into pursuant to the authority under section 302(c)(11) together with a brief description of the nature of each shall be filed with the Office of Budget and Management for each six-month period ending on June 30 and December 31.

6. This delegation is effective as of July 1, 1959.

Dated: June 30, 1959.

FREDERICK H. MUELLER,
*Acting Secretary of Commerce.*

[F.R. Doc. 59-5561; Filed, June 30, 1959; 3:02 p.m.]

# ATOMIC ENERGY COMMISSION

[Docket No. 50-13]

## BABCOCK & WILCOX CO.

### Notice of Issuance of Facility License Amendment

Please take notice that the Atomic Energy Commission has issued Amendment No. 2 set forth below to License No. CX-10. The amendment authorizes The Babcock & Wilcox Company, as requested in its application for license amendment dated April 24, 1959, to conduct critical experiments with aluminum clad thoria-urania fuel in the facility, used for the Nuclear Merchant Ship Reactor (NMSR) experiments, in the Company's Critical Experiment Laboratory located near Lynchburg, Va. The Commission has found that operation of the facility in accordance with the terms and conditions of the license as amended will not present any undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has found that prior public notice of proposed issuance of this amendment is not necessary in the public interest since the conduct of the proposed experiments does not present any substantial changes in the hazards to the health and safety of the public from those presented by the previously approved operation of the facility.

In accordance with the Commission's "rules of practice" (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of the issuance of the license amendment upon receipt of a request therefor from the licensee or an intervener within thirty days after issuance of the license amendment. For further details, see (1) the application for license amendment dated April 24, 1959, submitted by The Babcock & Wilcox Company and (2) a hazards analysis of the proposed experiments prepared by the Hazards Evaluation Branch of the Division of Licensing and Regulation, both on file at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of item (2) above may be obtained at the Commission's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., this 25th day of June 1959.

For the Atomic Energy Commission.

R. L. KIRK,
*Deputy Director, Division of Licensing and Regulation.*

[License No. CX-10; Amdt. 2]

In addition to the activities previously authorized by the Commission in License No. CX-10, as amended, The Babcock & Wilcox Company is authorized to conduct, in the facility used for the Nuclear Merchant Ship Reactor critical experiments in its Critical Experiment Laboratory located near Lynchburg, Virginia, the experiments requested in its application for license amendment dated April 24, 1959. The experiments shall be conducted in accordance with the procedures and subject to the limitations contained in License No. CX-10 as amended and in the application for license amendment dated April 24, 1959.

This amendment is effective as of the date of issuance:

Date of issuance: June 25, 1959.

For the Atomic Energy Commission.

R. L. KIRK,
*Deputy Director, Division of Licensing and Regulation.*

[F.R. Doc. 59-5479; Filed, July 1, 1959; 8:45 a.m.]

[Docket No. 50-3]

## CONSOLIDATED-EDISON COMPANY OF NEW YORK, INC.

### Notice of Issuance of Amendment to Construction Permit

Please take notice that no request for a formal hearing having been filed following the filing of notice of the proposed action with the Federal Register Division on May 15, 1959, the Atomic Energy Commission has issued Amendment No. 1 to Construction Permit No. CPPR-1. The amendment (1) increases the allocation of special nuclear material to Consolidated-Edison Company of New York, Incorporated, for use through 1998 in connection with operation of its reactor to be located at Indian Point, New York, from 5,699 kilograms of contained uranium 235 to 9,934 kilograms of contained uranium 235, (2) amends the schedule of transfers of special nuclear material between the Company and the Commission, (3) extends the latest completion date for the reactor for an additional year to October 1, 1961. The review of the application for this amendment did not entail considerations of the health and safety characteristics of the reactor. Notice of the proposed action was published in the FEDERAL REGISTER on May 16, 1959, 24 F.R. 4009.

Dated at Germantown, Md., this 25th day of June 1959.

For the Atomic Energy Commission.

H. L. PRICE,
*Director, Division of Licensing and Regulation.*

[Construction Permit No. CPPR-1; Amdt. 1]

Condition (1) of Construction Permit No. CPPR-1 is hereby amended by changing

the second sentence thereof to read as follows:

The latest date for completion of the reactor is October 1, 1961.

The final paragraph of Construction Permit No. CPPR–1 is hereby amended to read as follows:

Pursuant to § 50.60 of the regulations in Title 10, Chapter I, CFR, Part 50, the Commission has allocated to Consolidated, for use in connection with the operation of the reactor, 9,934 kilograms of uranium 235 contained in uranium at the isotopic ratios specified in Consolidated's application for license. An estimated schedule of special nuclear material transfers to Consolidated and returns to the Commission are contained in Appendix A which is attached hereto. Deliveries by the Commission to Consolidated in accordance with column (2) in Appendix A will be conditioned upon Consolidated's return to the Commission of special nuclear material substantially in accordance with column (3) of Appendix A.

Appendix A to Construction Permit No. CPPR–1 is hereby amended to read as follows:

AMENDED APPENDIX A TO CONSOLIDATED-EDISON CO. OF NEW YORK, INC., CONSTRUCTION PERMIT NO. CPPR–1

[Estimated schedule of transfers of special nuclear material to Consolidated from the Commission and to the Commission from Consolidated]

| (1) Date of transfer (fiscal year) | (2) Transfers from AEC to Consolidated-Edison Co., kgs. U–235 | (3) Returns by Consolidated-Edison Co. to AEC, kgs. U–235 | | (4) Net yearly distribution, kgs. U–235 | (5) Cumulative distribution, kgs. U–235 |
|---|---|---|---|---|---|
| | | Cold | Irradiated | | |
| 1960 | 1,425 | | | 1,425 | 1,425 |
| 1961 | | 181 | | (181) | 1,244 |
| 1962 | | | | | 1,244 |
| 1963 | 1,295 | | | 1,295 | 2,539 |
| 1964 | | 165 | 695 | (860) | 1,679 |
| 1965 | 1,295 | | | 1,295 | 2,974 |
| 1966 | | 165 | 695 | (860) | 2,114 |
| 1967 | 1,295 | | | 1,295 | 3,409 |
| 1968 | | 165 | 695 | (860) | 2,549 |
| 1969 | 1,295 | | | 1,295 | 3,844 |
| 1970 | | 165 | 695 | (860) | 2,984 |
| 1971 | 1,295 | | | 1,295 | 4,279 |
| 1972 | | 165 | 695 | (860) | 3,419 |
| 1973 | 1,295 | | | 1,295 | 4,714 |
| 1974 | | 165 | 695 | (860) | 3,854 |
| 1975 | 1,295 | | | 1,295 | 5,149 |
| 1976 | | 165 | 695 | (860) | 4,289 |
| 1977 | 1,295 | | | 1,295 | 5,584 |
| 1978 | | 165 | 695 | (860) | 4,724 |
| 1979 | 1,295 | | | 1,295 | 6,019 |
| 1980 | | 165 | 695 | (860) | 5,159 |
| 1981 | 1,295 | | | 1,295 | 6,454 |
| 1982 | | 165 | 695 | (860) | 5,594 |
| 1983 | 1,295 | | | 1,295 | 6,889 |
| 1984 | | 165 | 695 | (860) | 6,029 |
| 1985 | 1,295 | | | 1,295 | 7,324 |
| 1986 | | 165 | 695 | (860) | 6,464 |
| 1987 | 1,295 | | | 1,295 | 7,759 |
| 1988 | | 165 | 695 | (860) | 6,899 |
| 1989 | 1,295 | | | 1,295 | 8,194 |
| 1990 | | 165 | 695 | (860) | 7,334 |
| 1991 | 1,295 | | | 1,295 | 8,629 |
| 1992 | | 165 | 695 | (860) | 7,769 |
| 1993 | 1,295 | | | 1,295 | 9,064 |
| 1994 | | 165 | 695 | (860) | 8,204 |
| 1995 | 1,295 | | | 1,295 | 9,499 |
| 1996 | | 165 | 695 | (860) | 8,639 |
| 1997 | 1,295 | | | 1,295 | 9,934 |
| 1998 | | 165 | 695 | (860) | 9,074 |
| | 24,735 | 3,151 | 12,510 | | |

This amendment is effective as of the date of issuance.

Date of issuance: June 25, 1959.

For the Atomic Energy Commission.

H. L. PRICE,
*Director, Division of Licensing and Regulation.*

[F.R. Doc. 59–5480; Filed, July 1, 1959; 8:45 a.m.]

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[Docket No. 50–22]

## WESTINGHOUSE ELECTRIC CORP.

### Notice of Issuance of Facility License

Please take notice that the Atomic Energy Commission by order dated June 19, 1959, has issued Facility License No. TR–2, set forth below authorizing Westinghouse Electric Corporation to operate the Westinghouse Testing Reactor at power levels up to 20,000 kilowatts (thermal).

A public hearing in the matter of the issuance of the license to Westinghouse Electric Corporation was held on March 25, 1959, and June 11, 1959.

Dated at Germantown, Md., this 25th day of June 1959.

For the Atomic Energy Commission.

H. L. PRICE,
*Director, Division of Licensing and Regulation.*

[License No. TR–2]

1. This license applies to the heterogeneous, light water cooled and moderated 20,000 kilowatt (thermal) testing reactor (hereinafter referred to as "the facility") which is owned by Westinghouse Electric Corporation and located near Waltz Mill in Westmoreland County, Pennsylvania, and described in Westinghouse Electric Corporation's application attested February 29, 1956 and amendments to the application attested August 3 and 20, 1956, September 17, 1956, February 4, 1957, April 29, 1957, August 7, 1957, September 5, 1957, August 7, 1958, September 29, 1958, October 30, 1958, December 16, 1958, January 27, 1959 and February 5, 1959 (herein collectively referred to as "the application") and for which Construction Permit No. CPRR–8 (henceforth designated CPTR–1) was issued by the Commission on July 3, 1957.

2. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses Westinghouse Electric Corporation:

a. Pursuant to section 104(c) of the Atomic Energy Act of 1954, as amended (hereinafter referred to as "the Act") and Title 10, CFR Chapter I, Part 50, "Licensing of Production and Utilization Facilities", to possess and operate the facility as a utilization facility in accordance with the procedures described in the application;

b. Pursuant to the Act and Title 10, CFR, Chapter I, Part 70, "Special Nuclear Material", to receive, possess and use 156 kilograms of contained uranium 235 as fuel for operation of the facility; and

c. Pursuant to the Act and Title 10, CFR, Chapter I, Part 30, "Licensing of Byproduct Material", to possess, but not to separate, such byproduct material as may be produced by operation of the facility.

3. This license shall be deemed to contain and be subject to the conditions specified in § 50.54 of Part 50 and § 70.32 of Part 70; is subject to all applicable provisions of the Act and rules, regulations and orders of the Commission now or hereafter in effect; and is subject to any additional conditions specified or incorporated below:

a. *Operating restrictions.* (1) Westinghouse Electric Corporation (hereinafter referred to as "Westinghouse") shall not operate the facility at a power level in excess of 20,000 kilowatts (thermal).

(2) Westinghouse shall not operate the facility with a combined fuel and experiment loading resulting in an excess reactivity of more than 10 percent above cold clean critical.

(3) Westinghouse shall not operate the facility unless the over-all void and over-all temperature coefficients are negative and of such values that the facility can inherently withstand, without melting of fuel element cladding, a step increase in reactivity of at least 1 percent.

(4) Westinghouse may make changes in—

(a) The physical, nuclear, thermal, or hydraulic performance characteristics of the reactor core;

(b) The performance characteristics of the reactor control and safety systems;

(c) The number and type of experimental facilities;

(d) The physical, thermal, or hydraulic performance characteristics of the high pressure experimental thimbles or loops;

(e) The reactivity limitations on experiments; or

(f) The integrity of the containment vessel specified in the application

only in accordance with the following procedures:

After review and approval of the proposed change by the Westinghouse Testing Reactor Safeguards Committee, Westinghouse shall provide the Commission with a report describing the proposed change including (*i*) a hazards evaluation of the proposed change, and (*ii*) a determination by the Westinghouse Testing Reactor Safeguards Committee as to whether or not the proposed change may involve hazards greater than or different from those analyzed in The Final Safety Report, or may involve a material alteration of the facility.

If, within fifteen days after the date of acknowledgement by the Division of Licensing and Regulation of receipt of such report, the Commission does not issue any notice to Westinghouse to the contrary, Westinghouse may make such change without further approval.

If, within fifteen days after the date of acknowledgment by the Division of Licensing and Regulation of receipt of such report, the Commission notifies Westinghouse that the hazards involved may be greater than or materially different from those analyzed in The Final Safety Report, or that the proposed change involves a material alteration of the facility, the change shall not be made until after such change has been authorized in writing by the Commission. If a license amendment is necessary to authorize the proposed change, the report submitted by Westinghouse shall be deemed to constitute an application for a license amendment.

(5) Except with respect to the categories described in paragraph 3.a.(4) above, Westinghouse may make changes in the facility design, performance characteristics, and operating procedures specified in the application only in accordance with the following procedures:

(a) The Westinghouse Testing Reactor Safeguards Committee shall evaluate the hazards involved in the proposed change and the effect of such change on each of the postulated accidents analyzed in The Final Safety Report.

(b) (i) If the Westinghouse Testing Reactor Safeguards Committee determines that the proposed change involves hazards not greater than and not different from those analyzed in The Final Safety Report, and does not involve a material alteration of the facility, no further approval shall be required.

(ii) If the Westinghouse Testing Reactor Safeguards Committee determines that the hazards involved are or may be greater than or different from those analyzed in The Final Safety Report or if the Committee determines that the proposed change involves a material alteration of the facility, the procedures set forth in paragraph 3.a. (4) shall apply.

For purposes of paragraphs 3.a. (4) and (5) a proposed change shall be deemed to involve "hazards not greater than, and not different from, those analyzed in The Final Safety Report" if (1) the probability of the types of accidents analyzed in The Final Safety Report would not be increased, and (2) the possible consequence of the types of accidents analyzed in The Final Safety Report would not be increased, and (3) such change would not create a credible probability of an accident of a type different from those analyzed in The Final Safety Report. A proposed change shall be deemed to involve hazards which may be "greater than, or different from, those analyzed in The Final Safety Report" if (1) the probability of the types of accidents analyzed in The Final Safety Report might be increased, or (2) the consequences of the types of accidents analyzed in The Final Safety Report might be increased, or (3) such change might create a credible probability of an accident of a type different from those analyzed in The Final Safety Report. The Final Safety Report means Westinghouse Document WCAP-369 (Rev.), dated August 7, 1958, as amended on September 29, October 30, 1958, and January 27, 1959.

(6) No experiment or test shall be conducted in the facility until the proposed experiment or test has been reviewed and approved by the Westinghouse Testing Reactor Safeguards Committee.

(7) In any case where the procedures described in the application are not consistent with the operating restrictions specified in this paragraph 3., the restrictions contained herein shall govern.

b. *Records.* In addition to those otherwise required under this license and applicable regulations, Westinghouse shall keep the following records:

(1) Reactor operating records, including power levels.

(2) Records showing radioactivity released or discharged into the air or water beyond the effective control of Westinghouse as measured at the point of such release or discharge.

(3) Records of emergency shutdowns, including reasons therefor.

(4) Records containing a description of each change authorized pursuant to paragraph 3.a.(5)(b)(i) by the Westinghouse Testing Reactor Safeguards Committee and a summary statement of the bases for the conclusions reached by the Committee.

(5) Records containing a description of each test or experiment conducted in the facility.

c. *Reports.* (1) Westinghouse shall make an immediate report in writing to the Commission of any indication or occurrence of a possible unsafe condition relating to the operation of the facility.

(2) Westinghouse shall submit to the Commission a report of the results of operation of the facility pertinent to safety during (a) the low power tests (power levels up to 200 kilowatts) and the subsequent "check out" period, (b) the full power testing without high pressure experiments and (c) the full power tests with high pressure experiments. These reports should also identify any change made in the facility design, performance characteristics and operating procedures. Each such report shall be submitted to the Commission immediately following the conclusion of each stage except that the report of full power testing with high pressure experiments shall be submitted after three months of such operations.

(3) An annual report of operating experience and changes in facility design, performance and characteristics, and operating procedure shall be submitted to the Commission, the first such report to be submitted within thirteen months following issuance of this license.

4. Pursuant to § 50.60 of the regulations in Title 10, Chapter I, CFR, Part 50, the Commission has allocated to Westinghouse for use in the operation of the facility 156 kilograms of uranium 235 contained in uranium enriched to approximately 93% in the isotope uranium 235. Estimated schedules of special nuclear material transfers to Westinghouse and returns to the Commission are contained in Appendix "A" which is attached hereto. Shipments by the Commission to Westinghouse in accordance with column (2) in Appendix "A" will be conditioned upon Westinghouse's return to the Commission of material substantially in accordance with column (3) of Appendix "A".

5. This license is effective as of the date of issuance and shall expire at midnight July 3, 1967.

Date of issuance: June 19, 1959.

APPENDIX A TO WESTINGHOUSE ELECTRIC CORP. LICENSE NO. TR-2

[Estimated schedule of transfers of special nuclear material from the Commission to Westinghouse and to the Commission from Westinghouse]

| (1) Date of transfer (fiscal year) | (2) Transfers from AEC to Westinghouse Electric Corp., kgs. U-235 | (3) Returns by Westinghouse Electric Corp. to AEC, kgs. U-235 | | (4) Net yearly distribution, kgs. U-235 | (5) Cumulative distribution, kgs. U-235 |
|---|---|---|---|---|---|
| | | Recoverable scrap | Spent fuel | | |
| 1958 | 20.912 | | | 20.912 | 20.912 |
| 1959 | 43.118 | 2.840 | | 40.278 | 61.190 |
| 1960 | 45.370 | 5.900 | 12.450 | 27.020 | 88.210 |
| 1961 | 45.370 | 4.500 | 29.700 | 11.170 | 99.380 |
| 1962 | 45.370 | 4.500 | 29.700 | 11.170 | 110.550 |
| 1963 | 45.370 | 4.500 | 29.700 | 11.170 | 121.720 |
| 1964 | 45.370 | 4.500 | 29.700 | 11.170 | 132.890 |
| 1965 | 45.370 | 4.500 | 29.700 | 11.170 | 144.060 |
| 1966 | 45.370 | 4.500 | 29.700 | 11.170 | 155.230 |
| 1967 | 22.000 | 3.700 | 29.700 | (11.400) | 143.830 |
| | | | [1] 48.940 | (48.940) | [2] 94.890 |
| | 403.620 | 39.440 | 269.290 | 94.890 | |

[1] Inventory to be returned. [2] Fabrication and burnup losses.

[F.R. Doc. 59-5481; Filed, July 1, 1959; 8:45 a.m.]

# FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 11932; FCC 59M-822]

## NEW JERSEY EXCHANGES, INC. (KEC738)

### Order Scheduling Hearing

In the matter of the application of New Jersey Exchanges, Inc. (KEC738), Docket No. 11932, File No. 2379-C2-P-56; for a construction permit to establish a new station for two-way communications in the Domestic Public Land Mobile Radio Service at Ridgewood, New Jersey.

At the prehearing conference held on Friday, June 26, 1959, it was announced that New Jersey Exchanges, Inc., will amend its application to specify the use of Motorola equipment for its base station and mobile units in lieu of the equipment previously proposed. Counsel for the applicant stated that an amendment to that effect together with all supporting exhibits will be filed on or before Friday, July 10, 1959.

At the time the applicant files its amendment specifying the equipment which will be used, copies of such amendment together with such other exhibits as the applicant proposes to offer in evidence at the hearing will be served on all other parties to the proceeding. These exhibits may be offered in evidence by John F. Reilly, president of the applicant, at the evidentiary hearing which will be held on Friday, July 24, 1959. At the hearing, Mr. Reilly, if he desires, may give oral testimony explaining, clarifying and supporting the evidence contained in the written exhibits.

A further prehearing conference will be held on Friday, July 17, 1959, if, prior

to that date, the Hearing Examiner and other parties are advised in writing by any party that (a) there is objection to granting applicant's petition to amend; or (b) counsel cannot agree as to the witness or witnesses to be cross-examined at the evidentiary hearing; or (c) any party other than the applicant desires to make an affirmative showing or call at the evidentiary hearing any witness or witnesses on its own behalf; or (d) counsel cannot agree as to the time and place of taking such depositions as any party may wish to take; or (e) any party contends that it will be an undue hardship to proceed with the evidentiary hearing on July 24, 1959.

The attention of all parties is invited to the transcript of the prehearing conference held on Friday, June 26, 1959, for matters not specifically referred to herein.

*It is ordered*, This the 26th day of June 1959, that the evidentiary hearing in this proceeding will be held on Friday, July 24, 1959, beginning at 10:00 a.m. in the offices of the Commission, Washington, D.C.

Released: June 26, 1959.

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

[F.R. Doc. 59-5527; Filed, July 1, 1959; 8:52 a.m.]

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[Docket Nos. 12693, 12875; FCC 59M-820]

## TOBACCO VALLEY BROADCASTING CO. AND TELECOLOR CORP. (WTXL)

### Order Following Prehearing Conference

In re applications of The Tobacco Valley Broadcasting Company, Windsor, Connecticut; Docket No. 12693, File No. BP-11339; Telecolor Corporation (WTXL), West Springfield, Massachusetts; Docket No. 12875, File No. BP-12632; for construction permit.

A prehearing conference in the above-entitled matter having been held on June 25, 1959, and it appearing that certain agreements were reached therein which properly should be formalized in an order;

*It is ordered*, This 26th day of June 1959, that:

(1) The affirmative cases of the applicants shall be presented by written, sworn exhibits;

(2) In the event any proposed written material is excluded at the hearing (except for grounds of irrelevancy or immateriality), then the party offering such matter shall be afforded the opportunity of restoration thereof by competent oral testimony;

(3) The applicants shall make a formal exchange of their exhibits in final form with the other parties (with copies to be supplied to the Hearing Examiner) on September 1, 1959;

(4) The applicants shall be notified in writing by the parties concerned by September 15, 1959, as to those witnesses for the applicants who are to be made available for cross-examination at the hearing on September 22, 1959; and

*It is further ordered*, That the hearing in this proceeding heretofore continued without date, is rescheduled for September 22, 1959, at 10:00 o'clock a.m., in the offices of the Commission in Washington, D.C.

Released: June 26, 1959.

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

[F.R. Doc. 59-5528; Filed, July 1, 1959; 8:52 a.m.]

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[Docket No. 12864; FCC 59M-821]

## VIRGIN ISLANDS BROADCASTING SYSTEM

### Order Continuing Hearing

In re application of Mary Louise Vickers, tr/as Virgin Islands Broadcasting System Christiansted, Virgin Islands; Docket No. 12864, File No. BMP-8149; for additional time to construct Station WDTV.

Pursuant to agreement of all parties in the prehearing conference held in this proceeding on June 26, 1959: *It is ordered*, This 26th day of June 1959, that the hearing now scheduled for July 6, 1959, is continued to Wednesday, July 29, 1959, at 10:00 o'clock a.m., in the offices of the Commission, Washington, D.C.

Released: June 26, 1959.

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

[F.R. Doc. 59-5529; Filed, July 1, 1959; 8:52 a.m.]

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[Docket Nos. 12922-12924; FCC 59-614]

## MESA MICROWAVE, INC.

### Memorandum Opinion and Order Scheduling Oral Argument

In re applications of Mesa Microwave, Inc., Oklahoma City, Oklahoma; for construction permit for new fixed video radio station. Frequencies: 6012.5, 6112.5 and 6212.5 Mc. Location: 10 miles NW of Lake City, Florida; Docket No. 12922, File No. 2681-C1-P-58. For construction permit for new fixed video radio station. Frequencies: 6067.5, 6167.5 and 6267.5 Mc. Location: 6 miles east of Madison, Florida; Docket No. 12923, File No. 2682-C1-P-58. For construction permit for new fixed video radio station. Frequencies: 6012.5, 6112.5 and 6212.5 Mc. Location: 2.5 miles south of Monticello, Florida; Docket No. 12924, File No. 2683-C1-P-58.

*Preliminary statement.* 1. On April 27, 1959, the three above-identified applications for construction permits for microwave relay radio facilities were granted by the Commission. The grants were announced in a Public Notice dated May 4, 1959 (Report No. 475, Mimeo No. 72912). These grants were made to enable the applicant to construct a microwave relay system to make an off-the-air pickup of the programs of three television stations in Jacksonville, Florida and to deliver those programs to Vumore Company, a proposed operator of a community antenna television system (hereinafter called CATV) in Tallahassee, Florida. The grantee, Mesa Microwave, Inc. (hereinafter called Mesa), and CATV are both subsidiaries of Video Independent Theatres, Inc. of Oklahoma City, Oklahoma.

2. The subject applications were filed with the Commission May 9, 1958. By letter dated September 2, 1958, John H. Phipps, licensee of television station WCTV, Thomasville, Georgia (the protestant herein, hereinafter called Phipps) expressed to the Commission certain objections to a grant of the subject applications and asked that the Commission withhold action thereon until final conclusions were reached with respect to the Commission's Notice of Inquiry in Docket No. 12443.

3. The Notice of Inquiry referred to was captioned "In the Matter of Inquiry into the Impact of Community Antenna Systems, TV Translators, TV 'Satellite' Stations, and TV 'Repeaters' on the Orderly Development of Television Broadcasting", and was initiated by the Commission by a notice released May 22, 1958. The proceeding relative to the Notice of Inquiry was terminated by a Report and Order of the Commission (FCC 59-292; Mimeo No. 71489), adopted April 13, 1959 (26 FCC 403).

4. Pursuant to, and following the determination made in, the above mentioned Report and Order in Docket No. 12443, the subject applications were duly granted. On May 27, 1959, Phipps filed a timely protest herein, pursuant to the provisions of section 309(c) of the Communications Act of 1934, as amended, coupled with a timely request for reconsideration pursuant to section 405 of the Act, requesting that the subject grants be vacated and that the applications be designated for hearing on specified issues.

5. On June 8, 1959, Mesa timely filed its Opposition to the protest and petition for reconsideration.

*The protest.* 6. Phipps relates that the result of the grant of the contested applications will be to enable the CATV system in Tallahassee to bring multiple signals from distant metropolitan stations, where such signals would not otherwise be receivable in WCTV service areas, and that this will have a substantial adverse economic impact on the operations of WCTV. Upon this showing, we conclude that Phipps is a "party in interest", within the meaning of section 309(c) of our Act and a "person aggrieved" within the meaning of section 405 of our Act and that he has standing to protest and to request reconsideration of our action herein.

7. Phipps requests an opportunity to show that the Tallahassee-Thomasville area is a place where the impact of CATV operations, made possible by these microwave grants, may destroy, jeopardize, or diminish the service presently provided and presently projected by sta-

tion WCTV; and that the number of persons who would thus lose, or lose pro tanto, their only local off-the-air service is considerably greater than the number who would thereby gain a multiple service. Phipps also contends that Mesa is an alter ego of CATV because of the corporate interrelationships between Mesa, CATV, and Video Independent Theatres, Inc., and that, since Mesa does not serve any person or persons other than the related CATV, it is not able to qualify as a communication common carrier and is ineligible for a grant of the contested authorizations. Further, Phipps contends that Mesa and its alter ego CATV are utilizing the signals and programs picked up from the Jacksonville stations without the consent of such stations and contrary to the rights of such stations and others in such signals, and that this reflects adversely on the character qualifications of Mesa. Finally, Phipps contends that the Commission should not act on the subject applications until Congress has had an opportunity to adopt certain legislative proposals suggested by the Commission in its Report and Order relative to Docket No. 12443.[1]

*The opposition to the protest.* 8. Mesa admits the corporate relationships alleged with respect to itself, CATV, and Video Independent Theatres, Inc. Mesa contends that Phipps is entitled to no more than oral argument as to the validity of the doctrines and policies set forth in the Commission's Report and Order in Docket No. 12443 as they may be applicable to Phipps' allegations. Mesa makes various references to the Report and Order which we do not here repeat because of the consideration given to them hereinafter. Mesa contends that the Commission should exercise its discretion favorably to Mesa in making the "public interest" finding prescribed in section 309(c) of our Act as a condition precedent to maintaining the contested construction permits in a valid status pending the determination of this proceeding.

*Disposition of the protest.* 9. As we have hereinabove indicated, it is our view that the protestant has standing to initiate the instant protest and request for reconsideration. As indicated in our resumé of his pleading, Phipps alleges various reasons and grounds purporting to show that the grant herein was improperly made or would otherwise not be in the public interest. In our Report and Order in Docket No. 12443, we undertook an extensive and careful review of all the considerations brought to our attention and bearing upon the alleged interrelationships between the provision of common carrier microwave relay communication service to CATVs generally and the operation of CATVs versus television broadcasters. In our Report and Order we arrived at various considered conclusions, some of which have a direct bearing upon this situation.

[1] Phipps cites our Report and Order in Docket No. 12443 frequently, with apparent approval. There is no contention or suggestion in his pleading that such Report is, in any wise, in error.

10. Thus, in paragraphs 45 through 51 of that Report and Order, we considered the impact of CATVs on television broadcasters and concluded that there was nothing that woud justify us in taking action, or seeking authority under which we could act, to bar CATVs from coming into, or continuing to operate in, a particular market. As a concomitant to this, we also concluded, in paragraphs 58 through 71, that we had no jurisdiction to regulate CATVs directly or indirectly. In paragraphs 65 through 68, and in paragraphs 78 through 79, we made various pertinent determinations concerning our lack of authority and competence to determine contested questions of property rights as between broadcasters and others, on the one hand, and common carriers and CATVs, on the other hand. In paragraphs 72 through 77 of the Report and Order, we set out the basis for our conclusion that it would not constitute a legally valid exercise of regulatory jurisdiction over common carriers to deny authorizations for common carrier microwave, wire or cable transmission of television programs to CATV systems on the ground that such facilities would abet the creation of adverse competitive impact by the CATV on the construction or successful operation of local or nearby television stations.

11. In light of the aforementioned determinations made in Docket No. 12443, which we hereby affirm and adhere to, we think the instant protest must turn first on the threshold question as to whether or not the subject grantee is a communications common carrier. If it is determined that Mesa is a bona fide common carrier then, in the light of our determinations in Docket No. 12443, we should not proceed further herein unless Phipps can demonstrate to us that our relevant and controlling determinations in Docket No. 12443 (which we have herein identified) are erroneous, or that the corporate interrelationships between Mesa and CATV warrant a different result in this case.

12. The facts relating to Mesa's operations and its corporate interrelationships are clearly established and admitted. The legal conclusion to flow from these facts and the proposed operations of Mesa, relative to the asserted common carrier status of Mesa, is, therefore, the first issue for proper determination in this proceeding. Though, as we have noted above, Phipps has not contended that our decision in Docket No. 12443 is, in any wise, in error, we will afford him an opportunity to argue this issue also insofar as it relates to the proper determination to be made herein assuming that Mesa is confirmed in its status as a communication common carrier. Accordingly, we shall designate these issues for determination before the Commission on oral argument. If it should subsequently appear that there is a need for an evidentiary hearing herein, an appropriate further order will be issued hereafter.

13. In designating this matter for oral argument on the issues we have specified, we note that there is no dispute as to the facts relating to these issues. Assuming the truth and accuracy of these facts, we do not, of course, imply that the ultimate conclusions flowing therefrom, as asserted by protestant, are either correct or relevant. The matters to be determined relative thereto are the legal conclusions which would flow from such facts. As contemplated in the statutory scheme of section 309(c) of our Act, as amended in 1956, this appears to be an appropriate case for disposition on oral argument, since the ultimate question to be determined is, assuming that the facts are proven as related by protestant, whether there are legal grounds for setting the grants aside.

14. As for protestant's plea that we stay the subject grants pending action by the Congress on the legislative recommendations we have submitted relative to CATV's, we note that, during the pendency of the formal Inquiry in which these matters were under consideration (Docket No. 12443), the Commission felt it appropriate to defer action on applications for such microwave transmission systems as were then before it so that the status quo might be unimpaired until a final decision was reached. Our deferral of consideration of such applications was challenged in a mandamus proceeding in which the Court of Appeals sustained the Commission during the pendency of the Inquiry. See Mesa Microwave, Inc. v. FCC, No. 14729, December 24, 1958. However, having reached and announced our conclusions on these matters, we would find it difficult to justify a reinstitution of the freeze. In the light of our conclusions, this might be subject to a further mandamus action because such action would not be in accord with the proper exercise of our jurisdiction on the sole basis of the pendency of these particular legislative proposals. Accordingly, having carefully weighed the entire matter and having reached our reasoned conclusions, as set forth in the Report mentioned above, we feel that the proper course for the Commission is to continue to process applications in the regular course pending action of the Congress on legislation necessary to changes in the established regulatory pattern.

15. The remaining question to be determined is whether we should stay the effectiveness of the contested grants pending a determination of this proceeding. Since the contested operation involves a new service, it cannot be held to be necessary to the maintenance and conduct of an existing service. In light of the facts adduced on the record to date indicating that other television service is available in the area without the existence of the microwave relay facility, we are unable to conclude that the public interest requires that the grants remain in effect. Accordingly, we shall stay the effectiveness of the subject grants pending final determination of this matter.

*Conclusion.* 16. In view of the foregoing: *It is ordered,* That effective immediately, the effective date of the grant of the above-captioned applications of Mesa Microwave, Inc., is postponed, pending a final determination herein by

the Commission; that the protest and petition for reconsideration of Phipps is granted to the extent herein provided and denied in all other respects; and that, pursuant to the provisions of section 309(c) of the Communications Act of 1934, as amended, oral argument be held before the Commission en banc, commencing at 10:00 a.m. on July 24, 1959, on the following issues:

(1) To determine whether Mesa Microwave, Inc., is a bona fide communications common carrier eligible to receive approval and grant of the subject applications.

(2) To determine whether our conclusions in paragraphs 45 through 51, and 58 through 79, of the Report and Order in Docket No. 12443, as applied in this case, are in error.

(3) To determine whether the corporate interrelationships between Mesa and CATV require a different conclusion in this case from that reached in Docket No. 12443.

17. *It is further ordered*, That the protestant and applicant herein, and the Chief, Common Carrier Bureau, are hereby made parties to this proceeding; and that each party intending to participate in oral argument shall file a statement of intention to appear not later than July 6, 1959; and

18. *It is further ordered*, That the parties to the proceeding shall have until ten days prior to date of oral argument to file briefs or memoranda of law and five days after the filing of such briefs or memoranda of law to file a reply thereto.

Adopted: June 24, 1959.

Released: June 29, 1959.

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

[F.R. Doc. 59-5530; Filed, July 1, 1959; 8:53 a.m.]

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[Docket Nos. 12928-12930; FCC 59-616]

## MESA MICROWAVE, INC.

### Memorandum Opinion and Order Scheduling Oral Argument

In re applications of Mesa Microwave, Inc., Oklahoma City, Oklahoma; for a construction permit for new fixed video radio station. Frequencies 6012.5, 6112.5 and 6212.5 Mc. Location: Miquel, 15 miles east of Pearsall, Texas; Docket No. 12928, File No. 2177-C1-P-58. For a construction permit for new fixed video radio station. Frequencies: 6067.5, 6167.5 and 6267.5 Mc. Location: 7 miles east of Cotulla, Texas; Docket No. 12929, File No. 2178-C1-P-58. For a construction permit for new fixed video radio station. Frequencies: 6012.5, 6112.5 and 6212.5 Mc. Location: Hilltop, 12 miles west of Encinal, Texas; Docket No. 12930, File No. 2179-C1-P-58.

*Preliminary statement.* 1. On April 22, 1959, the three above-identified applications for construction permits for microwave relay radio facilities were granted by the Commission. The grants were announced in a Public Notice dated April 27, 1959 (Report No. 474, Mimeo No. 72759). These grants were made to enable the applicant to construct a microwave relay system to make an off-the-air pick-up of the programs of the televisions stations in San Antonio, Texas and to deliver those programs to Vumore Company, a proposed operator of a community antenna television system (hereinafter called CATV), in Laredo, Texas. The grantee, Mesa Microwave, Inc. (hereinafter called Mesa), and the CATV are both subsidiaries of Video Independent Theatres, Inc. of Oklahoma City, Oklahoma.

2. The captioned applications were filed with the Commission on March 27, 1958. Final action on Mesa's applications was withheld until final conclusions were reached with respect to the Commission's Notice of Inquiry in Docket No. 12443.

3. Notice of Inquiry referred to was captioned "In the Matter of Inquiry into the Impact of Community Antenna Systems, TV Translators, TV 'Satellite' Stations, and TV 'Repeaters' on the Orderly Development of Television Broadcasting", and was initiated by the Commission by a notice released May 22, 1958. The proceeding relative to the Notice of Inquiry was terminated by a Report and Order of the Commission (FCC 59-292; Mimeo No. 71489), adopted April 13, 1959 (26 FCC 403).

4. Pursuant to, and following the determination made in the above mentioned Report and Order in Docket No. 12443, the captioned applications were duly granted. On May 27, 1959, Southwestern Operating Company, the permittee of television station KGNS-TV, Laredo, Texas (hereinafter called Southwestern) filed a timely protest herein, pursuant to the provisions of section 309(c) of the Communications Act of 1934, as amended, coupled with a timely request for reconsideration pursuant to section 405 of the Act, requesting that the subject grants be vacated and that the applications be designated for hearing on specified issues.

5. On June 8, 1959, Mesa timely filed its Opposition to the protest and petition for reconsideration and, on June 15, 1959, Southwestern filed a timely Reply thereto.

*The protest.* 6. Southwestern relates that the result of the grant of the contested applications will be to enable the CATV system at Laredo to bring multiple signals from distant metropolitan stations, where such signals would not otherwise be receivable in the KGNS-TV service area, and that this will have a substantial adverse economic impact on the operations of KGNS-TV. Upon this showing, we conclude that Southwestern is a "party in interest", within the meaning of section 309(c) of our Act and a "person aggrieved" within the meaning of section 405 of our Act and that it has standing to protest and to request reconsideration of our action herein.

7. Southwestern requests an opportunity to show that the Laredo area is a place where the impact of CATV operations made possible by these microwave grants, may destroy, jeopardize, or diminish the service presently provided and presently projected by station KGNS-TV; and that, in such event, the great majority of the Laredo area, i.e., those who cannot afford expensive receiving antenna installations for the direct reception of San Antonio, Corpus Christi, Weslaco and Harlingen stations, and who could not afford, or for other reasons could not effect, connections with the CATV would lose their only television service. Southwestern also contends that Mesa is the alter ego of CATV because of the corporate interrelationships between Mesa, CATV and Video Independent Theatres, Inc., and that it is apparent, from the captioned applications, that Mesa has not offered to serve the general public as a common carrier; that it has made no effort to secure traffic from anyone other than Vumore; that neither the general public nor other CATV systems will have reasonable access to Mesa's facilities; and that it will not be able to handle the traffic as traffic is ordinarily handled by a common carrier. Southwestern further alleges that Mesa's primary purpose and first duty will be to serve Vumore and, as such, it is not eligible to use frequencies available for use by domestic communication common carrier operations. Further, Southwestern contends that Mesa has not requested or received from the Commission a certificate of public convenience and necessity, in accordance with section 214(a) of our Act, nor has it shown that the proposed communication system is a part of an interstate system so as to require such a certificate, or that it has sought other recognition of common carrier status from the State of Texas. Thus, Southwestern requests a hearing to determine if Mesa is, in fact or in law, a common carrier. Further, Southwestern contends that Mesa and its alter ego, the CATV, are picking up television signals of television stations at San Antonio without the consent of such stations and that it, therefore, "pirates" its program material, which reflects adversely on the character qualifications of Mesa and results in unfair competition to Southwestern because Southwestern must pay for its program material. Finally, Southwestern contends that the Commission should not act on the applications until the Congress has the opportunity to adopt certain legislative proposals suggested by the Commission in its Report and Order relative to Docket No. 12443.

*The opposition to the protest.* 8. Mesa states that the Commission was fully advised of the corporate relationships alleged with respect to itself, CATV and Video Independent Theatres, Inc., at the time it filed the applications for these facilities and admits that such situation continues to be the fact. However, Mesa denies that the conclusions stated by Southwestern can be drawn from such facts. Mesa contends that Southwestern is entitled to no more than oral argument as to whether Mesa must comply with section 214(a) of our Act and oral argument is all that is required as to the validity of the doctrines and policies set forth in the Commission's Report and Order in Docket No. 12443, as they may

be applicable to Southwestern's allegations. Mesa makes various references to the Report and Order which we do not here repeat because of the consideration given to them hereinafter. Mesa contends that the Commission should exercise its discretion favorably to Mesa in making the "public interest" finding prescribed in section 309(c) of our Act as a condition precedent to maintaining the contested construction permits in a valid status pending the determination of this proceeding.

9. Southwestern relates, in its Reply to Mesa's Opposition to the Protest and Petition for Reconsideration, that it does not recognize the Commission's Report and Order in Docket No. 12443 as having validly disposed of the questions raised by Southwestern; that the public has a right to television service and their right must be protected from diminution or destruction by competitive forces set in motion by any exercise of the Commission's licensing authority under Title III of the Act; that the Commission should make the same public interest determination when it considers an application for common carrier microwave facilities as would apply to a broadcast application; that, in the face of pending legislation, it would not be in the public interest to permit a service to be initiated today which might have to be terminated in the near future.

*Disposition of the protest.* 10. As we have hereinabove indicated, it is our view that the protestant has standing to initiate the instant protest and request for reconsideration. As indicated in our résumé of his pleadings, Southwestern alleges various reasons and grounds purporting to show that the grant herein was improperly made or would otherwise not be in the public interest. In our Report and Order in Docket No. 12443, we undertook an extensive and careful review of all the considerations brought to our attention and bearing upon the alleged interrelationships between the provision of common carrier microwave relay communication service to CATVs generally and the operation of CATVs versus television broadcasters. In our Report and Order we arrived at various considered conclusions, some of which have a direct bearing upon this situation.

11. Thus, in paragraphs 45 through 51 of that Report and Order, we considered the impact of CATVs on television broadcasters and concluded that there was nothing that would justify us in taking action, or seeking authority under which we could act, to bar CATVs from coming into, or continuing to operate in, a particular market. As a concomitant to this, we also concluded, in paragraphs 58 through 71, that we had no jurisdiction to regulate CATVs directly or indirectly. In paragraphs 65 through 68, and in paragraphs 78 through 79, we made various pertinent determinations concerning our lack of authority and competence to determine contested questions of property rights as between broadcasters and others, on the one hand, and common carriers and CATVs, on the other hand. In paragraphs 72 through 77 of the Report and Order, we set out the basis for our conclusion that it would not constitute a legally valid exercise of regulatory jurisdiction over common carriers to deny authorizations for common carrier microwave, wire or cable transmission of television programs to CATV systems on the ground that such facilities would abet the creation of adverse competitive impact by the CATV on the construction or successful operation of local or nearby television stations.

12. In light of the aforementioned determinations made in Docket No. 12443, which we hereby affirm and adhere to, we think the instant protest must turn first on the threshhold question as to whether or not the subject grantee is a communications common carrier. If it is determined that Mesa is a bona fide common carrier then, in the light of our determinations in Docket No. 12443, we should not proceed further herein unless Southwestern can demonstrate to us that our relevant and controlling determinations in Docket No. 12443 (which we have herein identified) are erroneous, or that the corporate interrelationships between Mesa and CATV warrant a different result in this case.

13. The facts relating to Mesa's operations and its corporate interrelationships are set out in the applications, which facts both Mesa and Southwestern have relied upon in their several pleadings filed herein. Thus, such matters are clearly established and admitted. Likewise, it is clear that Mesa has not heretofore sought or obtained a certificate from the Commission pursuant to section 214(a) of our Act. The legal conclusion to flow from these facts and the proposed operations of Mesa, relative to the asserted common carrier status of Mesa, is, therefore, the first issue for proper determination in this proceeding. Southwestern has stated that it does not recognize the Commission's Report and Order in Docket No. 12443 as having validly disposed of the questions raised in Southwestern's protest and petition for reconsideration. As heretofore indicated in paragraphs 10, 11 and 12 above, our determinations in Docket No. 12443 do have a direct bearing upon the facts of this case. Accordingly, we will afford Southwestern an opportunity to argue the validity of certain relevant determinations in that proceeding, as they are germane to this case, assuming that Mesa is confirmed in its status as a communications common carrier. Accordingly, we shall designate these issues for determination before the Commission on oral argument. If it should subsequently appear that there is a need for an evidentiary hearing herein, an appropriate further order will be issued hereafter.

14. In designating this matter for oral argument on the issues we have specified, we note that there is no dispute as to the facts relating to these issues. Assuming the truth and accuracy of these facts, we do not, of course, imply that the ultimate conclusions flowing therefrom, as asserted by protestant, are either correct or relevant. The matters to be determined relative thereto are the legal conclusions which would flow from such facts. As contemplated in the statutory scheme of section 309(c) of our Act, as amended in 1956, this appears to be an appropriate case for disposition on oral argument, since the ultimate question to be determined is, assuming that the facts are proven as related by protestant, whether there are legal grounds for setting the grants aside.

15. As for protestant's plea that we stay the subject grants pending action by the Congress on the legislative recommendations we have submitted relative to CATVs, we note that, during the pendency of the formal Inquiry in which these matters were under consideration (Docket No. 12443), the Commission felt it appropriate to defer action on applications for such microwave transmission systems as were then before it so that the status quo might be unimpaired until a final decision was reached. Our deferral of consideration of such applications was challenged in a mandamus proceeding in which the Court of Appeals sustained the Commission during the pendency of the Inquiry. See Mesa Microwave, Inc. v. FCC, No. 14729, December 24, 1958. However, having reached and announced our conclusions on these matters, we would find it difficult to justify a reinstitution of the freeze. In the light of our conclusions, this might be subject to a further mandamus action because such action would not be in accord with the proper exercise of our jurisdiction on the sole basis of the pendency of these particular legislative proposals. Accordingly, having carefully weighed the entire matter and having reached our reasoned conclusions, as set forth in the Report mentioned above, we feel that the proper course for the Commission is to continue to process applications in the regular course pending action of the Congress on legislation necessary to changes in the established regulatory pattern.

16. The remaining question to be determined is whether we should stay the effectiveness of the contested grants pending a determination of this proceeding. Since the contested operation involves a new service, it cannot be held to be necessary to the maintenance and conduct of an existing service. In light of the facts adduced on the record to date indicating that other television service is available in the area without the existence of the microwave relay facility, we are unable to conclude that the public interest requires that the grants remain in effect. Accordingly, we shall stay the effectiveness of the subject grants pending final determination of this matter.

*Conclusion.* 17. In view of the foregoing: *It is ordered*, That effective immediately, the effective date of the grant of the above-captioned applications of Mesa Microwave, Inc., is postponed, pending a final determination herein by the Commission; that the protest and petition for reconsideration of Southwestern is granted to the extent herein provided, and denied in all other respects; and that, pursuant to the provisions of section 309(c) of the Communications Act of 1934, as amended, oral argument be held before the Commission en banc, commencing at 10:00 a.m. on July 24th, 1959, on the following issues:

(1) To determine whether Mesa Microwave, Inc., is a bona fide communica-

tions common carrier eligible to receive approval and grant of the subject applications.

(2) To determine whether our conclusions in paragraphs 45 through 51, and 58 through 79, of the Report and Order in Docket No. 12443, as applied in this case, are in error.

(3) To determine whether the corporate interrelationships between Mesa and CATV require a different conclusion in this case from that reached in Docket No. 12443.

18. *It is further ordered,* That the protestant and applicant herein, and the Chief, Common Carrier Bureau, are hereby made parties to this proceeding; and that each party intending to participate in oral argument shall file a statement of intention to appear not later than July 6, 1959; and

19. *It is further ordered,* That the parties to the proceeding shall have until ten days prior to date of oral argument to file briefs or memoranda of law and five days after the filing of such briefs or memoranda of law to file a reply thereto.

Adopted: June 24, 1959.

Released: June 26, 1959.

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

[F.R. Doc. 59-5531; Filed, July 1, 1959; 8:53 a.m.]

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[Docket No. 12931; FCC 59-617]

## CARTER MOUNTAIN TRANSMISSION CORP.

### Memorandum Opinion and Order Scheduling Oral Argument

In re application of Carter Mountain Transmission Corporation, Cody, Wyoming; Docket No. 12931, File No. 2463-C1-P-58; for construction permit to install an additional transmitter, to transmit on frequency 6387.5 Mc. Location: Copper Mountain, 40 miles south of Worland, Wyoming.

*Preliminary statement.* 1. On April 22, 1959, the above identified application for construction permit for microwave radio relay facilities filed April 24, 1958, was granted by the Commission. This grant was announced in a Public Notice dated April 27, 1959 (Report No. 474, Mimeo No. 72759). The grant was made to enable the applicant to construct a microwave relay system to make an off-the-air pick up of the program of television station KTWO-TV at Casper, Wyoming and to deliver this program to community antenna television systems (hereinafter called CATV) at Riverton, Lander and Thermopolis, Wyoming. Two stockholders of the grantee (hereinafter called Carter) who hold a total of 50 percent of the corporate stock of Carter, also have substantial stock interests in the CATV systems at Riverton, Lander and Thermopolis. Carter is also presently licensed to operate point-to-point microwave facilities (stations KOY39, KPB64 and KPB66) on a common carrier basis for transmission of other television signals to community antenna systems at Riverton, Lander, Worland, Basin and Greybull, all in the state of Wyoming, and a construction permit (station KPF75) to provide for the transmission of television signals to a community antenna system at Miles City, Montana. Carter's presently authorized facilities which terminate at Riverton and Lander provide for one channel of service to the respective CATV systems in these communities. The captioned application would provide a second channel of service to the CATVs at Riverton and Lander, and permit a new two channel service to the CATV at Thermopolis.

2. Joseph P. Ernst and Mildred V. Ernst, d/b as Chief Washakie TV, is the licensee of television station KWRB-TV, operating on Channel 10, in Riverton, with its main studio in Thermopolis. Mrs. Mildred V. Ernst is licensee of standard broadcast station KRTR at Thermopolis. These parties are hereinafter called Protestant KWRB-TV and Protestant KRTR, respectively. These parties have not previously filed any specific objections to the captioned application.[1] However, Protestant KWRB-TV made its objections known at the Hearing on S. Res. 224, 85 Cong. 2d Sess., Senate Committe on Interstate and Foreign Commerce, and in comments submitted in response to the Commission's Notice of Inquiry in Docket No. 12443.

3. The Notice of Inquiry referred to was captioned "In the Matter of Inquiry into the Impact of Community Antenna Systems, TV Translators, TV 'Satellite' Stations, and TV 'Repeaters' on the Orderly Development of Television Broadcasting", and was initiated by the Commission by a notice released May 22, 1958. The proceeding relative to the Notice of Inquiry was terminated by a Report and Order of the Commission (FCC 59-292; Mimeo No. 71489), adopted April 13, 1959 (26 FCC 403).

4. Pursuant to, and following the determinations made in the above mentioned Report and Order in Docket No. 12443, the subject application was duly granted. Protestants KWRB-TV and KRTR jointly filed a timely protest herein, pursuant to the provisions of section 309(c) of the Communications Act of 1934, as amended, coupled with a timely request for reconsideration pursuant to section 405 of the Act, requesting that the subject grant be vacated and that the application be designated for hearing on specified issues.

5. On June 8, 1959, Carter timely filed its Opposition to the joint protest and petition for reconsideration and, on June 11, 1959, Protestants KWRB-TV and KRTR timely filed a Reply to the Opposition.

*The protest.* 6. Protestant KWRB-TV relates that the result of the grant of the contested application will be to enable the CATV system at Riverton and Lander to bring a second signal from a distant metropolitan station (the first signal being presently provided by Carter to the CATVs in these two communities) and to enable the CATV system at Thermopolis to bring two signals from distant metropolitan stations. Protestant states that it serves all three towns and that signals from distant metropolitan stations would not otherwise be receivable in this Protestant's service area, and that this will have a substantial adverse economic impact on the operations of station KWRB-TV. Protestant KRTR states that its standard broadcast station serves the community of Thermopolis and that a grant of the captioned application will have a serious adverse impact on the operation of station KWRB-TV. It makes no claim or allegation that this situation presents any adverse economic impact to it, nor does it show how the protested grant will affect it adversely. Upon these showings, we conclude that Protestant KWRB-TV is a "party in interest" within the meaning of section 309(c) of our Act and is a "person aggrieved" within the meaning of section 405 of our Act and that Protestant KWRB-TV has standing to protest and request reconsideration of our action herein. We also conclude that Protestant KRTR has no standing to protest and no standing to request reconsideration because we are unable to determine affirmatively that she is a party in interest.

7. Protestant KWRB-TV requests an opportunity to show that a second channel video service to community antenna systems in Riverton and Lander, and a new two channel video service to a community antenna television system in Thermopolis, involve places where the impact of CATV operations, made possible by these microwave grants, may destroy, jeopardize, or diminish the service presently provided and presently projected by station KWRB-TV and that the number of persons who would thus lose, or lose pro tanto, their only local off-the-air service is considerably greater than the number who would thereby gain a multiple service. Protestant KWRB-TV also contends that Carter is the alter ego for the various CATV systems operating in KWRB-TV's service area, in that Messrs. Bliss and Mitchell are the president and vice president, respectively, of Carter and are each holders of 25 percent of the stock therein, and that Messrs. Bliss and Mitchell are also officers of Western TV Corporation which owns and operates, among others, CATV systems at Lander, Riverton and Thermopolis. Protestant KWRB-TV alleges, upon information and belief, that, as a consequence, through this corporate device, the various interrelated CATV systems in KWRB-TV's service area, not themselves eligible for a microwave channel under the Commission's rules, are obtaining a frequency, reserved for common carrier use, for their own private purposes. Further, Protestant KWRB-TV contends that Carter and its alter ego CATVs are utilizing the signals and programs of stations in Idaho Falls, Billings and Casper without the consent of such stations and contrary to the rights of such stations and others in such signals, and that this reflects adversely on the character qualifications of Carter. Finally, Protestant

[1] Protestants have likewise made no objection to any of Carter's existing facilities mentioned in Paragraph 1.

KWRB–TV contends that the Commission should not act on the subject application until Congress has had an opportunity to adopt certain legislative proposals suggested by the Commission in its Report and Order relative to Docket No. 12443.[2]

*The opposition to the protest.* 8. Carter admits the allegations that two stockholders in Carter, holding a total of 50 percent of the corporate stock, also have substantial stock interests in the CATV systems located in Riverton, Lander and Thermopolis, Wyoming. Carter contends that Protestant KWRB–TV is entitled to no more than oral argument as to the validity of the doctrines and policies set forth in the Commission's Report and Order in Docket No. 12443 as they may be applicable to the Protestant's allegations. Carter makes various references to the Report and Order which we do not here repeat because of the consideration given to them hereinafter. Carter contends that the Commission should exercise its discretion favorably to Carter in making the "public interest" finding prescribed in Section 309(c) of our Act as a condition precedent to maintaining the contested construction permit in a valid status pending the determination of this proceeding.

9. The reply to the Opposition, which reiterates what has been previously stated in Protestant's protest, has been considered in the disposition hereof.

*Disposition of the protest.* 10. As we have hereinabove indicated, it is our view that one protestant has standing to initiate the instant protest and request for reconsideration. As indicated in our résumé of his pleading, Protestant KWRB–TV alleges various reasons and grounds purporting to show that the grant herein was improperly made or would otherwise not be in the public interest. In our Report and Order in Docket No. 12443, we undertook an extensive and careful review of all the considerations brought to our attention and bearing upon the alleged interrelationships between the provision of common carrier microwave relay communication service to CATVs generally and the operation of CATVs versus television broadcasters. In our Report and Order we arrived at various considered conclusions, some of which have a direct bearing upon this situation.

11. Thus, in paragraphs 45 through 51 of that Report and Order, we considered the impact of CATVs on television broadcasters and concluded that there was nothing that would justify us in taking action, or seeking authority under which we could act, to bar CATVs from coming into, or continuing to operate in, a particular market. As a concommitant to this, we also concluded, in paragraphs 58 through 71, that we had no jurisdiction to regulate CATVs directly or indirectly. In paragraphs 65 through 68, and in paragraphs 78 through 79, we made various pertinent determinations concerning our lack of authority and competence to determine contested questions of property rights as between broadcasters and others, on the one hand, and common carriers and CATVs, on the other hand. In paragraphs 72 through 77 of our Report and Order, we set out the basis for our conclusion that it would not constitute a legally valid exercise of regulatory jurisdiction over common carriers to deny authorizations for common carrier microwave, wire or cable transmission of television programs to CATV systems on the ground that such facilities would abet the creation of adverse competitive impact by the CATV on the construction or successful operation of local or nearby television stations.

12. In light of the aforementioned determinations made in Docket No. 12443, which we hereby affirm and adhere to, we think the instant protest must turn first on the threshhold question as to whether or not the subject grantee is a communications common carrier. If it is determined that Carter is a bona fide common carrier then, in the light of our determinations in Docket No. 12443, we should not proceed further herein unless Protestant KWRB–TV can demonstrate to us that our relevant and controlling determinations in Docket No. 12443 (which we have herein identified) are erroneous, or that the corporate interrelationships between Carter and CATV warrant a different result in this case.

13. The facts relating to Carter's operations and its corporate interrelationships are clearly established and admitted. The legal conclusion to flow from these facts and the proposed operations of Carter, relative to the asserted common carrier status of Carter, is, therefore, the first issue for proper determination in this proceeding. Though, as we have noted above, Protestant KWRB–TV has not contended that our decision in Docket No. 12443 is, in any wise, in error, we will afford him an opportunity to argue this issue also insofar as it relates to the proper determination to be made herein assuming that Carter is confirmed in its status as a communication common carrier. Accordingly, we shall designate these issues for determination before the Commission on oral argument. If it should subsequently appear that there is a need for an evidentiary hearing herein, an appropriate further order will be issued hereafter.

14. In designating this matter for oral argument on the issues we have specified, we note that there is no dispute as to the facts relating to these issues. Assuming the truth and accuracy of these facts, we do not, of course, imply that ultimate conclusions flowing therefrom, as asserted by protestant, are either correct or relevant. The matters to be determined relative thereto are the legal conclusions which would flow from such facts. As contemplated in the statutory scheme of section 309(c) of our Act, as amended in 1956, this appears to be an appropriate case for disposition on oral argument, since the ultimate question to be determined is, assuming that the facts are proven as related by protestant, whether there are legal grounds for setting the grant aside.

15. As for protestant's plea that we stay the subject grant pending action by the Congress on the legislative recommendations we have submitted relative to CATVs, we note that, during the pendency of the formal Inquiry in which these matters were under consideration (Docket No. 12443), the Commission felt it appropriate to defer action on applications for such microwave transmission systems as were then before it so that the status quo might be unimpaired until a final decision was reached. Our deferral of consideration of such applications was challenged in a mandamus proceeding in which the Court of Appeals sustained the Commission during the pendency of the Inquiry. See Mesa Microwave, Inc. v. FCC, No. 14729, December 24, 1958. However, having reached and announced our conclusions on these matters, we would find it difficult to justify a reinstitution of the freeze. In the light of our conclusions, this might be subject to a further mandamus action because such action would not be in accord with the proper exercise of our jurisdiction on the sole basis of the pendency of these particular legislative proposals. Accordingly, having carefully weighed the entire matter and having reached our reasoned conclusions, as set forth in the Report mentioned above, we feel that the proper course for the Commission is to continue to process applications in the regular course pending action by the Congress on legislation necessary to changes in the established regulatory pattern.

16. The remaining question to be determined is whether we should stay the effectiveness of the contested grant pending a determination of this proceeding. Since the contested operation involves a new service, it cannot be held to be necessary to the maintenance and conduct of an existing service. In light of the facts adduced on the record to date indicating that other television service is available in the area without the existence of the microwave relay facility, we are unable to conclude that the public interest requires that the grant remain in effect. Accordingly, we shall stay the effectiveness of the subject grant pending final determination of this matter.

*Conclusion.* 17. In view of the foregoing: *It is ordered,* That effective immediately, the effective date of the grant of the above-captioned application of Carter Mountain Transmission Corporation is postponed, pending a final determination herein by the Commission; that the protest and petition for reconsideration of Protestant KWRB–TV is granted to the extent herein provided, and denied in all other respects; that the protest and petition for reconsideration of Protestant KRTR is hereby dismissed for failure to establish standing as a "party in interest" herein or a "person aggrieved" within the meaning of sections 309(c) and 405 of our Act; and that, pursuant to the provisions of section 309(c) of the Communications Act of 1934, as amended, oral argument be held before the Commission en banc, commencing at 10:00 a.m. on July 24, 1959, on the following issues:

(1) To determine whether Carter Mountain Transmission Corporation is

[2] Protestant KWRB–TV cites our Report and Order in Docket No. 12443 frequently, with apparent approval. There is no contention or suggestion in his pleading that such Report is, in any wise, in error.

a bona fide communications common carrier eligible to receive approval and grant of the subject application.

(2) To determine whether our conclusions in paragraphs 45 through 51, and 58 through 79, of the Report and Order in Docket No. 12443, as applied in this case, are in error.

(3) To determine whether the corporate interrelationships between Carter and CATV require a different conclusion in this case from that reached in Docket No. 12443.

18. *It is further ordered,* That Protestant KWRB–TV and the applicant herein, and the Chief Common Carrier Bureau, are hereby made parties to this proceeding; and that each party intending to participate in oral argument shall file a statement of intention to appear not later than July 6, 1959; and

19. *It is further ordered,* That the parties to the proceeding shall have until ten days prior to date of oral argument to file briefs or memoranda of law and five days after the filing of such briefs or memoranda of law to file a reply thereto.

Adopted: June 24, 1959.

Released: June 29, 1959.

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

[F.R. Doc. 59–5532; Filed, July 1, 1959; 8:53 a.m.]

# SECURITIES AND EXCHANGE COMMISSION

[File No. 24C–2118]

## AMERICAN TELEVISION & RADIO CO.

### Notice of and Order for Hearing

JUNE 26, 1959.

I. American Television & Radio Co., a Minnesota corporation with its principal offices at 300 East Fourth Street, St. Paul 1, Minnesota, filed with the Commission on March 23, 1959 a notification on Form 1–A and an offering circular relating to an offering of 60,000 shares of its $0.50 par value common stock at $5.00 per share, thereafter amended to 100,000 shares at $3.00 per share for an aggregate offering of $300,000, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) thereof and Regulation A promulgated thereunder.

II. The Commission on June 10, 1959 issued an order pursuant to Rule 261 of the general rules and regulations under the Securities Act of 1933, as amended, temporarily suspending the conditional exemption under Regulation A, and affording to any person having an interest therein an opportunity to request a hearing pursuant to Rule 261. A written request for hearing was received by the Commission.

The Commission, deeming it necessary and appropriate to determine whether to vacate the temporary suspension order or to enter an order permanently suspending the exemption,

*It is hereby ordered,* That a hearing under the applicable provisions of the Securities Act of 1933, as amended, and the rules of the Commission be held at the offices of the Chicago Regional Office of the Commission, 630 Bankers Building, 105 West Adams Street, Chicago 3, Illinois at 11:00 a.m., July 14, 1959, with respect to the following matters and questions without prejudice, however, to the specification of additional issues which may be presented in these proceedings:

A. Whether the conditional exemption provided by Regulation A is not available for the securities purported to be offered in that:

1. The terms and conditions of Regulation A have not been complied with in that:

a. An offering circular was not used in connection with the offering of the issuer's securities to the public, as required by Rule 256(a)(1);

b. Written communications were published in violation of Rule 256(c); and

c. Written communications were published which were not filed with the Commission, as required by Rule 258.

2. The offering circular contains untrue statements of material facts and omits to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, particularly with respect to:

a. The statement that the issuer's vibrators are used as original equipment in auto radio sets and in the vibrator replacement market; and the failure to disclose that the original equipment auto radio vibrator market has materially declined in each year since 1955 and is presently almost non-existent, and that the replacement market for auto radio vibrators can be expected to decline materially in the next few years;

b. The statement that the Company, in its opinion, is recognized as one of the World's Leaders in the vibrator field;

c. The statement that the Company believes its market position to be equal to that of its competitors in the vibrator field;

d. The statement that the Company believes its sales potential on each of its product lines is extremely great;

e. The statements in the paragraph under the caption "Growth Prospects";

f. The statement that the Company "while relatively new in the Television Set manufacturing business, having entered it in 1955, has, in its opinion, developed a unique method of merchandising from factory directly to TV technician to the consumer";

g. The failure to disclose that if all the securities being offered are sold, with the Company receiving $300,000, the president's equity in the Company will be increased from approximately $235,000 to approximately $401,000, while the public's equity will be immediately reduced from $300,000 to $134,000; and

h. The failure to disclose adequately the purposes for which the net cash proceeds to the Company from the sale of the securities are to be used and the amount to be used for each such purpose, indicating in what order of priority the proceeds will be used for the respective purposes;

3. The offering is being and would be made in violation of section 17 of the Securities Act of 1933, as amended.

B. Whether the order dated June 10, 1959 temporarily suspending the exemption under Regulation A should be vacated or made permanent.

III. *It is further ordered,* That William W. Swift or any officer or officers of the Commission designated by it for that purpose shall preside at the hearing, and any officer or officers so designated to preside at any such hearing are hereby authorized to exercise all of the powers granted to the Commission under sections 19(b), 21, and 22(c) of the Securities Act of 1933, as amended, and to hearing officers under the Commission's rules of practice.

*It is further ordered,* That the Secretary of the Commission shall serve a copy of this order by registered mail on American Television & Radio Co., that notice of the entering of this order shall be given to all other persons by general release of the Commission and by publication in the FEDERAL REGISTER. Any person who desires to be heard or otherwise wishes to participate in such hearing shall file with the Secretary of the Commission on or before July 10, 1959 a request relative thereto as provided in Rule XVII of the Commission's rules of practice.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
*Secretary.*

[F.R. Doc. 59–5500; Filed, July 1, 1959; 8:48 a.m.]

[File No. 70–3807]

## PENNSYLVANIA ELECTRIC CO.

### Notice of Proposed Issuance and Sale of Principal Amount of Bonds at Competitive Bidding

JUNE 25, 1959.

Notice is hereby given that Pennsylvania Electric Company ("Penelec"), an exempt holding company and a public-utility subsidiary of General Public Utilities Corporation, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction which is described below.

Penelec proposes to issue and sell, pursuant to the competitive bidding requirements of Rule 50 promulgated under the Act, $15,000,000 principal amount of First Mortgage Bonds, to be dated August 1, 1959, and to mature August 1, 1989. The new bonds are proposed to be issued under the Mortgage and Deed of Trust dated as of January 1, 1942, of Penelec to Bankers Trust Company,

Trustee, as heretofore supplemented and amended and as to be further supplemented and amended by a Supplemental Indenture to be dated as of August 1, 1959. The interest rate on the new bonds (which will be a multiple of ⅛ of 1 percent) and the price, exclusive of accrued interest, to be paid to Penelec (which will not be less than 100 percent nor more than 102¾ percent of the principal amount thereof) will be determined by the competitive bidding.

Of the proceeds from the sale of the new bonds, $9,000,000 will be applied to repay short-term bank loans in that amount outstanding at March 31, 1959 (the proceeds of which were applied to Penelec's 1959 construction program) and $6,000,000 will be applied to the 1959 construction program or to partially reimburse the company's treasury for previous expenditures for that purpose. The balance of the proceeds, if any, will be used for general corporate purposes. Penelec's 1959 construction program contemplates cash expenditures of approximately $39,700,000 for property additions.

The fees and expenses to be incurred by Penelec in connection with the proposed transaction are estimated at $80,000, including legal fees and expenses of $20,750 (Ballard, Spahr, Andrews & Ingersoll, $14,000; Berlack, Israels & Liberman, $6,750); fees and expenses of Lybrand, Ross Bros. & Montgomery, accountants, $4,200; printing and engraving expenses, $25,250; and indenture trustee's fees and expenses, $7,100. The fees and expenses of Beekman & Bogue, counsel for the purchasers, which are to be supplied by amendment, will be paid by the successful bidders.

The application states that the Pennsylvania Utility Commission has jurisdiction over the issuance and sale of the new bonds and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than July 23, 1959, at 5:30 p.m., request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 59-5501; Filed, July 1, 1959; 8:48 a.m.]

# FEDERAL POWER COMMISSION

[Docket Nos. G-18769—G-18773]

## HERD OIL & GAS CO. ET AL.

### Order for Hearings and Suspending Proposed Changes in Rates [1]

JUNE 24, 1959.

In the matter of Herd Oil & Gas Company, Docket No. G-18769; Redfern Oil Company, Docket No. G-18770; The Superior Oil Company, Docket No. G-18771; Gulf Oil Corporation (Operator) et al., Docket No. G-18772; Mound Company et al., Docket No. G-18773.

The above-named Respondents have tendered for filing proposed changes in presently effective rate schedules for their sales of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

| Docket No. | Respondent | Rate schedule No. | Supplement No. | Purchaser | Notice of change dated | Date tendered | Effective date [1] unless suspended | Date suspended until [2] |
|---|---|---|---|---|---|---|---|---|
| G-18769 | Herd Oil & Gas Co. (Herd). | 1 | [3] 3 | El Paso Natural Gas Co. | 5-15-59 | 5-25-59 | 6-25-59 | 11-25-59 |
| G-18770 | Redfern Oil Co. (Redfern). | 1 | [4] 3 | do | 5-14-59 | 5-25-59 | 6-25-59 | 11-25-59 |
| G-18771 | The Superior Oil Co. (Superior). | 44 | [5] 3 | do | 5-25-59 | 5-27-59 | 6-27-59 | 11-27-59 |
| G-18772 | Gulf Oil Corp. (operator), et al. (Gulf). | 77 | [6] 5 | United Gas Pipe Line Co. | 5-26-59 | 5-27-59 | 6-27-59 | 11-27-59 |
| G-18773 | Mound Co., et al. (Mound). | 13 | 4 | do | [7] 5-13-59 | 5-28-59 | 6-28-59 | 11-28-59 |
| | | 13 | 5 | do | 5-27-59 | 5-28-59 | 6-28-59 | 11-28-59 |

[1] The stated effective dates are the effective dates requested by Respondents or the first day after expiration of the required thirty days' notice, whichever is later.
[2] And until such further time as they are made effective in the manner prescribed by the Natural Gas Act.
[3] The present rate is in effect subject to refund in Docke No. G-15775.
[4] The present rate is in effect subject to refund in Docket No. G-15776.
[5] The present rate is in effect subject to refund in Docket No. G-14003.
[6] The present rate is in effect subject to refund in Docket No. G-8516.
[7] Supplemental Agreement.

In support of their proposed favored-nation rate increases, Herd and Redfern cite a triggering increase in rate for a sale to El Paso Natural Gas Company. Herd and Redfern state that the pricing provisions of each contract collectively represent the negotiated contract price; the contracts were negotiated at arm's length; and the favored-nation pricing arrangement is common to many long-term contracts in order to permit initial delivery at a price lower than the contemplated average price for the life of the contract. In support of its proposed favored-nation rate increase, Superior cites the favored-nation clause of its contract. Superior also supports the amount of its proposed increased rate by citing the amount of a triggering increase and adjusting that amount for differences in delivery terms for the proposed and the triggering rates. In support of its proposed periodic rate increase, Gulf states that its contract was negotiated at arm's length and that exhibits sponsored by Gulf in the consolidated section 4(e) and section 5 proceeding in Docket No. G-9520, et al. support the proposed rate on a cost basis. In support of its proposed renegotiated rate increase, Mound states that the contract, as amended, was the result of arm's-length bargaining; the cost of producing natural gas has substantially increased in recent years; and it is necessary to supply every possible drilling incentive if the producing industry is to meet the demand for gas.

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 hearings concerning the lawfulness of the several proposed changes and that the designated supplements to Respondent's FPC Gas Rate Schedules 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), public hearing shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in the designated supplements to Respondent's FPC Gas Rate Schedules.

(B) Pending hearings and decisions thereon, Supplement No. 3 to Herd's FPC Gas Rate Schedule No. 1 and Supplement No. 3 to Redfern's FPC Gas Rate Schedule No. 1 are hereby suspended and the use thereof deferred until November 25, 1959; Supplement No. 3 to Superior's FPC Gas Rate Schedule No. 44 and Supplement No. 5 to Gulf's FPC Gas Rate Schedule No. 77 are hereby suspended and the use thereof deferred until November 27, 1959; and Supplement Nos. 4 and 5 to Mound's FPC Gas Rate Schedule No. 13 are hereby suspended and the use thereof deferred until November 28, 1959; and each supplement is further suspended until such time as it is made effective in the manner prescribed by the Natural Gas Act.

[1] This order does not provide for the consolidation for hearing or disposition of the separately docketed matters covered herein, nor should it be so construed.

(C) None of the several supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until the relevant proceeding has been disposed of or until the applicable period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 or 1.37(f) of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.37(f)).

By the Commission.

JOSEPH H. GUTRIDE,
*Secretary.*

[F.R. Doc. 59-5491; Filed, July 1, 1959; 8:46 a.m.]

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[Docket No. G-18768]

## A. G. OLIPHANT ET AL.

### Order for Hearing and Suspending Proposed Change in Rate

JUNE 24, 1959.

A. G. Oliphant (Operator) et al. (Oliphant) on May 25, 1959, tendered for filing a proposed change in its presently effective 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 filing:

Description: Notice of change, undated.
Purchaser: Louisiana-Nevada Transit Company (Louisiana Nevada).
Rate schedule designation: Supplement No. 3 to Oliphant's FPC Gas Rate Schedule No. 3.
Effective date: June 25, 1959 (stated effective date is the first day after the required thirty days' notice).

In support of the proposed redetermined rate increase, Oliphant states that the proposed rate is a matter of contractual obligation arising from a written agreement which was negotiated at arm's length; the proposed rate is an integral part of the initial rate schedule; the price of gas is below the price of competing fuels; and the redetermination provision is necessary to provide for seller's economic needs over the term of the contract.

Protest to the acceptance of this rate filing was filed on May 29, 1959, by Louisiana Nevada, which purchases the gas involved and which urged rejection of this rate filing for the reasons stated in Commission Opinion No. 314.[2] Oliphant filed on June 15, 1959, a motion to strike this protest, claiming the right to file as a signatory to its contract. Louisiana Nevada also protested the amount of the proposed increased rate.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) The proposed change in rate tendered by Oliphant should be accepted for filing conditionally pending final determination of Commission Opinion No. 314.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) The proposed change in rate tendered by Oliphant is accepted for filing conditionally pending the final determination of Commission Opinion No. 314.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge.

(C) Pending such hearing and decision thereon, the supplement is hereby suspended and the use thereof deferred until November 25, 1959, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(D) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of, or until the period of suspension has expired, unless otherwise ordered by the Commission.

(E) Interested State commissions may participate as provided by §§ 1.8 and 1.37(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission.

JOSEPH H. GUTRIDE,
*Secretary.*

[F.R. Doc. 59-5492; Filed, July 1, 1959; 8:46 a.m.]

[2] Rehearing of Opinion No. 314 and the accompanying order was granted by order issued September 19, 1958, in Docket Nos. G-4932, et al., but a final order thereon has not been issued. Oliphant's FPC Gas Rate Schedule No. 3 and Supplements Nos. 1 and 2 were accepted conditionally on June 11, 1959, pending final determination of Opinion No. 314.

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[Project No. 2265]

## SOUTHERN INDIANA GAS AND ELECTRIC CO.

### Notice of Application for Preliminary Permit

JUNE 25, 1959.

Public notice is hereby given that the Southern Indiana Gas and Electric Company of Evansville, Indiana, has filed application under the Federal Power Act (16 U.S.C. 791a-825r) for preliminary permit for proposed water-power project to be located in Warrick County, upstream from Newburgh, Indiana, on the Ohio River at the proposed U.S. Government high lift navigation lock and dam. The project would consist of a powerhouse located at the Indiana end of the Newburg Dam with an installed capacity of 45,000 kilowatts. The power will be distributed through the applicant's interconnected system.

No construction is authorized under a preliminary permit. A permit, if issued, gives permittee, during the period of the permit, the right to priority of application for license while the permittee undertakes the necessary studies and examinations, including the preparation of maps and plans, in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for the project power, and all other information necessary for inclusion in an application for license, should one be filed.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last date upon which protests or petitions may be filed is August 13, 1959. The application is on file with the Commission for public inspection.

JOSEPH H. GUTRIDE,
*Secretary.*

[F.R. Doc. 59-5493; Filed, July 1, 1959; 8:46 a.m.]

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[Docket Nos. G-16236, G-16237]

## PACIFIC NORTHWEST PIPELINE CORP.

### Notice of Applications

JUNE 25, 1959.

Take notice that Pacific Northwest Pipeline Corporation (Pacific), a Delaware corporation, address P.O. Box 1526, Salt Lake City 10, Utah, filed on September 10, 1958, an application in Docket No. G-16236 for a certificate of public convenience and necessity, pursuant to section 7(c) of the Natural Gas Act, authorizing the construction and operation of facilities for the transportation and sale of natural gas; and an application in Docket No. G-16237 for permission and approval to abandon certain facilities and service rendered by means thereof, all as hereinafter described.

Pacific proposes by the application in Docket No. G-16237 to abandon the sale and delivery of natural gas to Colorado Interstate Gas Company in Sweetwater County, near Rock Springs, Wyoming, covered by its service agreement dated May 3, 1956, and applicable Rate Schedule PL-1, and coincident with the abandonment of service to sell natural gas to El Paso Natural Gas Company at this same point, as requested in Docket No. G-16236. Pacific proposes to sell up to a maximum of 235,000 Mcf per day to El Paso under a rate schedule designated PL-2 consisting of a demand charge of $2.24 per month per Mcf of contract demand and a commodity charge of 22.84 cents per Mcf. Pacific will remove its existing measuring and regulating station constructed at a cost of $78,000, required for the sale of gas to Colorado Interstate and construct and operate a measuring and regulating station at a cost of $173,000 out of current funds.

This application is related to the El Paso and Colorado Interstate proposals in Docket Nos. G–16235 and G–16904, respectively.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) on or before July 23, 1959. The applications are on file with the Commission for public inspection.

JOSEPH H. GUTRIDE,
*Secretary.*

[F.R. Doc. 59–5494; Filed, July 1, 1959; 8:46 a.m.]

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[Docket No. G–17485 etc.]

## NORTHERN NATURAL GAS CO. ET AL.

### Order Waiving Intermediate Decision Procedure Setting Date for Filing Briefs and Fixing Date for Oral Argument

JUNE 25, 1959.

In the matters of Northern Natural Gas Company, Docket Nos. G–17485, G–17486 and G–17874; Permian Basin Pipeline Company, Docket No. G–17487; Iron Ranges Natural Gas Company, Docket No. G–17626; El Paso Natural Gas Company, Docket No. G–17854; Phillips Petroleum Company, Docket No. G–18113.

On June 9, 1959, Northern Natural Gas Company and its subsidiary, Permian Basin Pipeline Company[1] filed a "Motion for Omission of Intermediate Decision Procedure" requesting that the Commission issue an order (1) omitting the intermediate decision in the above-entitled proceeding, (2) setting a time for the filing of simultaneous briefs two weeks after the conclusion of the hearing and (3) fixing a date for oral argument, in lieu of reply briefs, one week following the filing of the simultaneous briefs. In support of this motion, Northern again emphasizes, as it did in its "Motion for Severance and Ommission of Intermediate Decision Procedure" filed herein on April 27, 1959,[2] that the Cities of Duluth and Superior are urgently in need of natural gas and that a certificate must be issued during July in order to permit construction of the necessary facilities in time to render natural-gas service to Duluth and Superior and other proposed communities by the coming 1959–60 heating season. On page 2 of its motion, Northern says that it is "* * * most unlikely that a final certificate can be issued in time to permit service to * * * new markets during the 1959–60 heating season unless the time required for issuance of an intermediate decision and for the filing of Exceptions thereto is eliminated from the decisional process".

Under § 1.12(c) of the Commission's rules of practice and procedure, the last day for filing answers to Northern's motion was June 19, 1959, and as of that date, thirteen answers[3] had been filed in support of Northern's motion and two answers[4] had been filed in opposition thereto. The parties supporting the motion uniformly either give the urgent need for gas in Duluth and Superior as their reason for desiring expedition of the decision, or stress the length of time that they have been trying to get gas for additional communities proposed to be served, and the many frustrations they have encountered incident thereto and aver that granting Northern's motion may make it possible for some communities, in addition to those on the proposed Duluth extension to receive natural-gas service by this coming heating season.

The principal contentions of MUD against granting Northern's motion are rather well summarized on page 3 of its answer as follows:

> Applicant Northern seeks in these proceedings to obtain a certificate of convenience and necessity which would authorize an investment in excess of $100,000,000 to provide an additional salable capacity of some 230,000 Mcf. Certainly projects of that immensity, together with the additional problem of rates as heretofore mentioned, demand the application of the careful and painstaking consideration of all the parties in the form of briefs after the record is closed, including the Presiding Examiner, in order that due process and the essential functions and responsibilities of the Commission be adequately discharged.

The Coal Interveners' answer first calls "* * * attention to the contradictory positions taken by Northern in these consolidated dockets" in that Northern has heretofore stated in prior filings that July 1 is the latest date it can receive a certificate and still construct the facilities necessary to serve Duluth and Superior by the 1959–60 heating season, whereas in the motion now before the Commission, Northern has stated that it can construct the requisite facilities to serve Duluth and Superior by the coming heating season if a certificate is received during the month of July. Apparently the Coal Interveners overlooked the fact that Northern explained this change in "final" dates by stating in connection with the latter date that the facilities could be constructed "* * * by means of an accelerated construction program * * *". Taking this explanation into consideration, the change in deadlines does not appear to be contradictory.

The Coal Interveners also allege that "* * * no just and sufficient reason has been set forth as grounds * * *" for granting Northern's motion. In this connection, it should be noted that the Commission, in denying Northern's motion for severance, filed April 27, 1959, found that it was unnecessary to act upon Northern's request in that motion to omit the intermediate decision procedure because that particular request was confined to Docket No. G–17485 upon the assumption that the desired severance would be granted. Since the Commission's order of May 15, 1959, denying the severance, dealt primarily with the merits of Northern's desire to sever Docket No. G–17485 from the remaining dockets in this proceeding, that order cannot properly be used to infer that Northern has given no grounds in the motion now before the Commission for its request to omit the intermediate decision procedure when such request is not dependent upon the merits of a preliminary request to sever any one docket from the rest of the proceeding.

The Coal Interveners' principal objection to the granting of Northern's motion seems to relate to the two-week period requested by Northern for the filing of simultaneous briefs. On page 3 of their answer, the Coal Interveners state that "* * * the granting of only two weeks time in which to prepare Briefs would be in diametric opposition to the concept of fair play as this concept is contained in the due process clause of the Constitution of the United tSates. * * * If a Brief is to be meaningful it must flow from an intelligent and comprehensive analysis of the record, and two short weeks does not even closely approximate the time these Intervenors require to make that analysis." In this same vein, the Coal Interveners urge on page 5 of their answer that "* * * if the Commission is disposed to order filing of simultaneous Briefs, such Briefs should in no event be due sooner than July 30, 1959."

Finally, the Coal Interveners point out on page 5 of their answer that:

> The Examiner announced at the final day of hearing that he intended to inform the parties on June 24, 1959, the dates for filing Briefs. In so doing, he intimated that such Briefs would be designated by him to contain only proposed findings and conclusions. (Tr. 3910) Such procedure would fly in the face of § 1.29 of the rules of practice and procedure and would preclude parties from pointing up to the Examiner and the Commission those portions of the record which support their contentions. It is therefore respectfully urged that the Commission act upon Northern's Motion before June 24, 1959, in order to eliminate the necessity of having to deal with still another Order of the Examiner * * *.

As pointed out by Northern in its motion, omission of the intermediate decision herein would be entirely consistent with the Commission's intent to expedite the handling and disposition of new applications seeking to serve midwestern markets filed by any of the applicants who were parties to the proceeding terminated by Opinion No. 316, issued October 31, 1958, In the Matters of American Louisiana Pipe Line Company, et al.,

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[1] Hereinafter jointly referred to as "Northern".

[2] Denied by the Commission's order issued May 15, 1959, in the above-entitled consolidated proceeding.

[3] Filed by Central Natural Gas Company; City of Emmetsburg, Iowa; Iowa Electric Light and Power Company; Iron Ranges Natural Gas Company; Minnesota Natural Gas Company; Minnesota Valley Natural Gas Company; North Central Public Service Company; Northern States Power Company of Minnesota and Northern States Power Company of Wisconsin (jointly); Northwest Gas and Power Company; Northwestern Public Service Company; Public Service Commission of Wisconsin; State of Minnesota; and Superior Water, Light and Power Company and City of Duluth, Minnesota (jointly).

[4] Filed by Metropolitan Utilities District of Omaha (hereinafter referred to as "MUD"); and National Coal Association, United Mine Workers of America, Fuels Research Council, Inc., Mid-West Coal Producers Institute, Inc., Upper Lake Docks Coal Bureau, Inc., and The Chesapeake and Ohio Railway Company (jointly), hereinafter referred to as the "Coal Interveners".

Docket Nos. G–2306, et al. In fact, the Commission took action similar to that requested by Northern when it issued its order of March 20, 1959, waiving the intermediate decision procedure in the proceeding In the Matters of Midwestern Gas Transmission Company, et al., Docket Nos. G–16841, et al., which concerned the first of the new applications which were envisaged by the Commission when it issued Opinion No. 316. Consistent with the intent expressed in Opinion No. 316 and because of the need for early commencement of pipeline construction required to initiate natural-gas service to Duluth and Superior and as many other communities as possible by the 1959–60 heating season, the Commission considers, in the event it is determined that certificates of public convenience and necessity should be issued, that good cause has been shown for waiving the intermediate decision procedure and for allowing oral argument before the Commission.

The Commission's order issued March 20, 1959, in the Midwestern case, referred to above, permitted four weeks for the filing of principal and reply briefs plus a two-day interval for preparation for oral argument. The record in this proceeding is considerably longer and the details are more complex than those involved in the Midwestern case. Northern's request for two weeks for filing of simultaneous briefs and one week for oral argument in lieu of reply briefs is somewhat less time than is desirable under the circumstances. Therefore, this order will provide for the filing of simultaneous briefs and the scheduling of oral argument, in lieu of reply briefs, in such a manner as to allow a minimum of four weeks between the conclusion of the hearing on June 18, 1959, and the fixing of the date for oral argument.

The Commission finds:

(1) The due and timely execution of the Commission's functions imperatively and unavoidably requires the omission of the intermediate decision procedure.

(2) Good cause has been shown for waiving and omitting the intermediate decision procedure and for allowing oral argument before the Commission at the time hereinafter fixed.

(3) A greater period of time than the two weeks requested by Northern is required for the preparation of simultaneous briefs, as hereinafter ordered.

The Commission orders:

(A) The intermediate decision procedure in the above-entitled proceeding be and it is hereby waived and omitted.

(B) Simultaneous briefs shall be filed on or before July 10, 1959, and oral argument, in lieu of reply briefs, shall be held as hereinafter provided in paragraph (C).

(C) Oral argument before the Commission shall be held on July 17, 1959, 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. All parties desiring to participate in the oral argument shall inform the Secretary of the Commission in writing of the length of time desired for argument not later than July 10, 1959.

By the Commission.

JOSEPH H. GUTRIDE,
*Secretary.*

[F.R. Doc. 59–5495; Filed, July 1, 1959; 8:47 a.m.]

# CIVIL AERONAUTICS BOARD

[Docket No. 7697 et al.]

## SERVICE TO REGINA CASE

### Notice of Hearing

In the matter of the proceeding involving service between Williston and/or Minot, North Dakota, and Regina, Saskatchewan, Canada.

Notice is hereby given pursuant to the Federal Aviation Act of 1958, that the hearing in the above-entitled proceeding will be held July 28, 1959, at 10:00 a.m., c.s.t., in the Auditorium of the Provident Life Insurance Building, Bismarck, North Dakota, before Examiner Herbert K. Bryan.

Dated at Washington, D.C., June 29, 1959.

[SEAL] FRANCIS W. BROWN,
*Chief Examiner.*

[F.R. Doc. 59–5517; Filed, July 1, 1959; 8:50 a.m.]

# SUBVERSIVE ACTIVITIES CONTROL BOARD

[Docket No. 121–57]

## CONNECTICUT VOLUNTEERS FOR CIVIL RIGHTS

### Notice of Fact That Order Has Become Final Requiring Registration as a Communist-Front Organization

William P. Rogers, Attorney General of the United States, Petitioner v. Connecticut volunteers for Civil Rights, Respondent.

Pursuant to section 13(g) of Title I of the Internal Security Act of 1950, the Subversive Activities Control Board on April 14, 1959, duly issued and served a report and order requiring the Connecticut Volunteers for Civil Rights to register as a Communist-front organization under section 7 of said Title I. Publication of the order appeared in the FEDERAL REGISTER for April 24, 1959.

The time allowed in section 14(a) of Title I for filing a petition for review of the said order having expired and no such petition having been filed, notice is hereby given of the fact that said order has become final under the provisions of section 14(b) of Title I.

SUBVERSIVE ACTIVITIES CONTROL BOARD,
DOROTHY MCCULLOUGH LEE,
*Chairman.*

JUNE 26, 1959.

[F.R. Doc. 59–5503; Filed, July 1, 1959; 8:48 a.m.]

# INTERSTATE COMMERCE COMMISSION

[Notice 24]

## APPLICATIONS FOR MOTOR CARRIER "GRANDFATHER" CERTIFICATE OR PERMIT

JUNE 26, 1959.

The following applications and certain other procedural matters relating thereto are filed under the "grandfather" clause of section 7(c) of the Transportation Act of 1958. These matters are governed by special rule § 1.243 published in the FEDERAL REGISTER issue of January 8, 1959, page 205, which provides, among other things, that this publication constitutes the only notice to interested persons of filing that will be given; that appropriate protests to an application (consisting of an original and six copies each) must be filed with the Commission at Washington, D.C., within 30 days from the date of this publication in the FEDERAL REGISTER; that failure to so file seasonably will be construed as a waiver of opposition and participation in such proceeding, regardless of whether or not an oral hearing is held in the matter; and that a copy of the protest also shall be served upon applicant's representative (or applicant, if no practitioner representing him is named in the notice of filing).

These notices reflect the operations described in the applications as filed on or before the statutory date of December 10, 1958.

No. MC 99828 (Sub No. 4) (REPUBLICATION), filed December 10, 1958, published June 11, 1959 issue FEDERAL REGISTER. Applicant: PAUL W. NIELSEN, doing business as, NIELSEN TRUCKING COMPANY, 118 West Fifth South, Salt Lake City, Utah. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits, frozen vegetables*, and *bananas*, between points in California and Arizona on the one hand, and on the other, points in Arizona, Utah, Idaho, Colorado, Oregon, and Washington.

NOTE: The purpose of this republication is to show a between movement instead of a from and to movement as previously published.

No. MC 113843 (Sub No. 34) (REPUBLICATION), filed December 8, 1958, published FEDERAL REGISTER issue of April 2, 1959. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer Street, Boston 10, Mass. Applicant's attorney: James Michael Walsh, 316 Summer Street, Boston 10, Mass. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea*, and *bananas*, in straight and in mixed loads with *certain exempt commodities*, from Boston, Mass., Baltimore, Md., Columbus and Cleveland, Ohio, Chicago, Ill., Detroit, Mich., Pitts-

burgh, Pa., Rochester N.Y., and points in New Jersey, Maine, and the Delmarva Peninsula, to points in Illinois, Ohio, Indiana, Rhode Island, Massachusetts, Connecticut, New York, New Jersey, Maryland, Pennsylvania, Michigan, Virginia, Wisconsin, the District of Columbia, Kentucky, Maine, West Virginia, Delaware, and Minnesota.

NOTE: The purpose of this republication is to advise that applicant's attorney states that the application above, originally noticed in the FEDERAL REGISTER on the date shown, did not accurately reflect the operations performed. And the actual transportation of which wil be substantiated by documentary evidence to be presented at the hearing covering the transportation of the above commodities, between all points in the States of: Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and the District of Columbia.

*HEARING:* Remains as assigned July 30, 1959, at the New Post Office and Court House Building, Boston, Mass., before Examiner David Waters.

No. MC 118442, filed December 9, 1958. Applicant: VIRGIL KING, doing business as KING TRUCK SERVICE, R.R. No. 1, Bellevue, Ohio. Grandfather authority sought under section 7 of the Transportation Act of 1958 to continue to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, between points in the United States and Canada.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 59-5460; Filed, July 1, 1959; 8:45 a.m.]

## FOURTH SECTION APPLICATIONS FOR RELIEF

JUNE 29, 1959.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 35516: *Caustic soda—Port Neches, Tex., to southern points.* Filed by Southwestern Freight Bureau, Agent (No. B-7574), for interested rail carriers. Rates on liquid caustic soda, tank-car loads from Port Neches, Tex., to specified points in Florida, Tennessee and Virginia.

Grounds for relief: Market competition at destinations with Baton Rouge, Lake Charles, Plaquemine, La., Corpus Christi and Houston, Tex.

Tariff: Supplement 594 to Southwestern Freight Bureau tariff I.C.C. 4136.

FSA No. 35517: *Glassware—Chattanooga, Tenn., to Baton Rouge, La.* Filed by O. W. South, Jr., Agent (SFA No. A3820), for interested rail carriers. Rates on glassware, other than cut, namely bottles, carboys, demijohns or jars, and related articles, straight or mixed carloads from Chattanooga, Tenn., to Baton Rouge, La.

Grounds for relief: Market competition at destination with East St. Louis, Ill.

Tariff: Supplement 150 to Southern Freight Association, Agent, tariff I.C.C. 1548.

FSA No. 35518: *Caustic soda—Huntsville and Redstone Arsenal, Ala., to Rome, Ga.* Filed by O. W. South, Jr., Agent (SFA No. A3821), for interested rail carriers. Rates on liquid caustic soda, tank-car loads from Huntsville and Redstone Arsenal, Ala., to Rome, Ga.

Grounds for relief: Rail market competition with Evans, Ala., at Rome.

Tariff: Supplement 92 to Southern Freight Association, Agent, tariff I.C.C. 1536.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 59-5506; Filed, July 1, 1959; 8:49 a.m.]

[Notice 147]

## MOTOR CARRIER TRANSFER PROCEEDINGS

JUNE 29, 1959.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 62014. By order of June 25, 1959, the Transfer Board approved the transfer to Kelly-Springfield Trucking Co., A Corporation, Kearny, N.J., of permit in No. MC 45148, issued February 10, 1942, to Louis E. Gaeckle, doing business as Kelly-Springfield Trucking Company, Kearny, N.J., authorizing the transportation of: Iron castings, scrap iron, and various other specified commodities, between specified points in New York, New Jersey, Pennsylvania, Delaware, and Connecticut. Herman B. J. Weckstein, 1060 Broad Street, Newark 2, N.J., for applicants.

No. MC-FC 62195. By order of June 25, 1959, the Transfer Board approved the transfer to H. & S. Inc., Jacksonville, Fla., of Permits in Nos. MC 4840 and MC 4840 Sub 2, issued March 9, 1950 and November 14, 1951, respectively, to L. W. Holstun and Paul E. Holstun, a Partnership, doing business as L. W. Holstun & Son, Ocala, Fla., authorizing the transportation of: various specified commodities of a general commodity nature between named points in Florida, Georgia, and South Carolina. Farris Bryant, Munroe & Chambliss Bank Building, Ocala, Fla., for applicants.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 59-5507; Filed, July 1, 1959; 8:49 a.m.]

## FILING OF DOCUMENTS

### Notice of Holiday

JUNE 29, 1959.

As the result of Executive Order 10825 (24 F.R. 4825) the offices of the Commission will be closed on July 3, 1959. The next day, July Fourth, a legal holiday, falls on Saturday. Under the circumstances, any pleading, brief, or other document due to be filed with the Commission not later than July 3 need not be filed until Monday, July 6. This is pursuant to § 1.21 of the general rules of practice.

HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 59-5508; Filed, July 1, 1959; 8:49 a.m.]

[Notice 276]

## MOTOR CARRIER APPLICATIONS

JUNE 30, 1959.

The following application is governed by the Interstate Commerce Commission's Special Rules governing notice of filing of applications by motor carriers of property or passengers under section 5(a) and 210a (b) of the Interstate Commerce Act and certain other procedural matters with respect thereto. (49 CFR 1.240)

No. MC-F 7239. Authority sought for merger into OKLAHOMA TRANSPORTATION COMPANY (AN OKLAHOMA CORPORATION), 1206 Exchange Avenue, Oklahoma City 4, Okla., of the operating rights and property of THE OKLAHOMA TRANSPORTATION CO., INC. (A DELAWARE CORPORATION), 1206 Exchange Avenue, Oklahoma City 4, Okla., and for acquisition by R. S. BOWERS, EUGENE JORDAN and JULIA JORDAN, all of Oklahoma City, of control of such rights and property through the transaction. Applicants' representative: Eugene Jordan, Executive Vice President and General Counsel of The Oklahoma Transportation Co., Inc., 1206 Exchange Avenue, Oklahoma City, Okla. Operating rights sought to be merged: *Passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers, as a *common carrier* over regular routes between Oklahoma City, Okla., and Ardmore, Okla., between Mangum, Okla., and Norman, Okla., between Duncan, Okla., and Davis, Okla., between junction U.S. Highway 77 and Oklahoma Highway 59, south of Wayne, and Ada, Okla., between junction U. S. Highway 77 and Oklahoma Highway 74F and Purcell, Okla., between

Oklahoma City, Okla., and Norman, Okla., between Lawton, Okla., and the Fort Sill Military Reservation, Okla., between Oklahoma City, Okla., and Fort Smith, Ark., between Krebs Junction, Okla., and junction U.S. Highway 271 and Oklahoma Highway 31, east of Bokoshe, Okla., between Oklahoma City, Okla., and Wichita Falls, Tex., and between Waurika, Okla., and Bowie, Tex., serving certain intermediate points. OKLAHOMA TRANSPORTATION COMPANY (AN OKLAHOMA CORPORATION) holds no authority from this Commission. However, it is affiliated with MID-CONTINENT COACHES, INC., a motor carrier subject to Part II of the Interstate Commerce Act, through stock ownership. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 59-5577; Filed, July 1, 1959; 9:08 a.m.]

## CUMULATIVE CODIFICATION GUIDE—JULY

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