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PART I

FEDERAL REGISTER

VOLUME 29 NUMBER 82

Washington, Saturday, April 25, 1964

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Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1964, and specifies how they are affected.

FEDERAL REGISTER

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Presidential Documents

Title 3—THE PRESIDENT

Proclamation 3583

MOTHER'S DAY, 1964

By the President of the United States of America

A Proclamation

WHEREAS American mothers bear a major responsibility in the tasks of maintaining healthy home environments, of training their young ones with firmness and wisdom, and of guiding their children to mature citizenship; and

WHEREAS the mothers of our Nation have, in succeeding generations, given their children their utmost devotion, and by their love, precept, and example have sought to endow them with the ideals, qualities, and strength of a great people; and

WHEREAS it is appropriate that we should join on one day of each year in acknowledging and expressing the gratitude we share for our own mothers and for the blessings of motherhood; and

WHEREAS by a joint resolution approved May 8, 1914 (38 Stat. 770), the Congress designated the second Sunday in May of each year as Mother's Day and requested the President to issue a proclamation calling for its observance in accordance with the provisions of that resolution:

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States of America, do hereby request that Sunday, May 10, 1964, be observed as Mother's Day; and and I direct the appropriate officials of the Government to display the flag of the United States on all Government buildings on that day.

I also call upon the people of this Nation to render public and private expression of their love and reverence for their mothers on that day through the display of the flag at their homes or other suitable places, through prayers, and through other manifestations of their esteem and devotion.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-third day of April in the year of our Lord nineteen hundred and sixty-four, [SEAL] and of the Independence of the United States of America the one hundred and eighty-eighth.

LYNDON B. JOHNSON

By the President:

DEAN RUSK,
Secretary of State.

[F.R. Doc. 64-4219; Filed, Apr. 24, 1964; 11:29 a.m.]

Proclamation 3584

NATIONAL MARITIME DAY, 1964

By the President of the United States of America

A Proclamation

WHEREAS our country, in facing the challenges and opportunities of rapidly changing and expanding world trade, looks upon the sea lanes as highways of international good will and opportunity; and

WHEREAS the Nation looks to the maritime industry, working in cooperation with the Maritime Administration of the Department of Commerce and other Government agencies, to provide maritime programs and guidance that will best serve all Americans; and

WHEREAS the American merchant fleet is an essential element of our economy which provides employment for seamen, shipbuilders, shoreside workers, and those in supporting industries, and which, by transporting our products to world markets abroad, significantly advances our efforts to achieve an equitable international balance of trade and payments; and

WHEREAS the ships and men of the United States Merchant Marine stand ready to carry our flag abroad in peaceful competition today, or to deploy our seapower to the shores of any adversary in time of conflict; and

WHEREAS a strong merchant marine is essential to the economy and security of the free world, and merits the respect and support of our business community and the citizens of our Nation; and

WHEREAS the Congress, by a joint resolution approved May 20, 1933 (48 Stat. 73), designated May 22 as National Maritime Day, in commemoration of the departure from Savannah, Georgia, on May 22, 1819, of the S.S. *Savannah* on the first transoceanic voyage by any steamship, and requested the President to issue a proclamation annually calling for the observance of that day:

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States of America, do hereby urge the citizens of the United States to honor our American Merchant Marine on Friday, May 22, 1964, by displaying the flag of the United States at their homes and other suitable places.

I direct the appropriate officials of the Government to arrange for the display of the flag on all Government buildings on National Maritime Day, and I request that all ships sailing under the American flag dress ship on that day in tribute to the American Merchant Marine.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 23rd day of April in the year of our Lord nineteen hundred and sixty-four, and of the [SEAL] Independence of the United States of America the one hundred and eighty-eighth.

LYNDON B. JOHNSON

By the President:

DEAN RUSK,
Secretary of State.

[F.R. Doc. 64-4220; Filed, Apr. 24, 1964; 11:29 a.m.]

Proclamation 3585

PRAYER FOR PEACE, MEMORIAL DAY, 1964

By the President of the United States of America

A Proclamation

WHEREAS on Memorial Day of each year it has long been the custom of this Nation to honor its forefathers and compatriots who have laid down their lives that we might live in freedom; and

WHEREAS we are eternally grateful to them for their supreme and selfless sacrifice on the field of battle; and

WHEREAS the same revolutionary beliefs and ideals for which our forebears fought and died are still at issue in the world and the challenge against them can be met only through the same qualities of bravery, fortitude, and unyielding determination shown by our noble dead; and

WHEREAS Memorial Day each year provides a fitting occasion upon which our citizens may commemorate departed loved ones and offer prayers for the preservation of liberty and peace free from the threat of war; and

WHEREAS for this purpose the Congress, in a joint resolution approved May 11, 1950 (64 Stat. 158), requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace:

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States of America, do hereby designate Memorial Day, Saturday, May 30, 1964, as a day of prayer for permanent peace, and I call upon all the people of the Nation to invoke God's blessing on those who have died in defense of our country and to pray for a world of law and order. I designate the hour beginning in each locality at eleven o'clock in the morning of that day as the time to unite in such prayer.

I also urge the press, radio, television, and all other information media to cooperate in this observance.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 23rd day of April in the year of our Lord nineteen hundred and sixty-four, and of [SEAL] the Independence of the United States of America the one hundred and eighty-eighth.

LYNDON B. JOHNSON

By the President:

DEAN RUSK,
Secretary of State.

[F.R. Doc. 64-4221; Filed, Apr. 24, 1964; 11:29 a.m.]

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Small Business Administration

Section 213.3132(a) is added to authorize exceptions for the temporary appointment of personnel engaged in making and administering loans, either directly or cooperatively, to small business organizations in areas affected by the Alaskan disaster. Effective upon publication in the FEDERAL REGISTER, § 213.3132(a) is added as set out below.

§ 213.3132 Small Business Administration.

(a) For the duration of the Alaskan disaster as declared by the President, temporary appointment of personnel employed to make and administer small loans either directly or cooperatively to small business organizations under section 7(b)(2) of the Small Business Act, as amended by Public Law 88–264 of February 5, 1964. Such appointments shall not exceed six months initially, but may with prior approval of the Commission be extended for an additional six months.

* * * * *

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633; E.O. 10577, 19 F.R. 7521, 3 CFR, 1954–1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant to the Commissioners.

[F.R. Doc. 64–4112; Filed, Apr. 24, 1964; 8:48 a.m.]

Title 7—AGRICULTURE

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER G—DETERMINATION OF PROPORTIONATE SHARES

[Sugar Determination 851.1, Amdt. 7]

PART 851—COMMITMENT OF NATIONAL SUGARBEET ACREAGE RESERVE, 1962 AND SUBSEQUENT CROPS

Farms Supplying Proposed Facilities Near Presque Isle, Maine, and Phoenix, Arizona

Pursuant to the provisions of section 302 of the Sugar Act of 1948, as amended, § 851.1 (27 F.R. 10745, 12705; 28 F.R. 1369, 2090, 11220; 29 F.R. 397, 4666) is further amended by adding the following new paragraphs (m) and (n).

§ 851.1 Commitments of sugarbeet acreage from the national reserve.

* * * * *

(m) *Commitment of acreage to farms that will supply sugarbeets to proposed beet sugar facility near Presque Isle, Maine, and conditions of commitment*—(1) *Amount of commitment.* A commitment of 33,000 acres, which it is estimated will yield 50,000 short tons, raw value, of sugar, is made to farms in Aroostook County, Maine, for the 1966 crop, for the purpose of growing sugarbeets for delivery to the factory proposed for erection near Presque Isle, Maine.

(2) *Conditions of commitment.* The commitment of acreage made pursuant to subparagraph (1) of this paragraph shall be subject to the following conditions:

(i) *Eligible farms.* An acreage commitment may be made to any farm in Aroostook County, Maine.

(ii) *Limit of commitment to individual farm.* The maximum commitment to any farm shall be the smaller of 75 acres or the acreage on the farm which is suitable for the production of sugarbeets in consideration of sound rotation and other cultural practices.

(iii) *Proportionate share protection to be accorded farms utilizing committed acreage.* If proportionate shares are in effect in the two years immediately following the year for which acreage is committed under this paragraph (m), the proportionate share for any farm in such locality in each of such two years shall not be less than the acreage which will be committed pursuant to this paragraph (m) to such farm and utilized for the production of sugarbeets for the extraction of sugar.

(n) *Commitment of acreage to farms that will supply sugarbeets to proposed beet sugar facility near Phoenix, Arizona, and conditions of commitment*—(1) *Amount of commitment.* A commitment of 20,000 acres, which it is estimated will yield 50,000 short tons, raw value, of sugar, is made to farms in counties of Arizona for the 1966 crop, for the purpose of growing sugarbeets for delivery to the factory proposed for erection near Phoenix, Arizona, by the Spreckels Sugar Company.

(2) *Conditions of commitment.* The commitment of acreage made pursuant to subparagraph (1) of this paragraph shall be subject to the following conditions:

(i) *Eligible farms.* An acreage commitment may be made to any farm in Arizona.

(ii) *Limit of commitment to individual farm.* The maximum commitment to any farm shall be the smaller of 80 acres or the acreage on the farm which is suitable for the production of sugarbeets in consideration of sound rotation and other cultural practices.

(iii) *Proportionate share protection to be accorded farms utilizing committed acreage.* If proportionate shares are in effect in the two years immediately following the year for which an acreage is committed under this paragraph (n), the proportionate share for any farm in such locality in each of such two years shall not be less than the acreage which will be committed pursuant to this paragraph (n) to such farm and utilized for the production of sugarbeets for the extraction of sugar.

STATEMENT OF BASES AND CONSIDERATIONS

General. Pursuant to the Sugar Act of 1948, as amended, there has been reserved each year from the national sugarbeet acreage requirement the acreage required to yield 65,000 short tons, raw value, of sugar. Thus, an acreage which would yield 325,000 short tons of sugar became available for the growth and expansion of the beet sugar industry for the crop years of 1962 through 1966.

Prior commitments of acreage under the national sugarbeet acreage reserve for the crop years of 1963 through 1965 are expected to produce 225,000 short tons, raw value, of sugar. Of this quantity, an acreage expected to produce 29,300 short tons, of sugar, was approved recently for factories that will expand in 1964. With the carryover into 1966 of the maximum tonnage permitted by law of 35,000 short tons, an acreage equivalent of 100,000 short tons is available for commitment for that year.

Determination. This amendment provides for the commitment of the balance of the acreage available under the present Act to two localities wherein new beet sugar facilities are proposed to be constructed with commencement of operations in 1966.

The first commitment provides 33,000 acres to farms in Aroostook County, Maine, for the 1966 crop for the purpose of growing sugarbeets for delivery to a factory to be constructed in the vicinity of Presque Isle. It is estimated that this acreage will yield 50,000 short tons, raw value, of sugar.

A firm capital commitment has been made with respect to the Maine facility. First mortgage money in the amount of $8,000,000 is to be placed privately and will be insured by the Maine Industrial Building Authority. The Area Redevelopment Administration of the United States Department of Commerce has authorized the Small Business Administration to offer a loan of almost $7,000,000 to assist in the financing of this facility. Over $2,600,000 have been pledged by farmers, other local interests and the Great Western Sugar Company of Denver, Colorado. In addition to participation in the capital financing, this company has agreed to supply the

working capital. Subject only to a commitment of acreage, this company has also stated it will cause the factory to be constructed and, through a subsidiary company, will operate the facility.

The Aroostook area is the most distantly located (about 1100 miles) from existing United States beet factories of any locality requesting 1966 acreage, the most favorably situated in relation to the accessibility to sugar markets and the best qualified in regard to the need for a cash or a replacement crop. With respect to the other statutory criterion, suitability for growing sugarbeets, feasibility tests indicate that the crop can be grown economically.

The second locality to which a commitment is made by this action is the area to be served by a new factory proposed to be built near Phoenix, Arizona, by the Spreckels Sugar Company. The 20,000 acres made available are expected to produce 50,000 short tons, raw value, of sugar.

Most of the sugarbeets in Arizona will be grown in Cochise, Graham, Maricopa, Pinal, Yavapai and Yuma Counties. Although sugarbeet seed is produced in certain of these counties, information available to the Department makes it clear that the production of sugarbeets for sugar can be managed without adverse effects on seed production.

The Arizona facility will be financed by the Spreckels Sugar Company from internal sources or through long-term credit arrangements or a combination of both. This company is a subsidiary of another sugar company having a net worth far in excess of the projected cost of the new facility.

As compared to other localities requesting 1966 acreage for which firm capital commitments have been shown and to which commitments have not been made, Arizona appears to be the best-qualified with respect to two of the statutory criteria, i.e., (1) accessibility to sugar markets and (2) distance from other factories and with respect to the remaining two criteria (1) suitability of the locality for growing sugarbeets and (2) need for a cash or replacement crop, at least equally qualified.

In consideration of all of the statutory criteria, the two localities to which commitments are made under this action are deemed to be the best-qualified of all localities requesting 1966 reserve acreage.

As in past actions taken with respect to the national sugarbeet acreage reserve, a limitation is established with respect to the acreage that may be committed to any farm. This will permit a greater sharing of the available acreage than might occur without such limitation.

The distribution of acreage under this action is deemed to be fair and reasonable and in accordance with the provisions of the Sugar Act.

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

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

Effective date. Date of publication.

Signed at Washington, D.C., on April 17, 1964.

CHARLES S. MURPHY,
Acting Secretary.

[F.R. Doc. 64-4140; Filed, Apr. 24, 1964; 8:51 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Tree Nuts), Department of Agriculture

[Valencia Orange Reg. 81]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 908.381 Valencia Orange Regulation 81.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908; 27 F.R. 10089), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on April 23, 1964.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., April 26, 1964, and ending at 12:01 a.m., P.s.t., May 3, 1964, are hereby fixed as follows:

(i) District 1: 600,000 cartons;

(ii) District 2: 142,896 cartons;

(iii) District 3: 225,000 cartons.

(2) As used in this section, "handled," "handler," "District 1," "District 2," and "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: April 24, 1964.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 64-4217; Filed, Apr. 24, 1964; 11:17 a.m.]

[Lemon Reg. 108]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.408 Lemon Regulation 108.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 27 F.R. 8346), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set

forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on April 21, 1964.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., April 26, 1964, and ending at 12:01 a.m., P.s.t., May 3, 1964, are hereby fixed as follows:

(i) District 1: Unlimited movement;

(ii) District 2: 279,000 cartons;

(iii) District 3: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: April 23, 1964.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 64-4181; Filed, Apr. 24, 1964; 8:52 a.m.]

Title 12—BANKS AND BANKING

Chapter V—Federal Home Loan Bank Board

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

[No. 18,011]

PART 545—OPERATIONS

Loans To Finance Acquisition and Development of Land

APRIL 21, 1964.

Resolved that, notice and public procedure having been duly afforded (29 F.R. 355) and all relevant material presented or available having been considered by it, the Federal Home Loan Bank Board, upon the basis of such consideration and of determination by it of the advisability of amendment of Part 545 of the rules and regulations for the Federal Savings and Loan System (12 CFR Part 545) in order to revise the authority of Federal savings and loan associations to make loans for the acquisition and development of land including the financing of construction of homes inclusive of acquisition and development of land, and for the purpose of effecting such amendment, hereby amends said Part 545 as hereinafter set forth, effective May 25, 1964.

Amend § 545.6-14 of the rules and regulations for the Federal Savings and Loan System to read as follows:

§ 545.6-14 Loans to finance acquisition and development of land; loans to finance construction of homes inclusive of acquisition and development of land.

(a) *General provisions.* Subject to the provisions of this section, a Federal association may, if permitted by the terms of its charter, invest in loans to finance (1) the acquisition and development of land for primarily residential usage and (2) the construction of homes or single-family dwellings, inclusive of acquisition and development of land primarily for the purpose of such construction. Said investments may be made by a Federal association only in accordance with the applicable provisions of this section. Such loan plans, practices, and procedures as are not inconsistent with this section or with other provisions of this part otherwise applicable to the making of loans on the security of first liens are hereby approved by the Board for use by Federal associations in the making of loans under this section.

(b) *Basic limitations.* A Federal association may make loans under this section only when (1) the aggregate amount of its general reserves, surplus, and undivided profits is equal to more than 5 percent of the amount of its withdrawable accounts, (2) the resulting aggregate amount of its investments in loans under this section, exclusive of that portion of loans under subparagraph (2) of paragraph (c) of this section which is for the purpose of financing the construction of homes or single-family dwellings, would not exceed 5 percent of the amount of its withdrawable accounts, (3) the loans are loans on the security of first liens, and (4) the real estate security for each such loan is located within the association's regular lending area.

(c) *Limitations on specific loans—*(1) *Loans to finance acquisition and development of land.* A Federal association may make loans on the security, and for the purpose of financing the acquisition and development, of land for primarily residential usage. No loan shall be made under this subparagraph (1) in an amount equal to more than 70 percent of the value of the real estate security therefor as of the completion of the development thereof into building lots or sites ready for construction thereon. Each such loan shall be repayable within a period of not more than 3 years and the interest thereon shall be payable at least semiannually. Upon the sale or release from the lien of any portion of the security property, the principal amount of any such loan shall be reduced in an amount at least equal to that portion of the total loan secured by the property sold or released. No disbursement of any of the proceeds of any loan made under this subparagraph (1) shall be made at any time if such disbursement, together with the aggregate amount of such proceeds previously disbursed by the association and not repaid to it, would exceed an amount equal to the sum of (i) 70 percent of the value at such time of that portion of the security property which is building lots or sites the development of which is in progress or completed and, (ii) 70 percent of the value at such time of the remaining security property.

(2) *Loans to finance construction of homes inclusive of acquisition and development of land.* A Federal association may make loans on the security of, and for the purpose of financing the construction of homes or single-family dwellings for sale on, land the acquisition and development of which for primarily residential usage is also a purpose of any such loan. No loan shall be made under this subparagraph (2) in an amount equal to more than 80 percent of the value of the real estate security therefor as of the completion of the construction of homes or single-family dwellings thereon. Each loan made under this subparagraph (2) shall be repayable in full within a period of not more than 6 years after the date of the loan instruments, with or without periodic amortization but with interest payable at least semiannually, except that (i) beginning not more than 18 months after the first disbursement of loan proceeds made for the purpose of financing the construction of any home or single-family dwelling, whether or not such construction has been completed, there shall be amortization of principal each month at a rate of not less than 1 percent of that portion of the loan balance that is applicable to such home or single-family dwelling, including the building site, and (ii) beginning not more than four years after the date of the loan instruments, there shall be amortization of principal each month at a rate of not less than 1 percent of that portion of the loan balance which is not applicable to the construction of any home or single-family dwelling and its building site. Upon the sale or release from the lien of any home or single-family dwelling or of any other portion of the security property, the principal amount of any such loan shall be reduced in an amount at least equal to that portion of the total loan secured by such home or single-family dwelling or other portion of the security property. No disbursement of any of the proceeds of any loan made under this subparagraph (2) shall be made at any time if such disbursement, together with the aggregate amount of such proceeds previously disbursed by the association and not repaid to it, would exceed an amount equal to the sum of (*a*) 80 percent of the value at such time of homes or single-family dwellings under construction or completed and not sold; (*b*) 70 percent of the value at such time of that portion of the remaining security property which is building lots or sites the development of which is in progress or completed; and (*c*) 70 percent of the value at such time of the remaining security property. By a con-

struction loan agreement or other suitable instrument applicable to each construction loan made by a Federal association under this subparagraph (2) such association shall reserve to its board of directors full power and the exclusive right, without regard to any other provision of any loan instrument or of any agreement applicable to such loan, to impose, at any time and from time to time, such limitations as such board of directors may determine on the number of homes and single-family dwellings the construction of which may be in progress at any one time from the proceeds of such loan.

(3) *Loans made prior to completion of planning.* If a loan is made under either subparagraph (1) or (2) of this paragraph (c) to a borrower who acquires the land before completion of plans for development thereof or construction thereon, a Federal association may leave for its later determination, based on appraisal after completion of such plans, the total amount of a loan under subparagraph (1) of this paragraph to finance the acquisition and development of land or the total amount of a loan under subparagraph (2) of this paragraph to finance the acquisition and development of land including the financing of construction thereon. Where such determination is so deferred, the loan agreement or other suitable instrument shall provide for acceleration of maturity of the loan to a fixed date (which shall be not more than 12 months after the date of the first disbursement of any of the proceeds of the loan) if by such fixed date the borrower has not furnished to the Federal association complete plans, satisfactory to the association, for development of the land and, if it is a loan under subparagraph (2) of this paragraph (c), for construction thereon.

(d) *Participation in making of loans; purchase and sale of participating interests; purchase of loans.* Notwithstanding any other provision of this part, a Federal association may not participate in the making of any loan, may not purchase or sell a participating interest in any loan, and may not purchase any loan, if such loan is of the type that such association may make only under this section.

(e) *Definitions.* The term "development" as used in this section means the installations and improvements necessary to produce from the land building sites so completed, in keeping with applicable governmental requirements and with general practice in the community, that they are ready for the construction of buildings thereon.

(f) *Relation to § 545.6–7.* Loans made under this section shall not be included in the aggregate amount of investments referred to in § 545.6–7 unless such inclusion is required by paragraph (a) of said § 545.6–7.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 64–4113; Filed, Apr. 24, 1964; 8:48 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

SUBCHAPTER E—AIRSPACE [NEW]

[Airspace Docket No. 63–CE–142]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS [NEW]

Revocation of Federal Airway Segment; Alteration of Transition Area

On January 29, 1964, a notice of proposed rule making was published in the FEDERAL REGISTER (29 F.R. 1479) stating that the Federal Aviation Agency was considering amendments to Part 71 [New] of the Federal Aviation Regulations which would revoke the segment of VOR Federal airway No. 108 from Hill City, Kans., to Salina, Kans., and would alter the Salina transition area by substituting a line 5 miles south of and parallel to the Salina 286° True radial for Victor 108 in the transition area boundary.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. All comments received were favorable.

Subsequent to publication of the notice, it was determined that the altered Salina transition area would overlap VOR Federal airway No. 4, and by regulation, the floor of the airway would assume that of the transition area. This would raise the minimum en route altitude on the affected segment of Victor 4 from 3,600 feet MSL to 4,000 MSL.

To preclude this situation, action is taken herein to alter the Salina transition area by substituting the Salina 286° True radial for Victor 108 in its description.

Since this change is minor in nature and will impose no additional burden on any person, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, the following actions are taken:

1. Section 71.123 (29 F.R. 1009) is amended as follows:

In V–108 all after "Goodland, Kans.;" is deleted and "Goodland, Kans.; to Hill City, Kans." is substituted therefor.

2. Section 71.181 (29 F.R. 1160, 3356) is amended as follows:

In the Salina, Kans., transition area "V–4 E of the Salina VORTAC and V–108 W of the Salina VORTAC," is deleted and "V–4 and the 286° radial of the Salina VORTAC," is substituted therefor.

These amendments shall become effective 0001 e.s.t., June 25, 1964.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on April 17, 1964.

H. B. HELSTROM,
Acting Chief, Airspace Regulations and Procedures Division.

[F.R. Doc. 64–4081; Filed, Apr. 24, 1964; 8:45 a.m.]

[Airspace Docket No. 63–LAX–10]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE AND REPORTING POINTS [NEW]

Revocation of Federal Airway Segment

On January 30, 1964, a notice of proposed rule making was published in the FEDERAL REGISTER (29 F.R. 1588) stating that the Federal Aviation Agency was considering an amendment to Part 71 [New] of the Federal Aviation Regulations which would revoke the segment of VOR Federal airway No. 421 from St. Johns, Ariz., to Zuni, N. Mex.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. The Air Transport Association of America, in commenting on the proposal, offered no objection. However, they presented a request for an airway from Phoenix, Ariz., to Zuni. This request is under consideration by the Agency. No other comments were received.

In consideration of the foregoing, the following action is taken:

In § 71.123 (29 F.R. 1009) V–421 is amended to read as follows:

V–421 From Zuni, N. Mex., to Farmington, N. Mex.

This amendment shall become effective 0001 e.s.t., June 25, 1964.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on April 17, 1964.

H. B. HELSTROM,
Acting Chief, Airspace Regulations and Procedures Division.

[F.R. Doc. 64–4082; Filed, Apr. 24, 1964; 8:45 a.m.]

[Airspace Docket No. 63–SO–87]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS [NEW]

Revocation of Federal Airway Segment

On January 30, 1964, a notice of proposed rule making was published in the FEDERAL REGISTER (29 F.R. 1588) stating that the Federal Aviation Agency was considering an amendment to Part 71 [New] of the Federal Aviation Regulations which would revoke VOR Federal airway No. 185 west alternate from Savannah, Ga., to Dover, Ga., Intersection.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. All comments received were favorable.

In consideration of the foregoing, the following action is taken: section 71.123 (29 F.R. 1009) is amended as follows:

In V–185 all before "Augusta;" is deleted and "From Savannah, Ga., via INT of Savannah 321° and Augusta, Ga., 157° radials;" is substituted therefor.

This amendment shall become effective 0001 e.s.t., June 25, 1964.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on April 17, 1964.

H. B. HELSTROM,
Acting Chief, Airspace Regulations and Procedures Division.

[F.R. Doc. 64-4083; Filed, Apr. 24, 1964; 8:45 a.m.]

[Airspace Docket No. 63-SW-104]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS [NEW]

Revocation of Federal Airways

On January 23, 1964, a notice of proposed rule making was published in the FEDERAL REGISTER (29 F.R. 573) stating that the Federal Aviation Agency was considering an amendment to Part 71 [New] of the Federal Aviation Regulations which would revoke VOR Federal airway No. 482 from Las Vegas, N. Mex., to Liberal, Kans.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments but no objections were received.

In consideration of the foregoing the following action is taken: In § 71.123 (29 F.R. 1009) V-482 is revoked.

This amendment shall become effective 0001 e.s.t., June 25, 1964.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on April 17, 1964.

H. B. HELSTROM,
Acting Chief, Airspace Regulations and Procedures Division.

[F.R. Doc. 64-4084; Filed, Apr. 24, 1964; 8:45 a.m.]

[Airspace Docket No. 63-CE-97]

PART 75—ESTABLISHMENT OF JET ROUTES [NEW]

Alteration and Revocation of Jet Routes

On October 2, 1963, a notice of proposed rule making was published in the FEDERAL REGISTER (28 F.R. 10581) stating that the Federal Aviation Agency (FAA) proposed the following: Revocation of Jet Route No. 26 between Joliet, Ill., and Appleton, Ohio; revocation of Jet Route No. 71 between Appleton and Front Royal, Va.; modification of Jet Route No. 30, in part, from the Joliet VORTAC via the intersection of the Joliet VORTAC 108° and the Fort Wayne, Ind., VORTAC 279° radials; the Fort Wayne VORTAC; Appleton VORTAC; to the Front Royal VOR; modification of Jet Route No. 64, in part, from the Bradford, Ill., VOR via the intersection of the Bradford VOR 089° and the Fort Wayne VORTAC 279° radials; Fort Wayne VORTAC; Ellwood City, Pa., VORTAC; Yardley, Pa., VOR; to the Idlewild, N.Y., VORTAC (subsequently renamed the Kennedy, N.Y., VORTAC); modification of Jet Route No. 80 from the Pittsburgh, Pa., VORTAC via Coyle, N.J., VORTAC to the Idlewild VORTAC (subsequently renamed Kennedy VORTAC).

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. No objections were received.

The substance of the proposed amendments having been published, therefore, for the reasons stated in the notice, the following actions are taken:

1. In § 75.100 (29 F.R. 1287 January 24, 1964) Jet Route No. 26 is amended as follows:

In the caption "(El Paso, Texas, to Appleton, Ohio)." is deleted, and "(El Paso, Texas, to Joliet, Ill.)." is substituted therefor. In the text "Joliet, Ill., to Appleton, Ohio." is deleted and "to Joliet, Ill." is substituted therefor.

2. In § 75.100 (29 F.R. 1287 January 24, 1964) Jet Route No. 30 is amended as follows:

In the caption "(Salt Lake City, Utah, to Appleton, Ohio)." is deleted and "(Salt Lake City, Utah, to Front Royal, Va.)." is substituted therefor. In the text "Joliet, Ill., to Appleton, Ohio." is deleted and "Joliet, Ill.; via the INT of the Joliet 108° and the Fort Wayne, Ind., 279° radials; Fort Wayne; Appleton, Ohio; to Front Royal, Va." is substituted therefor.

3. In § 75.100 (29 F.R. 1287, January 24, 1964) Jet Route No. 64 is amended as follows:

In the caption "(Los Angeles, Calif., to Idlewild, N.Y.)." is deleted and "(Los Angeles, Calif., to Kennedy, N.Y.)." is substituted therefor. In the text "Bradford, Ill., Joliet, Ill., Cleveland, Ohio; Pittsburgh, Pa.; Yardley, Pa., to Idlewild, N.Y." is deleted and "Bradford, Ill.; via the INT of the Bradford 089° and the Fort Wayne, Ind., 279° radials; Fort Wayne; Ellwood City, Pa.; Yardley, Pa.; to Kennedy, N.Y." is substituted therefor.

4. In § 75.100 (29 F.R. 1287, January 24, 1964) Jet Route No. 71 is revoked.

5. In § 75.100 (29 F.R. 1287, January 24, 1964) Jet Route No. 80 is amended as follows:

In the caption "(Oakland, Calif., to Idlewild, N.Y.)." is deleted and "(Oakland, Calif., to Kennedy, N.Y.)." is substituted therefor. In the text "Pittsburgh, Pa.; Philipsburg, Pa.; Allentown, Pa., to Idlewild, N.Y." is deleted, and "Pittsburgh, Pa.; Coyle, N.J.; to Kennedy, N.Y." is substituted therefor.

These amendments shall become effective 0001 e.s.t. June 25, 1964.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on April 17, 1964.

H. B. HELSTROM,
Acting Chief, Airspace Regulations and Procedures Division.

[F.R. Doc. 64-4085; Filed, Apr. 24, 1964; 8:46 a.m.]

[Reg. Docket No. 5020]

[Special Federal Aviation Reg. 5]

PART 91—GENERAL OPERATING AND FLIGHT RULES

Prohibition of Air Traffic Over and in Vicinity of the World's Fair, Fushing Meadow, New York

On April 22, 1964, President Lyndon B. Johnson will attend the opening ceremonies of the World's Fair at Flushing Meadow, New York. The interest of the public in the President and the large assemblage of persons resulting from his presence should attract numerous aircraft in the area that will be operated over the Fairgrounds and through the airspace generally used by other aircraft. In addition, the Federal agency responsible for the security of the President has requested that we take appropriate action for his safety and the safety of other persons present.

In order to provide appropriate safeguards for aircraft operations in the area and for persons and property on the ground, I have determined that a temporary restriction must be imposed on air traffic to prohibit the operation of all types of aircraft in the vicinity of the Fairgrounds below 2,000 feet above the surface unless authorized by air traffic control. This authorization may be obtained most readily by communicating with La Guardia Airport Traffic Control Tower, La Guardia Airport.

I have determined that there is a requirement for the immediate adoption of this regulation for the safety of air commerce. Therefore, I find it contrary to the public interest to comply with the notice and public procedure provisions of the Administrative Procedure Act and that good cause exists for making this regulation effective immediately.

In consideration of the foregoing, the following Special Federal Aviation Regulation is adopted:

(1) Unless otherwise authorized by air traffic control, no person may operate an aircraft during the period 1000 to 1300 hours Eastern Standard Time on April 22, 1964, below 2,000 feet above the surface within a one mile square area encompassing the New York World's Fairgrounds, Flushing Meadow, New York.

(2) This regulation becomes effective immediately and expires at 1300 Eastern Standard Time, April 22, 1964.

This regulation is adopted under the authority of section 307 of the Federal Aviation Act of 1958 (49 U.S.C. 1348).

Issued in Washington, D.C., on April 21, 1964.

N. E. HALABY,
Administrator.

[F.R. Doc. 64-4130; Filed, Apr. 24, 1964; 8:50 a.m.]

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 5012; Amdt. 719]

PART 507—AIRWORTHINESS DIRECTIVES

Beech Model 35 Series Aircraft

Amendment 652, 28 F.R. 12926, AD 63–25–1, requires inspection which necessitates cutting inspection openings in the fuselage. Since the issuance of Amendment 652, the need for the holes has been reevaluated by the Federal Aviation Agency and it has been determined that an adequate inspection can be performed without the three center openings being cut in the fuselage. Therefore, Amendment 652 is being amended to require that only two inspection openings be cut in the fuselage instead of five.

Since this amendment is relieving in nature and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is amended as follows:

Amendment 652, 28 F.R. 12926, AD 63–25–1, Beech Model 35 Series aircraft, is amended by changing paragraph (a)(1) to read:

(1) Cut two 3½ inch diameter inspection openings in the fuselage skin just under the forward center section steel truss at right and left butt stations 16.50 inches, in accordance with Beech Service Bulletin 35–24, as revised November 5, 1963, or FAA-approved equivalent.

(NOTE: In addition to these two openings, any or all of the three inside inspection openings defined in Service Bulletin 35–24 may be incorporated at the owner's option.)

This amendment shall become effective April 24, 1964.

(Secs. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on April 17, 1964.

W. LLOYD LANE,
Acting Director,
Flight Standards Service.

[F.R. Doc. 64–4088; Filed, Apr. 24, 1964; 8:46 a.m.]

[Reg. Docket No. 5013; Amdt. 720]

PART 507—AIRWORTHINESS DIRECTIVES

Douglas Model DC–8 Series Aircraft

Amendment 665, 29 F.R. 13, AD 63–27–1, effective January 31, 1964, requires inspection of the bogie beam assembly and repair or replacement of any found defective on Douglas Model DC–8 Series aircraft. Amendment 665 also provides that when certain specified interim rework is accomplished, the bogie beam assembly may be continued in service for 1,500 hours from the time the interim rework was accomplished before incorporating the required final rework. However, the manufacturer has supplied substantiating data which would permit relaxation of the foregoing provision in Amendment 665. Therefore, Amendment 665 is being revised to permit bogie beam assemblies on which the interim rework had been incorporated prior to the effective date of that amendment, to be continued in service for 1,500 hours' time in service from the effective date of Amendment 665 rather than from the date on which the interim rework was accomplished. Bogie beam assemblies on which the interim rework has been accomplished subsequent to the effective date of Amendment 665 may still be continued in service for 1,500 hours' time in service from the time the interim rework was accomplished before the required final rework is incorporated.

Since this amendment relieves a restriction and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and good cause exists for making it effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is amended as follows:

Amendment 665, 29 F.R. 13, AD 63–27–1, Model DC–8 Series aircraft, is amended by:

1. Changing paragraph (a)(2)(iii) to read:

(iii) Bogie beam assemblies on which the interim rework outlined in Paragraph 2C(8) of DC–8 Service Bulletin No. 32–64 is incorporated subsequent to January 31, 1964, may be continued in service without further rework for a period not to exceed 1,500 hours' time in service from the time the interim rework is accomplished. However, the inspection and final rework referred to in (c) must be accomplished before the accumulation of that 1,500 hours' time in service.

2. Adding the following new paragraphs (a)(2) (iv) and (v) to read:

(iv) Bogie beam assemblies on which the interim rework outlined in Paragraph 2C(8) of DC–8 Service Bulletin No. 32–64 was incorporated prior to January 31, 1964, may be continued in service without further rework for a period not to exceed 1,500 hours' time in service after January 31, 1964. However, the insepction and final rework referred to in (c) must be accomplished before the accumulation of that 1,500 hours' time in service.

(v) The 1,000-hour periodic inspection specified in (a) is not required for bogie beams incorporating the interim rework outlined in Paragraph 2C(8) of DC–8 Service Bulletin No. 32–64.

This amendment shall become effective April 24, 1964.

(Secs. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., April 17, 1964.

W. LLOYD LANE,
Acting Director,
Flight Standards Service.

[F.R. Doc. 64–4089; Filed, Apr. 24, 1964; 8:46 a.m.]

[Reg. Docket No. 5014; Amdt. 721]

PART 507—AIRWORTHINESS DIRECTIVES

Piper Model PA–30 Aircraft

There have been instances of failure of the induction system alternate air doors on Piper Model PA–30 aircraft, one of which resulted in significant engine power loss. The alternate air door is hinged on the inside of the air intake duct and operates under negative pressure. Failure at the hinge could cause the door to be drawn into the engine injector unit. To correct this condition, an airworthiness directive is being issued to require inspection of the engine induction system air takeoff assembly for signs of hinge wear at the alternate air door and replacement of the alternate air doors.

As a situation exists which demands immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days after the date of publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

PIPER. Applies to Model PA–30 aircraft Serial Numbers 30–1 to 30–321 inclusive.
Compliance required as indicated.

(a) Within the next 10 hours' time in service after the effective date of this AD, and within every 10 hours' time in service thereafter until a new alternate air door is installed per (b):

(1) Inspect each engine induction system air takeoff assembly, P/N 23810–00, for signs of hinge wear at the alternate air door P/N 23809–00.

(2) Replace worn or loose alternate air doors before further flight.

(b) Within the next 50 hours' time in service after the effective date of this AD, unless already accomplished, replace the P/N 23809–00 alternate air door with a new door P/N 23809–07 in accordance with Piper Kit Instructions 756794. After the new part is installed, the repetitive inspections in paragraph (a) are no longer required.

(Piper Service Bulletin No. 220 covers this same subject).

This amendment shall become effective April 29, 1964.

(Secs. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., April 17, 1964.

W. LLOYD LANE,
Acting Director,
Flight Standards Service.

[F.R. Doc. 64–4090; Filed, Apr. 24, 1964; 8:46 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. 8569]

PART 13—PROHIBITED TRADE PRACTICES

Estee Sleep Shops, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.70 *Fictitious or misleading guarantees;* § 13.155 *Prices:* 13.155–40 Exaggerated as regular and customary.

(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, Estee Sleep Shops, Inc. (Chicago, Ill.) et al., Docket 8569, April 10, 1964]

In the Matter of Estee Sleep Shops, Inc., a Corporation, Estee Bedding Company, a Corporation, Samuel Trossman, Marvin Trossman, Harold Trossman, and Norman Trossman, Individually and as Officers of Said Corporation

Order requiring two associated corporations, engaged in manufacturing bedding and assembling furniture which they sold at retail, to cease representing falsely in newspaper advertising that prices at which specified furniture was offered were substantially reduced from the usual prices and would afford savings to purchasers, and that their mattresses carried a "5 Year Guarantee", a "10 Year Written Guarantee", etc., when there were undisclosed limitations on any guarantees.

The order to cease and desist is as follows:

It is ordered, That respondents Estee Sleep Shops, Inc. and Estee Bedding Company, corporations and their officers and Samuel Trossman, Marvin Trossman, Harold Trossman, and Norman Trossman, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of bedding and furniture or other similar products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any saving is afforded in the purchase of such products by use of a direct or indirect dual price representation without using words or other descriptive means that clearly and truthfully describe both the higher and lower prices.

2. Representing, directly or by implication, that any of such products are guaranteed unless the nature and extent of the guarantee are clearly and conspicuously disclosed.

By "Decision of the Commission", etc., order requiring report of compliance is as follows:

It is ordered, That 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 it has complied with the order to cease and desist.

Issued: April 10, 1964.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 64–4132; Filed, Apr. 24, 1964; 8:50 a.m.]

[Docket No. 8588]

PART 13—PROHIBITED TRADE PRACTICES

Farrar, Straus and Co., Inc., and Sussman and Sugar, Inc.

Subpart—Advertising falsely or misleadingly: § 13.170 *Qualities or properties of product or service:* 13.170–24 Cosmetic or beautifying; 13.170–35 Educational, informative, training; 13.170–52 Medicinal, therapeutic, healthful, etc.; 13.170–64 Nutritive; § 13.190 *Results;* § 13.205 *Scientific or other relevant facts.*

(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, Farrar, Straus and Company, Inc., et al., New York, N.Y., Docket 8588, April 9, 1964]

Order requiring a publisher and its advertising agency, both in New York City, to cease making various misrepresentations in advertising in newspapers and magazines and other promotional matter as to the health and other benefits to be derived by persons following the dietary principles, formulas and instructions in Gaylord Hausers book entitled "'Mirror, Mirror on the Wall," as in the order below in detail set out.

The order to cease and desist is as follows:

It is ordered, That Farrar, Straus and Company, Inc., a corporation, and its officers, and Sussman and Sugar, Inc., and its officers, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a book entitled "Mirror, Mirror on the Wall" or any other book of the same or approximately the same content, material and principles, whether sold under the same name or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That by following the dietary principles set forth in the book a person will:

(a) Lose weight without reducing his caloric intake.

(b) Protect his heart or restore it to normal, or have any other beneficial effect upon his heart.

(c) Increase his sexual potency.

(d) Control the chemical balance of his body or distribute chemicals within his body in a prescribed manner.

2. That by following formulas or instructions set forth in said book a person will:

(a) Tighten the skin in the face or neck, or eliminate loose face or neck tissue.

(b) Slenderize in 10 seconds, or in any other period of time.

(c) Add brightness or clarity to his eyes.

(d) Prevent or retard baldness or excessive hair loss.

(e) Cure dandruff.

(f) Become healthy or remain healthy.

3. That the order in which one eats food is important to health.

4. That the cosmetics described in the book are natural or nutritious.

5. That the book contains hundreds of secrets of health or that it contains any health secret.

6. That the exercises described in the book will never be tiring to the person who performs them.

By "Decision of the Commission", etc., further order requiring report of compliance is as follows:

It is further ordered, That respondents 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: April 9, 1964.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 64–4133; Filed, Apr. 24, 1964; 8:50 a.m.]

[Docket No. 8323 o.]

PART 13—PROHIBITED TRADE PRACTICES

Regina Corp.

Subpart—Advertising falsely or misleadingly: § 13.155 *Prices:* 13.155–45 Fictitious marking.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, The Regina Corporation, Rahway, N.J., Docket 8323, April 7, 1964]

Order modifying desist order of Oct. 11, 1962, so that "its terms will be in explicit accord with" the Commission's revised Guides Against Deceptive Pricing issued Jan. 8, 1964.

The order to cease and desist is as follows:

Respondents are ordered to cease and desist from: "Advertising or disseminating any list or preticketed price unless such price is a good faith estimate of the actual retail price and does not appreciably exceed the highest price at which substantial sales are made in respondent's trade area."

Issued: April 7, 1964.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 64–4134; Filed, Apr. 24, 1964; 8:51 a.m.]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

[Docket No. R-260; Order 282]

PART 2—GENERAL POLICY AND INTERPRETATIONS

Filing Rate Schedules by Public Utilities

APRIL 21, 1964.

§ 2.5 Filing of rate schedules by Public Utilities.

(a) The Commission has received a number of inquiries from public utilities who are presently engaged in reviewing the status of their wholesale power sales, in the light of the recent Supreme Court decision in the Colton case, Federal Power Commission v. Southern California Edison Company, 376 U.S. 205, 11 L ed. 2d 638, decided March 2, 1964, as to the manner in which the Commission would expect to treat filings made with it of existing wholesale sales which had not previously been filed with this Commission. In response to such inquiries the Commission believes it appropriate to advise all public utilities that, while it of course cannot prejudge the possible rights of interested third parties, its primary objective is in insuring that the rate schedules for all jurisdictional sales are promptly filed with this agency, as required by law, and that where such rate schedules are filed with this agency by August 1, 1964, it does not intend on its own motion to initiate any inquiry into past failures to file such schedules.

(b) In accordance with this policy the Commission, in the absence of valid objection by any interested party, will permit all existing rate schedules to be filed as initial rate schedules pursuant to the provisions of § 35.1(b) of this chapter and will give favorable consideration to requests pursuant to the provisions of § 35.11 of this chapter to make such schedules effective as of the date of filing or such earlier date as the public utility may show is consistent with the public interest, if such filings are made on or before August 1, 1964. Moreover, while the Commission will carefully review all such filings to insure that they are consistent with the statutory standards, it is contemplated that any Commission action resulting from such review would normally be taken pursuant to the provisions of section 206 of the Federal Power Act.

(c) It is recognized that despite the Supreme Court's latest reiteration of the broad scope of this agency's jurisdiction over wholesale sales of public utilities, there may remain some special situations in which a company engaged in the wholesale sale of electric energy, although it is interconnected with systems in other states directly or indirectly, will wish to contest its jurisdictional status as a public utility or the status of particular sales. However, the Commission's existing procedures provide full protection for such companies since they are free to file their wholesale rates with a reservation of the question of jurisdiction, which could then be adjudicated in an orderly way.

(Secs. 205, 309, 49 Stat. 851, 858; 16 U.S.C. 824d, 825h)

By the Commission.

[SEAL] GORDON M. GRANT, *Acting Secretary.*

[F.R. Doc. 64-4103; Filed, Apr. 24, 1964; 8:48 a.m.]

[Docket No. R-259; Order 281]

PART 2—GENERAL POLICY AND INTERPRETATIONS

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

Gas-Purchase Facilities — Budget-type Applications—Pipeline Companies—Waiver of Cost Requirements

APRIL 21, 1964.

The Commission, in this order, is amending §§ 2.58 and 157.7 of its rules and regulations to clarify the obligations of applicants seeking authority to secure budget-type certificates where the application does not meet the prescribed limitations of such rules.

Section 2.58 of the Commission's general rules and regulations, entitled "Budget-type certificate applications—gas-purchase facilities" is being amended by adding a new paragraph which provides that any application proposing the construction of facilities having an estimated total cost in excess of the amounts specified herein shall be accompanied by a request for waiver of the provisions of such paragraph and will be granted only for good cause shown. A similar amendment is being made to § 157.7 of the Commission's regulations under the Natural Gas Act, relating to "Abbreviated applications."

These amendments do not impose any new requirement upon pipeline applicants for budget-type certificates in connection with gas-purchase facilities since provisions for seeking waiver of a Commission regulation is already set out in § 1.7 of the Commisison's rules of practice and procedure. However, reference to these requirements in §§ 2.58 and 157.7 should help insure that applicants will be aware of and will comply with the existing requirements.

Notice of rule making pursuant to section 4(a) of the Administrative Procedure Act and § 1.19 of our rules of practice and procedure is unnecessary here since the amendments relax existing procedural requirements. For the same reason it is appropriate to make the amendments effective immediately.

The Commission finds:

(1) The adoption of these amendments are necessary and appropriate to the administration of the Natural Gas Act.

(2) Since these amendments involve matters of Commission practice and procedure and impose no new requirement, the notice, hearing and effective date requirements of section 4 of the Administrative Procedure Act are not applicable.

The Commission, acting pursuant to the authority granted by the Natural Gas Act, as amended, particularly sections 7 and 16 thereof (52 Stat. 825, 830; 56 Stat. 83; 15 U.S.C. 717f, 717o) orders:

(A) Parts 2 and 157 of the Commission's rules and regulations, Chapter I of Title 18 of the Code of Federal Regulations, are amended in the following respects:

1. In Part 2 amend § 2.58 by redesignating paragraph (a) as (1), redesignating paragraph (b) as (2) and adding a new paragraph (b). As so amended paragraphs (a) and (b) will read as follows:

§ 2.58 Budget-type certificate applications—gas-purchase facilities.

* * * * *

(a) (1) The total estimated cost of the facilities to be installed in a given twelve-month period does not exceed 1½ percent of the applicant company's plant account or $5,000,000 whichever is the lesser.

(2) The total cost of any single project facilities to be installed during the authorization period does not exceed 25 percent of the total budget amount or $500,000, whichever is the lesser.

(b) Any application proposing the construction of facilities having an estimated total cost in excess of the amounts specified in paragraph (a) of this section shall be accompanied by a request for waiver of the provisions of such paragraph and will be granted only for good cause shown.

* * * * *

(Secs. 7, 16, 52 Stat. 825, 830, 56 Stat. 83; 15 U.S.C. 717f, 717o)

2. In Part 157 amend paragraph (b) of § 157.7, as prescribed in Order No. 280, by redesignating subparagraph (1) as (i), redesignating subparagraph (2) as (ii) and adding a new paragraph (2). As so amended subparagraphs (1) and (2) will read as follows:

§ 157.7 Abbreviated applications.

* * * * *

(b) *Gas-purchase facilities—budget-type applications.* An abbreviated application requesting a budget-type certificate authorizing the construction of gas-purchase facilities during a given twelve-month period and operation thereafter may be filed when:

(1) (i) The total estimated cost of the gas-purchase facilities proposed in the application does not exceed 1½ percent of the applicant's gas plant (Account 101, Uniform System of Accounts Prescribed for Natural Gas Companies) or $5,000,000 whichever is the lesser.

(ii) The total cost of gas-purchase facilities for any single project to be installed during the authorized construction period does not exceed 25 percent of the total budget amount or $500,000, whichever is the lesser.

(2) Any application proposing the construction of facilities having an estimated total cost in excess of the amounts specified in subparagraph (1) of this paragraph shall be accompanied by a request for waiver of the provisions

of such paragraph and will be granted only for good cause shown.

* * * * *

(Secs. 7, 16, 52 Stat. 825, 830, 56 Stat. 83; 15 U.S.C. 717f, 717o)

(B) These amendments shall be effective upon the issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 64-4105; Filed, Apr. 24, 1964; 8:48 a.m.]

Title 26—INTERNAL REVENUE

Chapter II—Tax Court of the United States

PART 701—RULES OF PRACTICE

Bond To Stay Execution of Order of Renegotiation Board

Section 701.65(b), as amended, is as follows:

§ 701.65 Bond to stay execution of order of renegotiation board.

* * * * *

(b) *Fixing amount of bond.* The amount of bond to be filed to stay execution of an order of the Renegotiation Board pursuant to statute will be fixed by order of the Tax Court upon motion timely filed by the petitioner. The amount of bond requested will be considered prima facie evidence of the proper amount of the bond if the motion requests that it be fixed:

(1) At 112 percent of the full amount of the excessive profits determined in the unilateral order on which the petition is based, or

(2) At 112 percent of an amount equal to the full amount of the excessive profits determined in that order reduced by the credit authorized by section 3806 of the Internal Revenue Code of 1939, or section 1481, Code of 1954, and is accompanied by a statement from the district director of internal revenue for the district in which the return for the taxable year was filed, showing the amount of the credit to which the petitioner is entitled as a result of the determination, and

(3) The motion recites that petitioner agrees that approval of a bond in an amount fixed as provided in subparagraph (1) or (2) of this paragraph shall not preclude the entry of an order increasing the amount of bond at any time thereafter upon a showing satisfactory to the Court of the necessity for increase.

* * * * *

The Court will consider other applications differing from the above, but the applicant must have in mind the short time allowed by the statute for the approval of the bond.

Effective: June 1, 1964.

Dated: April 22, 1964.

By the Court.

NORMAN O. TIETJENS, *Chief Judge, Tax Court of the United States.*

[F.R. Doc. 64-4126; Filed, Apr. 24, 1964; 8:50 a.m.]

Title 21—FOOD AND DRUGS

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

PART 121—FOOD ADDITIVES

Chlortetracycline; Diethylstilbestrol

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition (FAP 1252) filed by American Cyanamid Company, P.O. Box 400, Princeton, New Jersey, and other relevant data, has concluded that the food additive regulations should be amended to provide for additional conditions under which chlortetracycline, with or without diethylstilbestrol, may be safely used in beef-cattle feed. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (21 CFR 2.90; 29 F.R. 471), §§ 121.208 and 121.241 are amended as indicated below.

1. In § 121.208 *Chlortetracycline*, paragraph (d) is amended by inserting in Table 6, under the "Limitations" column, opposite items 4 and 5, the statement"; not to be administered within 48 hours of slaughter", and by adding to Table 6 new items designated as items 6, 7, and 8. As amended, the affected portions of this table read as follows:

TABLE 6—CHLORTETRACYCLINE IN CATTLE FEED

Principal ingredient	Amount	Combined with—	Amount	Limitations	Indications for use
	Mg. per head per day		*Mg. per head per day*		
* * *	* * *	* * *	* * *	* * *	* * *
4. Chlortetracycline	350			For beef cattle; not to be administered within 48 hours of slaughter.	Aid in prevention of bacterial pneumonia and shipping fever (hemorrhagic septicemia); aid in reduction of losses due to respiratory infection (infectous rhinotracheitis-shipping fever complex).
* * *	* * *	* * *	* * *	* * *	* * *
5. Chlortetracycline	350			For beef cattle up to 700 pounds in weight; not to be administered within 48 hours of slaughter.	Aid in prevention of anaplasmosis.
* * *	* * *	* * *	* * *	* * *	* * *
6. Chlortetracycline	500			For beef cattle 700–1,000 pounds in weight. Not to be administered within 48 hours of slaughter.	Aid in prevention of anaplasmosis.
a. Chlortetracycline	500	Diethylstilbestrol	10	Not to be administered within 48 hours of slaughter.	Fattening of beef cattle.
7. Chlortetracycline	750			For beef cattle 1,000–1,500 pounds in weight. Not to be administered within 48 hours of slaughter.	Aid in prevention of anaplasmosis.
a. Chlortetracycline	750	Diethylstilbestrol	10	Not to be administered within 48 hours of slaughter.	Fattening of beef cattle.
8. Chlortetracycline	0.5 (mg. per pound of body weight per day).			For beef cattle over 1,500 pounds in weight. Not to be administered within 48 hours of slaughter.	Aid in prevention of anaplasmosis.
a. Chlortetracycline	0.5 (mg. per pound of body weight per day).	Diethylstilbestrol	10	Not to be administered within 48 hours of slaughter.	Fattening of beef cattle.

2. In § 121.241 *Diethylstilbestrol*, paragraph (b) is amended by changing item 1.a. in the table to read as follows:

DIETHYLSTILBESTROL IN FEED

Principal ingredient	Amount	Combined with—	Amount	Limitations	Indications for use
	Mg. per head per day		*Mg. per head per day*		
1. * * *	* * *	* * *	* * *	* * *	* * *
a. Diethylstilbestrol	10	Chlortetracycline	70–750 (0.5 mg. per lb. of body weight for animals over 1,500 lb.).	§ 121.208, table 6, items 1, 2, 3, 4, 5, 6, 7, 8.	§ 121.208, table 6, items 1, 2, 3, 4, 5, 6, 7, 8.
* * *	* * *	* * *	* * *	* * *	* * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the persons filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348 (c)(1))

Dated: April 8, 1964.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 64-4063; Filed, Apr. 24, 1964; 8:45 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

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

MISCELLANEOUS AMENDMENTS TO CHAPTER

The following miscellaneous amendments have been made to this chapter:

SUBCHAPTER D—RENTAL HOUSING INSURANCE

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

In § 207.19 paragraph (c)(1) is amended to read as follows:

§ 207.19 Required supervision of private mortgagors.

* * * * *

(c) *Requirements incident to insurance of advances.* (1) The mortgagor shall deposit with the mortgagee, or in a depository satisfactory to the mortgagee and under control of the mortgagee, for the purpose of meeting the cost of equipping and renting the project subsequent to completion of construction of the entire project or units thereof and, during the course of construction, for allocation by the mortgagee to accruals for taxes, ground rents, mortgage insurance premiums, property insurance premiums, and assessments required by the terms of the mortgage:

(i) In the case of new construction, an amount equivalent to not less than two percent of the original principal amount of the mortgage.

(ii) In the case of rehabilitation, an amount satisfactory to the Commissioner.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 207, 52 Stat. 16, as amended; 12 U.S.C. 1713)

SUBCHAPTER F—URBAN RENEWAL HOUSING INSURANCE AND INSURED IMPROVEMENT LOANS

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

Subpart A—Eligibility Requirements—Homes

In § 220.30(a) subparagraphs (3) and (4) are amended to read as follows:

§ 220.30 Maximum mortgage amounts—loan-to-value limitation.

(a) *Occupant mortgagors.* * * *

(3) 97 percent of the first $15,000 of the sum of (i) the Commissioner's estimate of the cost of repair and rehabilitation and (ii) the Commissioner's estimate of the value of the property before rehabilitation as of the date the mortgage is accepted for insurance; plus 90 percent of such sum in excess of $15,000, but not in excess of $20,000; plus 75 percent of such sum in excess of $20,000, if the application for insurance covers an existing dwelling which was approved for mortgage insurance prior to the beginning of construction, or an existing dwelling the construction of which has been completed for more than one year; provided, that if the application involves the refinancing of an existing indebtedness, the mortgage may not exceed the sum of (i) the estimated cost of repairs and rehabilitation, and (ii) the amount required to refinance the existing indebtedness secured by the property.

(4) 90 percent of the first $20,000 of the sum of (i) the Commissioner's estimate of the cost of repair and rehabilitation and (ii) the Commissioner's estimate of the value of the property before rehabilitation as of the date the mortgage is accepted for insurance; plus 75 percent of such sum in excess of $20,000, if the application for insurance covers an existing dwelling which was not approved for mortgage insurance prior to beginning of construction and the construction has been completed less than one year; provided, that if the application involves the refinancing of an existing indebtedness, the mortgage may not exceed the sum of (i) the estimated cost of repairs and rehabilitation, and (ii) the amount required to refinance the existing indebtedness secured by the property.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 220, 68 Stat. 596, as amended; 12 U.S.C. 1715k)

SUBCHAPTER G—HOUSING FOR MODERATE INCOME AND DISPLACED FAMILIES

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart C—Eligibility Requirements—Moderate Income Projects

In § 221.540 paragraph (a) is amended to read as follows:

§ 221.540 Financial requirements.

* * * * *

(a) The mortgagor shall deposit with the mortgagee, or in a depository satisfactory to the mortgagee and under control of the mortgagee, for the purpose of meeting the cost of equipping and renting the project subsequent to completion of construction of the entire project or units thereof and, during the course of construction, for allocation by the mortgagee to accruals for taxes, ground rents, mortgage insurance premiums, property insurance premiums, and assessments required by the terms of the mortgage:

(1) In the case of new construction, an amount equivalent to not less than two percent of the original principal amount of the mortgage.

(2) In the case of rehabilitation, an amount satisfactory to the Commissioner.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 221, 68 Stat. 599, as amended; 12 U.S.C. 1715*l*)

SUBCHAPTER L—MORTGAGE INSURANCE FOR INDIVIDUALLY OWNED UNITS IN MULTIFAMILY STRUCTURES

PART 234—CONDOMINIUM OWNERSHIP

Subpart A—Eligibility Requirements

In § 234.13 paragraphs (a)(1) and (a)(4)(iii) are amended and new paragraphs (a)(4)(iv) and (b)(4)(iii) are added as follows:

§ 234.13 Application and commitment extension fees.

(a) *Application fee*—(1) *Amount of fee.* The mortgagee shall pay an appli-

cation fee of $25 per family unit to cover the cost of processing.

* * * * *

(4) *Fee not required.* * * *

(iii) The application is in connection with the insurance of a mortgage to finance the purchase of Commissioner-held property; or

(iv) The application is filed prior to the issuance of the commitment to insure the project mortgage.

(b) *Commitment extension fee.* * * *

(4) *Fee not required.* * * *

(iii) The commitment is in connection with the initial sale of the family units following conversion of the multifamily structure to apartment ownership.

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 234, 75 Stat. 160; 12 U.S.C. 1715y)

Issued at Washington, D.C., April 20, 1964.

PHILIP M. BROWNSTEIN,
Federal Housing Commissioner.

[F.R. Doc. 64-4127; Filed, Apr. 24, 1964; 8:50 a.m.]

SUBCHAPTER K—EXPERIMENTAL HOUSING INSURANCE

PART 233—EXPERIMENTAL HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Homes

MISCELLANEOUS AMENDMENTS

In Part 233 in the table of contents the appropriate section heading is amended and two new section headings are added as follows:

Sec.
233.5 Maximum mortgage amount—dollar limitation.
233.6 Maximum mortgage amount—loan-to-value limitation.
233.7 Maximum mortgage amount—refinancing limitation.

1. Section 233.5 is amended to read as follows:

§ 233.5 Maximum mortgage amount—dollar limitation.

Depending upon the design of the structure, a mortgage shall not exceed the following dollar amount:

(a) $25,000 for a one-family residence;

(b) $27,500 for a two-family residence;

(c) $27,500 for a three-family residence; or

(d) $35,000 for a four-family residence.

In addition to the dollar limitation prescribed in this section, the mortgage is subject to a loan-to-value limitation as provided in § 233.6.

2. Part 233 is amended by adding two new §§ 233.6 and 233.7 to read as follows:

§ 233.6 Maximum mortgage amount—loan-to-value limitation.

In addition to meeting the dollar limitation in § 233.5, the mortgage shall meet a loan-to-value limitation as follows:

(a) *Occupant mortgagors.* Where the mortgagor is the occupant of the property, the mortgage shall be in an amount not in excess of:

(1) 97 percent of $15,000 of the Commissioner's estimate of the cost of replacing the property using comparable conventional design, materials and construction, or using advanced housing technology or experimental property standards, whichever is the lesser, and 90 percent of such cost in excess of $15,000, but not in excess of $20,000; and 75 percent of such cost in excess of $20,000, if the application is for construction of a proposed new dwelling which is approved for mortgage insurance prior to the beginning of construction.

(2) 97 percent of the first $15,000 of the sum of (i) the Commissioner's estimate of the cost of repair and rehabilitation using comparable conventional design, materials and construction, or using advanced housing technology or experimental property standards, whichever cost is the lesser, and (ii) the Commissioner's estimate of the value of the property before repair and rehabilitation; plus 90 percent of such sum in excess of $15,000, but not in excess of $20,000; plus 75 percent of such sum in excess of $20,000, if the application covers an existing dwelling which was approved for mortgage insurance prior to the beginning of repair and rehabilitation.

(b) *Nonoccupant mortgagors.* A mortgage executed by a mortgagor who is not the occupant of the property shall not exceed 85 percent of the amount available to an occupant mortgagor under § 233.5 or under paragraph (a) of this section, whichever is the lesser.

§ 233.7 Maximum mortgage amount—refinancing limitation.

In addition to meeting the dollar limitation in § 233.5 and the loan-to-value limitation in § 233.6, if the application involves the refinancing of an existing indebtedness, the mortgage shall not exceed the sum of the estimated cost of repair and rehabilitation and the amount required to refinance the existing indebtedness related to the property.

3. Section 233.15 is amended to read as follows:

§ 233.15 Eligible property.

To be eligible for insurance:

(a) The mortgage shall cover property involving the utilization and testing of advanced technology in housing design, materials, or construction, or experimental property standards for neighborhood design.

(b) The Commissioner shall make determinations as follows:

(1) That the property is an acceptable risk, giving consideration to the need for testing advanced housing technology or experimental property standards.

(2) That the utilization and testing of the advanced technology or experimental property standards involved will provide data or experience which the Commissioner deems to be significant in reducing housing costs or improving housing standards, quality, livability, or durability or improving neighborhood design.

(c) The dwelling shall be approved for insurance by the Commissioner prior to the beginning of construction or repair and rehabilitation.

Subpart C—Eligibility Requirements—Projects

4. In § 233.501 paragraph (a) is amended by deleting from the listed provisions the following:

§ 233.501 Incorporation by reference.

(a) * * *

207.29 Rehabilitation projects.

* * * * *

5. Section 233.505 is amended to read as follows:

§ 233.505 Eligible projects.

To be eligible for insurance:

(a) The mortgage shall cover property on which there is located a new or rehabilitated multifamily housing project involving the utilization and testing of advanced technology in housing design, materials, or construction, or experimental property standards for neighborhood design.

(b) The Commissioner shall make determinations as follows:

(1) That the property is an acceptable risk, giving consideration to the need for testing advanced housing technology or experimental property standards.

(2) That the utilization and testing of the advanced technology or experimental property standards involved will provide data or experience which the Commissioner deems to be significant in reducing housing costs or improving housing standards, quality, livability, or durability or improving neighborhood design.

6. In § 233.515 the heading of paragraph (a) is amended; paragraph (a) (3) is revoked; and a new paragraph (e) is added to read as follows:

§ 233.515 Maximum mortgage amounts.

(a) *Dollar limitation.* * * *

(3) [Revoked]

* * * * *

(e) *Loan-to-value limitation.* In addition to meeting the dollar limitation set forth in paragraphs (a) through (d), the mortgage shall be in an amount not to exceed:

(1) *New construction.* 90 percent of the Commissioner's estimate of the cost of replacing the project using comparable conventional design, materials and construction, or using advanced housing technology or experimental property standards, whichever is the lesser.

(2) *Repair and rehabilitation.* 90 percent of the sum of (i) the Commissioner's estimate of the cost of repair and rehabilitation using comparable conventional design, materials and construction, or using advanced housing technology or experimental property standards, whichever cost is the lesser, and (ii) the Commissioner's estimate of the value of the property or project before repair and rehabilitation.

(3) *Limitation on refinancing.* The estimated cost of repair and rehabilitation and the amount, as determined by the Commissioner, required to refinance

existing indebtedness related to the property or project.

7. In § 233.520 paragraph (a) is amended to read as follows:

§ 233.520 Development of property.

(a) *Type of construction and design.* At the time the mortgage is insured, the mortgagor shall be obligated to construct and complete new housing accommodations on the mortgaged property or to rehabilitate existing housing accommodations designed principally for residential use, conforming to standards satisfactory to the Commissioner. The project shall consist of not less than eight rental dwelling units on one site and may be detached or semidetached units or row houses or multifamily structures. The Commissioner may insure a mortgage on a completed project constructed pursuant to a commitment to insure upon completion.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interpret or apply sec. 233, 75 Stat. 158; 12 U.S.C. 1715x)

Issued at Washington, D.C. April 20, 1964.

PHILIP N. BROWNSTEIN,
Federal Housing Commissioner.

[F.R. Doc. 64-4128; Filed, Apr. 24, 1964; 8:50 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

Part 800—Equal Pay for Equal Work Under the Fair Labor Standards Act

Pursuant to the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and General Order No. 45-A of the Secretary of Labor (15 F.R. 3290), I hereby establish 29 CFR Part 800 pertaining to the Equal Pay Act of 1963 (77 Stat. 56).

The part contains the interpretations and statements of general policy that will be relied upon by the Department in the administration of the new law. In formulating the contents of this part careful consideration has been given to all relevant oral and written information submitted by interested members of the public pursuant to notice published in the FEDERAL REGISTER on August 24, 1963 (28 F.R. 9357).

The new part reads as follows:

Subpart A—General

INTRODUCTORY

Subpart B—Requirements of the Equal Pay Act of 1963

AUTHORITY: The provisions of this Part 800, issued under secs. 1-19, 52 Stat. 1060 as amended; 77 Stat. 56; 29 U.S.C. 201-219.

Subpart A—General

INTRODUCTORY

§ 800.0 General scope of the Fair Labor Standards Act.

The Fair Labor Standards Act, as amended, hereinafter referred to as the Act, is a Federal statute of general application which establishes minimum wage, overtime pay, child labor, and equal pay requirements that apply as provided in the Act. All employees whose employment has the relationship to interstate or foreign commerce which the Act specifies are subject to the prescribed labor standards unless specifically exempted from them. Employers having such employees are required to comply with the Act's provisions in this regard unless relieved therefrom by some exemption in the Act. Such employers are also required to comply with specified recordkeeping requirements contained in Part 516 of this chapter. The law authorizes the Department of Labor to investigate for compliance and, in the event of violations, to supervise the payment of unpaid wages or unpaid overtime compensation owing to any employee. The law also provides for enforcement in the courts.

§ 800.1 Purpose of this part.

It is the purposes of this Part 800 to make available official interpretations of the Department of Labor with respect to the meaning and application of the equal pay provisions added to the Fair Labor Standards Act by the Equal Pay Act of 1963 (Public Law 88-38). The Equal Pay Act was enacted on June 10, 1963, for the purpose of correcting "the existence in industries engaged in commerce or in the production of goods for commerce of wage differentials based on sex". This law amends the Fair Labor Standards Act by adding a new section 6(d) to its minimum wage provisions.

§ 800.2 Significance of official interpretations.

The interpretations of the law contained in this part are official interpretations of the Department of Labor with respect to the application under described circumstances of the provisions of law which they discuss. The ultimate decisions on interpretations of the Act are made by the courts. Court decisions supporting interpretations contained in this part are cited where it is believed they may be helpful. On matters which have not been determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (Skidmore v. Swift, 323 U.S. 134). In order that these positions may be made known to persons who may be affected by them, official interpretations are issued by the Administrator on the advice of the Solicitor of Labor, as authorized by the Secretary (Reorg. Pl. 6 of 1950, 64 Stat. 1263; Gen. Ord. 45A, May 24, 1950, 15 F.R. 3290). As included in the regulations in this part, these interpretations are believed to express the intent of the law as reflected in its provisions and as construed by the courts and evidenced by its legislative history. They indicate the construction of the law which the Secretary of Labor and the Administrator believe to be correct and which will guide them in the performance of their duties under the Act unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon reexamination of an interpretation, that it is incorrect. References to pertinent legislative history are made in this part where it appears that they will contribute to a better understanding of the interpretations.

§ 800.3 Reliance on interpretations.

On and after publication of this part in the FEDERAL REGISTER, the interpreta-

tions contained therein shall be in effect and shall remain in effect until they are modified, rescinded, or withdrawn. So long as they remain effective and are not modified, amended, rescinded, or determined by judicial authority to be incorrect, they may be relied upon as provided in section 10 of the Portal-to-Portal Act of 1947 (61 Stat. 84, 29 U.S.C. 251 et seq., discussed in Part 790 of this chapter). In addition, the Supreme Court has recognized that such interpretations of this Act "provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" and "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance". Further, as stated by the Court: "Good administration of the Act and good judicial administration alike require that the standards of public enforcement and those for determining private rights shall be at variance only where justified by very good reasons." (Skidmore v. Swift, 323 U.S. 134.)

§ 800.4 Matters discussed in this part.

(a) This part primarily discusses the meaning and application of the equal pay provisions in section 6(d) of the Act. These provisions are discussed in some detail in Subpart B. The enforcement provisions applicable to the equal pay requirements are discussed in §§ 800.119–121. In addition, § 800.5 et seq. of this subpart briefly consider or make reference to the guides for determining what interstate commerce activities will bring employees and employers within the basic coverage of the Act so that its equal pay requirements may apply. The meaning and application of other provisions of the Act are discussed only to make clear their relevance to the equal pay provisions and are not considered in detail in this part.

(b) The interpretations in this part provide statements of general principles applicable to the subjects discussed and illustrations of the application of these principles to situations that frequently arise. They do not and cannot refer specifically to every problem which may be met in the consideration of the provisions discussed. The omission to discuss a particular problem in this part or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor or the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy. Questions on matters not fully covered by this part may be addressed to the Administrator of the Wage and Hour and Public Contracts Divisions, United States Department of Labor, Washington 25, D.C., or to any Regional Office of the Divisions.

(c) Interpretations published elsewhere in this title deal with such subjects as the general coverage of the Act (Part 776 of this chapter), methods of payment of wages (Part 531, Subpart C of this chapter), computation and payment of overtime compensation (Part 778 of this chapter), retailing of goods or services (Part 779 of this chapter), hours worked (Part 785 of this chapter), and child labor provisions (Part 1500 of this title). Regulations on recordkeeping are contained in Part 516 of this chapter, and regulations defining exempt bona fide executive, administrative, professional employees, and outside salesmen are contained in Part 541 of this chapter. Regulations and interpretations on other subjects concerned with the application of the Act are listed in the table of contents to this chapter. Copies of any of these documents may be obtained from any office of the Wage and Hour and Public Contracts Divisions.

BASIC COVERAGE AND EXEMPTION PROVISIONS AFFECTING APPLICATION OF EQUAL PAY REQUIREMENTS

§ 800.5 Basic coverage as related to the equal pay provisions.

The equal pay provisions neither extend nor curtail coverage of the Fair Labor Standards Act but simply place within the new requirements those employers and employees who were already subject to the Act's minimum wage requirements (H. Rept. No. 309, 88th Cong., 1st sess., p. 2). The nature of the employment coming within the basic or general coverage of the Act should therefore be clearly understood. The general coverage of the Act extends, and its requirements apply except as otherwise provided by a specific exemption, to every employee who is "engaged in commerce or in the production of goods for commerce" and every employee who is "employed in an enterprise engaged in commerce or in the production of goods for commerce" or "by an establishment" qualifying as such an enterprise, as specified and defined in the statute. What employees are so engaged or employed must be ascertained in the light of the definitions and delimitations set forth in the statute, giving due regard to authoritative interpretations by the courts and to the legislative history of the Act, as amended. In §§ 800.6 to 800.12, the employment which comes within this basic coverage is briefly outlined. For a more comprehensive discussion and a detailed explanation of the applicable principles, reference should be made to the interpretations on general coverage contained in Part 776 of this chapter.

§ 800.6 General coverage of employees "engaged in commerce".

(a) The minimum wage provisions of the Act have applied since 1938, and continue to apply along with the new equal pay provisions, except as otherwise provided by specific exemptions in the Act, to employees "engaged in commerce". "Commerce" is broadly defined in section 3(b) of the Act. It includes both interstate and foreign commerce and is not limited to transportation across State lines, or to activity of a commercial character. All parts of the movement among the several States or between any State and any place outside thereof of persons or things, tangibles or intangibles, including communication of information and intelligence constitute movement in "commerce" within the statutory definition. This includes those parts of any such activity which take place wholly within a single State. In addition, the instrumentalities for carrying on such commerce are so inseparable from the commerce itself that employees working on such instrumentalities within the borders of a single State are, by virtue of the contribution made by their work to the movement of the commerce, "engaged in commerce" within the meaning of the Act.

(b) Consistent with the purpose of the Act to apply the Federal standards "throughout the farthest reaches of the channels of interstate commerce", the courts have made it clear that the employees "engaged in commerce" to whom coverage is extended include every employee employed in the channels of such commerce or in activities so closely related to such commerce as to be considered a part of it as a practical matter. See Walling v. Jacksonville Paper Co., 317 U.S. 564; Overstreet v. North Shore Corp., 318 U.S. 125; Mitchell v. Volmer, 349 U.S. 427; Mitchell v. Lublin, 358 U.S. 207; see also Borden Co. v. Borella, 325 U.S. 679; and see the discussion, with other pertinent court decisions cited, in Part 776 of this chapter. Engaging "in commerce" includes activities connected therewith such as management and control of the various physical processes, together with the accompanying accounting and clerical activities. Thus, employees engaged in interstate or foreign commerce will typically include, among others, employees in distributing industries such as wholesaling or retailing who sell, transport, handle, or otherwise work on goods moving in interstate or foreign commerce as well as workers who order, receive, guard, pack, ship, or keep records of such goods; employees who handle payroll or personnel functions for workers engaged in such activities; clerical and other workers who regularly use the mails, telephone, or telegraph for communication across State lines; and employees who regularly travel across State lines while working. For other illustrations see Part 776 of this chapter.

§ 800.7 General coverage of employees "engaged in * * * the production of goods for commerce".

(a) The minimum wage provisions of the Act also have applied since 1938, and continue to apply along with the new equal pay provisions, except as otherwise provided by specific exemptions in the Act, to employees "engaged in * * * the production of goods for commerce". The broad meaning of "commerce" as defined in section 3(b) of the Act has been outlined in § 800.5. "Goods" is also comprehensively defined in section 3(i) of the Act, and includes "articles or subjects of commerce of any character, or any part or ingredient thereof" not expressly excepted by the statute. The activities constituting "production" of the goods for commerce are defined in section 3(j) of the Act. These are not limited to such work as manufacturing but include handling or otherwise working on goods intended for shipment out of the State either directly or indirectly or for use within the State to

serve the needs of the instrumentalities or facilities by which interstate or foreign commerce is carried on. See United States v. Darby, 312 U.S. 100; Alstate Constr. Co. v. Durkin, 345 U.S. 13. Employees engaged in any closely related process or occupation directly essential to such production of any goods, whether employed by the producer or by an independent employer, are also engaged, by definition, in "production". See § 800.8 and the detailed discussion in Part 776 of this chapter. Further, the courts have recognized that an enterprise producing goods for commerce does not accomplish the actual production of such goods solely with employees performing physical labor on them. Thus, in Borden v. Borella, 325 U.S. 679, it was held that employees engaged in the administration, planning, management, and control of the various physical processes together with the accompanying clerical and accounting activities are, from a productive standpoint and for purposes of the Act, "actually engaged in the production of goods for commerce just as much as are those who process and work on the tangible products" in the manufacturing plants or other producing facilities of the enterprise.

(b) Typically, but not exclusively, employees engaged in the production of goods for interstate or foreign commerce include those who work in manufacturing, processing, and distributing establishments, including wholesale and retail establishments, that "produce" (including handle or work on) goods for such commerce. This includes everyone employed in such establishments, or elsewhere in the enterprises by which they are operated, whose activities constitute "production" of such goods under the principles outlined in paragraph (a) of this section. Thus, employees who sell, process, load, pack, or otherwise handle or work on goods which are to be shipped or delivered outside the State either by their employer or by another firm, and either in the same form or as a part or ingredient of other goods, are engaged in the production of goods for commerce within the coverage of the Act. So also are the office, management, sales, and shipping personnel, and maintenance, custodial, and protective employees who perform, as a part of the integrated effort for the production of the goods for commerce, services related to such production or to such goods or to the plant, equipment, or personnel by which the production is accomplished.

§ 800.8 "Closely related" and "directly essential" activities.

As previously noted in § 800.7 an employee is engaged in the production of goods for interstate or foreign commerce within the meaning of the general coverage provisions of the Act even if his work is not an actual and direct part of such production, so long as he is engaged in a process or occupation which is "closely related" and "directly essential" to it. This is true whether he is employed by the producer of the goods or by someone else who provides goods or services to the producer. See in this connection Kirschbaum v. Walling, 316 U.S. 517, and Mitchell v. Joyce Agency, 348 U.S. 945, affirming 110 F. Supp. 918. A full discussion of "closely related" and "directly essential" work is contained in Part 776 of this chapter. Typical of employees covered under these principles are bookkeepers, stenographers, clerks, accountants, and auditors and other office and white-collar workers, and employees doing payroll, timekeeping, and time study work for the producer of goods; employees in the personnel, labor relations, safety and health, advertising, promotion, and public relations activities of the producing enterprise; work instructors for the producers; employees maintaining, servicing, repairing or improving the buildings, machinery, equipment, vehicles or other facilities used in the production of goods for commerce, and such custodial and protective employees as watchmen, guards, firemen, patrolmen, caretakers, stockroom workers and warehousemen; and transportation workers bringing supplies, materials, or equipment to the producer's premises, removing waste materials therefrom, or transporting materials or other goods, or performing such other transportation activities, as the needs of production may require. These examples are illustrative, rather than exhaustive, of the employees who are "engaged in the production of goods for commerce" by reason of performing activities closely related and directly essential to such production.

§ 800.9 What goods are considered as produced for commerce.

Goods (as defined in 3(i) of the Act) are "produced for commerce" if they are "produced, manufactured, mined, handled or in any other manner worked on" in any State for sale, trade, transportation, transmission, shipment, or delivery, to any place outside thereof. Goods are produced for commerce where the producer intends, hopes, expects, or has reason to believe that the goods or any unsegregated part of them will move (in the same or in an altered form or as a part or ingredient of other goods) in interstate or foreign commerce. If such movement of the goods in commerce can reasonably be anticipated by the producer when the goods are produced, it makes no difference whether he himself or the person to whom the goods are transferred puts the goods in interstate or foreign commerce. The fact that goods do move in interstate or foreign commerce is strong evidence that the producer intended, hoped, expected, or had reason to believe that they would so move. Goods may also be produced "for commerce" where they are to be used within the State and not transported in any form across State lines. This is true where the use to which they are put is one which serves the needs of the instrumentalities or facilities by which interstate or foreign commerce is carried on within the State. These principles are discussed comprehensively in Part 776 of this chapter.

§ 800.10 Coverage is not based on amount of covered activity.

The Act makes no distinction as to the percentage, volume, or amount of activities of either the employee or the employer which constitute engaging in commerce or in the production of goods for commerce. (Mabee v. White Plains Publishing Co., 327 U.S. 128; United States v. Darby, 312 U.S. 100.) As explained more fully in Part 776 of this chapter, the law is settled that every employee whose activities in commerce or in the production of goods for commerce, even though small in amount, are regular and recurring, is considered "engaged in commerce or in the production of goods for commerce". Also, under the definition in section 3(s) of the Act, an enterprise described in any of the five numbered clauses of the subsection is an enterprise "engaged in commerce or in the production of goods for commerce" if, in its activities, some employees are so engaged, "including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person".

§ 800.11 Enterprise coverage under 1961 amendments.

The scope of the added coverage on an enterprise basis, which was provided by the 1961 amendments to the Act, is determined with reference to the special definitions of the term "enterprise" in section 3(r) of the Act and of the term "enterprise engaged in commerce or in the production of goods for commerce" under section 3(s). Under these enterprise coverage provisions, if an enterprise or establishment is an "enterprise engaged in commerce or in the production of goods for commerce" as defined and delimited in section 3(s) of the Act, every employee employed in such enterprise or by such establishment is within the coverage of the minimum wage and the equal pay provisions, except as otherwise specifically provided by the Act. "Enterprise" coverage is discussed comprehensively elsewhere in this chapter. A detailed discussion of the statutory definition of "enterprise" and of enterprise coverage as it relates to enterprises which have retail or service establishments and as it relates to gasoline service establishments is contained in Part 779 of this chapter.

§ 800.12 Exemptions from section 6 provided by section 13.

The equal pay provisions do not apply to employees exempted from the provisions of section 6 under any provision of section 13(a) of the Act. The following employees are among those excluded if their employment fully satisfies all the statutory conditions for exemption: bona fide executive, administrative, and professional employees and outside salesmen, as defined in regulations (see Part 541 of this chapter); employees of certain retail or service establishments (see Part 779 of this chapter); employees of certain nonindustrial laundries and dry cleaning establishments (see Part 781 of this chapter); employees of certain small newspapers (see Act, sec. 13(a)(8)); employees of urban and interurban transit systems which have less than $1,000,000 in annual gross sales (see Act, sec. 13(a)(9)); switchboard operators of independent telephone companies which have fewer than 750 tele-

phones (see Act, sec. 13(a)(11)); employees of a taxicab business (see Act, sec. 13(a)(12)); employees employed in fishing and fish farming (see Part 784 of this chapter); farm workers and employees engaged in specified operations relating to agricultural or horticultural commodities (see Part 780 of this chapter); seamen employed on vessels other than American vessels (see Part 783 of this chapter); employees in certain small forestry and logging operations (See Part 788 of this chapter).

OTHER EQUAL PAY LAWS

§ 800.13 Relation to other laws.

The provisions of various State or other equal pay laws differ from the equal pay provisions set forth in the Fair Labor Standards Act. Where any such legislation and the equal pay provisions of the Fair Labor Standards Act both apply, the principle established in section 18 of the latter Act will be controlling. No provisions of the Fair Labor Standards Act will excuse noncompliance with any State or other law establishing equal pay standards higher than the equal pay standards provided by section 6(d) of the Fair Labor Standards Act. On the other hand, compliance with other applicable legislation will not excuse noncompliance with the equal pay provisions of the Fair Labor Standards Act.

Subpart B—Requirements of the Equal Pay Act of 1963

SCOPE AND APPLICATION IN GENERAL

§ 800.100 The statutory provisions.

The Equal Pay Act of 1963 amended section 6 of the Fair Labor Standards Act by adding thereto a new subsection (d) as follows:

(d)(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this Act.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

§ 800.101 Application to employers.

The prohibition against discrimination in wages on account of sex contained in section 6(d)(1) of the Act (see § 800.100) is applicable to every employer having employees subject to a minimum wage under the Act. The employer may not discriminate on the basis of sex against such employees in any establishment (see § 800.103) in which such employees are employed by him by paying them wages at rates lower than he pays employees of the opposite sex employed in the same establishment for work subject to the equal pay standard—that is, where equal work is performed by such employees and by employees of the opposite sex on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions (see §§ 800.107–800.114). The Act excepts from this general prohibition such differences between the wage rates for such work performed by men and by women employed by the employer in the establishment as can be shown to be based on a factor or factors other than sex (see §§ 800.115–800.118). It should be kept in mind, in determining an employer's obligations under the equal pay provisions, that "employer" and "establishment" as used in these and other provisions of the Act are not synonymous terms. An employer may have more than one establishment in which he employs employees within the meaning of the Act. In such cases, the legislative history makes clear that there shall be no comparison between wages paid to employees in different establishments.

§ 800.102 Pertinent statutory definitions.

The Act provides its own definitions of "employer", "employee", and "employ", under which "economic reality" rather than "technical concepts" determines whether there is employment subject to its terms (Goldberg v. Whitaker House Cooperative, 366 U.S. 28; United States v. Silk, 331 U.S. 704; Rutherford Food Corp. v. McComb, 331 U.S. 722). An "employer", as defined in section 3(d) of the Act, "includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization". An "employee", as defined in section 3(e) of the Act, "includes any individual employed by an employer" and "employ", as used in the Act, is defined in section 3(g) to include "to suffer or permit to work". It should be noted, as explained in the interpretative bulletin on joint employment, Part 791 of this chapter, that in appropriate circumstances two or more employers may be jointly responsible for compliance with the statutory requirements applicable to employment of a particular employee.

§ 800.103 Application to establishments.

The prohibition against discrimination in wages on account of sex contained in section 6(d)(1) of the Act applies "within any establishment" in which employees who must be paid a minimum wage under section 6 are employed by an employer. The term "establishment" as used in section 6(d)(1) has the same meaning as it has in section 13(a)(2) and elsewhere in the Act. Although not expressly defined in the Act, this term has a well settled meaning in the application of the Act's provisions. It refers to a "distinct physical place of business" rather than to "an entire business or enterprise" which may include several separate places of business. This is consistent with the meaning of the term as it is normally used in business and in government, is judicially settled, and has been recognized in the Congress in the course of enactment of amendatory legislation (Phillips v. Walling, 324 U.S. 490; Mitchell v. Bekins Van & Storage Co., 352 U.S. 1027; 95 Cong. Rec. 12505, 12579, 14877; H. Rept. No. 1453, 81st Cong., 1st Sess., p. 25). Each physically separate place of business is ordinarily considered a separate establishment. For example, where a manufacturer operates at separate locations a plant for production of its goods, a warehouse for storage and distribution, several stores from which its products are sold, and a central office for the enterprise, each physically separate place of business is a separate establishment. Under certain circumstances, however, two or more portions of a business enterprise, even though located on the same premises and under the same roof, may constitute more than one establishment. This would ordinarily be the case only if these portions of the enterprise are both physically segregated and engaged in operations which are functionally separated from each other and which have separate employees and maintain separate records. The application of these principles is illustrated further and in more detail by the discussion in §§ 779.303–779.306 of Part 779 of this chapter of the term "establishment" as it relates to retail or service establishments within the meaning of sections 3(s)(1) and 13(a)(2) of the Act.

§ 800.104 Application to employees.

(a) As has been seen, there must be compliance by the employer with the equal pay requirements within any establishment in which employees subject to the Act's minimum wage provisions are employed by him. The Act's concern with wage discrimination by an employer on account of sex to the detriment of his employees who are subject to the minimum wage provisions is not limited either by its language or by its legislative history to those employees whose work is performed on the premises of their employer's establishment. The Act speaks of the employment of employees in the establishment rather than of their engagement in work there. Also, the legislative history of the Equal Pay Act makes it clear that coverage under the equal

pay provisions is equal to that provided by the other provisions of section 6 of the Fair Labor Standards Act, and that those employers and employees who are subject to the minimum wage provisions will be subject to the new provisions on equal pay. (See S. Rept. No. 176, 88th Cong., 1st sess., p. 2; H. Rept. No. 309, 88th Cong., 1st sess., p. 2.) Congress clearly rejected the concept that the equal pay provisions apply only to work performed inside a physical establishment. Otherwise, those employees, subject to section 6 of the Act, would be incongruously deprived of equal pay protection simply because their work is performed away from the physical premises of the establishment in which they are employed. For example, employees of "shopping services" whose work is performed in clients' establishments, rather than on their employer's premises, are nonetheless to be considered employed in their employer's establishment. See Willmark Service Inc. v. Wirtz, 317 F. 2d 486, cert. den., 375 U.S. 897. Similarly, where the only "establishment" of a contractor performing building maintenance services is his office, from which all work is directed, contracts taken, assignments made, employees paid, and related operations carried on, all employees whose work is directed from that place of business are considered to be employed in that establishment. See Mitchell v. Kletjian, d.b.a. University Cleaning Co., 286 F. 2d 40 (C.A. 1).

(b) An employee may be employed in an establishment by an employer subject to the equal pay provisions, and yet not be protected by these provisions. Unless such an employee is one to whom the minimum wage provisions apply, the Act does not afford protection from a discrimination in wages based on sex between such employee and an employee of the opposite sex. This is true both with respect to employees who are not covered under section 6 and with respect to employees to whom section 6 cannot apply by reason of an express exemption in section 13(a) (see § 800.12). More particularly, the equal pay standards have no application with respect to wages paid employees who are neither engaged in or in the production of goods for interstate commerce nor employed in an enterprise which is so engaged.

§ 800.105 Application to labor organizations.

Section 6(d)(2) of the Act prohibits a labor organization, representing employees of an employer having employees subject to the minimum wage provisions of section 6, from engaging in acts that cause or attempt to cause the employer to discriminate against an employee in violation of the equal pay provisions. Agents of the labor organization are also prohibited from doing so. Thus, such a labor organization and its agents must refrain from strike or picketing activities aimed at inducing an employer to institute or maintain a prohibited wage differential, and must not demand any terms or any interpretation of terms in a collective bargaining agreement with such an employer which would require the latter to discriminate in the payment of wages contrary to the provisions of section 6(d)(1). Section 6(d)(2), together with the special provision in section 4 of the Equal Pay Act of 1963 allowing a deferred effective date for application of the equal pay provisions to employees covered by specified existing collective bargaining agreements (see § 800.124), are indicative of the legislative intent that in situations where wage rates are governed by collective bargaining agreements, unions representing the employees shall share with the employer the responsibility for ensuring that the wage rates required by such agreements will not cause the employer to make payments that are not in compliance with the equal pay provisions. For purposes of application to labor organizations of these requirements of section 6(d) of the Act and the enforcement of such requirements under sections 16 and 17 (see § 800.105), section 6(d)(4) of the Act defines the term "labor organization" as meaning "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." This is the same definition of "labor organization" that is used in the Labor Management Relations Act, 1947, and will be applied in the same manner.

§ 800.106 Wages and wage rates.

(a) The term "wages" used in section 6(d)(1) of the Act is considered to have the same meaning it has elsewhere in the Act. As a general rule, in determining compliance with the equal pay provisions, the wages paid by the emlpoyer will be calculated pursuant to the same principles and procedures as have traditionally been followed in calculating such wages for purposes of determining compliance with the minimum wage provisions of the Act. Wages paid to an employee generally include all payments made to or on behalf of the employee as remuneration for employment.

(b) The reasonable cost or fair value of certain perquisites, as provided in section 3(m) of the Act and Part 531 of this chapter is, by definition, a part of the wage paid to an employee for purposes of the Act. Section 3(m) provides that the wage paid to any employee includes "the reasonable cost, as determined by the Secretary of Labor, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees". As an exception to this rule, section 3(m) provides the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: A further provision of section 3(m) authorizes the Secretary "to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value." The statute directs that such evaluations, "where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee". As explained in Part 531 of this chapter, it is the above provision of the Act which governs the payment, otherwise than in cash, of wages which the Act requires. Regulations under which the reasonable cost or fair value of such facilities furnished may be computed for inclusion as part of the wages required by the Act are also contained in Part 531 of this chapter.

(c) The term "wage rate" used in section 6(d)(1) of the Act is considered to encompass all rates whether calculated on a time, piece, job, incentive or other basis. The term includes the rate at which overtime compensation is paid as well as the rate at which straight time compensation is paid. Thus, where men and women receive the same straight-time rates for work subject to the equal pay standards, but the men receive an overtime premium rate of twice the straight-time rate while the women receive only one and one-half times the straight-time rate for overtime, a prohibited wage rate differential is being paid. It is clear from the proviso included in section 6(d)(1) that where a wage rate differential in violation of the provision is paid, the violation cannot be corrected by reducing the wage rate of any employee.

The Equal Pay for Equal Work Standard

§ 800.107 The job concept in general.

(a) Section 6(d)(1) of the Act prohibits an employer from paying to employees of one sex wages at rates lower than he pays employees of the opposite sex for "equal work on jobs" described by the statute in terms of equality of the "skill, effort, and responsibility" required for performance and similarity of the "working conditions" under which they are performed. This descriptive language refers to "jobs". In applying the various tests of equality to the requirements for the performance of such jobs, it will generally be necessary to scrutinize the job as a whole and to look at the characteristics of the jobs being compared over a full work cycle. This will be true because the kinds of activities required to perform a given job and the amount of time devoted to such activities may vary from time to time. As the legislative history makes clear, the equal pay standard provided by the Act is designed to eliminate any wage rate differentials which are based on sex; nothing in the equal pay provisions is intended to prohibit differences in wage rates that are based not at all on sex but wholly on other factors. (See Sen. Rept. No. 176, 88th Cong. 1st sess., p. 4; H. Rept. No. 309, 88th Cong. 1st sess., p. 2.)

§ 800.108 Effect of differences between jobs in general.

There is evidence that Congress intended that jobs of the same or closely related character should be compared in applying the equal pay for equal work standard (Daily Cong. Record, House,

May 23, 1963, pp. 8686, 8698). Jobs that require equal skill, effort, and responsibility in their performance within the meaning of the Act are usually not identical in every respect. (Daily Cong. Rec., Senate, May 28, 1963, p. 9219.) Congress did not intend that inconsequential differences in job content would be a valid excuse for payment of a lower wage to an employee of one sex than to an employee of the opposite sex if the two are performing equal work on essentially the same jobs in the same establishment. It will be remembered in this connection that the National War Labor Board (to the experience of which attention is directed in the Senate and House Committee Reports) developed a policy of ignoring inconsequential differences in job content in administering equal pay for equal work provisions. (Brown & Sharp Manufacturing Co. Case No. 2228–D, September 25, 1942). On the other hand, it is clear that Congress did not intend to apply the equal pay standard to jobs substantially differing in their terms and conditions. Thus, the question of whether a female bookkeeper should be paid as much as a male file clerk required to perform a substantially different job is outside the purview of the equal pay provisions. It is also clear that the equal pay standard is not to be applied where only men are employed in the establishment in one job and only women are employed in a dissimilar job. For example, the standard would not apply where only women are employed in clerk typist positions and only men are employed in jobs as administrative secretaries if the latter really require substantially different duties.

§ 800.109 Job content rather than job titles as controlling.

Application of the equal pay standard is not dependent on job titles or classifications but rather depends on actual job requirements and performance. For example, if under the job title of "retail clerk", some employees are engaged only in selling major electrical appliances and others in selling infants' wear, the requirements of the jobs would possibly support a determination that they are in fact substantially different. However, in all situations including such as those which may exist between the job of a "retail clerk" selling men's wear and that of a "retail clerk" selling infants' wear, the application of the equal pay standard will have to be determined by applying the terms of the statute to the full factual situation.

§ 800.110 General guides for testing equality of skill, effort and responsibility.

What constitutes equal skill, equal effort, or equal responsibility cannot be precisely defined. In interpreting these key terms of the statute, the broad remedial purpose of the law must be taken into consideration. The terms are considered to constitute three separate tests, each of which must be met in order for the equal pay standard to apply. In applying the tests it should be kept in mind that "equal" does not mean "identical." (Daily Congressional Record, Senate, May 28, 1963, p. 9219.) Insubstantial or minor differences in the degree or amount of skill, or effort, or responsibility required for the performance of jobs will not render the equal pay standard inapplicable. On the other hand, substantial differences, such as those customarily associated with differences in wage levels when the jobs are performed by persons of one sex only, will ordinarily demonstrate an inequality as between the jobs justifying differences in pay.

§ 800.111 Equal skill.

(a) The jobs to which the equal pay standard is applicable are jobs requiring equal skill in their performance. Where the amount or degree of skill required to perform one job is substantially greater than that required to perform another job, the equal pay standard cannot apply even though the jobs may be equal in all other respects. Skill includes consideration of such factors as experience, training, education and ability. It must be measured in terms of the performance requirements of the job. If an employee must have essentially the same skill in order to perform either of two jobs, the jobs will qualify under the Act as jobs the performance of which requires equal skill, even though the employee in one of the jobs may not exercise the required skill as frequently or during as much of his working time as the employee in the other job. Possession of a skill not needed to meet requirements of the job cannot be considered in making a determination regarding equality of skill. The efficiency of the employee's performance in the job is not in itself an appropriate factor to consider in evaluating skill.

(b) As a simple illustration of the principle of equal skill, suppose that a man and a woman have jobs classified as typists. Both jobs require them to spend two-thirds of their working time in typing and related activities, such as proofreading and filing, and the remaining one-third in diversified tasks, not necessarily the same. Since there is no difference in the skills required for most of their work, whether or not these jobs require equal skill in performance will depend upon the nature of the work the employees must actually perform during this latter period to meet the requirements of the jobs. If it happens that the man, during the remaining one-third of the time, spends twice as much time operating a calculator as does the woman who prefers and is allowed to do most of the copying work required in the office, this would not preclude a conclusion that the performance of the two jobs requires equal skill if there is actually no distinction in the performance requirements of such jobs so far as the skills utilized in these tasks are compared. Even if the man were required to do all of the calculating work in order to perform his job, it is not at all apparent that the jobs would require substantially different degrees of skill unless it should appear that operation of that calculator requires more training and can command a higher wage than the typing and related work performed by both the man and the woman, and that the work required to be done by the woman in the remaining one-third of the time requires less training and is recognized as commanding a lower wage whether performed by a man or a woman.

§ 800.112 Equal effort.

The jobs to which the equal pay standard is applicable are jobs that require equal effort to perform. Where substantial differences exist in the amount or degree of effort required to be expended in the performance of jobs, the equal pay standard cannot apply even though the jobs may be equal in all other respects. Effort is concerned with the measurement of the physical or mental exertion needed for the performance of a job. Where jobs are otherwise equal under the Act, and there is no substantial difference in the amount or degree of effort which must be expended in performing the jobs under comparison, the jobs may require equal effort in their performance even though the effort may be exerted in different ways on the two jobs. Differences only in the kind of effort required to be expended in such a situation will not justify wage differentials. To illustrate this principle, suppose that a male checker employed by a supermarket is required to spend part of his time carrying out heavy packages or replacing stock involving the lifting of heavy items whereas a female checker is required to devote an equal degree of effort during a similar portion of her time to performing fill-in work requiring greater dexterity—such as rearranging displays of spices or other small items. The difference in kind of effort required of the employees does not appear to make their efforts unequal in any respect which would justify a wage differential, where such differences in kind of effort expended to perform the job are not ordinarily considered a factor in setting wage levels. Further, the occasional or sporadic performance of an activity which may require extra physical or mental exertion is not alone sufficient to justify a finding of unequal effort. Suppose, however, that men and women are working side by side on a line assembling parts. Suppose further that one of the men who performs the operations at the end of the line must also lift the assembly, as he completes his part of it, and place it on a waiting pallet. In such a situation, a wage rate differential might be justified for the person who is required to expend the extra effort in the performance of his job. Such a situation, however, would not justify the payment of a higher wage rate to all men on that line than to all women on it. In general, a wage rate differential based on differences in the degree or amount of effort required for performance of jobs must be applied uniformly to men and women. For example, if all women and some of the men performing a particular type of job do not perform heavy lifting, and some men do, payment of a higher wage rate to all of the men than to the women would constitute a prohibited wage rate differential if the equal pay provisions otherwise apply.

§ 800.113 Equal responsibility.

The jobs to which the equal pay standard applies are jobs in the performance

of which equal responsibility is required. Responsibility is concerned with the degree of accountability required in the performance of the job, with emphasis on the importance of the job obligation. Differences in the degree of responsibility required in the performance of otherwise equal jobs cover a wide variety of situations. The following illustrations, which are by no means exhaustive, may suggest the nature or degree of differences in responsibility which will constitute unequal work. There are many situations where one employee of a group performing jobs which are equal in other respects is required from time to time to assume supervisory duties for reasons such as the absence of the regular supervisor. Suppose, for instance, that it is the employer's practice to pay a higher wage rate to such a "relief" supervisor with the understanding that during the intervals in which he performs supervisory duties he is in training for a supervisory position. In such a situation, payment of the higher rate to him might well be based solely on the additional responsibility required to perform his job and the equal pay provisions would not require the same rates to be paid to an employee of the opposite sex in the group who does not have an equal responsibility. There would clearly be no question concerning such a wage rate differential if the employer pays the higher rate to both men and women who are called upon from time to time to assume such supervisory responsibilities. Other differences in responsibilities of employees in generally similar jobs may require similar conclusions. Sales clerks, for example, who are engaged primarily in selling identical or similar merchandise may be given different responsibilities. Suppose that one employee of such a group (who may be either a man or a woman) is authorized and required to determine whether to accept payment for purchases by personal checks of customers. The person having this authority to accept personal checks may have a considerable additional degree of responsibility which may materially affect the business operations of the employer. In this situation, payment of a higher wage rate to this employee would be permissible. On the other hand, there are situations where one employee of the group may be given some minor responsibility which the others do not have (e.g., turning out the lights in his department at the end of the business day) but which is not of sufficient consequence or importance to justify a finding of unequal responsibility. As another example of a minor difference in responsibility, suppose that office employees of both sexes work in jobs essentially alike but at certain intervals a male and female employee performing otherwise equal work within the meaning of the statute are responsible for the office payroll. One of these employees may be assigned the job of checking time cards and compiling the payroll list. The other, of the opposite sex, may be required to make out paychecks, or divide up cash and put the proper amounts into pay envelopes after drawing a payroll check. In such circumstances, although some of the employees' duties are occasionally dissimilar, the difference in responsibility involved would not appear to be of a kind that is recognized in wage administration as a significant factor in determining wage rates. Under such circumstances, this difference would seem insufficient to justify a wage rate differential between the man's and the woman's job if the equal pay provisions otherwise apply.

§ 800.114 Performance under similar working conditions.

In order for the equal pay standard to apply, the jobs must be performed under similar working conditions. It should be noted that the statute adopts the flexible standard of similarity as a basis for testing this requirement. In determining whether the requirement is met, a practical judgment is required in the light of whether the differences in working conditions are the kind customarily taken into consideration in setting wage levels. The mere fact that jobs are in different departments of an establishment will not necessarily mean that the jobs are performed under dissimilar working conditions. This may or may not be the case. Generally, employees performing jobs requiring equal skill, effort and responsibility are likely to be performing them under similar working conditions. However, in situations where some employees performing work meeting these standards have working conditions substantially different from those required for the performance of other jobs the equal pay principle would not apply. For example, if some sales persons are engaged in selling a product exclusively inside a store and others employed by the same establishment spend a large part of their time selling the same product away from the establishment, the working conditions would be dissimilar. Also, where some employees do repair work exclusively inside a shop while others employed by the shop spend most of their time doing similar repair work in customers' homes, there would not be similarity in working conditions. On the other hand, slight or inconsequential differences in working conditions that are essentially similar would not justify a differential in pay. Such differences are not usually taken into consideration by employers or in collective bargaining in setting wage rates.

Exceptions to Equal Pay Standard

§ 800.115 Application of exceptions in general.

(a) Section 6(d)(1) of the Act provides three specific exceptions and one broad general exception to its general standard requiring that employees doing equal work be paid equal wages, regardless of sex. Under these exceptions, where it can be established that a differential in pay is the result of a wage payment made pursuant to a seniority system, a merit system, a system measuring earnings by quantity or quality of production, or that the differential is based on any other factor other than sex, the differential is expressly excluded from the statutory prohibition of wage discrimination based on sex. The legislative intent was stated to be that any discrimination based upon any of these exceptions shall be exempted from the operation of the statute. These exceptions recognize, as do the reports of the legislative committees, that there are factors other than sex that can be used to justify a wage differential, even as between employees of opposite sexes performing equal work on jobs which meet the statutory tests of equal skill, effort, and responsibility and similar working conditions. (See H. Rept. No. 309, S. Rept. No. 176, 88th Cong., 1st sess.)

(b) The facts necessary to establish that a wage differential has a basis specified in any of the foregoing exceptions are peculiarly within the knowledge of the employer. If he relies on the excepting language to exempt a differential in pay from the operation of the equal pay provisions, he will be expected to show the necessary facts. Thus, such a showing will be required to demonstrate that a payment of wages to employees at a rate less than the rate at which he pays employees of the opposite sex is based on a factor other than sex where it appears that such payments are for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions within the meaning of the statute. After careful examination of the legislative history and the judicial precedents, this is believed to be the most reasonable construction of the law and the one which will be approved by the courts. However, because there is some legislative history that could support a different view, the reasons for reaching the foregoing conclusions are explained in some detail in paragraph (c) of this section.

(c) The legislative history of the Equal Pay Act amendments to the Fair Labor Standards Act includes some statements in the House debate, by a member of the House committee who was an active sponsor of the legislation in the form approved by the committee, expressing a view differing from that stated in paragraph (b) of this section. The opinion expressed in these statements appears to be that the burden of establishing a prima facie case of violation of the equal pay provisions includes not only a showing of the facts necessary to establish a failure to comply with the Act's general standard, but also a showing that no facts exist that could bring the wage differential within an exception. In this view, the employer would not have to show facts necessary to prove the exception as as an affirmative defense. (Daily Cong. Rec., House May 23, 1963, p. 8698.) But if the exceptions are intended to have an exempting effect, as was indicated by House committee spokesmen (H. Rept. No. 309, 88th Cong., 1st sess., p. 3; statement of Subcommittee Chairman Thompson, Daily Cong. Rec., House, May 23, 1963, p. 8685), it seems plain that a view such as that expressed above is not consistent with the general rule established by the courts that the application of an exemption under this Act is a matter of affirmative defense and the employer urging such an exemption has the

burden of showing that it applies. (See Phillips v. Walling, 334 U.S. 490; Arnold v. Kanowsky, 361 U.S. 388; Walling v. General Industries Co., 330 U.S. 545; Mitchell v. Kentucky Finance Co., 359 U.S. 290.) On balance, it would be difficult to conclude from the legislative history that it was the intent of Congress to supersede this established rule by applying a different rule to these provisions than to other exemptions from section 6 or 7. The House committee report emphasized that the "now familiar system of * * * administration, and enforcement, * * * will be utilized fully to complement the new provision" and many statements in the legislative debates as well as the report of the Senate committee further indicate a well-understood legislative intent to apply and enforce the equal pay provisions in a manner consistent with the familiar procedures traditionally followed under the Act in the administration and enforcement of its labor standards. (H. Rept. No. 309, S. Rept. No. 176, 88th Cong. 1st sess.; Daily Cong. Rec., House, May 23, 1963, pp. 8692, 8705; Daily Cong. Rec., Senate, May 28, 1963, pp. 9219–9220.) Also pertinent is the understanding expressed by the House sponsors that a "bona fide program" that "does not discriminate on the basis of sex will serve as a valid defense to a charge of discrimination" (H. Rept. No. 309, 88th Cong. 1st sess.; Daily Cong. Rec., House, May 23, 1963, p. 8685) and the clarifying remarks of the subcommittee chairman managing the House-passed legislation in the Senate, who said: "The employer's defense, if it is based on an employer's plan, must be a bona fide one; and the burden of demonstrating the legitimacy of that defense will rest upon the employer." (Daily Cong. Rec., House, May 28, 1963, p. 9219.) On review of the legislative history as a whole, therefore, the most reasonable conclusion appears to be that the position expressed in paragraph (b) of this section is the better view, and that it is consistent with the legislative intent to consider the statutory exceptions, like other exemptions from section 6, as matters of affirmative defense and to require an employer who believes he comes within them to show facts establishing that this is so.

(d) A showing that a wage differential is based on a factor other than sex, so as to come within one of the exceptions in section 6(d)(1), may sometimes be incomplete without a showing that there is a reasonable relationship between the amount of the differential and the weight properly attributable to the factor other than sex. To illustrate, suppose that male clerks who work 40 hours each week and female clerks who work 35 hours each week are performing equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions. If they are paid weekly salaries for this work, a differential in the amounts could be justified as based on a difference in hours of work, a difference based on a factor other than sex which the chairman of the House subcommittee stated would "be exempted under this act." (Daily Cong. Rec., House, p. 8685, May 23, 1963.) But if the difference in salaries paid is too great to be accounted for by the difference in hours of work, as where the male clerks are paid $90 for their 40-hour week (equal to $2.25 an hour) and the female clerks receive only $70 for their 35-hour week (equal to $2.00 an hour), then it would seem necessary to show some other factor other than sex as the basis for the unexplained portion of the wage differential before a conclusion that there is no wage discrimination based on sex would be warranted.

§ 800.116 Excepted "systems".

The exceptions for a seniority "system", a merit "system", and a "system" for measuring earnings by quantity or quality of work are not restricted to, although they include, formal systems or systems or plans that are reduced to writing. Such formal or written systems or plans may, of course, provide better evidence of the actual factors which provide a basis for a wage differential, but any informal or unwritten system or plan which can be shown to provide the basis for differentials in wage rates because of seniority, merit, or quantity or quality of production may qualify under the statutory language if it can be demonstrated that the standards or criteria applied under it are applied pursuant to an established plan the essential terms and conditions of which have been communicated to the affected employees.

§ 800.117 Sex must not be a factor in excepted wage differential.

While differentials in the payment of wages are permitted when it can be shown that they are based on a seniority system, a merit system, a system measuring earnings by quantity or quality of production, or on any other factor other than sex, the requirements for such an exception are not met unless the factor of sex provides no part of the basis for the wage differential. If these conditions are met, the fact that application of the system for measuring earnings results in higher average earnings for employees of one sex than for employees of the opposite sex performing equal work would not constitute a prohibited wage differential. However, to come within the exempting provisions, any system or factor of the type described pursuant to which a wage rate differential is paid must be applied equally to men and women whose jobs require equal skill, effort and responsibility and are performed under similar working conditions. Any evaluation, incentive, or other payment plan which establishes separate and different "male rates" and "female rates" without regard to job content will be carefully examined to determine if these rate differentials are based on sex in violation of the equal pay requirements.

§ 800.118 Application of exceptions illustrated.

(a) When applied without distinction to employees of both sexes, shift differentials, incentive payments, production bonuses, performance and longevity raises and the like will not result in equal pay violations. For example, in an establishment where men and women are employed on a job, but only men work on the night shift for which a night shift differential is paid, such a differential would not be prohibited. However, the payment of a higher hourly rate to all men on that job for all hours worked because some of the men may occasionally work nights would raise questions as to discrimination based on sex.

(b) The following examples illustrate a few applications of the exception provisions:

(1) *"Red circle rates."* The term "red circle rates" describes certain unusual, higher than normal, wage rates which are maintained for many reasons. For instance, an employer who must reduce help in a skilled job may transfer employees to less demanding work without reducing their pay, in order to have them available when they are again needed for their former jobs. Although employees traditionally engaged in performing the less demanding work would be paid at a lower rate than those employees transferred from the more skilled jobs, the resultant wage differential would not constitute a violation of the equal pay provisions since the differential is based on factors other than sex. This would be true during the period of time for which the "red circle" rate is bona fide.

(2) *Temporary reassignments.* For a variety of reasons an employer may require an employee, for a short period, to perform the work of a job classification other than the employee's regular classification. If the employee's rate for his regular job is higher than the rate usually paid for the work to which he is temporarily reassigned, the employer may continue to pay him the higher rate, under the "red circle" principle. Temporary reassignments may also involve the opposite relationship of wage rates. Thus, an employee may be required, during the period of temporary reassignment, to perform work for which employees of the opposite sex are paid a higher wage rate than that paid for the duties of the employee's regular job classification. In such a situation, the employer may continue to pay the reassigned employee at the lower rate, if the rate is not based on quality or quantity of production, and if the reassignment is in fact a temporary one. If a piece rate is paid employees of the opposite sex who perform the work to which the employee in question is reassigned, failure to pay that employee the same piece rate paid such other employees would raise questions of discrimination based on sex. Also, failure to pay the higher rate to the reassigned employee after it becomes known that the reassignment will not be of a temporary nature would raise a question whether sex rather than the temporary nature of the assignment is the real basis for the wage differential. Generally, failure to pay the higher rate for a period longer than one month will raise questions as to whether the reassignment was in fact intended to be a temporary one.

(3) *Entrance rates.* Some firms follow a practice of paying a range of rates to newly hired employees. Differentials in entrance rates will not constitute a violation of the equal pay principle if the factors taken into consideration in determining which rate is to be paid each employee are applied equally to men and women. This would be true, for example, if all persons who have a parent employed by the firm are paid at the highest rate of the rate range whether they are men or women. However, if in a particular establishment all persons of one sex tend to be paid at the lowest rate of the range and employees of the opposite sex hired to perform the same work tend to be paid at the highest rate of the range, and if no specific factor or factors other than sex appear to be associated with the difference in pay, a serious question would be raised as to whether the pay practice involves prohibited wage differentials.

(4) *Training programs.* Employees employed under a bona fide training program may, in the furtherance of their training, be assigned from time to time to various types of work in the establishment. At such times, the employee in training status may be performing equal work with nontrainees of the opposite sex whose wages or wage rates may be unequal to those of the trainee. Under these circumstances, provided the rate paid to the employee in training status is paid, regardless of sex, under the training program, the differential can be shown to be attributable to a factor other than sex and no violation of the equal pay standard will result.

(5) *Part-time employees.* The payment of a different wage to employees who work only a few hours a day than to employees of the opposite sex who work a full day will not necessarily involve noncompliance with the equal pay provisions, even though both groups of workers are performing equal work in the same establishment. No violation of the equal pay standards would result if, for example, the difference in working time is the basis for the pay differential, and the pay practice is applied uniformly to both men and women.

§ 800.119 Investigations.

The Wage and Hour and Public Contracts Divisions are charged with the administration of the Fair Labor Standards Act, including the equal pay provisions. Investigations under the Act will therefore include such inquiry as may be necessary to obtain compliance with the equal pay provisions in cases where they are applicable. As provided in section 11(a) of the Act, authorized representatives of the Divisions may investigate and gather data regarding the wages, hours and other conditions and practices of employment. They may enter establishments and inspect the premises and records, transcribe records, and interview employees. They may investigate whatever facts, conditions, practices or matters are considered necessary to find out whether any person has violated any provisions of the Act or which may aid in enforcement of the Act. Wage-Hour investigators will advise employers regarding any changes necessary or desirable regarding payroll, recordkeeping and other personnel practices which will aid in achieving and maintaining compliance with the law. Complaints, records and other information obtained from employers and employees are treated confidentially.

§ 800.120 Recordkeeping requirements.

Records required to be kept by employers having employees subject to the equal pay provisions under section 6(d) of the Act are set forth in § 516.2 of this chapter.

§ 800.121 Recovery of wages due; penalties for willful violations.

(a) Pursuant to section 6(d)(3) of the Act, wages withheld in violation of the equal pay provisions have the status of unpaid minimum wages or unpaid overtime compensation under the Fair Labor Standards Act. This is true both of the additional wages required by the Act to be paid to an employee to meet the equal pay standard, and of any wages that the employer should have paid an employee whose wages he reduced in violation of the Act in an attempt to equalize his pay with that of an employee of the opposite sex performing equal work, on jobs subject to the equal pay standard.

(b) The following methods are provided under sections 16 and 17 of the Act for recovery of unpaid wages: The Administrator of the Wage and Hour and Public Contracts Divisions may supervise payment of back wages and, in certain circumstances, the Secretary of Labor may bring suit for back pay upon the written request of the employee. The employee may sue for back pay and an additional sum, up to the amount of back pay, as liquidated damages, plus attorney's fees and court costs. The employee may not bring suit if he has been paid back wages under supervision of the Administrator, or if the Secretary has filed suit to collect the wages. The Secretary may also obtain a court injunction to restrain any person from violating the law, including the unlawful withholding by an employer of proper compensation. A two-year statute of limitations applies to the recovery of unpaid wages.

(c) Willful violations of the Act may be prosecuted criminally and the violator fined up to $10,000. A second conviction for such a violation may result in imprisonment.

(d) The equal pay provisions are an integral part of section 6 of the Act, violation of any provision of which by any person, including any labor organization or agent thereof, is unlawful, as provided in section 15(a) of the Act. Accordingly, any labor organization, or agent thereof, who violates and provision of section 6(d) of the Act is subject to injunction proceedings in accordance with the applicable provisions of section 17 of the Act. Any such labor organization, or agent thereof, who wilfully violates the provisions of section 15 is also liable to the penalties set forth in section 16(a) of the Act.

EFFECTIVE DATE

§ 800.122 The statutory provision.

Section 4 of the Equal Pay Act of 1963 provides as follows with respect to the effective date of its amendments to the Fair Labor Standards Act:

SEC. 4. The amendments made by this Act shall take effect upon the expiration of one year from the date of its enactment: *Provided*, That in the case of employees covered by a bona fide collective bargaining agreement in effect at least thirty days prior to the date of enactment of this Act, entered into by a labor organization (as defined in section 6(d)(4) of the Fair Labor Standards Act of 1938, as amended), the amendments made by this Act shall take effect upon the termination of such collective bargaining agreement or upon the expiration of two years from the date of enactment of this Act, whichever shall first occur.

§ 800.123 General effective date.

The equal pay provisions generally are effective on June 11, 1964. Full compliance is required on that date except in the case of certain employees covered by collective bargaining agreements for whom the statute further defers the time of its application.

§ 800.124 Effective date for employees covered by collective bargaining agreements.

The application of the equal pay provisions is deferred as to employees covered by bona fide collective bargaining agreements, which were in effect on May 11, 1963, and which do not terminate until some date after June 11, 1964. As to employees covered by such agreements the provisions will become effective on the termination date of the agreement or on June 11, 1965, whichever occurs first. In view of the statutory reference to "employees" covered by certain collective bargaining agreements, the Act's effective date may differ as to employees employed in the same establishment where more than one union agreement is involved or part of the employees are not covered by such an agreement.

Signed at Washington, D.C., this 21st day of April 1964.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 64-4091; Filed, Apr. 24, 1964; 8:46 a.m.]

Title 31—MONEY AND FINANCE: TREASURY

Chapter I—Monetary Offices, Department of the Treasury

PART 53—INSTRUCTIONS OF THE SECRETARY OF THE TREASURY CONCERNING WRONGFULLY WITHHELD GOLD COIN AND GOLD BULLION DELIVERED AFTER JANUARY 17, 1934

PART 54—GOLD REGULATIONS

Removal of Delivery Requirements for Gold Certificates and General License to Hold Gold Certificates

1. The Order of the Secretary of the Treasury of December 28, 1933, as supplemented and amended by Orders of the Secretary of the Treasury of January 15, 1934, and July 14, 1954, which

required the delivery to the United States of gold bullion, gold certificates and gold coins situated in the United States, except gold coins made prior to April 5, 1933, is hereby amended to exempt gold certificates from the provisions of such Order, as amended. The amendatory order will read as follows:

DEPARTMENT OF THE TREASURY

OFFICE OF THE SECRETARY

Delivery of Gold Coin, Gold Bullion and Gold Certificates to the Treasurer of the United States

Change in Requirements

The Order of the Secretary of the Treasury of December 28, 1933, as supplemented and amended by the Orders of the Secretary of the Treasury of January 15, 1934, and July 14, 1954 (19 F.R. 4331), required the delivery to the United States of gold certificates and gold coin situated in the United States, except gold coins made prior to April 5, 1933.

In my judgment the delivery requirements with respect to gold certificates are no longer necessary to protect the currency system of the United States.

Accordingly, by virtue of the authority vested in me by section 11(n) of the Federal Reserve Act, as amended (12 U.S.C. 248(n)), I hereby amend effective upon publication in the FEDERAL REGISTER, the Order of the Secretary of the Treasury of December 28, 1933, as supplemented and amended by the Orders of the Secretary of the Treasury of January 15, 1934, and July 14, 1954, by deleting "gold certificates" wherever the same appears therein.

Gold certificates will continue to be exchangeable in other lawful coin or currency as provided in 31 U.S.C. 773(a).

In view of the foregoing amendment to the order of the Secretary of the Treasury of December 28, 1933, as supplemented and amended, exempting gold certificates from the provisions thereof, the Instructions of the Secretary of the Treasury Concerning Wrongfully Withheld Gold Coin, Gold Bullion and Gold Certificates Delivered after January 17, 1934 (31 CFR 53.1) are hereby amended by deleting therefrom "gold certificates" wherever the same appears therein.

This amendment is effective upon publication in the FEDERAL REGISTER and is made without notice and public procedure thereon as such proceedings are deemed to be unnecessary.

The heading of Part 53 is changed to read as set forth above, and § 53.1 is amended to read as follows:

§ 53.1 Wrongfully withheld gold coin and gold bullion delivered after January 17, 1934.

The order of the Secretary of the Treasury dated January 15, 1934, as amended, supplementing the order of December 28, 1933, requiring the delivery of gold coin and gold bullion to the Treasurer of the United States provides, in part, as follows:

* * * I, Henry Morgenthau, Jr., Secretary of the Treasury, do hereby fix midnight of Wednesday, January 17, 1934, as the expiration of the period within which any gold coin or gold bullion may be paid and delivered to the Treasurer of the United States in compliance with the requirements contained in such Order of December 28, 1933, as amended.

In the event that any gold coin or gold bullion withheld in noncompliance with said Order and of this Order are offered after January 17, 1934, to the Secretary of the Treasury, the Treasurer of the United States, any United States mint or assay office, or to any fiscal agent of the United States, there shall be paid therefor only such part or none of the amount otherwise payable therefor as the Secretary of the Treasury may from time to time prescribe and the whole or any balance shall be retained and applied to the penalty payable for failure to comply with the requirements of such Order and of this Order. The acceptance of any such coin or bullion after January 17, 1934, whether or not a part or all of the amount otherwise payable therefor is so retained, shall be without prejudice to the right to collect by suit or otherwise the full penalty provided in Section 11(n) of the Federal Reserve Act, as amended, less such portion of the penalty as may have been retained as hereinbefore provided.

Subject to the rights reserved in said Order of January 15, 1934, supplementing the order of December 28, 1933, requiring the delivery of gold coin and gold bullion to the Treasurer of the United States and without prejudice to the right to alter or amend these instructions from time to time by notice to the Treasurer of the United States, the United States mints and assay offices, and the Federal Reserve banks, I do hereby prescribe that in the event that any gold coin or gold bullion held in noncompliance with said order of December 28, 1933, as amended, and said order of January 15, 1934, are offered after January 17, 1934, to the Secretary of the Treasury, the Treasurer of the United States, any United States mint or assay office or to any fiscal agent of the United States, the Secretary of the Treasury, the Treasurer of the United States, any United States mint or assay office, and the fiscal agents of the United States shall pay for such gold coin the dollar face amount thereof, and for gold bullion $20.67 an ounce. Member banks of the Federal Reserve System may receive such gold coin and gold bullion for account of the Treasurer of the United States and forthwith forward the same to the Secretary of the Treasury, the Treasurer of the United States, any United States mint or assay office or any fiscal agent of the United States, whichever is nearest.

(Sec. 3, 48 Stat. 2; 12 U.S.C. 248(n))

2. Section 54.2(b) *Delivery requirements of 1933 gold orders* of the Gold Regulations (31 CFR Part 54) is being amended in order to reflect the removal of the delivery requirements for gold certificates in § 53.1 of this chapter and the addition of § 54.83, licensing the holding of gold certificates. Section 54.2(b) as amended, will read as follows:

§ 54.2 General provisions.

* * * * *

(b) *Delivery requirements of 1933 gold orders.* Executive Order 6102 of April 5, 1933, Executive Order 6260 of August 28, 1933, (31 CFR 1936 ed. Part 50), and the order of the Secretary of the Treasury of December 28, 1933, as amended and supplemented, required that, with certain exceptions, all persons subject to the jurisdiction of the United States deliver to the United States gold coins, gold bullion and gold certificates situated in the United States and held or owned by such persons on the dates of such orders. Gold coins having a recognized special value to collectors of rare and unusual coin, including all gold coins made prior to April 5, 1933, and gold certificates of the type issued before January 30, 1934, have been exempted from such delivery requirement. The regulations in this part do not alter or affect in any way the requirements under said orders to deliver gold bullion, and gold bullion required to be delivered pursuant to such orders is still required to be delivered and may be received in accordance with the Instructions of the Secretary of the Treasury of January 17, 1934 (§ 53.1 of this chapter), subject to the rights reserved in such instructions.

3. A new subpart I, consisting of one section, § 54.83, is being added to the Gold Regulations (31 CFR Part 54). This new subpart, the text of which is set forth below, grants in § 54.83 a general license to all persons subject to the jurisdiction of the United States to acquire, hold, dispose of, export and import United States gold certificates issued before January 30, 1934, which are situated inside or outside the United States. Subpart I will read as follows:

Subpart I—General License To Hold Gold Certificates

§ 54.83—General license; gold certificates.

A general license is hereby granted licensing all persons subject to the jurisdiction of the United States, as defined in § 54.4(13), to acquire, hold, dispose of, export and import United States gold certificates issued before January 30, 1934. This general license applies to any such gold certificates whether situated inside or outside of the United States. Such certificates shall not be redeemable in gold, but may be exchanged at the dollar face amount thereof in other coins and currencies of the United States which may be lawfully acquired and are legal tender for public and private debts.

The foregoing amendment of § 54.2(b) and new subpart I are effective upon publication in the FEDERAL REGISTER. They are added to the Gold Regulations without notice and public procedure thereon as such proceedings are deemed to be unnecessary.

(Sec. 54.83 issued under sec. 5(b), 40 Stat. 415, as amended, sec. 3, 48 Stat. 2; 12 U.S.C. 95a, 12 U.S.C. 248(n); E.O. 6260, August 28, 1933, as amended by E.O. 10896, November 29, 1960, E.O. 10905, January 14, 1961, and E.O. 11037, July 20, 1962; E.O. 9193, as amended, 7 F.R. 5205; 3 CFR 1943 Cum. Supp.)

[SEAL] DOUGLAS DILLON,
Secretary of the Treasury.

[F.R. Doc. 64-4150; Filed, Apr. 24, 1964; 8:52 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER M—MISCELLANEOUS

PART 265—STANDARDS FOR DOCUMENTATION OF TECHNICAL REPORTS UNDER THE DOD SCIENTIFIC AND TECHNICAL INFORMATION PROGRAM

The Director of Defense Research and Engineering approved the following February 18, 1964:

Sec.

AUTHORITY: The provisions of this Part 265 issued under 5 U.S.C. 22.

§ 265.1 Purpose and objective.

(a) This part supplements DoD Instruction 5129.43, "Assignment of Functions for the Defense Scientific and Technical Information Program," dated January 22, 1963; its primary purpose is to simplify and improve document control and cataloging procedures for technical reports derived from research and development (R&D) activities of the Department of Defense.

(b) The objectives and concept of this part and the enclosed R&D Documentation Standards are as follows:

(1) Scientific and technical information is a primary product of research and development activities. Effective handling of the scientific and technical information is an integral part of the work performed under R&D.

(2) Effective communication of scientific and technical information can be achieved, in part, by timely preparation and primary distribution of technical reports prepared by the organization performing the R&D. Handling of reports by receiving organizations can be simplified and improved if standard documentation procedures are adopted.

(3) Long-term availability of the scientific and technical information to scientists and engineers not included in the primary distribution of a technical report depends upon efficient, comprehensive systems for storage and retrieval of technical reports containing the scientific and technical information.

(4) Both the primary distribution of technical reports and the documentary processes for storage and retrieval of the reports can be made more efficient if all DoD technical reports adhere to a single standard for presentation of data used in descriptive cataloging and in the storage and retrieval of reports.

§ 265.2 Applicability and scope.

(a) The provisions of this part apply to the Military Departments and to other DoD components performing R&D. This part covers technical reports prepared by in-house laboratories, contractors, subcontractors, and grantees.

(b) Progress reports containing scientific and technical information of more than transient interest are included within the scope of this part as a special form of technical report; administrative and managerial progress reports are not included. However, the Document Control Data form provided in this part may be used in any report where subsequent storage and retrieval or bibliographic control is desirable.

(c) It is not intended that the provisions of this part affect the content, mode of presentation, or editorial style of the technical report.

§ 265.3 Definitions.

(a) Technical reports are documents written for the permanent record to document results obtained from and recommendations made on scientific and technical activities relating to a single project, task, or contract or relating to a small group of closely-connected efforts within the DoD R&D program.

(b) An abstract is a brief and factual summary of a document. An indicative abstract tells what the author wrote about. It refers to the purpose, the method, the results, and the conclusions. For documentation purposes, it is highly desirable that the abstract of classified reports be unclassified. Therefore, the abstract should include only descriptive statements with the lowest possible security classification.

§ 265.4 Procedures.

(a) *Internal technical reports.* All DoD components responsible for R&D work shall arrange for inclusion of a DD Form 1473,[1] Document Control Data—R&D, in each copy of all technical reports issued on work performed in DoD laboratories and offices.

(b) *Contractor, subcontractor, and grantee technical reports.* (1) All DoD scientific, technical and/or military personnel responsible for the management and direction of R&D work shall indicate in their statement of procurement requirements that a completed DD Form 1473[1] shall be included in each copy of all technical reports prepared by their contractors, subcontractors, and grantees.

(2) It is planned to make the appropriate modifications to ASPR or other DoD procurement instructions so as to require the use of DD Form 1473[1] by contractors, subcontractors, and grantees. Failure to include the Form in DoD scientific and technical reports shall bring into effect the provisions of § 9-207 (Data—Withholding of Payment) of the Armed Services Procurement Regulations (Subchapter A of Title 32).

§ 265.5 Standards for documentation of technical reports.

(a) *Mechanical specifications.* (1) Technical reports will be printed in accordance with the current standards for U.S. Government printing. As of this date, these are contained in "Government Printing & Binding Regulations," published by the Joint Committee on Printing, Congress of the United States; April 1, 1963; No. 15.

(2) All DoD technical reports are subject to further duplication by photographic processes. This requirement will be kept in mind during preparation and reproduction. Specifically:

(i) Reproduced text material will be in the form of black characters on white opaque paper.

(ii) Halftones will be kept at an absolute minimum consistent with the communication of technical information; black-and-white linework is preferred. Linework will be sharp and clear, of consistent density, and reproduced on white opaque paper. Color will be used only when it serves a functional purpose.

(iii) Material presented in the form of charts, tables, or graphs will appear in a final reproduced size large enough to be clearly legible. Graph coordinate rulings or grid lines will be spaced as far apart as practical.

(b) *Document Control Data—R&D.* DD Form 1473[1] will be completed and provided as the last page of each DoD technical report. Instructions for preparation are contained on the form.

(c) *Optional data.* (1) If possible, the important terms (key words) shall have their roles and weights listed under the column headings "A", "B" and "C" which in turn shall refer to paragraphs in the Abstract.

(2) The "role indicators" shall be numbered from 0 (zero) through 10 (ten) and shall have the following meanings:

(i) (*a*) The term indexed in Role 8 represents the concept of primary importance in an intellectual relationship of ideas in a document. If there are a number of such intellectual relationships, there may be a number of terms in Role 8. When Role 8 is used on a number of terms to describe the intellectual relationships in a document, indexers must be certain that they determine if all of them can be used in one link or whether two or more links must be used to prevent false retrieval. Once the indexer has determined what term or terms should properly be assigned in Role 8, selecting other terms and their proper roles will follow logically. The term(s) in Role 8 is the key idea in an indicative abstract statement of document content.

(*b*) Role 8 has the following meanings: the primary topic of consideration is; the principal subject of discussion is; the subject reported is; the major topic under discussion is; there is a description of.

(ii) (*a*) Role 1 is used on terms for materials, devices, apparatus, and equipment which are subjected to processes or operations which modify or change the original identity, composition, configuration, molecular structure, physical state, or physical form of the materials. To be indexed in Role 1, one or more of these characteristics or properties must be changed.

(*b*) Role 1 is used on a form of energy when the purpose of the operation or system is to change the form of energy.

[1] Copies of DD Form 1473 may be obtained from the Departmental Contracting Office.

(c) Role 1 is used on terms for data and data quantities which are inputs to mathematical operations and systems.

(iii) (a) Role 2 is used on terms for materials, alloys, mixtures, devices, equipment, apparatus produced in a process, operation, or system in which materials in Role 1 have had one or more of the following changed or modified: original identity, composition, configuration, molecular structure, physical state, or physical form.

(b) Use Role 2 on data and data quantities derived in a mathematical process or operation from input data indexed in Role 1.

(c) Use Role 2 on a form of energy to which a form of energy in Role 1 has been converted.

(iv) Role 3 has the following meanings: Undesirable component; waste; scrap; rejects (manufactured devices); contaminant; impurity, pollutant, adulterant, or poison in inputs, environments, and materials passively receiving actions; undesirable material present; unnecessary material present; undesirable product, by-product, co-product.

(v) Role 4 is used primarily when a material, mixture, device, etc., is being manufactured, produced, fabricated, or is passively receiving an operation or process, and the content or intent of the information points out how or in what situation or manner it can be or is subsequently used.

(vi) (a) Terms in Role 5 represent only materials present in or introduced into an operation, process, or other material, for the purpose of facilitating completion of the operation or process or to improve the qualities, conditions, or characteristics of the other material.

(b) Materials in Role 5 describe the gas, liquid, or solid in which or on which other materials are processed or operated. Role 5 materials may be present with input materials but are not themselves inputs in the sense of Role 1. In this sense they are "inert" or "neutral."

(c) Role 5 has the following meanings: environment; medium; atmosphere; solvent; carrier (material); support (in a process or operation); vehicle (material); host; absorbent, adsorbent.

(vii) (a) Role 6 is used primarily on terms which represent properties, conditions, qualities, and characteristics serving as causes (independent variables). It may be used on terms for processes, operations, and systems to indicate how using or not using a process, operation, or system affects something in Role 7.

(b) Role 6 may be used on terms such as performance, reliability, and dependability, as qualities or influencing factors of equipment, devices, and apparatus.

(c) When two variables alternately or simultaneously affect each other, index both in Role 6 and in Role 7.

(viii) Role 7 is used almost exclusively on terms representing effects (dependent variables), including concepts such as characteristics, qualities, conditions, and properties as well as terms which describe the ability of materials or devices to do something or to have something done to them.

(ix) Role 9 has the following meanings: Passively receiving an operation or process with no change in identity, composition, configuration, molecular structure, physical state, or physical form; possession such as when preceded by the preposition of, in or on meaning possession; location such as when preceded by the prepositions in, on, at, to, or from meaning location; used with months and years when they locate information (not bibliographic data) on a time continuum.

(x) Role 10 is used to denote means to accomplish the primary topic of consideration or other objective, such as devices, equipment, apparatus, operations, processes, methods, procedures, techniques, test methods, analytical methods, process conditions (if quantified), materials, classes of uses of materials, forms of energy, and inspection methods.

(xi) (a) Role 0 is used with bibliographic or source-identifying data. These are terms such as personal names of authors, corporate authors, dates of publication, and terms which describe the types of documents and which do not describe the informational content of the document.

(b) Role 0 is assigned to adjectives which modify terms in other roles.

(c) Terms in this role play only a minor role in assisting in retrieval; only adjectives in this role contribute to the fineness of discrimination in location of scientific or technical information. Terms indexed in this role, other than adjectives, are primarily description of administrative or control data.

(d) The names of companies; persons; other organizations, such as institutes, universities, and governmental agencies; publications; types of documents; professional societies; plants and laboratories will frequently be used as bibliographic data terms.

(3) If possible, each key word will have a suffix numeral indicating the relative weight of the subject of the key word in describing the technical content of the report. The "weight factors" shall range from 0 (zero) to 3 (three), with the highest weight assigned to the suffix numeral "3". (Unless clear distinctions of weight or importance can be determined, only the suffix numerals "0" and "3" should be used.)

MAURICE W. ROCHE,
Administrative Secretary.

[F.R. Doc. 64-4000; Filed, Apr. 24, 1964; 8:45 a.m.]

Title 46—SHIPPING

Chapter IV—Federal Maritime Commission

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

[General Order 4, Amdt. 5]

PART 510—PRACTICES OF LICENSED INDEPENDENT OCEAN FREIGHT FORWARDERS, OCEAN FREIGHT BROKERS, AND OCEAN GOING COMMON CARRIERS

Compensation on Freight Forwarder Certification

On January 30, 1964, the Federal Maritime Commission published notice of proposed rule making in the FEDERAL REGISTER (29 F.R. 1589) setting forth a proposed revision to paragraph (g) of § 510.24 of the Commission's General Order 4 (46 CFR 510.24(g)). Written comments on the proposed rule were invited and received from interested persons. The Commission has carefully considered the comments submitted and is of the opinion that the text of the proposed amended rule should be adopted without change.

The comments on the proposed rule were generally that the Commission has no statutory authority over the practices of ocean freight brokers, as distinguished from freight forwarders, and therefore that any rule regulating the payment of brokerage commissions would be improper. It was suggested that the proposed rule should be modified to permit licensed ocean freight forwarders to collect brokerage commissions without making the certification required by section 510.24(e) of the rules and section 44(e) of the Shipping Act, 1916, when they are acting in the capacity of ocean freight brokers as distinguished from acting as freight forwarders. The vice of such a rule is that it would make the certification requirements of the rules and section 44(e) of the Shipping Act meaningless. Under such a rule a licensed freight forwarder, when he had not performed such services to make the necessary certification, would merely have to assert that as to that shipment he was acting as a freight broker rather than as a freight forwarder and that therefore his payment from the carrier was not the "compensation" spoken of in section 44 of the Shipping Act, 1916.

The payment of commissions by carriers to freight forwarders, where the forwarder has performed little or no service in connection with the shipment, is a problem which has plagued the ocean freight forwarding industry for years and was one of the primary evils sought to be eliminated by the enactment of section 44. To permit licensed forwarders to receive commissions from carriers on shipments of general cargo where the forwarder has not performed the requisite number of forwarding services would allow wholesale evasion of the provisions of the statute, could open the door to rebating, and would seriously undermine freight forwarder regulation.

We recognize, however, that the payment of brokerage commissions on bulk cargo which is exempted from the tariff filing requirements of section 18(b)(1) of the Shipping Act, 1916, does not present these dangers. The rates on such cargoes are frequently quoted on a spot basis and are permitted under the Shipping Act to fluctuate without the restraints which are imposed upon general cargo rates. It would therefore appear that freight forwarders can and do properly perform active functions in the negotiation between shipper and carrier regarding such cargo without regard to whether forwarding services have also been performed.

Therefore, pursuant to the authority of sections 43 and 44 of the Shipping Act, 1916 (75 Stat. 766; 75 Stat. 522), paragraph (g) of § 510.24 is amended to read as follows:

§ 510.24 Compensation and freight forwarder certification.

* * * * *

(g) No licensee, and no person, firm or corporation directly or indirectly controlled by a licensee or in whom a licensee has a beneficial interest, nor any person, firm or corporation directly or indirectly controlling or having a beneficial interest in a licensee, shall demand, charge or collect any compensation or brokerage from a common carrier by water unless there shall be first filed with such carrier a certificate in the form prescribed in paragraph (e) of this section, and in compliance with section 44(e) of the Shipping Act: *Provided, however,* That the provisions of this paragraph shall not be applicable to brokerage paid on cargoes exempted from the tariff filing requirements of section 18(b)(1) of the Shipping Act, 1916 (46 U.S.C. 817 (b)(1)).

* * * * *

Effective date. The rule herein adopted shall become effective 30 days after date of publication in the FEDERAL REGISTER.

By order of the Commission, April 7, 1964.

[SEAL] THOMAS LISI,
Secretary.

[F.R. Doc. 64-4135; Filed, Apr. 24, 1964; 8:51 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Subpart 3105]

HELIUM

Extraction From Gas Produced From Lands Leased Under the Mineral Leasing Act; Notice of Proposed Rule Making

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C., sec. 181, et seq.), as amended, the Helium Act of 1960 (74 Stat. 918; 50 U.S.C., sec. 167a), as amended, and section 2470 of the Revised Statutes (43 U.S.C., sec. 1201), it is proposed to amend 43 CFR 3105 as set forth below. Additional regulations under this subpart as required will be proposed at a later date.

The purpose of the amendment is to provide for the conservation of helium by authorizing disposition to qualified applicants of rights for the extraction of helium from gas produced from Federal lands.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Bureau of Land Management, Washington 25, D.C., within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

Subpart 3105 is amended to read as follows:

§ 3105.1 Helium.

(a) The Secretary, pursuant to his authority and jurisdiction over Federal lands, may, where helium can be conserved that would otherwise be wasted in production of oil or gas from Government lands embrased in an oil and gas lease or where necessary to prevent drainage of Federally owned deposits of helium, enter into an agreement with a qualified applicant to dispose of the helium of the United States which is being produced or drained, upon such terms and conditions as he deems fair, reasonable, and necessary to conserve such helium.

(b) An agreement shall be subject to the existing rights of the Federal oil and gas lessee. No agreement will become effective without the approval of the Secretary or his authorized representative. The precise nature of any agreement will depend on the conditions and circumstances involved in any particular case.

§ 3105.2 Proposals for recovery of helium from leaseholds valuable for both gas and helium.

(a) The Secretary will accept proposals for the recovery of helium from leaseholds valuable for both gas and helium, from applicants qualified as follows:

(1) Oil and gas lessees as to such areas leased to them.

(2) Other applicants showing satisfactory evidence of contractual agreements with oil and gas lessees for areas known to be valuable for gas and helium.

(b) Written proposals shall be submitted. They need not be in any particular form but must contain information sufficient to permit the Secretary to determine the following:

(1) That the area covered by the proposal is known to be valuable for gas and helium under the conditions of section 3105.1.

(2) That the applicant is qualified under 3105.2(a). Copies of the documents showing qualification under 3105.2(a) (2) must be furnished.

(3) That conservation of helium will be served by the proposal.

(4) That the applicant has the financial and technical capability to carry out the proposal. There must be a complete and detailed showing of the applicant's financial capability, including a full disclosure of the proposed financing for the project.

(5) Each application shall be accompanied by a lease ownership map for each field containing helium to be made subject to the agreement, and for each field, the estimated recoverable gas and helium reserves, the BTU content of the gas, and whether from pipeline, gas well, or residue gas. The application shall show the location and type of the proposed extraction plant, related data, including sources of gas supply, pipeline facilities and such other information as may be necessary to properly evaluate the application.

(c) The proposal and all papers and documents pertinent thereto shall be filed with the Secretary. The filing of a proposal gives no prior right to the applicant and the Secretary may entertain any competing proposals.

(d) Any filing shall include evidence of notice of such filing to all lessees or lessors in the field or fields involved.

(e) Proposals for the purpose of prospecting, exploration, or development of new helium deposits will not be considered.

§ 3105.3 Term and conditions.

(a) Agreements may be coextensive with the life of the leases affected or for a fixed term. Upon termination the reservation of helium to the United States shall be fully operative.

(b) The United States shall have access to all technological data incident to extraction of helium from gas produced from lands under oil and gas lease.

§ 3105.4 Consideration to the United States; renegotiation.

(a) The Secretary shall determine the consideration to be paid by the applicant, which consideration shall be in an amount sufficient to secure to the United States a return on all the values, including recovered helium, and the Secretary shall have the right initially and at five-year intervals to impose an additional royalty on the helium values.

§ 3105.6 Bonds.

The applicant shall be required to submit a bond in such amount and in such form as the Secretary may prescribe to secure the faithful performance of the terms of any agreement made.

STEWART L. UDALL,
Secretary of the Interior.

APRIL 23, 1964.

[F.R. Doc. 64-4129; Filed, Apr. 24, 1964; 8:52 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 980]

TOMATO IMPORT REGULATION

Notice of Proposed Rule-Making

Notice is hereby given that the Secretary of Agriculture is giving consideration to grade, size, quality and inspection regulations that are to be made applicable to the importation of tomatoes into the United States pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601 et seq.).

Consideration will be given to any written data, views, or arguments pertaining thereto, which are filed with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C., 20250, not later than 9 days following publication of this notice in the FEDERAL REGISTER. The proposals are as follows:

§ 980.202 Tomato import regulation No. 9.

Except as otherwise provided, during the period from May 11, 1964, to July 15, 1964, both dates inclusive, no person shall import fresh tomatoes of any variety except Cerasiform type commonly referred to as cherry tomatoes unless they are inspected and meet the requirements of this section.

(a) *Minimum grade and size requirements*—(1) *Grade.* U.S. No. 2, or better, grade.

(2) *Size.* 2 1/32 inches minimum diameter or larger.

(i) *Exceptions to size requirements.* Elongated types, commonly referred to as pear shaped or paste tomatoes and including, but not limited to, San Marzano, Red Top, and Roma varieties are exempt from the minimum size requirement.

(ii) *Tolerance for size.* Not more than ten (10) percent, by count, of the tomatoes in any lot of 7 x 7 (2 1/32 inches minimum diameter to 2 9/32 inches maximum diameter) may be smaller than the specified minimum diameter.

(b) *Minimum quantity.* Any importation which in the aggregate does not exceed 120 pounds, may be imported without regard to the provisions of paragraph (a) of this section.

(c) *Plant quarantine.* No provisions of this section shall supersede the restrictions or prohibitions on tomatoes under the Plant Quarantine Act of 1912.

(d) *Designation of Governmental inspection services.* The Federal or the Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, and the Fruit and Vegetable Division, Production and Marketing Branch, Canada Department of Agriculture, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of tomatoes that are imported, or to be imported, into the United States under the provisions of section 8e–1 of the act.

(e) *Inspection and official inspection certificates.* (1) Inspection by the Federal or Federal-State Inspection Service, by the Fruit and Vegetable Division, Production and Marketing Branch, Canada Department of Agriculture, or by such other governmental inspection service as may be designated, or approved, by the Director, Fruit and Vegetable Division, Agricultural Marketing Service, with appropriate evidence thereof in the form of an official inspection certificate issued by the respective service and applicable to a particular shipment of tomatoes, is required. Each such lot shall be made available and accessible for inspection. Such inspection and certification will be made available in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables and other products (Part 51 of this title). Since inspectors may not be stationed in the immediate vicinity of some smaller ports of entry, importers of uninspected and uncertified tomatoes should make advance arrangements for inspection by ascertaining whether or not there is an inspector located at their particular port of entry. For all ports of entry where an inspection office is not located, each importer must give the specified advance notice to the applicable office listed below prior to the time the tomatoes will be imported.

Ports	Office	Advance notice
All Texas points.	W. T. McNabb, P.O. Box 111, 222 McClendon Bldg., 305 East Jackson St., Harlingen, Tex. (Tel.: Garfield 3-5644.)	1 day.
All Arizona points.	R. H. Bertelson, 136 Grand Ave., P.O. Box 1646, Nogales, Ariz. (Tel.: Atwater 7-2902.)	1 day.
All California points.	Carley D. Williams, 294 Wholesale Terminal Bldg., 784 South Central Ave., Los Angeles, Calif., 90021. (Tel.: Madison 2-8756.)	3 days.
New York City.	Edward J. Beller, 346 Broadway, Room 306, New York, N.Y., 10013. (Tel.: Rector 2-8000, ext. 807.)	1 day.
All other points.	D. S. Matheson, Acting Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Div., AMS, Washington, D.C., 20250. (Tel.: Dudley 8-5870.)	3 days.

(2) Inspection certificates shall cover only the quantity of tomatoes that is being imported at a particular port of entry by a particular importer.

(3) The inspections performed, and certificates issued, by the Federal or Federal-State Inspection Service, or the Fruit and Vegetable Division, Production and Marketing Branch, Canada Department of Agriculture, shall be in accordance with the rules and regulations of the Department governing the inspection and certification of fresh fruits, vegetables and other products (Part 51 of this title). The cost of any inspection and certification shall be borne by the applicant therefor.

(4) Each inspection certificate issued with respect to any tomatoes to be imported into the United States shall set forth, among other things:

(i) The date and place of inspection;

(ii) The name of the shipper, or applicant;

(iii) The commodity inspected;

(iv) The quantity of the commodity covered by the certificate;

(v) The principal identifying marks of the containers;

(vi) The railroad car initials and number, the truck and trailer license number, the name of the vessel, or other identification of the shipment; and

(vii) The following statement, if the facts warrant: Meets U.S. Import requirements under Section 8e–1 of the Agricultural Marketing Agreement Act of 1937.

(f) *Reconditioning prior to importation.* Nothing contained in this part shall be deemed to preclude any importer from reconditioning prior to importation any shipment of tomatoes for the purpose of making it eligible for importation under the act.

(g) *Definitions.* (1) The term "U.S. No. 2" means the U.S. No. 2 grade, as set forth in the United States Standards for Fresh Tomatoes (§§ 51.1855 to 51.1877, inclusive, of this title), including the tolerances set forth therein.

(2) "Importation" means release from custody of the United States Bureau of Customs.

Dated: April 21, 1964.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 64–4141; Filed, Apr. 24, 1964; 8:51 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 4b]

[Notice 64–6A; Docket No. 1987]

STABILITY AND STALLING CHARACTERISTICS, REQUIREMENTS FOR TRANSPORT CATEGORY AIRPLANES

Extension of Comment Period

The Federal Aviation Agency proposed in Notice 64–6 (Stability and Stalling Characteristics Requirements for Transport Category Airplanes) published in the FEDERAL REGISTER of February 4, 1964 (29 F.R. 1692), to amend the stability and stalling characteristics requirements of Part 4b of the Civil Air Regulations. That notice stated that consideration would be given to all comments received on or before April 2, 1964.

The Aerospace Industries Association of America (AIA), on behalf of its members, has requested an extension of the time for comment on this proposed regulatory action. This organization which has a substantive interest in the proposed rule, advised the Agency that it needed until June 2, 1964, to give proper consideration to the proposal.

I find that the petitioner has shown a substantial interest in the proposed rule and good cause for the extension, and that the extension is consistent with the public interest. Therefore, pursuant to the authority which has been delegated to me by the Administrator (14 CFR 11.45), the time within which comments on Notice 64–6 will be received is extended to June 2, 1964.

Communications should be submitted in duplicate to the Federal Aviation Agency, Office of the General Counsel: Attention Docket Section, 800 Independence Avenue SW., Washington, D.C., 20553. All comments submitted will be available, both before and after the closing dates for comments in the Docket Section for examination by interested persons.

Issued in Washington, D.C., on April 17, 1964.

W. LLOYD LANE,
Acting Director, Flight Standards Service.

[F.R. Doc. 64–4101; Filed, Apr. 24, 1964; 8:48 a.m.]

[14 CFR Part 71 [New]]

[Airspace Docket No. 64-LAX-1]

FEDERAL AIRWAYS

Proposed Designation

Notice is hereby given that the Federal Aviation Agency (FAA) is considering an amendment to Part 71 [New] of the Federal Aviation Regulations, the substance of which is stated below.

The FAA is considering designating a low altitude VOR Federal airway from Peach Springs, Ariz., to Winslow, Ariz. This proposed airway would be utilized by air traffic operating between Las Vegas, Nev., and Albuquerque, N. Mex. It would also provide a replacement for the segment of intermediate altitude VOR Federal airway No. 1776 between Peach Springs and Winslow which will be revoked if the two-layer airway/route system (Airway/Route Modification Plan, Airspace Docket No. 63-WA-74, 29 F.R. 4101) is adopted.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attn: Chief, Air Traffic Branch, Federal Aviation Agency, Western Region Area Office, P.O. Box 45018, Los Angeles, California, 90045. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Chief, Air Traffic Branch, Western Region Area Office, or the Chief, Airspace Regulations and Procedures Division, Federal Aviation Agency, Washington, D.C., 20553. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C. An informal docket will also be available for examination at the office of the Branch Chief, Western Region Area Office.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on April 17, 1964.

H. B. HELSTROM,
Acting Chief, Airspace Regulations and Procedures Division.

[F.R. Doc. 64-4093; Filed, Apr. 24, 1964; 8:46 a.m.]

[14 CFR Part 71 [New]]

[Airspace Docket No. 63-LAX-12]

FEDERAL AIRWAYS

Proposed Designation

Notice is hereby given that the Federal Aviation Agency is considering amendments to Part 71 [New] of the Federal Aviation Regulations, the substance of which is stated below.

VOR Federal airway No. 237 is designated from Needles, Calif., to the Willow Beach Intersection. (In Airspace Docket No. 63-WE-83 published in the FEDERAL REGISTER on February 27, 1964 (29 F.R. 2740) and amended in the FEDERAL REGISTER on April 2, 1964 (29 F.R. 4719), this airway was revoked from the Willow Beach Intersection to Mormon Mesa, Nev., effective April 30, 1964.)

The Federal Aviation Agency is considering a request from the Air Transport Association of America for the designation of an airway from Needles to Boulder, Nev. It is proposed to realign and extend Victor 237 from Needles, via Boulder, the intersection of Boulder 347° and Las Vegas 081° True radials to Las Vegas. This would provide part of an alternate route between Phoenix and Las Vegas when adverse weather conditions generate severe turbulence on VOR Federal airways Nos. 105, 1545 and 1748. The proposed alignment of Victor 237 between Boulder and Las Vegas would be compatible with the established transition radial for two standard instrument approach procedures at Las Vegas and simplify instrument approaches at this terminal for aircraft operating from the south and southeast.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attn: Chief, Air Traffic Branch, Federal Aviation Agency, Western Region Area Office, P.O. Box 45018, Los Angeles, California, 90045. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Chief, Air Traffic Branch, Western Region Area Office, or the Chief, Airspace Regulations and Procedures Division, Federal Aviation Agency, Washington, D.C., 20553. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C. An informal docket will also be available for examination at the office of the Branch Chief, Western Region Area Office.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on April 21, 1964.

D. E. BARROW,
Acting Chief, Airspace Regulations and Procedures Division.

[F.R. Doc. 64-4094; Filed, Apr. 24, 1964; 8:47 a.m.]

[14 CFR Part 71 [New]]

[Airspace Docket No. 63-WA-86]

FEDERAL AIRWAYS

Proposed Designation

Notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 71 [New] of the Federal Aviation Regulations, the substance of which is stated below.

The Air Transport Association of America has requested designation of a Federal airway from Rock Springs, Wyo., direct to Casper, Wyo. Both cities are permanently certified air carrier stops. The proposed airway would provide a direct route for VOR equipped aircraft operating between these terminals and reduce the present airway mileage by 14 nautical miles.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attn: Chief, Air Traffic Branch, Federal Aviation Agency, Western Region Area Office, P.O. Box 45018, Los Angeles, California, 90045. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Chief, Air Traffic Branch, Western Region Area Office, or the Chief, Airspace Regulations and Procedures Division, Federal Aviation Agency, Washington, D.C., 20553. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The Official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C. An informal docket will also be available for examination at the office of the Branch Chief, Western Region Area Office.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on April 17, 1964.

H. B. HELSTROM,
Acting Chief, Airspace Regulations and Procedures Division.

[F.R. Doc. 64-4095; Filed, Apr. 24, 1964; 8:47 a.m.]

[14 CFR Part 71 [New]]

[Airspace Docket No. 64-WE-11]

FEDERAL AIRWAYS

Proposed Alteration

Notice is hereby given that the Federal Aviation Agency (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations, the substance of which is stated below.

VOR Federal airway No. 19 is designated in part from Cheyenne, Wyo., via Douglas, Wyo., to Casper, Wyo., with an east alternate segment from Douglas to Casper.

The FAA is considering the following airspace actions:

1. Redesignate V-19 main airway segment from Cheyenne direct to Casper.

2. Redesignate V-19 main airway segment from Douglas direct to Casper as V-19 east alternate.

The redesignated main airway segment would provide a shorter mileage route for air traffic between Cheyenne and Casper. The designation of V-19 east alternate segment from Douglas direct to Casper would provide route continuity for air traffic operating from Cheyenne via Douglas to Casper and would permit operation at a lower minimum en route altitude. Airspace action has already been taken in Docket No. 63-WE-94 to revoke the presently designated V-19 east alternate from Douglas to Casper via the intersection of the Douglas 314° and Casper 103° True radials, effective April 30, 1964.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attn: Chief, Air Traffic Branch, Federal Aviation Agency, Western Region Area Office, P.O. Box 45018, Los Angeles, California, 90045. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Chief, Air Traffic Branch, Western Region Area Office, or the Chief, Airspace Regulations and Procedures Division, Federal Aviation Agency, Washington, D.C., 20553. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C. An informal docket will also be available for examination at the office of the Branch Chief, Western Region Area Office.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on April 17, 1964.

H. B. HELSTROM,
Acting Chief, Airspace Regulations and Procedures Division.

[F.R. Doc. 64-4096; Filed, Apr. 24, 1964; 8:47 a.m.]

[14 CFR Part 71 [New]]

[Airspace Docket No. 62-PC-10]

TRANSITION AREA

Proposed Designation

In consonance with ICAO International Standards and Recommended Practices, notice is hereby given that the Federal Aviation Agency (FAA) is considering an amendment to Part 71 [New] of the Federal Aviation Regulations. This proposal relates to navigable airspace both within and outside the United States.

Applicability of International Standards and Recommended Practices, by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 and Annex 11 to the Convention on International Civil Aviation (ICAO), which pertains to the establishment of air navigation facilities and services necessary to promote safe, orderly and expeditious flow of civil air traffic. Its purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under jurisdiction of a contracting state, derived from ICAO wherein ,air traffic services are provided and also wherever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in International airspace with due regard for the safety of civil aircraft.

Since this action involves in part the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order No. 10854.

The Federal Aviation Agency has under consideration the designation of a transition area over the Hawaiian Islands. The proposed transition area would include the airspace at and above 14,500 feet MSL lying within the area bounded by the folowing coordinates:

Beginning at latitude 22°24' N., longitude 161°15' W.; thence to latitude 23°53' N., longitude 159°30' W.; latitude 22°31' N., longitude 156°05' W.; latitude 22°06' N., longitude 155°46' W.; latitude 21°47' N., longitude 155°32' W.; latitude 19°44' N., longitude 153°15' W.; latitude 18°20' N., longitude 153°32' W.; latitude 17°15' N., longitude 155°40' W.; latitude 19°43' N., longitude 158°00' W.; latitude 20°46' N., longitude 159°29' W.; latitude 21°18' N., longitude 159°32' W.; latitude 21°30' N., longitude 159°32' W.; latitude 21°30' N., longitude 161°00' W.; latitude 21°56'30" N., longitude 161°20' W.; to point of beginning.

The airspace within control area extensions, transition areas, Federal airways, R-3107, warning areas and the airspace less than 1,500 feet above the terrain would be excluded.

This proposed transition area would provide protection for aircraft operating in and around the Hawaiian Islands. The present volume and nature of the air traffic are such that the airway system does not always provide the most efficient and expeditious means of air traffic flow in the Hawaiian Islands, particularly with high speed aircraft at the higher altitudes. The expected increase in air traffic would worsen the situation.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Pacific Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, P.O. Box 4009, Honolulu, Hawaii, 96812. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Regulations and Procedures Division, Federal Aviation Agency, Washington, D.C., 20553. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C. An informal docket will also be available for examination at

the office of the Regional Air Traffic Division Chief.

(Sec. 307(a), 1110, 72 Stat. 749, 800; 49 U.S.C. 1348, 1510; E.O. 10854, 24 F.R. 9565)

Issued in Washington, D.C., on April 17, 1964.

H. B. HELSTROM,
Acting Chief, Airspace Regulations and Procedures Division.

[F.R. Doc. 64-4099; Filed, Apr. 24, 1964; 8:47 a.m.]

[14 CFR Part 71 [New]]

[Airspace Docket No. 63-SO-12]

CONTROLLED AIRSPACE

Alteration of Proposed Designation

In a notice of proposed rule making published in the FEDERAL REGISTER on June 8, 1963 (28 F.R. 5650) it was stated, in part, that the Federal Aviation Agency proposed to designate a transition area at McComb, Miss.

Subsequent to the publication of the notice, a review of the controlled airspace requirements in the McComb terminal area, in conjunction with proposed airway realignment actions north and northwest of New Orleans, La. (Airspace Docket Nos. 63-SW-65 (28 F.R. 9953) and 63-SW-97 (29 F.R. 572) indicates that the boundaries of the 1,200-foot floor portion of the proposed McComb transition area south and southwest of McComb should be adjusted to provide adequate controlled airspace for off-airway radar vectoring of aircraft both in the en route flight environment and while arriving and departing the New Orleans, Baton Rouge, La., and McComb terminals. This service is provided in this area by the New Orleans Air Route Traffic Control Center.

Accordingly, the notice is hereby amended to propose that the McComb transition area be designated as that airspace extending upward from 700 feet above the surface within a 5-mile radius of the McComb-Pike County Airport; and that airspace extending upward from 1,200 feet above the surface bounded on the east by V-9, on the south by latitude 30°38'00" N., on the west by V-114N, and on the north by the north boundary of V-222; within 8 miles south and 5 miles north of the McComb VOR 254° and 074° True radials, extending from 17 miles west to 5 miles east of the VOR; and within 8 miles north and 5 miles south of the McComb VOR 074° True radial, extending from the VOR to 12 miles east.

In the event V-114N is realigned in accordance with the related notice of proposed rule making, the McComb 1,200-foot transition area as proposed herein would expand automatically to maintain contiguous boundaries therewith.

In order to provide interested persons time to adequately evaluate this proposal, as modified herein, and an opportunity to submit additional written data, views or arguments, the date for filing such material is extended to 30 days after the date of publication in the FEDERAL REGISTER of this supplemental notice.

Communications should be submitted to the Director, Southern Region, Attention: Chief, Air Traffic Division, Federal Aviation Agency, P.O. Box 20636, Atlanta, Ga., 30320.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on April 21, 1964.

D. E. BARROW,
Acting Chief, Airspace Regulations and Procedures Division.

[F.R. Doc. 64-4100; Filed, Apr. 24, 1964; 8:48 a.m.]

[14 CFR Part 75 [New]]

[Airspace Docket No. 63-SW-89]

JET ROUTES

Proposed Alteration

The Federal Aviation Agency (FAA) is considering an amendment to Part 75 [New] of the Federal Aviation Regulations, the substance of which is stated below.

Jet Route No. 2 presently extends in part from the Lake Charles, La., VOR to the New Orleans, La., VORTAC.

The Federal Aviation Agency (FAA) is proposing to alter this segment of J-2 from the Lake Charles VOR via the intersection of the Lake Charles VOR 089° and the New Orleans VORTAC 275° radials to the New Orleans VORTAC. Such action would cause J-2 to overlie VOR Federal airway No. 20 between Lake Charles and New Orleans, thereby, facilitating transition between the jet route and low altitude airway. Increase in distance would be negligible.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Southwest Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth, Texas, 76101. All communications received within thirty days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Regulations and procedures Division, Federal Aviation Agency, Washington, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on April 17, 1964.

H. B. HELSTROM,
Acting Chief, Airspace Regulations, and Procedures Division.

[F.R. Doc. 64-4097; Filed, Apr. 24, 1964; 8:47 a.m.]

[14 CFR Part 75 [New]]

[Airspace Docket No. 63-SW-94]

JET ROUTES

Proposed Designation

The Federal Aviation Agency (FAA) is considering an amendment to Part 75 [New] of the Federal Aviation Regulations, the substance of which is stated below.

The FAA proposes to designate a jet route from the El Paso, Texas, VORTAC via the Fort Stockton, Texas, VORTAC; the Austin, Texas, VORTAC; to the Houston, Texas, VORTAC. There are twelve daily scheduled flights between Houston and Los Angeles, Calif., which operate via Jet Route No. 2 between El Paso and Houston. The action proposed herein would provide a route between El Paso and Houston which would bypass the San Antonio terminal area and would be shorter than existing J-2.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Southwest Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth, Texas, 76101. All communications received within thirty days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Regulations and Procedures Division, Federal Aviation Agency, Washington, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on April 17, 1964.

H. B. HELSTROM,
Acting Chief, Airspace Regulations and Procedures Division.

[F.R. Doc. 64-4098; Filed, Apr. 24, 1964; 8:47 a.m.]

[14 CFR Part 507]

[Reg. Docket No. 5015]

AIRWORTHINESS DIRECTIVES

Schleicher Models Ka2B and Ka6 Gliders

The Federal Aviation Agency has under consideration a proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive for Schleicher Models Ka2B and Ka6 gliders. Cracks have occurred in the forward horizontal stabilizer fittings. To correct this condition, this AD requires inspection of the horizontal stabilizer fittings and replacement if cracks are found.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the Federal Aviation Agency, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. All communications received on or before May 25, 1964, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a) of Part 507 (14 CFR Part 507), by adding the following airworthiness directive:

SCHLEICHER. Applies to all Models Ka2B and Ka6 gliders Serial Numbers 180 through 245.

Compliance required as indicated.

Cracks have occurred in the forward horizontal stabilizer fitting, above the welded seam on the fuselage side. The cracks are believed to be caused by excessive hardening due to welding.

Within the next 10 hours' time in service after the effective date of this AD, accomplish the following:

(a) Remove the forward horizontal stabilizer fittings and inspect for cracks with at least a 3-power magnifying glass. Replace cracked fittings with new fittings before further flight.

(b) Check all fittings for excessive hardness by use of a file as specified in Schleicher Special Inspection for Models Ka2B and Ka6 dated July 12, 1961. Replace fittings found to be too hard, with a new part within the next 10 hours' time in service thereafter.

Issued in Washington, D.C., on April 17, 1964.

W. LLOYD LANE,
Director, Flight Standards Service.

[F.R. Doc. 64-4092; Filed, Apr. 24, 1964; 8:46 a.m.]

Notices

DEPARTMENT OF STATE

Agency for International Development

PROJECT CONCERN, INC.

Register of Voluntary Foreign Aid Agencies

In accordance with the regulations of the Agency for International Development concerning Registration of Agencies for Voluntary Foreign Aid (A.I.D. Regulation 3) 22 CFR, Part 203, promulgated pursuant to section 621 of the Foreign Assistance Act of 1961, as amended, notice is hereby given that a certificate of registration as a voluntary foreign aid agency has been issued by the Advisory Committee on Voluntary Foreign Aid of the Agency for International Development to the following agency:

Project Concern, Inc.,
P.O. Box 536,
1011 C Avenue,
Coronado, Calif.

Dated: April 20, 1964.

WILLIAM S. GAUD,
Deputy Administrator.

[F.R. Doc. 64-4111; Filed, Apr. 24, 1964; 8:48 a.m.]

DEPARTMENT OF THE TREASURY

Bureau of Customs

[AA 643.3-b]

SYNTHETIC DIAMOND POWDER OR DUST FROM IRELAND

Purchase Price; Foreign Market Value

APRIL 22, 1964.

Pursuant to section 201(b) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)), notice is hereby given that there is reason to believe or suspect, from information presented to me, that the purchase price of synthetic diamond powder or dust imported from Ireland, sold by Industrial Grit Distributors (Shannon) Ltd., County Clare, Ireland, is less, or likely to be less, than the foreign market value, as defined by sections 203 and 205, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162 and 164).

Customs officers are being authorized to withhold appraisement of entries of synthetic diamond powder or dust from Ireland, sold by Industrial Grit Distributors (Shannon) Ltd., County Clare, Ireland, pursuant to § 14.9 of the Customs Regulations (CFR 14.9).

The allegation in this case was received on January 22, 1964.

[SEAL] LESTER JOHNSON,
Acting Commissioner of Customs.

[F.R. Doc. 64-4131; Filed, Apr. 24, 1964; 8:50 a.m.]

POST OFFICE DEPARTMENT

WINDOW SERVICES AND PARCEL POST DELIVERY

Notice of Changes

The following is the partial text of Regional Letter No. 64-74, signed by the Assistant Postmaster General, Bureau of Operations, dated April 10, 1964:

I. *Purpose.* To announce certain adjustments and changes which have been determined as necessary to substantially reduce employment and costs in the postal field service.

II. *Services affected.* A. Window services on Saturdays and Sundays.

B. "After Hours" window service.

C. Parcel Post Delivery.

III. *Offices affected.* All first-, second- and third-class offices, and all classified stations and branches.

IV. *Effective date.* May 4, 1964.

V. *Saturday window service.* A. *Hours of service.* Unless specifically authorized by Regional Directors, window service on Saturday as outlined below shall in no instance exceed four hours.

B. *Stamp and parcel post windows.* Only one consolidated stamp and parcel post window shall be opened. Separate stamp and parcel post windows shall not be maintained, and patrons shall be encouraged to make maximum use of available stamp vending machines.

C. *Registry and C.O.D. windows.* At offices where there is sufficient volume, Regional Directors may authorize a separate consolidated window for these services. Otherwise, all registry and C.O.D. windows shall be closed and the services made available at the consolidated stamp and parcel post window. At those large offices where the registry and C.O.D. sections are so physically located in the building as to preclude the consolidation of their activity at one consolidated window or at the consolidated stamp and parcel post window, the Regional Director may authorize the separate operation of each window.

D. *Money order window.* 1. Domestic and international money orders will not be issued and all money order windows will be closed.

2. Rural carriers, and those star route carriers who provide rural features, shall not accept money order applications on Saturdays. Postmasters shall provide all rural and star route patrons with an appropriate notice to this effect.

3. C.O.D. money orders shall not be issued on Saturdays. C.O.D. funds collected too late on Friday for the issuance of money orders on that day, and all C.O.D. funds collected on Saturday shall be treated as trust funds in accordance with Section 438.6, Postal Manual, and the money orders issued on Monday.

E. *Postal savings windows.* All postal savings business at first- and second-class offices, will be suspended on Saturdays.

F. *General delivery windows.* If it is not feasible to provide general delivery service at the one combination stamp and parcel post window, one general delivery window will be opened.

G. *Lock box call windows.* 1. Lock box call windows may be opened only in those offices where this service is usually provided, and then only if it is not possible to combine this service with the one combination stamp and parcel post window.

2. Provisions must be made for patrons to call for parcels on which carriers have "Left notice" of attempted delivery.

H. *Miscellaneous window service.* All windows such as inquiry and claims, information, meter settings, trust fund deposits, box rent collections, etc., shall be closed.

VI. *Sunday window service.* All window service on Sundays shall be discontinued. This includes lock box call windows.

VII. *After hours window service.* No "after hours" window service will be provided on any day of the week.

VIII. *Parcel post delivery service.* A. Parcel post delivery service will be provided on a five-day week basis, except that six-day service shall be continued on all mounted, mailster, rural, and box delivery star routes (except tri-weekly rural and star routes).

B. The days on which parcel post delivery will not be provided shall be determined locally by the postmaster taking into consideration the following:

(1) Workload and volume.
(2) Consistent lightest day of week.
(3) Storage space.
(4) Vehicle utilization.
(5) Manpower availability.
(6) Week-day afternoon closing of business concerns.

Postmasters may, depending on any or a combination of the above factors, adjust parcel post deliveries so that various sections of the postal district will receive deliveries on different days, provided the entire delivery area is given a five-day week delivery coverage. It is preferred that non-delivery days be confined to Tuesdays, Wednesdays, or Thursdays, if local circumstances and conditions permit. Only under unusual circumstances should Saturday be selected as a non-delivery day.

C. First-class parcels, air parcel post, and perishable articles must continue to be delivered six days a week. * * *

(R.S. 161, as amended; 5 U.S.C. 22, 39 U.S.C. 309,501)

LOUIS J. DOYLE,
General Counsel.

[F.R. Doc. 64-4119; Filed, Apr. 24, 1964; 8:49 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Classification No. 77]

ARIZONA

Small Tract Opening

1. Pursuant to authority delegated to me by Bureau Order No. 684, dated August 28, 1961 (26 F.R. 8216), as amended, I hereby open for bid and sale at public auction, under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), as amended, the lands described in Part 3 of this Order. Subject lands were classified by Small Tract Classification No. 77, dated October 3, 1961 (26 F.R. 9658). The lands will be offered to the general public in lot number sequence shown in Part 3 of this order, beginning at 10:00 a.m., on June 10, 1964. The auction will be held in the Post Theater No. 3 on the Fort Huachuca Military Reservation.

2. The lands are in southwestern Cochise County, roughly in the center of a triangle formed by the towns of Bisbee, Sierra Vista and Tombstone. (The latter was recently designated as a National Historical Townsite.) The nearest community, shopping and other facilities are at Sierra Vista, about eleven miles west of the area on Arizona State Highway 90. Highway 90 is a paved road which runs from Sierra Vista to Bisbee and crosses the small tract area from northwest to southeast.

The elevation is between 4,000 and 5,000 feet and the annual precipitation varies from 11 to 18 inches. Although there are no power lines running through the small tract area, electricity has been provided on the western edge of the area along the San Pedro River on private lands (San Rafael Del Valle Spanish Land Grant). Reports from local residents indicate that domestic water could be developed from wells at reasonable depths.

The topography of these lands is generally described as rough to rolling and crossed occasionally by washes which drain westerly toward the San Pedro River. The tracts will be subject to existing rights-of-way and to the reservations as listed in Part 3 of this Order. These reservations are made to assure the purchasers of access and proper easements for public utilities. Interested persons are cautioned that these lands are undeveloped, that they should inspect the lands prior to the sale and that the responsibility of providing roads and utilities rests with the buyers. The tracts have been individually surveyed and marked on the ground by the Bureau of Land Management.

All minerals will be reserved to the United States but the lands will not be subject to mineral location unless or until regulations are issued by the Secretary of the Interior.

3. The section, lot numbers, acreage, sides with rights-of-way reservations and the appraised value (minimum bid) are shown on the table below:

GILA AND SALT RIVER MERIDIAN

T. 22 S., R. 22 E., Secs. 3 and 4.

SECTION 3

Lot number	Acreage	Sides with R/W reservations	Appraised value minimum bid
5	5.98	50' North and East	$1,235.00
6	5.98	50' North, 30' West	1,235.00
7	5.00	30' West	1,035.00
8	5.00	50' East	1,035.00
9	5.00	50' East	1,035.00
10	5.00	30' West	1,035.00
11	5.00	30' South and West	1,035.00
12	5.00	50' East, 30' South	1,035.00
17	5.00	30' South and East	1,035.00
19	5.00	40' West, 30' East	1,035.00
20	5.00	40' West, 30' South and East.	1,035.00
22	5.97	50' North 40' East	1,235.00
23	5.97	50' North, 30' West	1,235.00
24	5.00	30' West	1,035.00
29	5.00	30' West	1,035.00
32	5.96	50' North, 30' East	1,235.00
33	5.96	50' North and West	1,235.00
34	5.00	50' West	1,035.00
35	5.00	30' East	1,035.00
36	5.00	30' East	1,035.00
37	5.00	50' West	1,035.00
38	5.00	50' West, 30' South	1,035.00
39	5.00	30' East	1,035.00
42	5.00	30' North and East*	1,535.00
43	5.00	50' West, 30' North*	1,535.00
47	5.00	50' West, 40' South*	1,535.00
48	5.00	40' South*	1,535.00
49	3.13	40' South*	985.00
50	3.75	40' South*	1,160.00
51	5.00	40' East, 30' North	1,035.00
54	5.00	40' East	1,035.00
55	5.00	40' East, 30' South	1,035.00
57	3.75	40' South, 30' North and East.*	1,160.00
59	2.50	40' East, 30' North	535.00
60	5.00	30' North and East	1,035.00
61	5.00	40' West, 30' North	1,035.00
62	5.00	40' West, 30' South	1,035.00
67	5.00	30' East and West	1,035.00
68	5.00	50' East, 30' North	1,035.00
69	5.00	30' North and West	1,035.00
70	5.00	30' West	1,035.00
71	5.00	50' East	1,035.00
72	5.00	50' East	1,035.00
73	5.00	30' West	1,035.00
74	5.00	30' West	1,035.00
75	5.00	50' East	1,035.00
76	5.00	50' East	1,035.00
77	5.00	30' West	1,035.00
78	5.00	30' South and West	1,035.00
79	5.00	50' East, 30' South	1,035.00
80	3.75	50' East, 30' North*	1,160.00
81	3.75	30' North*	1,160.00
82	2.50	30' North*	785.00
84	5.00	30' West*	1,535.00
85	3.75	30' South*	1,160.00
86	3.75	50' East, 30' South*	1,160.00
87	5.00	30' South, East and West	1,035.00
90	3.75	40' West, 30' South*	1,160.00
92	4.37	30' North and East*	1,335.00
93	3.13	30' South and East*	985.00
97	2.50	40' East*	785.00
101	2.50	40' East, 30' South*	785.00
103	5.00	30' North, East and West	1,035.00
104	5.00	30' South, East and West	1,035.00
105	5.00	40' East, 30' South and West	1,035.00
107	5.00	50' West, 40' North	1,035.00
108	5.00	50' West	1,035.00
110	5.00	30' North, East and West	1,035.00
111	5.00	50' West, 30' East	1,035.00
112	5.00	50' West, 30' East and South	1,035.00
113	5.00	30' South, East and West	1,035.00
114	5.00	30' North and East	1,035.00
115	5.00	50' West, 30' North	1,035.00
116	5.00	50' West	1,035.00
117	5.00	30' East	1,035.00
118	5.00	30' East	1,035.00
119	5.00	50' West	1,035.00
120	5.00	50' South and West	1,035.00
121	5.00	50' South, 30' East	1,035.00
122	5.00	40' East, 30' North	1,035.00
123	5.00	30' North and West	1,035.00
124	5.00	30' West	1,035.00
125	5.00	40' East	1,035.00
126	5.00	40' East	1,035.00
127	5.00	30' West	1,035.00
128	5.00	50' South, 30' West	1,035.00
129	5.00	50' South, 40' East	1,035.00
131	5.00	40' West, 30' North	1,035.00
132	5.00	40' West	1,035.00
133	5.00	30' East	1,035.00
134	5.00	30' East	1,035.00
135	5.00	40' West	1,035.00
136	5.00	50' South, 40' West	1,035.00
137	5.00	50' South, 30' East	1,035.00
138	5.00	30' South and West	1,035.00

*Tracts affected by Highway R/W.

SECTION 3—continued

Lot number	Acreage	Sides with R/W reservations	Appraised value minimum bid
139	5.00	30' South, West and North	$1,035.00
140	5.00	50' East, 30' North	1,035.00
141	5.00	50' East, 30' West	1,035.00
143	5.00	50' South, 30' East and West.	1,035.00
144	5.00	50' South and East, 30' West.	1,035.00
145	5.98	50' North, 30' East	1,235.00
146	5.97	50' North, 40' West	1,235.00
147	5.00	40' West	1,035.00
148	5.00	40' East	1,035.00
149	5.00	40' East	1,035.00
150	5.00	40' East, 30' South	1,035.00
151	5.00	30' South and West	1,035.00
152	5.00	30' North and West	1,035.00
153	5.00	30' East and West	1,035.00
154	5.00	30' South, East and West	1,035.00
155	5.00	30' West	1,035.00
156	5.00	30' South and West	1,035.00
157	4.37	30' North and East*	1,335.00

SECTION 4

Lot number	Acreage	Sides with R/W reservations	Appraised value minimum bid
11	5.96	50' North, 30' West and East	$1,235.00
22	5.60	30' North, East and West	1,160.00
23	5.00	30' East and West	1,035.00
24	4.40	30' South, East and West	910.00
25	5.96	50' North and East	1,235.00
26	5.96	50' North, 30' West	1,235.00
27	5.00	30' West	1,035.00
28	5.00	50' East	1,035.00
29	5.00	50' East	1,035.00
30	5.00	30' West	1,035.00
31	5.00	30' South and West	1,035.00
32	5.00	50' East, 30' South	1,035.00
33	5.96	50' North, 30' East and West	1,235.00
35	5.00	30' East and West	1,035.00
36	5.00	30' South, East and West	1,035.00
38	5.00	30' South, West and East	1,035.00
39	2.50	30' North and West*	785.00
40	3.75	30' North*	1,160.00
43	4.36	50' North, 30' East and West	910.00
44	2.97	30' South, East and West	635.00
45	5.00	30' North and East*	1,535.00
46	3.75	30' North and West*	1,160.00
48	2.01	30' South and West*	635.00
49	3.75	30' South*	1,160.00
50	2.50	30' South and East*	785.00
51	3.75	30' South*	1,160.00
52	3.75	30' South*	1,160.00
54	2.50	30' South and East*	785.00
57	5.00	30' East and West	1,035.00
59	5.00	50' East, 30' North*	1,535.00
62	2.50	30' North and West*	785.00
63	5.00	30' South and West*	1,535.00
67	5.00	30' North and West	1,035.00
68	5.00	50' East, 30' North	1,035.00
69	5.00	50' East	1,035.00
70	5.00	30' West	1,035.00
72	5.00	50' East	1,035.00
73	5.00	50' East	1,035.00
76	5.00	50' East, 30' South and West.	1,035.00
77	5.00	30' East and West	1,035.00
78	5.00	30' East and West	1,035.00
79	5.00	30' East and West	1,035.00
82	5.00	30' West	1,035.00
83	5.00	30' South and West	1,035.00
84	5.00	30' South	1,035.00
85	3.81	30' North, East and West	785.00
86	3.21	30' East and West	685.00
87	2.61	30' East and West	560.00
88	2.01	30' South, East and West	435.00
89	5.00	30' North and East	1,035.00
90	6.41	30' North and West	1,310.00
93	5.00	30' North and East	1,035.00
94	5.21	30' North and West	1,085.00
95	4.65	50' South, 30' West	960.00
96	5.00	50' South, 30' East	1,035.00
97	5.00	50' East, 30' North	1,085.00
98	5.00	30' North and West	1,035.00
99	5.00	30' West	1,035.00
100	5.00	50' East	1,035.00
101	5.00	50' East	1,035.00
102	5.00	30' West	1,035.00
103	5.00	50' South, 30' West	1,035.00

4. Bids may be made personally by the applicant or his agent at the sale, or may be mailed. Bids sent by mail will be considered only if received at the Arizona Land Office, Bureau of Land Management, 3022 Federal Building, Phoenix, Arizona, prior to 10:00 a.m., June 8,

1964. If sealed bids are submitted for more than one tract, no tract preference can be allowed since the tracts will be offered in numerical sequence. No bid will be accepted if it is less than the appraised value of the tract. No oral bid will be accepted if it is less than $10.00 higher than the highest mailed bid, or, if there be none, if it be less than the appraised value of the tract. Subsequent bids must be in increments of $10.00.

5. Bids sent by mail must be made by submitting a properly completed Small Tract Auction Application To Purchase, copies of which may be obtained from the Manager, U.S. Land Office, 3022 Federal Building, Phoenix, Arizona, 85025. Each bid sent by mail must clearly show (a) the name and Post Office address of the bidder, (b) Classification No. 77 and (c) the section and the lot number for which the bid is made. Each bid must be accompanied by the full amount of the bid in the form of cash, certified or cashier's check, post office money order, or bank draft, made payable to: Bureau of Land Management. Each bid must be enclosed in a separate envelope, but payment need only accompany the highest bid, provided all other bids designate the envelope containing the payment. Each envelope must carry on its reverse the following information and nothing else: (a) Classification No. 77, (b) the section and the lot number for which the bid is made. Bids not filed in accordance with the above instructions will be returned.

6. Each tract will be awarded to the highest qualified bidder. If the highest bid is oral, the bidder will be required to make payment for the tract at the close of the bidding, and a personal check will be acceptable for that purpose. Any person who is declared high bidder for any tract will be disqualified for consideration for other tracts at the sale. High mailed bids will become the opening bids at the auction. All unsuccessful bids will be returned promptly after the auction.

7. Persons who have previously acquired a tract under the Small Tract Act are not qualified to purchase a tract at this sale.

8. Lots not sold in the course of bidding on which no qualifying mailed bid has been received, will be offered at public auction upon the motion of any qualified bidder, beginning at 10:30 a.m., Thursday, June 18, 1964 in the U.S. Land Office, Room 3204 (Third Floor), Federal Building, 230 North First Avenue, Phoenix, Arizona. The remaining tracts will continue subject to nomination and auction at that place each succeeding Thursday at 10:30 a.m. (except holidays), until all lots are sold or until the auction is declared closed by the Manager, United States Land Office. Mailed bids in the format described in Part 5 above, received after 10:00 a.m., June 8, 1964, will be considered at the next scheduled offering.

9. Inquiries concerning these lands should be addressed to the Manager, United States Land Office, Room 3022 Federal Building, 230 North First Avenue, Phoenix, Arizona, 85025.

Dated: April 20, 1964.

RAYMOND C. CLEGHORN,
Acting State Director.

[F.R. Doc. 64-4059; Filed, Apr. 24, 1964; 8:45 a.m.]

ALASKA

Small Tract Classification Orders Cancelled in Their Entirety

APRIL 20, 1964.

Pursuant to the authority redelegated to me by Bureau Order 684, dated August 28, 1961 (26 F.R. 6215), as amended by the Alaska State Director in Section 1, Delegation of Authority (29 F.R. 3015), dated March 5, 1964, it is hereby ordered that effective at 10:00 a.m. on May 1, 1964, the following Small Tract Classifications are canceled in their entirety:

a. No. 48 dated January 16, 1952, F.R. Doc. 52-896, as amended by F.R. Doc. 52-1447.
b. No. 55 dated April 10, 1952, F.R. Doc. 52-4297.
c. No. 86 dated August 2, 1954, F.R. Doc. 54-6397, as amended by F.R. Doc. 55-6690.
d. No. 99 dated June 7, 1955, F.R. Doc. 55-4701.
e. No. 114 dated June 19, 1958, (F.R. Doc. 58-4821).

This order affects 869 tracts aggregating 1,972.41 acres.

AL J. HOLLEY,
Acting District Manager.

[F.R. Doc. 64-4122; Filed, Apr. 24, 1964; 8:49 a.m.]

ALASKA

Small Tract Public Sale Offers Cancellation

APRIL 20, 1964.

1. Pursuant to the authority redelegated to me by Bureau Order 684, dated August 28, 1961 (26 F.R. 6215), as amended by the Alaska State Director in Section 1, Delegation of Authority (29 F.R. 3015), dated February 27, 1964, it is ordered that Alaska Small Tract Sale Offers No. 13-ALD of April 11, 1962, No. 17-ALD of July 27, 1962 and No. 19-ALD of September 20, 1962 are hereby cancelled.

2. This order will take effect immediately.

AL J. HOLLEY,
Acting District Manager.

[F.R. Doc. 64-4123; Filed, Apr. 24, 1964; 8:49 a.m.]

[BLM 077983]

MICHIGAN

Notice of Proposed Withdrawal and Reservation of Lands

APRIL 20, 1964.

By letter dated March 23, 1964, the United States Department of Agriculture, Forest Service, North Central Region, filed application BLM 077983 requesting the withdrawal of the public domain lands described below from all forms of appropriation, entry or sale under the public land laws and that they be reserved for national forest purposes subject to valid existing rights.

The applicant desires the land to be formally added to the Hiawatha National Forest. The lands are similar to nearby national forest land and can be effectively managed therewith.

The lands were reconveyed to the United States under the provisions of the Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315g), as amended, as part of a joint program for the disposition of remnant public domain lands in the State of Michigan in such a way as to consolidate State conservation areas and the national forest. The reconveyance reserved to the State of Michigan all minerals, coal, oil and gas rights, together with rights of ingress and egress over and across lands lying along watercourses and streams and all aboriginal antiquities with the right to explore and excavate the same.

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, Washington, D.C., 20240.

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 as follows:

MICHIGAN MERIDIAN, MICHIGAN

SCHOOLCRAFT COUNTY

T. 44 N., R. 17 W.,
Sec. 19, SW¼SW¼, SW¼SE¼;
Sec. 26, N½NW¼, NE¼NE¼.

ALGER COUNTY

T. 47 N., R. 20 W.,
Sec. 31, SW¼NE¼.

The area described aggregates 234.82 acres.

DORIS A. KOIVULA,
Manager, Land Office.

[F.R. Doc. 64-4109; Filed, Apr. 24, 1964; 8:48 a.m.]

Office of the Secretary

SOUTHWESTERN POWER ADMINISTRATION

Delegation of Authority

The following material is a portion of the Departmental Manual and the numbering system is that of the Manual.

This material supersedes 270 DM 2.1 (28 F.R. 6198) June 15, 1963.

270.2.1 DESIGNATION AS MARKETING AGENCY. The Southwestern Power Administration is designated as the agency to market available surplus electric

power and energy generated at the following reservoir projects pursuant to section 5 of the Act of December 22, 1944 (58 Stat. 890; 16 U.S.C. 825s): Beaver; Blakely Mountain; Broken Bow; Bull Shoals; Dardanelle; DeGray; Denison; Eufaula; Fort Gibson; Greers Ferry; Keystone; Sam Rayburn; Narrows; Norfolk; Robert S. Kerr; Stockton; Table Rock; Tenkiller Ferry; and Whitney.

(Sec. 2 Reorg. Plan No. 3 of 1950; 5 U.S.C. sec. 133z–15, note)

STEWART L. UDALL,
Secretary of the Interior.

APRIL 17, 1964.

[F.R. Doc. 64–4110; Filed, Apr. 24, 1964; 8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

WYOMING

Designation of Counties Within Great Plains Area of Ten Great Plains States Where Great Plains Conservation Program Is Specifically Applicable

For the purpose of making contracts based upon an approved plan of farming operations pursuant to the Act of August 7, 1956 (70 Stat. 1115, 16 U.S.C. 590p (b)), as amended, the following county in the State is designated as susceptible to serious wind erosion by reason of its soil types, terrain, and climatic and other factors.

WYOMING

Weston.

Done at Washington, D.C., this 21st day of April 1964.

JOHN A. BAKER,
Assistant Secretary.

[F.R. Doc. 64–4114; Filed, Apr. 24, 1964; 8:48 a.m.]

DEPARTMENT OF COMMERCE

Maritime Administration

STATES STEAMSHIP CO.

Notice of Application

Notice is hereby given that States Steamship Company seeks on a privilege basis to serve port(s) in the Philippine Islands with ships operating on its Service B–1 Trade Route No. 29 Freight Service which presently provides service between U.S. Pacific ports and the northern area of the Far East, not including the Philippine Islands. The Company presently is authorized to make under certain conditions up to 19 sailings per annum on its Service B–2 which provides service between U.S. Pacific ports and primarily the southern area of the Far East, including the Philippine Islands. The requested privilege on its Service B–1 could enable the applicant to make up to 33 sailings per annum which could call at the Philippine Islands. The applicant advises, however, that the total sailings contemplated to and from Philippine Island ports by its B–1 and B–2 Service vessels will not exceed the maximum sailings presently permitted to its B–2 Service vessels to and from such ports.

Any person, firm or corporation having any interest in such application and desiring a hearing on issues pertinent to section 605(c) of the Merchant Marine Act, 1936, amended, 46 U.S.C. 1175, should by the close of business on May 4, 1964, notify the Secretary, Maritime Subsidy Board in writing, in triplicate, and file petition for leave to intervene in accordance with the rules of practice and procedure of the Maritime Subsidy Board.

In the event a hearing is ordered to be held on the application under section 605(c), the purpose thereof will be to receive evidence relevant to (1) whether the application is one with respect to a vessel to be operated on a service, route or line served by citizens of the United States which would be in addition to the existing service, or services, and, if so, whether the service already provided by vessels of United States registry in such service, route or line is inadequate, and (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Maritime Subsidy Board determines that petitions to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Maritime Subsidy Board will take such action as may be deemed appropriate.

Dated: April 21, 1964.

JAMES S. DAWSON, Jr.,
Secretary.

[F.R. Doc. 64–4120; Filed, Apr. 24, 1964; 8:49 a.m.]

National Bureau of Standards

WWV, GREENBELT, MARYLAND, AND WWVH, MAUI, HAWAII; UNIVERSAL TIME BROADCAST SERVICES

Notice of Improvement

Notice is hereby given of an improvement in the Universal Time broadcast services from WWV, Greenbelt, Maryland and WWVH, Maui, Hawaii.

Radio Stations WWV and WWVH will commence on May 1, 1964, to broadcast corrections to the time signals to enable users to obtain immediately an accurate value of UT2. UT2 is utilized in those sciences which involve the rotation of the earth.

The corrections are extrapolated values of the difference (UT2 minus Time Signal) furnished by the U.S. Naval Observatory. The probable error is ±3 milliseconds. Final corrections, with a probable error of ±1 millisecond, are published in the Time Service Bulletins of the Naval Observatory.

During the last half of the 19th minute of each hour from WWV and during the last half of the 49th minute of each hour from WWVH there will be broadcast from each station in International Morse Code: "UT2 AD (or) SU" followed by a 3 digit number. This 3 digit number is the correction in milliseconds. To obtain UT2, add the correction to the time indicated by the Time Signal pulse if the AD is broadcast; subtract if SU is broadcast.

These corrections will be revised daily, the new value appearing for the first time during the hour after 0 hours Universal Time and continuing as indicated for the following 24 hour period.

A. V. ASTIN,
Director,
National Bureau of Standards.

T. S. BASKETT,
Captain, U.S. Navy, Superintendent, U.S. Naval Observatory.

[F.R. Doc. 64–4121; Filed, Apr. 24, 1964; 8:49 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

FEDERAL FINANCIAL ASSISTANCE IN CONSTRUCTION ON NONCOMMERCIAL EDUCATIONAL TELEVISION BROADCAST FACILITIES

Applications Accepted for Filing

Notice is hereby given that effective with this publication the following described applications, and application amendment, for Federal financial assistance in the construction of noncommercial educational television broadcast facilities are accepted for filing in accordance with 45 CFR 60.7:

University of Houston, 3801 Cullen Boulevard, Houston 4, Texas, File No. 63, to improve the operation of the noncommercial educational television broadcasting station KUHT–TV operating on channel 8, Houston, Texas.

Educational Television Association of Metropolitan Cleveland, 715 Carnegie Avenue, Cleveland 15, Ohio, File No. 64, for the establishment of a new noncommercial educational television broadcasting station on channel 25, Cleveland, Ohio.

The Regents of the University of Idaho, Moscow, Idaho, File No. 31, to amend its application to increase transmitter power and relocate transmitter site, for the establishment of a new noncommercial educational television broadcasting station on channel 12, Moscow, Idaho.

Any interested person may, pursuant to 45 CFR 60.8, within 30 calendar days from the date of this publication, file comments regarding the above applications (within 10 calendar days from such publication regarding the above application amendment) with the Director, Educational Television Facilities Program, U.S. Office of Education, Washington, D.C., 20202.

(76 Stat. 64, 47 U.S.C. 390)

RAYMOND J. STANLEY,
Director, Educational Television Facilities Program, U.S. Office of Education.

[F.R. Doc. 64–4065; Filed, Apr. 24, 1964; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 14924]

AMERICAN MILWAUKEE DELETION

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on May 8, 1964, at 10:00 a.m., e.d.s.t., in Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D.C., April 22, 1964.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 64-4138; Filed, Apr. 24, 1964; 8:51 a.m.]

[Docket Nos. 8851, 9177; Order E-20727]

TOLEDO ADEQUACY OF SERVICE CASE AND FLINT-GRAND RAPIDS ADEQUACY OF SERVICE INVESTIGATION

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 21st day of April 1964.

In the Flint-Grand Rapids Adequacy of Service Investigation, Docket 9177, and the Toledo Adequacy of Service Case, Docket 8851, the Board found certain deficiencies in the service provided the cities of Flint and Grand Rapids, Michigan, and Toledo, Ohio, by Capital Airlines, Inc. (Capital). Capital was ordered to improve its service at these points in appropriate respects, and to submit to the Board periodic reports relative to on-time departure from Flint and Grand Rapids, and to passengers which it enplaned and deplaned at Toledo. Since Capital's merger with United Air Lines, Inc. (United), in June 1961, United has been submitting the reports theretofore required of Capital. The most recent are for the months of January and February, 1964.

Analysis of the reports indicates that United's departures from Flint were between 75.58 percent and 93.45 percent on time, and from Grand Rapids between 77.27 percent and 94.98 percent on time, during the most recent 14 months reported; and that enplanements and deplanements at Toledo steadily have increased.[1] Load factors experienced at Toledo further indicate a profitable operation by United at that point.

United has been submitting this required information for almost three years. This would seem to be an adequate length of time over which to evaluate the carrier's performance at these cities in these respects, hence to fulfill the Board's purpose in requiring the submission of the reports.[2] And the import of the information submitted is such as to seem not to warrant continued scrutiny of these facets of United's operations. Moreover, it is the policy of the President of the United States to "discontinue reports * * * (to the Government) * * * where possible", and to save the time of "industry in general" relative to their preparation and submission.[3]

Given these considerations, we tentatively conclude that the above reports, are no longer required and, therefore, their submission should be terminated.

Accordingly, it is ordered:

1. That the City of Grand Rapids, Michigan; the Grand Rapids Chamber of Commerce; the Flint, Michigan, Chamber of Commerce; the City of Toledo, Ohio; the Chamber of Commerce of the City of Toledo, Ohio; United Air Lines, Inc.; and any other interested persons shall show cause within thirty (30) days of the date of service of this order why the Board should not make final the above tentative findings and conclusions and terminate the requirement that United Air Lines, Inc., submit reports to the Board relative to on-time departure at the cities of Flint and Grand Rapids, Michigan, and enplanements and deplanements at Toledo, Ohio;

2. That any objections shall specify by separately numbered paragraphs the tentative findings and conclusions excepted to, and state the grounds thereof;[4]

3. That any objections to the above tentative findings and conclusions not made within the thirty-day period, or in the form specified herein, shall be deemed waived;

4. That, if no objections are filed, the matter shall stand submitted to the Board for issuance of a final order;

5. That, if timely objections are filed, further consideration will be accorded any matters or issues raised by the objections before further action is taken by the Board; and

6. That copies of this order shall be served on the parties enumerated in ordering paragraph 1 above.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 64-4139; Filed, Apr. 24, 1964; 8:51 a.m.]

[1] Total enplanements and deplanements at Toledo have risen from 16.4 in February 1961, to 86 in February 1964. During the months of June, August, and September, 1963, total traffic was 106.7, 112.1 and 109.8 persons, respectively.

[2] Thus, in Toledo, and commenting on reports submitted theretofore by Capital, the Board said, "Upon receipt of further reports, we will be able to evaluate more fully the results of the * * * service." Order E-16155, December 19, 1960, p. 8.

[3] "Memorandum For The Heads Of Executive Departments And Agencies", March 10, 1964.

[4] Since provision is made for the filing of objections to the order, separate petitions for reconsideration will not be entertained.

FEDERAL AVIATION AGENCY

[OE Docket No. 64-SO-8]

CAPE FEAR TELECASTING, INC.

Determination of No Hazard to Air Navigation

The Federal Aviation Agency has circularized the following proposal for aeronautical comment and has conducted an aeronautical study (SO-OE-3504) to determine its effect upon the safe and efficient utilization of the navigable airspace.

Cape Fear Telecasting, Inc., Wilmington, North Carolina, proposes to construct a television antenna structure at latitude 34°03'00" north, longitude 78°-04'56" west, near Mill Creek, North Carolina. The overall height of the structure would be 1250 feet above mean sea level (1190 feet above ground).

The structure would exceed the standards for determining hazards to air navigation as defined in § 77.23(a)(1) of the Federal Aviation Regulations by 690 feet since it would be more than 500 feet above ground at the site of construction.

The aeronautical study disclosed that the structure would be located approximately 23.5 miles southwest of the Wilmington, North Carolina, VORTAC and would require an increase from 1600 feet to 2300 feet in the missed approach altitude for standard instrument approach procedure AL-459-VOR-1 to the New Hanover County Airport, Wilmington, North Carolina, or that the missed approach procedure be restricted to within 15 miles of the facility in lieu of the present 20 miles. Either change could be implemented without having a substantial adverse effect upon instrument flight rule operations at this airport.

The study further disclosed that the structure would not be located in proximity to a commonly used visual flight rules route or in an area where there is a significant volume of VFR traffic.

Based on the aeronautical study, it is the finding of the Agency that the proposed structure would have no substantial adverse effect upon aeronautical operations, procedures or minimum flight altitudes.

Therefore, pursuant to the authority delegated to me by the Administrator (§ 77.37 [New]), it is found that the proposed structure would have no substantial adverse effect upon the safe and efficient utilization of navigable airspace and it is hereby determined that the proposed structure would not be a hazard to air navigation provided that it is obstruction marked and lighted in accordance with Agency standards.

This determination is effective and will become final 30 days after the date of issuance unless an appeal is filed under § 77.39 [New] (27 F.R. 10352). If the appeal is denied, the determination will then become final as of the date of the denial or 30 days after the issuance of the determination, whichever is later. Unless otherwise revised or terminated,

a final determination hereunder will expire 18 months after its effective date or upon earlier abandonment of the construction proposal (§ 77.41 [New]).

Issued in Washington, D.C., on April 16, 1964.

GEORGE R. BORSARI,
Chief, Obstruction Evaluation Branch.

[F.R. Doc. 64-4102; Filed, Apr. 24, 1964; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 15421-15423; FCC 64-328]

PAUL DEAN FORD (WPFR) ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Paul Dean Ford (WPFR), Terre Haute, Indiana, Docket No. 15421, File No. BPH-3954, has: 102.7 mc, No. 274, 1.1 kw, 26 ft., requests: 107.5 mc, No. 298; 50 kw; 435 ft.; Wabash Valley Broadcasting Corporation (WTHI-FM), Terre Haute, Indiana, Docket No. 15422, File No. BPH-4139, has: 99.9 mc, No. 260; 7.40 kw; 330 ft., requests: 107.5 mc, No. 298; 38.76 kw; 416 ft.; Radio WBOW, Incorporated, Terre Haute, Indiana, Docket No. 15423, File No. BPH-4254, requests: 107.5 mc, No. 298; 46.3 kw; 183.5 ft., for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 15th day of April 1964;

The Commission having under consideration the above-captioned and described applications;

It appearing, that, except as indicated by the issues specified below, each of the applicants is legally, technically, financially, and otherwise qualified to construct and operate as proposed; and

It further appearing, that the above-captioned applications are mutually exclusive in that concurrent operation would result in mutually destructive interference; and

It further appearing, that the areas which the applicants propose to serve are significantly different in size and that for purposes of comparison, the areas and populations within the respective 1 mv/m contours together with the availability of other FM service (at least 1 mv/m) within such areas will be considered in the hearing ordered below for the purpose of determining whether a comparative preference should accrue to any applicant; and

It further appearing, that, in view of the foregoing, the Commission is unable to make the statutory finding that a grant of the subject applications would serve the public interest, convenience, and necessity, and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues set forth below:

It is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the area and population within each of the proposed 1 mv/m contours and the availability of other FM service (at least 1 mv/m) to said area and population.

2. To determine the areas and populations which may be expected to gain or lose FM service (at least 1 mv/m) from the operation of Stations WPFR and WTHI-FM as proposed and the availability of other FM service (at least 1 mv/m) to such areas and populations.

3. To determine, on a comparative basis, which of the proposals would better serve the public interest, convenience, and necessity in light of the evidence adduced pursuant to the foregoing issues and the record made with respect to the significant differences between the applicants as to:

a. The background and experience of each having a bearing on the applicant's ability to own and operate its proposed station.

b. The proposals of each of the applicants with respect to the management and operation of the proposed station.

c. The programming service proposed in each of the said applications.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues which of the applications should be granted.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: April 21, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-4079; Filed, Apr. 24, 1964; 8:45 a.m.]

[Docket No. 15303, 15304; FCC 64M-339]

CASCADE BROADCASTING CO. AND SUNSET BROADCASTING CO. (KNDX-FM)

Order Cancelling Prehearing Conference

In re applications of Cascade Broadcasting Company, Yakima, Washington, Docket No. 15303, File No. BPH-4072; David Zander Pugsley tr/as, Sunset Broadcasting Company (KNDX-FM), Yakima, Washington, Docket No. 15304, File No. BPH-4180; for construction permits.

It is ordered, This 21st day of April 1964, that the further prehearing conference scheduled for Friday, May 1, 1964, at 10:00 a.m. is hereby cancelled.

Released: April 22, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-4142; Filed, Apr. 24, 1964; 8:51 a.m.]

[Docket Nos. 15419, 15420; FCC 64M-337]

CENTRAL BROADCASTING CORP. AND WCRB, INC.

Order Scheduling Hearing

In re applications of Central Broadcasting Corporation, Ware, Massachusetts, Docket No. 15419, File No. BPH-4243; WCRB, Inc., Springfield, Massachusetts, Docket No. 15420, File No. BPH-4319; for construction permits.

It is ordered, This 20th day of April 1964, that Charles J. Frederick will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on June 22, 1964, in Washington, D.C.; *And, it is further ordered,* That a prehearing conference in the proceeding will be convened by the presiding officer at 9:00 a.m., May 18, 1964.

Released: April 22, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-4143; Filed, Apr. 24, 1964; 8:51 a.m.]

[Docket Nos. 15419, 15420; FCC 64-327]

CENTRAL BROADCASTING CORP. AND WCRB, INC.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Central Broadcasting Corporation, Ware, Massachusetts, Docket No. 15419, File No. BPH-4243, requests: 102.1 mc, No. 271; 5.16 kw; 837 ft.; WCRB, Inc., Springfield, Massachusetts, Docket No. 15420, File No. BPH-4319, requests: 102.1 mc; No. 271; 27.1 kw; 649 ft., for construction permits.

At a session of the Federal Communications Commission held at its offices in

Washington, D.C. on the 15th day of April 1964;

The Commission having under consideration the above-captioned and described applications;

It appearing, that, except as indicated by the issues specified below, each of the applicants is legally, technically, financially and otherwise qualified to construct and operate as proposed; and

It further appearing, that the above-captioned applications are mutually exclusive in that concurrent operation would result in mutually destructive interference; and

It further appearing, that the areas for which the applicants propose to provide FM broadcast service are significantly different in size and location and that for purposes of comparison, the areas and populations within the respective 1 mv/m contours together with the availability of other FM service (at least 1 mv/m) within such areas will be considered in the hearing ordered below for the purpose of determining which proposal would best provide a fair, efficient and equitable distribution of radio service.

It further appearing, that, in view of the foregoing, the Commission is unable to make the statutory finding that a grant of the subject applications would serve the public interest, convenience, and necessity, and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues set forth below:

It is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the area and population within each of the proposed 1 mv/m contours and the availability of other FM service (at least 1 mv/m) to such areas and populations.

2. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

3. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to section 307(b), which of the operations proposed in the above-captioned applications would better serve the public interest, in light of the evidence adduced pursuant to the foregoing issues and the record made with respect to the significant differences between the applicants as to:

a. The background and experience of each having a bearing on the applicant's ability to own and operate the proposed FM broadcast station.

b. The proposals of each of the applicants with respect to management and operation of the proposed stations.

c. The programming services proposed in each of the applications.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if either, of the applications should be granted.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That the applicants herein shall, pursuant to section 311(a)(3) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

It is further ordered, That the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: April 21, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-4144; Filed, Apr. 24, 1964; 8:51 a.m.]

[Docket Nos. 15421-15423; FCC 64M-336]

PAUL DEAN FORD (WPFR) ET AL.

Order Scheduling Hearing

In re applications of Paul Dean Ford (WPFR), Terre Haute, Indiana, Docket No. 15421, File No. BPH-3954; Wabash Valley Broadcasting Corporation (WTHI), Terre Haute, Indiana, Docket No. 15422, File No. BPH-4139; Radio WBOW, Incorporated, Terre Haute, Indiana, Docket No. 15423, File No. BPH-4254; for construction permits.

It is ordered, This 20th day of April 1964, that Forest L. McClenning will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on July 6, 1964, in Washington, D.C.: *And, it is further ordered*, That a prehearing conference in the proceeding will be convened by the presiding officer at 9:00 a.m. May 18, 1964.

Released: April 22, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-4145; Filed, Apr. 24, 1964; 8:52 a.m.]

[Docket Nos. 14425, 14440; FCC 64M-334]

SAUL M. MILLER AND BI-STATES BROADCASTERS

Order Continuing Hearing

In re applications of Saul M. Miller, Kutztown, Pennsylvania, Docket No. 14425, File No. BP-13844; Chandler W. Drummond and E. Theodore Mallyck, d/b as Bi-States Broadcasters, Annville-Cleona, Pennsylvania, Docket No. 14440, File No. BP-14890; for construction permit.

The Hearing Examiner having under consideration a Petition for Continuance filed by Saul M. Miller on April 20, 1964, requesting that the date for hearing presently scheduled for April 22, 1964, be continued to May 7, 1964;

It appearing, that good cause has been shown for the requested continuance; and

It further appearing, that counsel for the Broadcast Bureau and Bi-States Broadcasters, the only other parties to this proceeding, have consented to a grant of this continuance and to a waiver of the four-day rule;

It is ordered, This 21st day of April 1964, that the Petition for Continuance mentioned hereinabove, be, and the same is hereby granted; and that the hearing presently scheduled for April 22, 1964, is hereby continued to May 7, 1964.

Released: April 22, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-4146; Filed, Apr. 24, 1964; 8:52 a.m.]

[Docket No. 15276; FCC 64M-341]

CHARLES A. SEAMAN

Order Scheduling Prehearing Conference

In re application of Charles A. Seaman, 935 Tanner Avenue, Elizabeth, Pennsylvania, Docket No. 15276, for a general class amateur operator license.

The Hearing Examiner having under consideration the Review Board's Memorandum Opinion and Order released herein on April 13, 1964;

It appearing, that, by order released March 6, 1964, the Hearing Examiner held in abeyance exchange of a summary of certain (lay) evidence to be introduced by the Commission's Safety and Special Radio Services Bureau (Bureau) pending disposition of Bureau's appeal to the Review Board from the Hearing Examiner's ruling made at the prehearing conference held February 26, 1964; and

It further appearing, that by the hereinabove-identified Memorandum Opinion and Order the Review Board denied Bureau's appeal as well as the alternative request submitted therewith; and

It further appearing, that it is now appropriate to go forward with the exchange of a summary of (lay) evidence and that such shall consist of a state-

ment of factual data otherwise to be established by testimony of witnesses contemplated to be produced on behalf of Bureau; and

It further appearing, that, on the basis of the already exchanged technical data and of the further exchange of factual data of the nature indicated hereinabove, stipulations may be arrived at by the parties that will tend to expedite the hearing;

It is ordered, This 21st day of April 1964, that Bureau shall exchange its summary statement of factual data (as hereinabove identified) with counsel for the other parties herein not later than by May 4, 1964, and that a further prehearing conference shall be held at 9:00 a.m., May 22, 1964, at the offices of the Commission in Washington, D.C.

Released: April 22, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-4147; Filed, Apr. 24, 1964; 8:52 a.m.]

[Docket Nos. 15417, 15418; FCC 64-325]

UNITED AUDIO CORP. AND NORTHLAND BROADCASTING CORP.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of United Audio Corporation, Rochester, Minnesota, Docket No. 15417, File No. BPH-3973, requests: 97.5 mc, No. 248; 27 kw; 440 ft.; Northland Broadcasting Corporation, Rochester, Minnesota, Docket No. 15418, File No. BPH-3975, requests: 97.5 mc, No. 248; 28 kw, 225 ft., for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 15th day of April 1964;

The Commission having under consideration the above-captioned and described applications;

It appearing, that the above-captioned applications are mutually exclusive in that operation by the applicants as proposed would result in mutually destructive interference; and

It further appearing, that the areas for which the applicants propose to provide FM service (at least 1 mv/m) within such different in size and that for purposes of comparison, the areas and populations within the respective 1 mv/m contours together with the availability of other FM service (at least 1 mv/m) within such areas will be considered in the hearing ordered below for the purpose of determining whether a comparative preference should accrue to either applicant; and

It further appearing, that, upon due consideration of the above-captioned applications, the Commission finds that pursuant to section 309(e) of the Communications Act of 1934, as amended, a hearing is necessary; that each of the applicants is legally, financially, technically and otherwise qualified to construct, own and operate the FM broadcast facilities proposed;

It is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the area and population within each of the proposed 1 mv/m contours and the availability of other FM services (at least 1 mv/m) to such areas and populations.

2. To determine, on a comparative basis, which of the proposals would better serve the public interest, convenience and necessity in the light of the evidence adduced pursuant to the foregoing issue and the record made with respect to the significant differences between the applicants as to:

a. The background and experience of each, bearing on its ability to own and operate the FM broadcast station as proposed.

b. The proposals of each with respect to the management and operation of the FM broadcast station as proposed.

c. The programming services proposed in each of the above-captioned applications.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues which of the applications should be granted.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within twenty (20) days of the mailing of this order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

It is further ordered, That the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the applications will be effectuated.

Released: April 21, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-4148; Filed, April 24, 1964; 8:52 a.m.]

[Docket Nos. 15417, 15418; FCC 64M-338]

UNITED AUDIO CORP. AND NORTHLAND BROADCASTING CORP.

Order Scheduling Hearing

In re applications of United Audio Corporation, Rochester, Minnesota, Docket No. 15417, File No. BPH-3973; Northland Broadcasting Corporation, Rochester, Minnesota, Docket No. 15418, File No. BPH-3975; for construction permits.

It is ordered, This 20th day of April 1964, that Elizabeth C. Smith will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on June 23, 1964, in Washington, D.C.: *And, it is further ordered,* That a prehearing conference in the proceeding will be convened by the presiding officer at 9:00 a.m., May 19, 1964.

Released: April 22, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-4149; Filed, Apr. 24, 1964; 8:52 a.m.]

FEDERAL MARITIME COMMISSION

[Docket No. 1178]

ITALY/U.S. NORTH ATLANTIC FREIGHT POOL

Extension of Time

On December 23, 1963, the present parties to approved Agreement 8680, as indicated in Appendix A below, filed with the Federal Maritime Commission a modification to that Agreement designated Agreement 8680-3. This Agreement would modify Agreement 8680 to provide that said Agreement, now scheduled to expire as of June 30, 1964, be extended for an additional one year period, and thereafter be automatically extended from year to year. Agreement 8680-3 would further modify Agreement 8680 to provide that members not desiring to participate beyond June 30, 1964, or beyond any subsequent yearly extension must give notice of withdrawal prior to March 31 of any previous pool year; that if one or more members should give such notice of withdrawal prior to March 31 of any year, any other member may present valid notice of withdrawal up to ten days prior to the date of expiration of the pool; and any members resigning prior to March 31 of any year shall have no right to withdraw such resignation and in order to again become a member, must file a new application for membership.

The Commission has considered Agreement 8680-3, and is of the opinion that it warrants full investigation in order to determine whether continuation of Pooling Agreement 8680 as provided for in Agreement 8680-3 would be detrimental to the commerce of the United States, contrary to the public interest, or otherwise in contravention of any of the standards of section 15 of the Shipping Act, 1916, and whether Agreements 8680 and 8680-3 should be approved, disap-

proved, cancelled or modified pursuant to section 15 of the Shipping Act, 1916.

The Commission is of the view that presently approved Agreement 8680 should be modified to provide that the present termination date of June 30, 1964, be extended until such time as the Commission approves, disapproves, cancels or modifies Agreements 8680 and 8680–3 in this proceeding, or until otherwise ordered by the Commission, and further to permit any party to that Agreement to give notice of withdrawal to other parties within 30 days after the date of this Commission order if it does not desire to participate in the Agreement beyond the present expiration date of June 30, 1964.

Now therefore, it is ordered, That the first paragraph in Article 15 of Agreement 8680 be modified to read as follows:

This Agreement which is subject to the approval of the Federal Maritime Commission, shall be effective as from 00:01, January 1, 1962, and remain in effect until such time as the Commission approves, disapproves, cancels or modifies Agreements 8680 and 8680–3 in Docket No. 1178 or until otherwise ordered by the Commission. Members who do not want to participate as members of the Agreement beyond June 30, 1964, must give notice of the withdrawal to the Secretary on or before (30 days from date of service).

And it is further ordered, That the above ordered modification to Agreement 8680 be, and the same is hereby, approved pursuant to section 15 of the Shipping Act, 1916; and

It is further ordered, That the Commission, pursuant to sections 15 and 22 of the Shipping Act, 1916, institute an investigation to determine whether Agreements 8680 and 8680–3 should be approved, disapproved, cancelled, or modified; and

It is further ordered, That the member lines of Agreement 8680, as listed in Appendix A below, are hereby made respondents in this proceeding; and

It is further ordered, That this matter is assigned for hearing before an examiner of the Commission's Office of Hearing Examiners at a date and place to be hereafter determined and announced by the presiding examiner; and

It is further ordered, That a copy of this order shall be served upon the respondents and published in the FEDERAL REGISTER; and

It is further ordered, That persons other than respondents who desire to become parties to this proceeding and to participate herein shall promptly notify the Secretary, Federal Maritime Commission, Washington, D.C., 20573, and shall file with the Secretary a petition for leave to intervene in accordance with Rule 5(n) of the Commission's rules of practice and procedure on or before May 8, 1964, with copy to each of the respondents.

It is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or prehearing conference, shall be mailed directly to all parties of record.

By order of the Commission, April 20, 1964.

[SEAL] THOMAS LISI, *Secretary.*

APPENDIX "A"

American Export and Isbrandtsen Lines, American Export Lines, Inc., 26 Broadway, New York, N.Y., 10004.
American President Lines, Ltd., 601 California St., San Francisco 8, Calif.
Compagnie De Navigation Fraissinet Et, Cyprien Fabre, S.A., Commander Shipping Company, Inc. Gen. Agents, 17 State St., New York, N.Y., 10004.
Concordia Line, Boise-Griffin Steamship Co., Inc., General Agents, 90 Broad St., New York, N.Y., 10004.
Giacomo Costa Fu Andrea (Costa Line), Overseas Consolidated Company, Ltd., General Agents, 26 Broadway, New York, N.Y., 10004.
Hansa Line (D.D.G. Hansa), F. W. Hartmann & Co., Inc., General Agents, 120 Wall St., New York, N.Y., 10005.
Italian Line, One Whitehall St., New York, N.Y., 10004.
Jugoslavenska Linijska Plovidba (Jugolinija), Cross Ocean Shipping Company, Inc., General Agents, 17 Battery Pl., New York, N.Y., 10004.
Kulukundis Lines, Ltd., Star Line Agency, Inc., General Agents, 115 Broad St., New York, N.Y., 10004.
A. P. Moller-Maersk Line, Moller Steamship Company, Inc., General Agents, 67 Broad St., New York, N.Y., 10004.
Mitsui Steamship Company, Ltd., Mitsui Line Agencies, Inc., General Agents, 17 Battery Pl., New York, N.Y., 10004.
Prudential Lines, Inc., One Whitehall St., New York, N.Y., 10004.
Villain & Fassio E. Compagnia Internazional Di Genova (Fassio Line), Norton, Lilly & Co., Inc., General Agents, 26 Beaver St., New York, N.Y., 10004.

[F.R. Doc. 64–4137; Filed, Apr. 24, 1964; 8:51 a.m.]

FEDERAL POWER COMMISSION

[Docket No. RI64–79 etc.]

CONTINENTAL OIL CO. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates; and Allowing Rate Changes To Become Effective Subject to Refund; Correction

APRIL 6, 1964.

Continental Oil Company, et al., Docket No. RI64–79, et al.; Gulf Oil Corporation, Docket No. RI64–83.

In the order providing for hearings on and suspension of proposed changes in rates; and allowing rate changes to become effective subject to refund issued August 4, 1963 and published in the FEDERAL REGISTER August 21, 1963 (F.R. Doc. 63–8928; 28 FR–9222), in the chart after Docket No. RI64–83, Gulf Oil Corporation, change "Supp. No." opposite Rate Schedule No. 213 to read "Supp. No. 2" in lieu of "1".

JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 64–4104; Filed, Apr. 24, 1964; 8:48 a.m.]

[Docket No. G–11790 etc.]

GRAHAM–MICHAELIS DRILLING CO. ET AL.

Certificates of Public Convenience and Necessity; Gas Rate Schedules; Bond

APRIL 20, 1964.

In the matter of Graham-Michaelis Drilling Company (Operator), (successor to William Gruenerwald (Operator), et al.), Docket No. G–11790; Graham-Michaelis Drilling Company (successor to William Gruenerwald (Operator), et al.), Docket No. G–15496; William Gruenerwald (Operator), et al., and Graham-Michaelis Drilling Company (Operator), Docket No. RI62–174.[1]

Order amending orders issuing certificates of public convenience and necessity, redesignating FPC gas rate schedules, accepting notices of succession and supplements to FPC gas rate schedules for filing, making successor co-respondent in rate proceeding, redesignating proceeding, accepting agreement and undertaking for filing, and denying motion to terminate bond.

On January 9, 1964, Graham-Michaelis Drilling Company (Applicant) filed in Docket Nos. G–11790 and G–15496 an application pursuant to section 7(c) of the Natural Gas Act to amend the orders issuing certificates of public convenience and necessity in said dockets to William Gruenerwald (Operator), et al., by substituting Applicant as certificate holder, all as more fully set forth in the application.

The subject sales are made to Cities Service Gas Company from the Farley Pool, Barber County, Kansas, pursuant to contracts heretofore designated as William Gruenerwald (Operator), et al., FPC Gas Rate Schedule Nos. 1 and 4, as supplemented, which rate schedules will be redesignated as rate schedules of Applicant. Applicant has submitted a supplemental agreement dated April 26, 1961, which amends the contract heretofore designated as the predecessor's FPC Gas Rate Schedule No. 1 by adding acreage. The supplemental agreement incorporates certain indefinite pricing provisions which are in the basic contract and which are not among those permitted by § 154.93 of the regulations under the Natural Gas Act. The supplemental agreement will be accepted for filing; however, the indefinite pricing provisions shall be inoperative and of no effect at law, and any tendered rate change under such provisions will be rejected if intended to be applicable to sales of gas from the acreage dedicated under the supplemental agreement.

The presently effective rates under the predecessor's rate schedules are in effect subject to refund in Docket No. RI62–174. Applicant has filed a motion to be made co-respondent in said proceeding and has filed an agreement and undertaking to refund those amounts collected above the amount found to be just and reasonable. The predecessor has filed a

[1] Consolidated with Docket No. AR64–1, et al.

motion to terminate his bond filed in the subject proceeding. Applicant will be made a co-respondent and the agreement and undertaking will be accepted for filing. The predecessor's motion will be denied since he remains liable for any refunds found to be required for sales made before the producing properties were assigned to Applicant.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the orders issuing certificates of public convenience and necessity in Docket Nos. G–11790 and G–15496 should be amended as hereinafter ordered.

(2) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Graham-Michaelis Drilling Company (Operator) should be made a co-respondent in the rate proceeding in Docket No. RI62–174, that said proceeding be redesignated accordingly, and that the agreement and undertaking submitted by Graham-Michaelis Drilling Company be accepted for filing.

(3) The notices of succession and supplements to the related FPC gas rate schedules should be accepted for filing, and the rate schedules should be redesignated as those of Graham-Michaelis Drilling Company.

(4) The motion filed in Docket No. RI62–174 to terminate the bond filed in said docket by William Gruenerwald should be denied.

The Commission orders:

(A) The orders issuing certificates of public convenience and necessity in Docket Nos. G–11790 and G–15496 be and the same are hereby amended by substituting Graham-Michaelis Drilling Company in lieu of William Gruenerwald (Operator), et al., as certificate holder, and in all other respects said orders shall remain in full force and effect.

(B) Graham-Michaelis Drilling Company (Operator) be and is hereby made a co-respondent in the rate proceeding in Docket No. RI62–174 insofar as said proceeding concerns sales of natural gas from properties assigned to Graham-Michaelis Drilling Company (Operator), said proceeding is redesignated accordingly and the agreement and undertaking is accepted for filing.

(C) Applicant shall comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, and Applicant's agreement and undertaking submitted in Docket No. RI62–174 shall remain in full force and effect until discharged by the Commission.

(D) The motion filed in Docket No. RI62–174 to terminate the bond filed in said docket by William Gruenerwald be and the same is hereby denied.

(E) The notices of succession to related FPC gas rate schedules are accepted for filing effective September 1, 1963, said rate schedules are redesignated, and supplements thereto are accepted for filing effective September 1, 1963, all as follows:

Docket No.	New Designation			Former designation and description and date of instrument
	Applicant	Rate schedule	Supplement	
G–11790	Graham-Michaelis Drilling Co. (Operator).	63		William Gruenerwald (Operator), et al., FPC Gas Rate Schedule No. 1.
		63	1	Supplement No. 1 to above.
		63	2	Notice of Succession 1–6–64.
		63	3	Supplemental Agreement 4–26–61.
G–15496	Graham-Michaelis Drilling Co.	64		Assignment 11–1–63.
		64	1	William Gruenerwald (Operator) et al., FPC Gas Rate Schedule No. 4.
		64	2	Supplement No. 1 to above.
				Notice of Succession 1–7–64.
				Assignment 11–1–63.

By the Commission.

[SEAL]

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 64–4106; Filed, Apr. 24, 1964; 8:48 a.m.]

[Docket No. G–3821 etc.]

R. MORGAN

Certificate of Public Convenience and Necessity; Gas Rate Schedules; Bond

APRIL 17, 1964.

In the matter of the Estate of R. Morgan (successor to Rand Morgan), Docket No. G–3821; Estate of R. Morgan, Docket No. G–19879;[1] Estate of R. Morgan, Docket No. RI61–3.[1]

Order amending order issuing certificate of public convenience and necessity, redesignating FPC gas rate schedule, substituting successor in interest as respondent, redesignating proceeding, requiring successor to file surety bonds, and permitting withdrawal of petition to intervene.

On February 10, 1964, the Estate of R. Morgan (Applicant) filed in Docket No. G–3821 an application pursuant to section 7(c) of the Natural Gas Act to amend the order issuing a certificate of public convenience and necessity in said docket by substituting Applicant in lieu of Rand Morgan, deceased, as certificate holder, all as more fully set forth in the application.

Rand Morgan received authorization in Docket No. G–3821 to sell and deliver natural gas in interstate commerce to Associated Oil & Gas Company for resale from the Farenthold and Rand Morgan Fields, Jim Wells and Nueces Counties, Texas, pursuant to a contract designated as Rand Morgan FPC Gas Rate Schedule No. 1. Rates presently and previously collected pursuant to said rate schedule have been suspended and are subject to refund in Docket Nos. G–19879 and RI61–3.

After due notice no notice of intervention or protest to the granting of the application in Docket No. G–3821 has been filed. A petition to intervene was filed on March 10, 1964, by Long Island Lighting Company, and withdrawn on March 31, 1964.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issuing a certificate of public convenience and necessity in Docket No. G–3821 be amended as hereinafter ordered.

(2) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the Estate of R. Morgan should be substituted as respondent in the pending rate proceedings in Docket Nos. G–19879 and RI61–3, that said proceedings should be redesignated accordingly, and that the Estate of R. Morgan should be required to file surety bonds in said proceedings.

(3) Long Island Lighting Company should be permitted to withdraw the petition to intervene filed in Docket No. G–3821.

The Commission orders:

(A) The order issuing a certificate of public convenience and necessity in Docket No. G–3821 to Rand Morgan be and the same is hereby amended by substituting the Estate of R. Morgan as certificate holder, and in all other respects said order shall remain in full force and effect.

(B) The Estate of R. Morgan be and it is hereby substituted as respondent in the pending rate proceedings in Docket Nos. G–19879 and RI61–3 in lieu of Rand Morgan, and said proceedings are redesignated accordingly.

(C) Rand Morgan FPC Gas Rate Schedule No. 1 and Supplement Nos. 1–5 thereto be and the same are hereby redesignated as Estate of R. Morgan FPC Gas Rate Schedule No. 1 and Supplement No. 1–5 thereto, and the notice of succession dated February 7, 1964, is hereby accepted for filing effective November 23, 1963.

(D) Within 30 days from the issuance of this order, the Estate of R. Morgan shall execute, in the form set out below,[2] and shall file with the Secretary of the Commission, an acceptable surety bond in Docket No. G–19879 in the amount of $12,000 and in Docket No. RI61–3 in the amount of $4,100 to assure the refunds of any amounts, together with interest at the rate of seven percent per annum collected in excess of the amounts determined to be just and reasonable in said dockets; and the surety bonds filed by Rand Morgan in said dockets are hereby discharged.

(E) The Estate of R. Morgan shall comply with the refunding and reporting

[1] Consolidated with Docket No. AR64–2, et al.

[2] Filed with the original document.

procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, and the surety bonds filed in Docket Nos. G–19879 and RI61–3 shall remain in full force and effect until discharged by the Commission.

(F) Long Island Lighting Company is hereby permitted to withdraw the petition to intervene filed in Docket No. G–3821 on March 10, 1964.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 64–4107; Filed, Apr. 24, 1964; 8:48 a.m.]

[Docket Nos. G–19417 etc.]

PAN AMERICAN PETROLEUM CORP. ET AL.

Order Severing Proceedings, Approving Proposed Settlements, Issuing Certificates of Public Convenience and Necessity; Correction

APRIL 10, 1964.

In the Order Severing Proceedings, Approving Proposed Settlements, and Issuing Certificates of Public Convenience and Necessity, issued March 30, 1964, and published in the FEDERAL REGISTER April 4, 1964 (F.R. Doc. 64–3285; 29 F.R. 4837–4839), make the following corrections:

1. Change line 5 of footnote 1 to read "in all dockets but five were * * *" in lieu of "in all dockets but one * * *".

2. At the end of footnote 4 add "By letter order of June 28, 1962, the effective date to refund was modified to be effective from and after the date of initial delivery in lieu of January 26, 1962."

3. Correct the last five lines of subparagraph (d) in paragraph (E) to read "shall also make provision for a full percentage downward adjustment in price for gas containing less than 1000 Btu's per cubic foot. The precedent processing agreements, where applicable, shall be similarly modified to provide reimbursement to Michigan Wisconsin on the same basis for Btu's below 1000 removed by the producers in processing the gas."

4. In line 4 of paragraph (G) change "CI63–417" to read "CI63–459".

5. At the end of paragraph (G) add "The Authorizations granted herein to Pan American in Docket Nos. CI61–516, CI63–336, and CI63–337 cover acreage only in the 'other Oklahoma' area."

6. Delete footnote 6, at bottom of page 4839, and substitute "As of date of initial delivery in the case of Pan American Petroleum Corporation in accordance with the letter of June 28, 1962."

JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 64–4108; Filed, Apr. 24, 1964; 8:48 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–3421]

CONTINENTAL VENDING MACHINE CORP.

Order Summarily Suspending Trading

APRIL 21, 1964.

In the matter of trading on the American Stock Exchange and the Philadelphia-Baltimore-Washington Stock Exchange in the Common Stock, 10¢ par value and trading on the American Stock Exchange in the 6 percent Convertible Subordinated Debentures due September 1, 1976, of Continental Vending Machine Corporation; File No. 1–3421.

The common stock, 10 cents par value, of Continental Vending Machine Corp., being listed and registered on the American Stock Exchange and having unlisted trading privileges on the Philadelphia-Baltimore-Washington Stock Exchange, and the 6 percent convertible subordinated debentures due September 1, 1976, being listed and registered on the American Stock Exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such securities on such Exchanges and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c)(2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2–2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sales of any such security, otherwise than on a national securities exchange.

It is ordered, Pursuant to section 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the American Stock Exchange and the Philadelphia - Baltimore - Washington Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective for the period April 22, 1964, through May 1, 1964, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 64–4124; Filed, Apr. 24, 1964; 8:49 a.m.]

[File No. 1–4722]

TASTEE FREEZ INDUSTRIES, INC.

Order Summarily Suspending Trading

APRIL 21, 1964.

In the matter of trading on the American Stock Exchange in the Common Stock, 67 cents par value, of Tastee Freez Industries, Inc.; File No. 1–4722.

The common stock, 67 cents par value, of Tastee Freez Industries, Inc., being listed and registered on the American Stock Exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on such Exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c)(2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2–2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of any such security, otherwise than on a national securities exchange;

It is ordered, Pursuant to section 19(a)(4) of the Securities Exchange Act of 1934, that trading in such security on the American Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective for the period April 22, 1964, through May 1, 1964, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 64–4125; Filed, Apr. 24, 1964; 8:50 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

APRIL 22, 1964.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 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. 38978: *Gravel from Riverton, Ind., to Decatur, Ill.* Filed by Illinois Freight Association, agent (No. 236), for

and on behalf of Illinois Central Railroad Company. Rates on gravel, road surfacing, passing through a one inch screen (not suitable for concrete construction), in carloads, from Riverton, Ind., to Decatur, Ill.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 110 to Illinois Central Railroad Company tariff I.C.C. A–11687.

FSA No. 38979: *Iron or steel reinforcing bars to Beaumont, Tex.* Filed by Southwestern Freight Bureau, agent (No. B–8541), for interested rail carriers. Rates on iron or steel reinforcing bars, in straight mill lengths not less than 40 feet, subject to minimum weight per shipment of 420,000 pounds, from Alton, East St. Louis, and Federal, Ill., also St. Louis, Mo., to Beaumont, Tex.

Grounds for relief: Market competition.

Tariff: Supplement 67 to Southwestern Freight Bureau, agent, tariff I.C.C. 4503.

AGGREGATE-OF-INTERMEDIATES

FSA No. 38980: *Iron or steel reinforcing bars to Beaumont, Tex.* Filed by Southwestern Freight Bureau, agent (No. B–8540), for interested rail carriers. Rates on iron or steel reinforcing bars, in straight mill lengths not less than 40 feet, subject to minimum weight per shipment of 420,000 pounds, from Alton, East St. Louis, and Federal, Ill., also St. Louis, Mo., to Beaumont, Tex.

Grounds for relief: Maintenance of depressed rates published to meet market competition without use of such rates as factors in constructing combination rates.

Tariff: Supplement 67 to Southwestern Freight Bureau, agent, tariff I.C.C. 4503.

By the Commission.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 64–4115; Filed, Apr. 24, 1964; 8:48 a.m.]

[Notice 974]

MOTOR CARRIER TRANSFER PROCEEDINGS

APRIL 22, 1964.

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 66613. By order of April 20, 1964, the Transfer Board approved the transfer to Dreyer Transport, Inc., 4939 North 36th Street, Milwaukee, Wis., of the operating rights in Certificate in No. MC 124383, issued October 15, 1963, to Gerald Dreyer, doing business as Dreyer Transport, 4939 North 36th Street, Milwaukee 9, Wis., authorizing the transportation, over irregular routes, of: Sand, stone chips, and crushed stone, in bulk, and concrete planks, slabs and beams, between specified points in Wisconsin, Illinois, and Indiana.

No. MC–FC 66693. By order of April 20, 1964, the Transfer Board approved the transfer to Raymond Bennett, doing business as R. R. Wix Transfer, 1813 Williamson Street, Wilmington, Del., of the operating rights in Certificate in No. MC 26545, issued by the Commission August 9, 1949, to Robert Reynolds Wix, doing business as R. R. Wix Transfer, 102 West 20th Street, Wilmington, Del., authorizing the transportation, over irregular routes, of household goods, between Wilmington, Del., and points within 20 miles thereof, on the one hand, and, on the other, points in Pennsylvania, Maryland, and New Jersey, rubber hose, from Wilmington, Del., to Passaic, N.J., and New York, N.Y., and tombstones, from Wilmington, Del., to points in Maryland, Pennsylvania, and New Jersey.

No. MC–FC 66712. By order of April 20, 1964, the Transfer Board approved the transfer to Union Transfer Company of Allentown, Inc., Allentown, Pa., of Certificate in No. MC 1344, issued August 1, 1958, to Gordon B. Evans, doing business as Union Transfer Co., of Allentown, Allentown, Pa., authorizing the transportation of: Fresh and canned meats, from Allentown, Pa., to points in Pennsylvania within 75 miles of Allentown; malt, coffee, meat and meat products, from Allentown, Pa., to Phillipsburg, N.J., and points in New Jersey within 50 miles of Phillipsburg; meat and meat products, from Allentown, Pa., to points in Pennsylvania within 40 miles of Allentown; agricultural commodities and groceries, from Allentown, Pa., to points within 40 miles of Allentown; meats, meat products, and meat byproducts, from Elizabeth, N.J., to Allentown, Bethlehem, Easton, and Reading, Pa.; household goods, between Allentown, Pa., and points within 50 miles of Allentown, on the one hand, and, on the other, points in New Jersey, New York, and the District of Columbia, and between Allentown, Pa., and points within 25 miles of Allentown, on the one hand, and, on the other, points in New York, New Jersey, and Maryland; and contractor's equipment and machinery, between Allentown, Pa., on the one hand, and, on the other, New York, N.Y., and points in New Jersey within 50 miles of Allentown. Bernard Frank, 517 Hamilton Street, Allentown, Pa., attorney for applicants.

No. MC–FC 66716. By order of April 20, 1964, the Transfer Board approved the transfer to Marie Morris, doing business as Vandalia Transfer Co., Vandalia, Ill., of Certificate in No. MC 109862 (Sub No. 1), issued September 22, 1959, to David V. Foley, Jr., doing business as Foley Truck Service, 80 Bellerive Acres, Normandy, Mo., authorizing the transportation of: General commodities, excluding household goods, commodities in bulk and other specified commodities, over regular routes, between Pierron, Ill., and St. Louis, Mo., serving intermediate and off-route points in the St. Louis, Mo.-East St. Louis, Ill., commercial zone, and those within 15 miles of Pierron.

No. MC–FC 66720. By order of April 20, 1964, the Transfer Board approved the transfer to Harvey L. Williams, Jr., Tarkio, Mo., of the operating rights issued by the Commission July 7, 1949, under Certificate in No. MC 74101, to Smallwood Transfer & Storage Company, a corporation, St. Joseph, Mo., authorizing the transportation over irregular routes, of household goods, as defined by the Commission, between points in Buchanan County, Mo., on the one hand, and, on the other, points in Kansas, Nebraska, and Illinois. Carl V. Kretsinger, 510 Professional Building, Kansas City, Mo., attorney for applicants.

No. MC–FC 66754. By order of April 20, 1964, the Transfer Board approved the transfer to Sizer Trucking, Inc., Rochester, Minn., of the operating rights issued by the Commission December 6, 1951, May 19, 1953, October 29, 1952, September 21, 1954, April 28, 1958, August 18, 1959, June 24, 1960, February 3, 1961, November 20, 1961, June 13, 1963, and August 15, 1953, to Oren M. Sizer, doing business as Sizer Grain Service, under Certificates Nos. MC 109994 (Sub No. 5), MC 109994 (Sub No. 8), MC 109994 (Sub No. 10), MC 109994 (Sub No. 13), MC 109994 (Sub No. 15), MC 109994 (Sub No. 16), MC 109994 (Sub No. 19), MC 109994 (Sub No. 21), MC 109994 (Sub No. 23), and MC 109994 (Sub No. 25), respectively, authorizing the transportation, over irregular routes, of animal and poultry feed, animal and poultry mineral mixtures and advertising matter from Burlington, Wis., to points in Minnesota; empty containers from points in Minnesota to Burlington, Wis.; oat flour, from St. Joseph, Minn., to Danville, Ill.; animal and poultry feed, animal and poultry mineral mixtures, insecticides, insect repellents and vermin exterminators, and advertising matter for the above-named commodities, from Burlington, Wis., to points in North Dakota and South Dakota; insecticides, insect repellents, and vermin exterminators and advertising matter therefor from Burlington, Wis., to points in Minnesota, and empty containers for the above-described commodities, from the above-described territories to Burlington, Wis.; horsemeat from Estherville, Iowa, to points in Wisconsin; condensed whey, from Richland Center and Marshfield, Wis., to points in Iowa; frozen packinghouse byproducts and frozen poultry byproducts, not for human consumption, from Omaha, Nebr., specified points in Iowa, Missouri, Colorado, and Minnesota, to points in Illinois, South Dakota, Minnesota, Wisconsin, and the upper peninsula of Michigan; frozen horsemeat, from Jamestown, N. Dak., and Aberdeen, S. Dak., to points in Minnesota, Wisconsin, South Dakota, and the upper peninsula of Michigan; frozen packinghouse byproducts and frozen poultry byproducts, not for human consumption, from Richmond, Va., Chicago, Ill., Mitchell, S. Dak., Fremont, Nebr., Iowa City, Dubuque, and Spencer, Iowa, and Fargo,

N. Dak., to points in Minnesota, Wisconsin, South Dakota, and the upper peninsula of Michigan; frozen peas, from Milwaukee and Fond du Lac, Wis., to Rochester, Minn.; wool, wool waste, and wool imported from a foreign country, from Philadelphia, Pa., Boston, Mass., and Albany, N.Y., to Reedsburg, Wis.; meat scrap, from Howard, Wis., to points in Minnesota; imported wool, wool tops and noils and wool waste and domestic wool, from Philadelphia, Pa., and points in Massachusetts, to Faribault, Minn., and points in Wisconsin; from points in Massachusetts, to Lacon, Ill.; from Rochelle, Ill., to Chippewa Falls, Wis.; fish flour and fish meal, from New Bedford, Mass., to points in Iowa, the upper peninsula of Michigan, Minnesota, North Dakota, South Dakota, and Wisconsin; and packinghouse products, not for human consumption (except in bulk in tank vehicles), from Duluth, Minn., to points in Illinois, Iowa, the Upper Peninsula of Michigan, North Dakota, South Dakota, and Wisconsin. A. R. Fowler, 2288 University Avenue, St. Paul, Minn., 55114, representative for applicants.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 64-4116; Filed, Apr. 24, 1964; 8:49 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

APRIL 21, 1964.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 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. 38974: *Joint Motor-Rail Rates, Central and Southern.* Filed by Central and Southern Motor Freight Tariff Association, Incorporated, agent (No. 84), for interested carriers. Rates on various commodities moving on class and commodity rates over joint routes of applicant rail and motor carriers, between points in southern territory, on the one hand, and points in central states territory, on the other.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 13 to Central and Southern Motor Freight Tariff Association, Incorporated, agent, tariff MF-I.C.C. 286.

FSA No. 38975: *Commodities between points in Southern Territory.* Filed by O. W. South, Jr., agent (No. A4500), for interested rail carriers. Rates on various commodities, in carloads and tank-car loads, between points in southern territory.

Grounds for relief: Market competition.

FSA No. 38976: *Cement and related articles from Selma, Mo.* Filed by O. W. South, Jr., agent (No. A4501), for interested rail carriers. Rates on cement and related articles, in carloads, from Selma, Mo., to points in southern territory.

Grounds for relief: Market competition, short line distance formula and grouping.

Tariff: Supplement 41 to Southern Freight Association, agent, tariff I.C.C. S-351.

FSA No. 38977: *Groundwood paper winding cores from and to points in Southern Territory.* Filed by O. W. South, Jr., agent (No. A4502), for interested rail carriers. Rates on groundwood paper winding cores, as described in the application, in carloads, between points in southern territory, from points in official (including Illinois) and western trunk-line territories, on the one hand, and points in southern territory, on the other.

Grounds for relief: Carrier competition.

Tariff: Supplement 92 to Southern Freight Association, agent, tariff I.C.C. S-230.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 64-4054; Filed, Apr. 23, 1964; 8:48 a.m.]

ALEXANDER W. WUERKER

Statement of Changes in Financial Interests

Pursuant to subsection 302(c), Part III, Executive Order 10647 (20 F.R. 8769) "Providing for the Appointment of Certain Persons under the Defense Production Act of 1950, as amended," I hereby furnish for filing with the Office of the Federal Register for publication in the FEDERAL REGISTER the following information showing any changes in my financial interests and business connections as heretofore reported and published (26 F.R. 8958, 27 F.R. 3829, 9469, 28 F.R. 4269 and 10468) during the six months' period ended March 14, 1964.

No change.

Dated: March 14, 1964.

A. W. WUERKER.

[F.R. Doc. 64-4118; Filed, Apr. 24, 1964; 8:49 a.m.]

JOHN V. LAWRENCE

Statement of Changes in Financial Interests

Pursuant to subsection 302(c), Part III, Executive Order 10647 (20 F.R. 8769) "Providing for the Appointment of Certain Persons under the Defense Production Act of 1950, as amended," I hereby furnish for filing with the Office of the Federal Register for publication in the FEDERAL REGISTER the following information showing any changes in my financial interests and business connections as heretofore reported and published (26 F.R. 8958, 27 F.R. 3829, 9545, 28 F.R. 4117, and 10468) during the six months' period ended March 14, 1964.

No change.

Dated: March 14, 1964.

JOHN V. LAWRENCE.

[F.R. Doc. 64-4117; Filed, Apr. 24, 1964; 8:49 a.m.]

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Agricultural Marketing Service

[7 CFR Parts 1001, 1006, 1007, 1014, 1015]

[Docket Nos. AO–14 A–35, AO–203 A–17, AO–204 A–17, AO–302 A–9, AO–305 A–9]

MILK IN CERTAIN NEW ENGLAND MARKETING AREAS

Notice of Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the Greater Boston, Springfield, and Worcester, Massachusetts; Southeastern New England; and Connecticut marketing areas. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C., 20250, not later than the close of business the 20th day after publication of this decision in the FEDERAL REGISTER. Eight copies of the exceptions should be filed.

Preliminary statement. The joint hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders as amended, were formulated, was conducted at Boston, Springfield, and Worcester, Massachusetts; Providence, Rhode Island; and Hartford, Connecticut; on January 7–25 and February 11–16, 1963, pursuant to notice thereof which was issued July 27, 1962 (27 F.R. 7647 and 7828) and supplemental notices thereof which were issued October 15, 1962 (27 F.R. 10299), November 9, 1962 (27 F.R. 11321), and December 10, 1962 (27 F.R. 12449).

To facilitate the receiving of evidence in an orderly manner, the numerous proposals considered at the hearing were grouped at the outset by the Presiding Officer into several categories on the basis of subject matter. For purposes of this decision also the proposals continue to be grouped by similar categories and are listed below as the material issues of the hearing. Accordingly, the amendments to the respective orders as proposed herein are described under the appropriate subject category with appropriate references to the specific order involved.

The material issues on the record of the hearing relate for all five orders to:

1. Need and basis for order consolidation;
2. Other proposed changes in marketing areas;
3. Zone differentials and zoning;
4. Farm location differentials;
5. Class prices;
6. Producer-handler definitions, "dairy farmer-distributors", and exemption of "own farm" production;
7. Accounting and reporting provisions;
8. Classification and assignment provisions;
9. Basis and scope of pooling;
10. Payments to producers and cooperative associations;
11. Marketing service deductions; and
12. Administrative provisions.

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. *Need and basis for order consolidation.* The Federal orders which regulate the handling of milk in the Greater Boston, Southeastern New England, Springfield, and Worcester marketing areas should be consolidated into one order. The consolidated marketing area to be regulated thereunder should be designated as the "Massachusetts-Rhode Island" marketing area.

A group of nine cooperative associations which represent producers under the New England orders whose farms are located principally in the State of Vermont proposed that the five New England orders now in effect be consolidated into one order. A similar proposal was made by certain cooperative associations representing producers under the New York-New Jersey Federal order. Three other cooperative associations representing producers under the New England orders whose farms are located principally in the States of Massachusetts, Vermont, New Hampshire, and Maine proposed that the Greater Boston, Springfield, and Worcester orders be combined. Another cooperative association representing primarily producers under the New York-New Jersey Federal order, but also representing producers under some of the New England orders, proposed that the five New England orders be merged into two orders. According to the latter proposal one order would be a combination of the Greater Boston, Southeastern New England, and Worcester orders and the other order a combination of the Connecticut and Springfield orders.

In summary, proponents of the several merger proposals contended that numerous marketing changes during the past several years have caused the five New England markets to become highly interrelated in both the procurement and the distribution of milk. They pointed to such supporting circumstances as the consolidation, expansion, and specialization of supply plants and distributing plants, the use of new types and sizes of consumer packages, the increased number and size of wholesale outlets, and the greater proximity of population centers to more distributing plants due to suburban expansion. Other changes include the general increase in milk production, the increased use of farm bulk tanks, and improved roads and transportation facilities. Proponents further stated that added factors such as the substantial difference among the New England markets in their fluid milk requirements in relation to supply, and the historical association of major surplus disposal facilities with the Boston markets, also contribute to the interdependency of these markets.

Proponents pointed out that substantial volumes of milk are being moved regularly among the New England markets and that numerous plants are being shifted frequently from regulation under one order to regulation under another. Under these circumstances, the separate regulation of these markets is causing inefficiency in marketing and often inequitable situations for substantial num-

bers of producers who are supplying milk to these markets. They contended that these problems can be resolved effectively only through order consolidation.

On the basis of the findings herein, it is concluded that the consolidation at this time of the Boston, Southeastern New England, Springfield, and Worcester markets under one order is necessary to maintain orderly and efficient marketing in these areas. The marketing problems described by witnesses in connection with both the merger proposals and the other proposals pertaining to interorder relationships relate primarily to these four markets. A consolidation of only the three Massachusetts orders or of only the Boston, Southeastern New England, and Worcester orders, as alternatively proposed, or no consolidation of orders, would continue the application of separate orders to an area which has become, in effect, a common market for a large segment of the dairy farmers in New England. Because the major problems pertaining to intermarket relationships in New England do not involve the Connecticut market, the consolidation of the Connecticut order with any of the other New England orders is not presently warranted.

When the Boston, Southeasten New England, Springfield, and Worcester orders were issued, they regulated areas which were generally distinguishable as separate markets for particular groups of producers. Both distributing plants and supply plants were usually associated continuously with only one market. Handlers' retail and wholesale routes were confined in most cases to areas relatively close to their distributing plants. Because distributing plants were more numerous and of smaller size than is the case today, intermarket handler competition was relatively minor.

Distinguishable markets for milk in most of eastern Massachusetts and Rhode Island no longer exist, however. The population increase of recent years, and particularly the growth of suburban areas around principal cities in Massachusetts and Rhode Island, has induced handlers in one defined marketing area to extend their distribution routes into other such marketing areas. This action has been encouraged by the increasing proportion of business done through supermarkets and by improved roads and transportation facilities. To achieve economies of scale and to meet consumer demand, a number of handlers have concentrated their processing and packaging operations in larger plants which contain the specialized equipment necessary to package milk in the many sizes and types of containers in use today. This has resulted in regular distribution to more than one regulated market at the same time from an individual plant. Also, the Boston, Southeastern New England, and Worcester marketing areas adjoin each other and the eastern periphery of the Springfield marketing area is relatively close to the western boundary of the Worcester marketing area. Because distributing plants are scattered widely throughout these four marketing areas, only short distances are involved in many cases for operators of these plants to extend their distribution routes into another marketing area. The numerous instances of overlapping of handler sales areas is thus resulting in intermarket competition for fluid milk sales throughout an area which has become essentially a single fluid milk consumption center.

A number of cases of regular intermarket route distribution by specific handlers were cited in the record. One handler supplies about 70 stores in the Boston market, approximately 27 stores in the Southeastern New England market, and about 5 stores in the Worcester market with milk packaged at a Boston order regulated plant located in the Readville section of Boston. Before this plant was built, the stores in the Southeastern New England market had been supplied with milk packaged at plants regulated under the Southeastern New England order. Outlets in these three markets are supplied also by another handler from a plant located in the Charlestown section of Boston and from a plant at Framingham, Massachusetts, both of which are regulated under the Boston order. Another handler currently supplies Boston, Worcester, and Southeastern New England market resale outlets from another Boston order pool plant located at Charlestown. In the case of the latter handler, the Worcester and Southeastern New England market outlets had been supplied formerly from distributing plants, now closed, which were located at Worcester and Providence and operated as pool plants under the Worcester and Southeastern New England orders.

The operator of still another Boston order pool plant at Charlestown packages milk there for distribution to resale outlets in the Boston, Southeastern New England, and Worcester markets. This handler also moves packaged milk into the Worcester market from its Springfield order plant located at Agawam, Massachusetts. In addition, the handler distributes packaged milk in parts of the Boston marketing area from its Worcester order pool plant located at Worcester.

Further examples of intermarket distribution of packaged milk involve milk distributed (1) in the Boston market from Southeastern New England order pool plant located at Northampton, New England marketing area at Fall River, Franklin, and Brockton, Massachusetts, (2) in the Springfield market from a plant located at Woonsocket, Rhode Island, which is regulated under the Southeastern New England order, (3) in the Southeastern New England market from a Worcester order pool plant located at Worcester, (4) in the Boston market from another plant at Worcester which is pooled under the Worcester order, and (5) in the Worcester market from a Springfield order pool plant located at Northampton, Massachusetts, in the Springfield marketing area.

Intermarket disposition of milk results also because of transfers of packaged fluid milk products between distributing plants regulated under different orders. It is not unusual for a distributing plant under one order to be dependent upon a distributing plant under another order for fluid milk products of a certain type or packaged in a particular type or size of container. Such transfers often allow a more efficient fluid milk operation for the importing handler.

Opponents of the merger proposals contended that intermarket route distribution is limited to the few larger handlers in the markets involved and that the actions of these few handlers should not be a determining factor for any order consolidation. It may not be overlooked, of course, that the larger handlers distribute a substantial proportion of all producer milk pooled in the four markets proposed herein to be merged. Accordingly, the blended prices returned to many of the New England producers under separate orders are affected materially by the distribution patterns established by these handlers since, as explained later herein, such patterns are material in determining which order is applicable with respect to substantial quantities of milk. However, it may be noted also that the opportunities for smaller handlers to do business within more than one marketing area are considerable since distributing plants are widely scattered and, in many instances, the boundary of an adjacent marketing area is only a short distance from the plant.

These markets are characterized further by frequent intermarket shifting of both distributing plants and supply plants, which situation creates uncertainty for individual producers in the separate markets as to the returns they may reasonably expect. A number of handlers were described as having route sales of nearly equal volume in two New England Federal order markets. In such cases relatively minor changes in a handler's sales patterns are sufficient to cause his plant to become pooled in a market other than the one with which it is customarily associated. Moreover, the impact on blended prices of distributing plant shifts is even greater when such shifts cause supply plants, in turn, to shift from one market to another.

A pertinent illustration is the case of a handler who operates a distributing plant at Dudley, Massachusetts. For a period of months the handler's Class I route sales from this plant in two of the New England Federal order markets were nearly equal in volume. Any relatively small shift in his distribution pattern could qualify the plant for pooling under either order in a given month. This circumstance contributed to the pooling of the plant in the "wrong" market for several months, a condition which ultimately resulted in substantial adjustments to the blended prices in the two markets.

Before July 1962, the Dudley plant customarily had been pooled on the basis of its route disposition in the Worcester market. In the months of July through October 1962 the plant continued, though inadvertently, to be pooled in that market. Routine audit of of the handler's records subsequent to this July through October period re-

vealed, however, that, in fact, greater route sales from the plant had been made in the Southeastern New England marketing area than in the Worcester marketing area during each of these months. According to the terms of each of the orders, the plant thus should have been pooled under the Southeastern New England order in those months. Inasmuch as pool proceeds in the Worcester market already had been distributed to producers on the basis of the plant being a pool plant under the Worcester order during that period, appropriate adjustments in the producer-settlement funds under the two orders became necessary. The appropriate pooling of the plant in November 1962 was so uncertain at the end of the month that a special audit of the handler's route disposition in that month was necessary prior to the computation of the blended price to determine which order should apply.

Further, appropriate regulation of three supply plants in certain months of the same July–October 1962 period was contingent upon the proper pooling of the Dudley plant. The determination that the Dudley plant originally had been pooled under the wrong order therefore directly affected the pool status of the three supply plants for the same prior period. Thus, a supply plant located at Lyndonville, Vermont, was pooled in the wrong market in the months of July, August, and September. Also, supply plants located at Chelsea and Bradford, Vermont, were pooled in the wrong market in the months of July and August in one case and in the month of July in the other. Corrective changes in the pool status of these plants also necessitated adjustments in the producer-settlement funds under the two orders. Because of the relatively small total volume of producer milk normally pooled in the Worcester market, the adjustments necessitated by shifting both the distributing plant and the supply plants from such market depressed the blended price to all Worcester market producers in the month of November 1962, when the necessary pool adjustments were made, by an amount estimated at more than 20 cents per hundredweight.

A very small change in the proportion of milk distributed in the various markets from the Dudley plant resulted in its being pooled again in the Worcester market from December 1962 through May 1963. As a result of further changes in route disposition the plant was pooled in the Connecticut market in June 1963 and in the Boston market in July 1963. (Official notice is taken of "The Market Administrator's Review", Volume 15, No. 8, issued August 1963 by the market administrator for the three Massachusetts orders.) With separate orders, continuance of advance audits of the route sales from the plant, made before the monthly pool computations, obviously would be necessary to avoid recurrence of the July–October 1962 pooling problem. In any case, from his own testimony, the handler is in position, with separate regulations, to shift his operations from one market to another with little effort. Consequently, he may not be clearly identified with a particular market.

Several other New England handlers also have made route sales of about equal volumes in two markets from a single distributing plant. On the basis of relatively minor changes in such handlers' sales patterns, the plants involved became regulated in markets other than the one in which they had been regulated historically and clear identification with a given market over time is no longer possible. For example, a distributing plant located at Franklin, Massachusetts, which had been a pool plant in the Southeastern New England market for some time, for this reason became a pool plant in the Boston market in June 1962.

In another case, a distributing plant located at South Boston and customarily pooled in the Southeastern New England market became a pool plant in the Boston market in March 1961, also because of a change in its sales pattern. This plant was later closed and a newly constructed distributing plant located at Canton, Massachusetts, which had absorbed the packaging operations of the South Boston plant, became a pool plant in the Southeastern New England market in July 1962. The plant became a pool plant in the Boston market again in October 1962.

Another distributing plant located at Woonsocket, Rhode Island, which had been a pool plant in the Boston market for a substantial period before May 1961 became a Southeastern New England order pool plant in that month.

Under separate regulations the association of plant milk supplies with one or another of the markets on a continuing basis in response to market needs for milk and price incentives also has become increasingly difficult. Several amendment actions have resulted for the express purpose of resolving this problem. However, while the order amendments generally improved the immediate marketing situation, they have been for the most part ineffective in furthering long-range stability for all the markets.

In this connection, it should be noted that the Boston market is characterized by numerous supply plants located in northern New England which perform the role of collecting milk for transfer to processing and packaging plants located in the marketing area. Some of these plants while maintaining pool status in the Boston market are substantial sources of milk for Southeastern New England distributing plants and for Boston plants which distribute on routes in the Southeastern New England market. Though fewer in number, some supply plants are similarly associated with the Southeastern New England market. In the Worcester and Springfield markets supply plants are not an important regular source of milk although supply plants attached to other markets are relied upon occasionally by these markets for milk to supplement the locally produced milk supplies.

The shifting of a supply plant from one market to another may occur for various reasons. In many cases the shifts take place in response to a higher blended price reflecting a relatively greater need for milk in the transferee market. Such shifts often have been made, however, in an attempt to bring blended prices into closer alignment. There is an incentive for handlers to make such shifts simply in order to retain milk deliveries from producers at the handlers' country plants. Numerous shifts of supply plants have been made, particularly between the Boston and Southeastern New England markets, in pursuit of this objective. The numerous shifts of supply plants from regulation under one order to regulation under another of the four orders may be illustrated by the fact that during the period September 1960 through September 1962 sixteen such plants were so shifted. In this period seven plants were shifted once, three plants twice, five plants three times, and one plant five times.

However, because of seasonal differences in market demand patterns, institutional factors affecting the marketing of milk and unforeseen contingencies, the efforts of handlers and cooperatives to achieve reasonably close blended price alignment in the four markets have not been successful. A particularly significant circumstance which has prevented successful price alignment is the increasing volumes of milk handled at country supply plants. The shift of one additional large size plant may well result in an over-adjustment of blended prices. Often, also, these shifts have been made at the sacrifice of efficiency in the marketing system and have resulted in extra marketing costs.

Despite the efforts that have been made to attain alignment of blended prices, significant differences in prices under the separate orders have persisted during recent years. The most important blended price differences, under present marketing conditions in New England, are those between the Boston and Southeastern New England markets, which, as previously indicated, adjoin each other in a densely populated residential and industrial area of Massachusetts. For the four-year period 1960 through 1963, for example, the Southeastern New England blended prices averaged 15 cents per hundredweight above the comparable blended prices of the dominant Boston market. During this time the Southeastern New England monthly blended prices exceeded the comparable Boston blended prices by more than 20 cents per hundredweight on 18 different occasions. During seven of these months the difference was more than 30 cents per hundredweight. The Worcester blended prices in this period exceeded the Boston blended prices by an average of 7.5 cents per hundredweight. On the other hand, the Springfield blended prices averaged 7.5 cents less per hundredweight than the Boston blended prices during the same period. (Official notice is taken of the "Monthly Statistical Reports" for 1963 which were issued by the market administrators for the five New England markets.) Quite naturally, substantial differences in blended prices result in dissatisfaction on the part of

those individual producers and producer groups who are receiving the lowest blended prices.

It may be noted that there is a definite seasonal character to the blended price differences between the Boston and Southeastern New England markets, with prices in the latter market reaching maximum variation over the Boston prices in the summer and early fall months and with narrow price differences prevailing in most other months. This reduces the incentive for proprietary handlers or cooperative associations operating under the Boston order to qualify plants and milk supplies for pooling under the Southeastern New England order on more than a temporary basis. In months other than in summer and early fall any substantial amount of additional milk in the Southeastern New England pool would reduce the blended price below Boston's blended price at all locations without advantage to the plant operator qualifying the additional milk, or to the producers of such milk. Thus, it would be virtually impossible to achieve close alignment of prices throughout the year under separate orders by the normal course of action available to plant operators, i.e., of qualifying additional milk for year-round pooling in the Southeastern New England market.

It is clear that a single marketing area has developed where previously separate markets existed. Under this circumstance, the economic stresses, marketing instability and price uncertainties which have developed and persisted must be eliminated by the adoption of a single milk order with a single marketwide pool.

Because of the differences in present market utilization patterns, however, the immediate effects of establishing a common pool on current blended price levels in the previous individual markets will vary. For example, estimates of the blended price level (computed on a weighted average basis) that would have resulted in 1963 from pooling under the Massachusetts-Rhode Island order proposed herein (at the class prices which prevailed during such period and exclusive of any change in zone differentials) are that producers in the present Boston and Springfield markets would have had their average prices increased 3 cents and 11 cents per hundredweight, respectively. Worcester producers would have received an average of 2 cents per hundredweight less in 1963 while producers who have been supplying the Southeastern New England market would have received an average of 11 cents less per hundredweight.

It was in connection with the contemplated decrease in the Southeastern New England blended prices that representatives of certain Southeastern New England producers testified against any merger involving their market. Such representatives expressed the view that a merger of such market with one or more of the Massachusetts markets would be financially deterimental to Southeastern New England producers. In addition, it was felt that the lower blended prices would cause a decrease in milk production in the nearby production areas, thereby increasing procurement problems for the smaller handlers in the market. It was contended that these handlers historically have relied on milk produced on close-in farms in Rhode Island and in the nearby Connecticut and Massachusetts areas for their fluid needs. Therefore, the present higher level of Southeastern New England blended prices is needed, they contended, to maintain milk supplies in such nearby production areas and to provide incentive for the seasonally greater production needed in summer and early fall to supply the resort trade characteristic of this market. Witnesses stated that in the event of shorter local supply these handlers would have to procure milk from more distant sources and, because of the relatively small quantities of milk involved for such a handler, any resulting higher procurement cost would place him at a competitive disadvantage with the larger handlers in the market.

It is estimated that the proposed merger of the four orders, and the proposed 7-cent reduction in the city plant Class I zone differential described later herein, would have resulted in an average one percent reduction in the 1963 weighted average blended prices to nearby producers in Massachusetts, Connecticut, and Rhode Island who deliver milk to city plants covered by the orders. Thus, the effect on availability of producer milk produced in such areas to Southeastern New England handlers should be minor. Moreover, as described under Issue No. 3, milk produced in these areas has become overpriced under the orders relative to country plant milk, and city plant operators often have preferred to purchase milk from country sources rather than from local producers. This situation is, in fact, one of the major marketing problems dealt with in this decision because recently much of the locally-produced milk has had to be disposed of in manufacturing channels.

In 1963, 20 percent of all producer milk received directly at city plants in the Boston, Southeastern New England, Springfield and Worcester markets was used in Class II. This milk, which is greater in quantity than the aggregate amount of milk which Southeastern New England handlers currently purchase from "up-country" plants (equal in 1963 to about 18 percent of their total Class I milk), will be made more attractive pricewise for Class I use by the proposed reduction in the city plant Class I zone differential and is available to serve the needs of those who desire nearby milk for Class I use. In view of the foregoing, there is no reason to believe that the total supply of milk available to all handlers under the merged order, including present Southeastern New England handlers, will not be ample in view of the substantial reserve supplies available in New England.

As indicated previously, the marketing problems described on the record relative to the several merger proposals relate mainly to the marketing of milk in the Boston, Southeastern New England, Springfield, and Worcester markets. Although three different merger proposals embraced also the Connecticut market, witnesses did not describe any marketing problem which warrants consolidating the Connecticut order with any of the other New England orders. The interrelationships between the Connecticut market and the other regulated markets in New England with respect to supplies and intermarket distribution have not been as marked as for the four markets proposed for consolidation, and there was little evidence to suggest any significant change in this situation in the near future.

It is not clear that the consolidation of the Connecticut order with any of the other New England orders would improve materially, under present marketing conditions, the efficiency of milk marketing in New England or solve the problems of marketing which warrant merger of the other orders. There has been no problem between the Connecticut market and other New England markets of supply plant shifts to contribute to the instability in market supplies and producer prices referred to previously. It reasonably may be expected also that the fact of adoption of a Massachusetts-Rhode Island order, as proposed herein, would minimize accidental or undesirable shifts of plants and supplies between markets and that, consequently, greater stability of market supply and prices will result for the Connecticut market as well as for the combined market area.

Moreover, evidence does not show that the two groups of cooperative associations which proposed the consolidation of all five New England orders would be impaired in performing their usual marketing functions if the Connecticut order were not merged with the other four New England orders. These associations had no members who were producers in the Connecticut market at the time of the hearing and they have not become identified from a marketing standpoint with the Connecticut market.

In light of all the above circumstances, it is concluded that the Greater Boston, Southeastern New England, Springfield, and Worcester orders should be merged into one order.

It should be noted in connection with this discussion of order consolidation that many provisions of the Boston, Springfield, and Worcester orders are either identical or similar, but differ in many respects from the provisions of the Southeastern New England order. The several merger proposals involving the Boston order contemplated the adoption of many of the provisions of that order as the basic provisions for a consolidated order. A majority of the milk now pooled in the four markets proposed herein to be merged already is subject to the nearly identical provisions of the three Massachusetts orders. It is therefore concluded that generally the terms and provisions of the Boston order are appropriate terms and provisions for the proposed Massachusetts-Rhode Island order, subject, however, to the modifications set forth in the findings and conclusions herein pertaining to the other issues considered at the hearing. Further, it is appropriate that the Connecticut order and the proposed Massachusetts-Rhode Island order be closely

coordinated to avoid any conflict in regulation and to facilitate any intermarket movements of milk as may occur.

In this connection, the provisions of the three Massachusetts orders presently are supplemented by published rules and regulations which have been developed over time for the effective administration of these orders. No similar rules and regulations are applicable under the present Southeastern New England order. Some of the provisions of the rules and regulations, particularly those having clarifying effect with respect to the classification of milk, the making of necessary reports by handlers, and producer payments, should be adapted for incorporation into the Massachusetts-Rhode Island order. Other provisions of such rules and regulations should be abandoned either as obsolete or no longer necessary. The latter rules relate primarily to application of the butter-cheese price adjustment (no longer provided in the orders), errors relating to deductions for cooperative associations, assignment of butterfat processed into cheese to sources, basis for determining quantities of fluid milk products received or used by handlers, and listing of milk conversion factors. In view of the foregoing, the rules and regulations presently in effect under the three Massachusetts orders would be abolished simultaneously with promulgation of the proposed Massachusetts-Rhode Island order.

2. *Other proposed changes in marketing areas.* In establishing a consolidated marketing area, the geographical limits of the four marketing areas which are now regulated under the Boston, Springfield, Worcester, and Southeastern New England orders should remain unchanged. The Connecticut marketing area, under separate regulation, also should remain as presently defined.

One proponent of the proposal to merge the five New England orders further proposed to include certain unregulated Massachusetts towns in any consolidated marketing area, to wit: Harvard, Bolton, Berlin, Northbridge, Uxbridge, and Douglas in Worcester County and Boxboro, Acton, Carlisle, Concord, Lincoln, Maynard, Sudbury, Hudson, and Stow in Middlesex County. Northbridge, Uxbridge, and Douglas are surrounded by other towns included in one or another of the present marketing areas, and the other named towns are nearly surrounded by regulated areas. Proponent contended that it was not appropriate for islands or pockets of unregulated territory in which regulated handlers make route sales to exist within the general area of the proposed consolidated marketing area. Proponent also contended that the administration of the consolidated order could be facilitated by the regulation of these towns.

Also, a proprietary handler proposed that the Worcester marketing area be expanded to include the Massachusetts towns of Sturbridge in Worcester County and Brimfield, Wales, and Holland in Hampden County, all of which lie between the Worcester and Springfield marketing areas. This proponent contended that the addition of such towns to the Worcester marketing area would result in a greater proportion of his route sales being in that marketing area, thereby reducing the possibility of his distributing plant being pooled at times under another New England order.

The fact that certain unregulated territory is nearly surrounded by regulated areas in itself does not necessitate an extension of Federal regulation to the territory. Also, it is expected that the proposed consolidation of marketing areas will minimize or even eliminate the likelihood of any plant being inadvertently shifted from one market to another. It was not shown that disorderly marketing conditions resulting from the sale of unregulated milk, the customary basis for regulation in any area, prevail in the above-named towns. Inasmuch as the record fails to support the inclusion of these towns in the marketing area, the proposals must be denied.

Three handlers regulated under the Worcester order jointly proposed that the Massachusetts cities and towns of Fitchburg, Gardner, Leominster, Lunenburg, Princeton, Sterling, and Westminster be removed from the Worcester marketing area. Proponents contended that from the time such cities and towns first became regulated as a result of the extension of the Worcester marketing area in September 1960, considerable extra expense to them has resulted because of additional recordkeeping and equalization payments into the producer-settlement fund.

No evidence was given to indicate, however, that marketing conditions in these cities and towns have changed substantially from the time when it was determined appropriate that they should be included in the Worcester marketing area. The removal of these areas from regulation could result in the influx of unpriced milk. Such a condition would be detrimental to handlers distributing milk in these areas who would continue to be regulated. Proponent handlers pay the same prices for milk under the order as other Worcester handlers. The fact that their cost of milk may have increased following the expansion of the area in itself is not sufficient grounds for modifying the marketing area. The proposal therefore is denied.

A cooperative association representing producers in Massachusetts proposed that the city of Marlborough and the town of Southborough (which are now a part of the Boston marketing area), and the Massachusetts towns of Milford, Hopedale, and Mendon (which are now a part of the Southeastern New England marketing area), be included as a part of the Worcester marketing area. In view of the conclusion that the Boston, Springfield, Worcester, and Southeastern New England marketing areas should be consolidated, this proposal is denied.

Dukes County, Massachusetts, which is a part of the Southeastern New England marketing area and which is limited geographically to certain islands, the principal of which is Martha's Vineyard, should not be removed from Federal regulation. A cooperative association, the membership of which consisted of a small number of producers in Martha's Vineyard, proposed removal of such county from regulation on the basis that regulation is no longer needed by island producers. A handler testified, on the other hand, that primary distribution in Dukes County is made by handlers currently regulated under the Southeastern New England order. The great majority of fluid milk sales in the county, therefore, are derived from regulated milk. In this circumstance, the continuation of regulation is appropriate.

3. *Zone differentials and zoning.* The Massachusetts-Rhode Island and Connecticut orders should provide that the Class I and blended prices applicable at nearby (city) plants be 47 cents per hundredweight above comparable prices for the 21st (201–210 mile) zone. The present Boston order's schedule of price differentials by zones, as modified herein, should be incorporated in the Massachusetts-Rhode Island order, and the zone differentials for Class II prices under the Boston order should be adopted as the zone differentials for Class II prices under the Connecticut order. The "nearby plant" (city plant) zone under the Massachusetts-Rhode Island order (at which the plus 47-cent zone differential would apply) should be approximately the same area now encompassed within the farm location differential areas under the Boston, Springfield, Worcester, and Southeastern New England orders plus the remainder of the State of Connecticut not currently included in such farm differential areas. The basing point for computing zone prices under the consolidated order should be Boston.

Three cooperative associations proposed that the Class I zone differential of 54 cents per hundredweight which is presently applicable at city plants under the Boston order be reduced by 12–14 cents. Corresponding reductions under the other orders were proposed with respect to Class I prices at city plants in relation to Class I prices at plants in the 21st zone.[1] A proprietary handler made another proposal to the effect that the price difference between the city and 21st zones under the Boston, Worcester, and Southeastern New England orders be reduced 17 cents.

The city plant Class I zone differential under each order establishes the Class I price applicable at plants located in, or close to, a central or principal consumption area of the market. For purposes of discussing differences between city and country zone pricing in the New England markets, differences are customarily measured by comparison with 21st zone pricing. On this basis such city plant zone differential is 54 cents per hundredweight of milk under each of the orders. This amount, determined on the basis of previous hearings, is related to the difference in cost to city plant operators of receiving milk directly from producers at such plants as compared to the cost of purchasing milk which is first received

[1] Basic prices under the Boston order are for receipts at the 201–210 mile zone. Under the Southeastern New England, Connecticut, Springfield, and Worcester orders, the basic prices are for receipts at city plants.

from producers at country plants located in the 21st zone and then moved to a city plant.

The purpose of establishing zone differentials is to achieve a high degree of uniformity in prices to all handlers f.o.b. the market for milk which is received from producers at plants located at varying distances from the principal consumption area. To achieve this purpose, the zone differentials must closely reflect costs generally incurred in receiving milk at country plants and moving such milk to city plants.

The present nearby plant Class I zone differential of 54 cents is based on two principal factors: (1) Freight charges for hauling milk from plants located in the 21st zone to city plants, and (2) the difference between costs incurred in the assembly of producer milk at country plants for transfer to city plants and costs incurred in receiving milk at city plants directly from producers. The total freight charge allowed in the present differential is 41 cents per hundredweight, which includes a Federal transportation tax no longer in effect. In earlier computations of the difference between country and city receiving costs, total country plant handling costs were considered to be 23 cents per hundredweight. Of the latter amount, 20 cents represented the cost of operating the country plant and the remaining three cents was to cover the cost to the handler in furnishing cans for the shipment of milk from the country plant to the city plant. Handling costs for receiving, weighing, and testing milk received from farms at the city plant were considered to be 10 cents per hundredweight, with the difference between this amount and the country plant handling costs thus being 13 cents.

The city plant Class I zone differential has been maintained at a level of 54 cents per hundredweight under the three Massachusetts orders since January 1, 1957, when the freight allowance was computed to be 41 cents per hundredweight. The factor of 13 cents, representing the computed additional cost of receiving milk at country plants, has not been changed since August 1, 1941.

Definite reductions in the cost of assembling and transporting milk have occurred since the city plant Class I zone differential was last revised. The one-cent Federal transportation tax now included in the freight allowance of 41 cents is, as indicated, no longer effective. Further, milk is no longer moved from country plants to city plants in cans but instead is moved in large tank trucks. This makes the three-cent can handling allowance now reflected in the zone differential outdated. Thus, in practice, handlers do not incur at least four cents of the total cost allowance of 54 cents provided in the orders.

A further cost reduction to handlers is evident with respect to transportation costs. This has resulted in part from improved highways throughout New England and the concentration of larger volumes of milk in fewer country plants which have made possible larger loads in moving milk from country plants to city plants. Hauling costs incurred for moving milk to the city in various quantities and from different zones were described by witnesses. Of the various rates described in the record for moving a hundredweight of milk from the 21st zone to city plants, however, the rates of 36.75 cents for tank trucks and 37.67 cents for railroad cars have the most relevancy under current marketing conditions. The indicated truck rate is based on the average cost of moving in January 1962, by several independent tank truck operators, over 6.6 million pounds of milk and skim milk from plants in the 21st zone to Boston city plants. Rates applicable to corresponding railroad movements of milk are established under joint tariff regulations which are effective in the New England States, and the rate of 37.67 cents applies to 5,000-gallon minimum loads. While it is recognized that the amounts of milk which are moved by rail have decreased greatly over the past few years, rail rates still apply to a substantial quantity of milk under current marketing practices in New England. It is concluded that 37 cents per hundredweight of milk, in contrast to the present allowance of 41 cents, represents a reasonable allowance for moving milk to market from the 21st zone.

There was considerable disagreement among witnesses as to the amount which most appropriately reflects the difference between the receiving costs at country plants and the receiving costs at city plants. This was largely due to the complexity of determining with precision the appropriate handling allowance in view of the evolution of bulk tank handling in New England. Some handlers already are receiving all their milk from farms in bulk tanks. While there is a general desire by the industry for a complete conversion to bulk receiving because of the lower receiving costs involved, such conversion has not yet been accomplished completely, or is it likely to occur in the very near future. Thus, a number of handlers are continuing to operate plants with the costlier can receiving facilities. Also, some country plants now are little more than transfer, or reload, points with plant equipment consisting primarily of wash-up facilities for tank trucks. Normally the handling costs are somewhat less at such installations than at the country plants with more elaborate facilities. In addition, the physical size of the many plants and the volumes of milk handled thereat differ considerably in these markets. The variations in efficiencies achieved because of size result in different unit costs in handling milk.

Some evidence would suggest that the difference between the receiving costs at country plants and such costs at city plants is as low as 5 cents per hundredweight. Other evidence indicates that this cost difference may be significantly higher. In view of the wide variation in costs apparently being experienced by handlers, it is concluded that the difference between country plant and city plant handling of 10 cents per hundredweight, which is now reflected in the 54-cent zone differential, should not be modified on this record. As marketing practices, conditions, and technology change, perhaps a somewhat lower handling allowance will be appropriate. Evidence in this record suggests that a thorough review of this matter would be warranted at a future date.

As just indicated there are, however, certain reductions which have occurred in the costs of handling milk and transporting it from country locations to city plants. This makes the present zone differential of 54 cents inappropriate for valuing milk received from producers at city plants in relation to milk received from producers at plants in the 21st zone. The present zone differential exceeds the indicated total additional cost of receiving milk at the city through a country plant. Therefore, the operator of a city plant who receives milk directly from producers in fact pays, insofar as the order is concerned, a greater amount for his milk supply than does the operator of a city plant who obtains his fluid supply from country plant sources.

This situation encourages city plant operators to obtain increasing quantities of milk from country plants for their fluid requirements. Such plant operators were described as able to purchase milk from country sources delivered f.o.b. the city plant at approximately the city plant Class I price. Under this arrangement, it is conducive for city plant operators to purchase milk from country sources and avoid the costs of field service, quality control, bookkeeping, and added receiving costs normally associated with receiving milk directly from individual producers. Multiple-plant handlers with both country and city plants are in a particularly favorable position to take advantage of the lower handling and transportation costs than are now reflected in the city plant Class I zone differential. One of the results has been that a major cooperative association has had to expand its manufacturing facilities in southern New England in order to market an increasing proportion of nearby produced milk for which Class I outlets have been lost to country plant sources.

There is, of course, a substantial economic waste when milk is transported unnecessarily from country plant locations to the city. All producers sharing in the pool incur an unnecessarily high aggregate cost of marketing in the circumstance where milk produced near the market and readily available for Class I use is disposed of through local manufacturing outlets while substantial quantities of milk produced in more distant areas are shipped in fluid form, at relatively higher transportation cost, to the marketing area for fluid use. Whether the producer's farm is located near the market center or at a country location, he individually bears the cost of getting his milk to a plant outlet. However, the added cost of moving milk between the country plant and the city plant after receipt from the farm is borne by all (pool) producers whether near, or distant from, the market since the price at which such milk is paid for by the handler when purchased from the country plant is the lower country plant zone price. In addition, if the country plant milk actually replaces nearby milk which must be turned to manufacturing, there

is also assessed against at least some producers a marketing cost associated with the diversion of milk to surplus outlets.

It is estimated that all producers in the market incur a cost of about $3,100 per million pounds of milk which is moved in fluid form from plants in the 21st zone to city plants when such milk replaces an equivalent amount of nearby milk which is disposed of through local manufacturing plants. The orders thus should not continue in effect a price at city plants which over-values producer milk which is delivered directly to city plants relative to milk available at country plants. Appropriate differentials will tend to maintain Class I milk outlets for the nearby-produced milk and hold aggregate marketing costs for pool producers to a minimum.

It is therefore concluded that the allowance for transportation to be reflected in the city plant zone differential should be 37 cents. Further, the plant handling allowance to be reflected in this differential should continue to be 10 cents. Accordingly, the Class I price applicable at nearby (city) plants under the Connecticut order and the proposed Massachusetts-Rhode Island order would be 47 cents greater than the Class I price at plants located in the 21st zone.

Any realignment of location differentials necessitated by reductions in the cost of handling to those handlers (including cooperative associations) who are engaged in the physical handling and transportation of milk should not result in lowering aggregate returns for Class I milk. Accordingly, the full incidence of the realignment in the city plant Class I zone differential with the 201–210 mile zone price should not fall on producers delivering milk directly to city plants as was proposed by several witnesses. Instead, both the Class I price applicable at city plants and the Class I price applicable at all country locations should be adjusted in such a manner that all producers in the market will continue to receive in the aggregate, insofar as the continued maintenance of the New England-New York-New Jersey Class I price relationship ("snubber" in Class I price formula) will allow, about the same total returns as they are now receiving under the present price structure. To achieve this the present 54-cent (city) zone differential should be reduced by 7 cents. At the same time, however, the Class I price formula should be revised to increase by 4 cents, before "snubbing" to the New York-New Jersey Class I price, the "New England basic Class I price" which is announced for the 21st zone. The result of this realignment of Class I prices by location will be to lower by 3 cents the Class I price on the 60 percent of Class I milk (five markets) obtained from direct receipts at city zone plants and to increase by 4 cents the level at plants in other zones where 40 percent of the Class I milk in New England originates. By this means the weighted average price for Class I milk in the New England markets is retained at virtually the same level.

On the basis of previous hearings it has been determined that the New England Class I price at the 21st zone should not be greater than 5 cents per hundredweight (on the 3.5 percent butterfat basis adopted herein) than the New York-New Jersey Class I price. The provision in the New England orders which provides for this relationship has been operative for some time. It is appropriate that this interorder price relationship be maintained. Thus, the proposed adjustment in the New England basic Class I price formula should be made in a manner which will not disturb this price relationship. It will be recognized, of course, that until such time as the price "snubber" becomes inoperative, it will reduce somewhat the aggregate returns to producers for all Class I milk following the reduction of the 54-cent zone differential.

It is estimated that had the realignment of location differentials proposed herein been in effect in 1963 in conjunction with the present tie to the New York-New Jersey prices, the combined returns for all producers in the present four markets included under the Massachusetts-Rhode Island order would have been lowered 3 cents per hundredweight. Total returns to all producers in the Connecticut market would have been lowered 6 cents per hundredweight during this period.

Local producer groups in the Connecticut and Southeastern New England markets stated their opposition to any reduction in the city plant Class I zone differential on the basis that (1) cost data available for use in determining the appropriateness of the differential were insufficient and inconclusive, (2) any reduction in the differential would have a relatively greater effect upon the returns to producers in these two markets than in the Boston market because higher proportions of the producer milk pooled under these two orders are delivered directly from farms to city plants, and (3) there had been no instance of Connecticut handlers replacing nearby producer milk with milk from country plants.

Provision for a nearby plant Class I zone differential at a higher level under the Connecticut order than under the Massachusetts-Rhode Island order could lead to disorderly marketing conditions. With different price levels at nearby plants under the two orders, Massachusetts-Rhode Island order handlers doing business in the Connecticut market would have a competitive advantage over Connecticut handlers for route sales in the Connecticut market. On the other hand, Connecticut handlers doing business in the consolidated market would be at a competitive disadvantage with Massachusetts-Rhode Island handlers as to route sales made within the consolidated marketing area. Because the two marketing areas are adjacent to each other and some handlers are actually distributing milk in both marketing areas at this time, the present policy of equal Class I price levels between the markets should be maintained.

A city plant zone differential of 54 cents per hundredweight under the New England orders is applicable also to the blended price which is returned to producers delivering milk directly to city plants. The nearby plant zone differential of 47 cents proposed herein for Class I prices likewise should be made applicable to blended prices under both the Massachusetts-Rhode Island order and the Connecticut order. Inasmuch as milk pooled under the orders is produced primarily for the fluid market, the blended prices returned to producers by location should reflect the same differentials which attach to Class I milk.

With the modifications previously discussed, the present schedule of zone differentials applicable to the Class I, Class II, and blended prices under the present Boston order should be adopted as the schedule of zone differentials under the Massachusetts-Rhode Island order. The adoption of the Boston order's Class II zone differentials, which are slightly lower than the Class II zone differentials under the Springfield, Worcester, and Southeastern New England orders, is appropriate in view of their continued applicability in the Boston market and the adoption of such differentials for the Connecticut order, as discussed below.

The schedule of Class II price zone differentials under the Connecticut order should correspond with the schedule of Class II price zone differentials under the Massachusetts-Rhode Island order. Two Connecticut cooperative associations proposed that the schedule of Class II zone differentials under the Boston order, adopted herein for the Massachusetts-Rhode Island order, be made applicable also under the Connecticut order.

The costs of moving the products of Class II milk do not differ appreciably in the Connecticut and Boston markets. Accordingly, the difference in the Class II prices applicable at nearby plants and at plants in the 21st zone should be 5.8 cents rather than 7.0 cents as the Connecticut order now provides.

Adoption of this proposal will insure similar Class II prices under the New England orders at comparable pricing points in relation to market centers. This also will promote close alignment of reserve milk prices throughout the northeastern Federally regulated markets. (Official notice is taken of findings and conclusions on the propriety of intermarket price alignment which were included in a decision on proposed amendments to ten northeastern Federal orders issued April 25, 1962 (27 F.R. 4115).)

There was a suggestion at the hearing that the appropriateness of individual zone adjustments in the schedule of Class I zone differentials under the orders be reviewed; also that the Class II zone differentials under the three Massachusetts orders be "smoothed out" so that the price differences between zones would be more uniform than is presently the case. Record data with respect to both the Class I zone differentials and Class II zone differentials for zones other than the nearby zones are insufficient to support further modification of zone adjustments, however, and such suggestion should not be adopted.

The nearby plant zone under the Massachusetts-Rhode Island order should coincide with the combined farm location differential areas adopted herein for the consolidated order plus the remainder of the area within the State of

Connecticut not included in such farm differential areas. (The farm location differential areas under the Massachusetts-Rhode Island order are described herein in more detail under Issue No. 4. Except for minor modification of the periphery, these areas embrace the present farm location differential areas under the Boston, Springfield, Worcester, and Southeastern New England orders.) The nearby plant zone thus would coincide closely with the combined city plant zones of the Boston and Southeastern New England orders, which together encompass an area within 80 miles of the State House in Boston and an area within 100 miles of Providence. The city plant zones of the Springfield and Worcester orders are relatively limited in that they each encompass the territory within 10 miles of the boundaries of the respective marketing areas. The latter areas are wholly contained, however, within the combined area covered by the city plant zones of the Boston and Southeastern New England orders. Defining the nearby plant zone for the Massachusetts-Rhode Island order in this manner will not change the zone status of city plants presently regulated under the orders proposed to be consolidated.

Boston should be the basing point for the application of zone differentials under the Massachusetts-Rhode Island order. There was no evidence to indicate that some other location, or locations, should be designated for this purpose or that significant problems would arise from the use of this location under a merged order.

The markets which rely regularly on supply plant milk are Boston and Southeastern New England. A number of supply plants in New England are located somewhat closer to Boston than to Providence. However, other supply plants, such as those located at Cambridge and Granville, New York, and Middletown Springs, Shoreham, Vergennes, and New Haven Junction, Vermont, which often have been pooled in the Southeastern New England market are nearly equidistant from Boston and Providence. Massachusetts-Rhode Island handlers operating distributing plants in areas outlying from Boston therefore should not be disadvantaged in their procurement of milk from country sources by virtue of location differentials computed from the Boston basing point.

The New England orders currently provide a procedure for measuring the highway mileage from the price basing points to the plants to be zoned. For simplicity in determining the proper zone location of plants under the Massachusetts-Rhode Island and Connecticut orders, the presently used procedure should be modified to permit use of mileage charts in the most recently issued Mileage Guide No. 7 which lists determined mileages between specified cities or "key points". It is desirable, however, that the zone location for plants which were regulated under any of the New England orders in the month immediately preceding the effective date of the amendments proposed herein be determined on the basis of the procedure presently in use under the New England orders until a new Mileage Guide is issued. The orders should reflect also the discontinuance in Mileage Guide No. 7 of the term "first-class" roads.

4. *Farm location differentials.* The farm location differential provisions under the present New England orders should be continued under the Massachusetts-Rhode Island order and the Connecticut order.

A group of nine cooperative associations, which represents principally producers whose farms are located outside any of the specified farm location differential areas, proposed that farm location differentials be eliminated under the New England orders. Three other cooperative associations proposed that a producer whose farm is located within New England and who is presently eligible to receive a farm location differential (either 46 cents or 23 cents depending on the location of the farm) under any New England order be eligible to receive the same differential irrespective of the New England order under which his milk is pooled. Another cooperative association proposed that the farm location differentials be increased as an offset to any reduction made in the city plant Class I zone differentials under the orders.

Farm location differentials represent payments of 46 cents and 23 cents per hundredweight to producers whose farms are located in specified "nearby" and "intermediate" areas, respectively, in addition to the applicable zone blended price which these producers receive. The payments are met by deductions from pool funds. The additional returns to producers who are eligible for these differentials are, in essence, monies which, in the absence of such differentials, would accrue through the blended price computation to all producers, including more distant producers.

Such farm location differentials have been in effect under the several New England orders since the inception of the orders. The differentials were adopted to reflect in the pricing structure of the orders historical price relationships by location which prevailed in these markets. It was found that customarily somewhat higher values, above those which normally reflected transportation costs, attached to milk produced near the principal consumption centers as compared to the market value of milk produced in the more distant areas of the milkshed.

While considerable testimony in support of removal of the provisions was received, it was not established that the farm location differential provisions are resulting in unstable or disruptive marketing conditions which warrant their deletion from the orders at this time. Although certain marketing problems in the nearby and intermediate market areas were referred to in the testimony, these problems are not the result of production increases on farms in these areas which logically might be attributable to the higher returns to producers in these areas. Such increases have not been significantly different from those on farms not eligible for the farm location differentials.

During a period of general incerase in milk production throughout the milksheds of the New England markets, the average daily milk deliveries per farm for those farms located in the farm location differential areas under the Boston order and for those farms located outside such areas both increased 23 percent in 1962 over the average of such deliveries in 1960. In the Southeastern New England market the average daily deliveries per farm for those farms located in the differential areas increased about 16 percent in 1962 over 1960 while such deliveries from farms not located in any differential area under the Southeastern New England order increased about 13 percent during this period.

Comparable percentage figures for Connecticut market producers for this period are not available. A comparison of 1961 with 1960, however, shows that there was an increase of 8 percent in the average daily deliveries per farm for those farms located in the differential areas and an increase of 13 percent in such deliveries for those producer farms located outside the Connecticut differential areas. In the Springfield market the average daily deliveries per farm for those producers in the differential areas increased about 18 percent during the 1960–1962 period. In this market very few farms are located outside the differential areas. Such increase of 18 percent is not out of line with comparable increases in the other markets, however. In the Worcester market such daily average deliveries from farms located in the 46-cent differential area (there is no 23-cent differential area under the Worcester order) increased about 17 percent during this two-year period while such deliveries per farm located outside such differential area increased about 32 percent.

The average number of producers with farms located in the farm location differential areas is decreasing in the Boston, Springfield, Southeastern New England, and Connecticut markets. The farm location differential area under the Worcester order was expanded in September 1960 and this caused an increase in 1961 over 1960 in the average number of producers who were eligible to receive such a differential. The average number of such producers decreased in 1962 from such number in 1961, however.

Marketing problems which have been attributed to the farm location differentials do not relate to the rates of the differentials as such but rather to the changes in applicable differential rates which often occur for producers when they are shifted from one market to another. Problems of this kind, however, are dealt with by the proposed merger of orders. Further, an unwarranted decrease in returns to nearby producers would result at this time if any reduction were made in the farm location differentials in conjunction with the 7-cent reduction in the city plant Class I zone differential proposed herein. It is therefore appropriate that the present levels of farm location differentials continue to be applicable under the New England orders.

It would not be appropriate to increase the farm location differentials under the Massachusetts-Rhode Island

and Connecticut orders, however, by part or all of the proposed reduction in the city plant Class I zone differential. Proponent of this proposal contended that under a reduced transportation differential such an increase in farm location differentials should be made to reflect in the returns to nearby producers the full value of nearby producer milk as compared to country plant milk.

It is probable that the attractiveness to handlers of nearby producer sources of milk will be increased under the circumstance of a reduced city plant Class I zone differential. As described under Issue No. 3, country receiving and transportation costs have decreased in recent years, indicating that the present zone differential for city plants is excessive. Reducing the zone differential merely provides for a proper relationship between the price to the handler for producer milk received at city plants as compared with the price to the handler for milk purchased from country plants. While such action may increase the marketability of nearby milk, the intrinsic value of the milk has not been increased. Accordingly, this proposal is denied.

The present farm location differential areas under the Boston, Springfield, Worcester, and Southeastern New England orders should be combined under the Massachusetts–Rhode Island order. With minor exception as described later, all territory which is within the present 46-cent differential area under any of the four orders should constitute the 46-cent differential area under the consolidated order. Similarly, all territory (also with minor exception as described later) which would not be within this proposed common 46-cent differential area but is now within the 23-cent differential area under any of the present four orders should constitute the 23-cent differential area under the consolidated order.

Producers now under the four orders to be merged would be suppliers of a single marketing area under the Massachusetts–Rhode Island order. Because only one marketing area will be involved, producers should receive the highest farm location differentials for which their farm locations would have made them eligible under any of the present four orders, regardless of the plant to which their milk is delivered under the merged order.

The consolidation of the respective farm location differential areas now provided under the four orders would eliminate sometimes unexpected decreases in returns to individual producers. When a distributing plant becomes pooled in another market, the producers delivering milk to that plant become associated with the new market also. This has been a disturbing condition for certain producers who were eligible for the 46-cent differential before a plant shift but who became eligible only for the 23-cent differential, or for no differential at all, after the shift was made. Handlers experience difficulty at times in handling milk with maximum efficiency because of their reluctance to shift producers from one market to another when such producers would experience a reduction in returns. Cooperative associations also may be handicapped in shifting producers to plants which have need for additional supplies. It is appropriate, therefore, that the application of farm location differentials under the Massachusetts-Rhode Island order be as described.

It is not necessary to provide that a New England producer who is eligible for a farm location differential under the Connecticut order or the Massachusetts-Rhode Island order be eligible for the same differential when his milk is pooled under the other New England order. The consolidation of the four orders and the farm location differential areas provided thereunder will remove, for all practical purposes, the problem of change in differentials for producers who shift, or are shifted, from one to the other of these markets. This is so since it is likely that there will be relatively few instances of plant shifts with only two orders in New England and since virtually all producers shipping to the merged market but readily available to the Connecticut market would be in the 46-cent differential area under either order.

As indicated, the 46-cent and 23-cent differential areas under the Boston order are proposed to constitute a part of the areas in which farm location differentials would be applicable under the consolidated order. In contrast to the other four New England orders which now define the farm location differential areas provided thereunder in terms of city and town boundaries, the differential areas under the Boston order are defined by "40-mile" and "80-mile" airline arcs which are measured from specified locations. To facilitate the administration of the order, it is concluded that the peripheries of the two differential areas provided under the Massachusetts-Rhode Island order should be described in terms of city and town boundaries. The use of long-established, well-known, and readily ascertainable political boundaries will provide a less burdensome procedure for determining a producer's eligibility to receive a farm differential than does the use of airline arcs measured from a base point.

Under this proposed modification of a portion of the peripheries of the Boston order farm location differential areas, all cities and towns in Maine and New Hampshire which are wholly within the present 40-mile arc, as measured from Lawrence, Massachusetts, would be included in the 46-cent differential area under the consolidated order. In addition, the modification would extend the 46-cent differential area to the entire area of the following cities and towns which are now intersected by the 40-mile arc: the cities and towns of Barrington, Chichester, Deering, Francestown, Greenfield, Pembroke, Pittsfield, Rochester, Rollinsford, Strafford, and Weare in New Hampshire.

The 23-cent differential area under the merged order would include those cities and towns in Maine and New Hampshire which are wholly within the presently defined 80-mile arc under the Boston order but which would not be included in the Massachusetts-Rhode Island 46-cent differential area. In addition, the entire area of each of the towns of Kennebunkport and Lyman in Maine and Gilmanton, Middleton, Milton, and Surry in New Hampshire would be included in the 23-cent differential area under the merged order.

The cities and towns individually listed above are those areas which are intersected by the respective airline arcs used in defining the differential areas under the Boston order and from which one or more producers recently have delivered milk to the Boston market from farms located inside the respective arcs. The remaining cities and towns which are intersected by the respective arcs are areas from which no milk has been delivered to the Boston market since January 1, 1962. Accordingly, it is appropriate that these areas not be included within the respective differential areas. Under this arrangement, only nine Boston producers known to have farms located in the 23-cent differential area at the time of the hearing would be shifted to the 46-cent differential area and the farm of one known Boston producer not located in any differential area would be shifted to the 23-cent differential area.

5. *Prices.* (a) For the purpose of determining the appropriate monthly supply-demand adjustment factor, the pricing provisions for Class I milk in the New England orders should be amended to (1) compute monthly "base Class I percentages" on a three-year moving average, and (2) compute the supply-demand relationship on producer receipts and Class I sales data for the most recent three months rather than the most recent two months as at present.

It was proposed that the procedure for computing supply-demand adjustment factors be revised to reflect on a more current basis than at present the seasonal patterns in the New England markets of receipts from producers and Class I utilization. The annual determination of the New England seasonal supply-sales relationship using data on a three-year moving average was suggested as a means of properly reflecting gradual seasonal changes in milk receipts and sales which have occurred in the New England markets over the past several years. Also, it was suggested that the effect upon the supply-demand adjustment factors of occasional, erratic changes in the supply-sales relationship during a one- or two-month period, which may result at times from such occurrences as abnormal weather conditions, might be minimized by increasing the number of months used in the calculation of such factors.

The New England orders provide for the computation each month of a supply-demand adjustment factor for use in calculating the monthly basic Class I price. This factor is included in the orders to reflect in the Class I price the current relationship of receipts from producers to Class I sales. If the combined producer receipts in these markets increase in relation to the combined Class I sales, the resulting change in

this factor is intended to bring about a reduction in the Class I price. Conversely, if such receipts of milk decrease in relation to the Class I sales, the change in the factor is intended to cause the Class I price to increase. In the present orders a 68.9 percent Class I utilization is considered the "normal" level of Class I sales of producer milk to receipts of producer milk in the five markets on an annual basis.

The receipts of, and demand for, milk vary, however, from month to month and from season to season, often inversely. When calculating the supply-demand relationship, it is necessary to compensate for these seasonal conditions; otherwise the supply-demand adjustment factor would reflect principally seasonal variations rather than basic changes in the level of receipts and sales.

A 12-month series of "base Class I percentages" have been established for the express purpose of removing seasonal variations when computing the New England supply-demand relationship. (See § 1001.48(c)(3) in the Boston order for the percentages now in effect.) The present Class I percentages are based on the seasonal pattern of producer receipts and Class I sales which prevailed during the period 1953 through 1957. The seasonal variations for this period were adjusted to reflect the "normal" annual relationship of 68.9 percent Class I utilization. For example, under the schedule of base Class I percentages now in effect, the supply of milk in January is considered to be in reasonable "balance" with Class I utilization if the percentage of producer receipts used in Class I equals 71.6.

During recent years the seasonal variation in daily receipts of milk from producers has lessened. For the month of November in the period 1953 through 1957, the average daily receipts of producer milk in the Boston market were 65 percent of the average combined daily producer receipts for the months of May and June immediately before and after each month of November. In contrast, the average daily receipts of producer milk in November 1960 and 1961 in the Boston market were 73 percent of the average daily producer receipts during the immediately preceding and succeeding May-June periods. (Data for the months of May and June for two consecutive years are combined and compared with data for the intervening month of November to counteract the effect of any change in the annual level of receipts.)

This change in the amount of seasonal variation in producer deliveries, as reflected in the supply-demand adjustment factor, is causing increases in the Class I price on July 1st greater than the seasonal increases intended by the Class I price formula. Conversely, intended seasonal price increases during some of the late summer and fall months are canceled.

The base Class I percentages for both the Massachusetts-Rhode Island and Connecticut orders therefore should be revised to reflect on a current basis producer delivery patterns in order to correct these inappropriate price adjustments. Accordingly, provision should be made for computing such percentages annually by using data based upon a three-year moving average. The standard statistical procedure, known as the "median link relative method", which was employed in establishing the base Class I percentages in the present orders, should be continued in making the annual computations. The monthly percentages for each period should continue to reflect the "normal" annual relationship of 68.9 percent Class I utilization. The adjusted monthly percentages then should be used as the base Class I percentages during the next twelve-month period. In each subsequent year a new computation should be made by the market administrator, as soon as data become available for the preceding year at which time data for the earliest of the three years would be dropped from the computation and similar data for the most recent year would be added to arrive at a new three-year period. The periodic updating of the base Class I percentages would prevent seasonal changes in the pattern of milk deliveries or sales from causing unwarranted fluctuations in the monthly Class I prices. It also would prevent delays in needed increases or decreases in the Class I price as indicated by changes in the supply-demand relationship.

In conjunction with the plan set forth above, it was proposed further that in computing the monthly supply-demand adjustment factor, the quantities of receipts and sales for the most recent three-month period rather than for the most recent two-month period, as at present, should be used. A supporting reason given was that undue fluctuations in the supply-demand adjustment factor may result because of the occurrence of abnormal weather within two successive months.

This latter proposal also should be adopted. Based on a review of data for a recent two and one-half year period, such proposed modification of the Class I price formula is consistent with the general purpose of the supply-demand adjuster. While it is recognized that such modification may cause the supply-demand adjustment factor to be somewhat less precise as an indicator of what future change, if any, in the Class I price may be appropriate in response to recent changes in the relationship of milk supplies to Class I sales, it is further recognized that the least change in the Class I price that takes place is 22 cents per hundredweight. It is desirable that a minimum price change of this magnitude result from a definite and consistent trend in the supply-sales relationship. It should not result from an abnormal production or marketing circumstance of short duration which temporarily accentuates or perhaps reverses the indicated trend in the relationship of production and Class I sales. While a small degree of accuracy in the measure of supply-demand relationships may be relinquished, it is also desirable that the possibility of unwarranted changes in the Class I price be minimized. It is therefore concluded that data on receipts from producers and Class I utilization in the Massachusetts-Rhode Island and Connecticut markets combined for the second, third, and fourth months preceding the month for which the Class I price is being computed should be used in computing the supply-demand adjustment factor under the New England orders.

(b) Basic class prices and blended (uniform) prices under the New England orders should be announced on a 3.5 percent butterfat basis.

A proposal was made that the standard butterfat test of milk, on which basic prices under the New England orders are announced, be changed from 3.7 percent to 3.5 percent. It was stated that the announcement of prices on the basis of a common basic butterfat test among all Federally regulated markets would assist in making regional and interregional price comparisons. This would tend to simplify business transactions among handlers, cooperative associations, and other persons in the dairy industry. At the time of the hearing, prices under only three other orders of the 83 orders then in effect were announced on a butterfat basis other than 3.5 percent. Of these three orders, however, two were recently consolidated and provision was made under the merged order for the announcement of prices on a 3.5 percent butterfat basis. Official notice is taken of the order issued November 26, 1963 (28 F.R. 12707), merging the Philadelphia, Pennsylvania, and Wilmington, Delaware, orders, now known as the Delaware Valley order.

Situations arise where producers located in a common supply area are associated with different markets. Price determinations and announcements based on a common basic butterfat test would assist the industry, particularly producers, in a better understanding of market prices. Also, the preparation and analysis of statistical material concerning intermarket price relationships which is often needed at public hearings and for other governmental and industry purposes would be facilitated. Comparable series of milk prices would be readily available for the Department's regular program for publishing dairy industry statistics. A uniform basis of price announcement in all regulated markets is important to these objectives.

Opposition testimony to this proposal indicated that adoption of the proposal might discourage the consumption of milk with a high butterfat content and that any change in the butterfat test for price announcement purposes could lead to producer confusion. It should be noted, however, that the change in the basic butterfat test used in official price announcements would not change the price level for milk of any given butterfat content. Since the price announcement may indicate also a price for 3.7 percent (or any other) butterfat content, any possible confusion could be expected to be of short duration.

For the reasons set forth above, it is concluded that the Class I, Class II, and blended prices should be established with reference to a 3.5 percent butterfat test and that the official announcement of prices under the Massachusetts-Rhode

Island and Connecticut orders should be based upon such butterfat test.

(c) The butterfat differential computed under the Connecticut order should continue to be rounded to the nearest one-tenth cent.

A cooperative association proposed that the butterfat differential applicable to producer prices and class prices under the Connecticut order be rounded to the nearest full cent. It was claimed that this change would simplify accounting procedures, would avoid producer confusion, and would reduce bookkeeping and accounting costs for the association.

On July 1, 1962, the Connecticut order, along with nine other Northeastern Federal orders, was amended to provide for a uniform basis of pricing reserve milk. One of the amendments to the Connecticut order called for the rounding of the producer butterfat differential to the nearest one-tenth cent. The Connecticut order, like the four other New England orders, does not contain butterfat differentials for the separate classes of milk as such but provides for a single producer butterfat differential which, in effect, is applicable to each of the classes. Unlike the four other New England orders, however, the Connecticut order provided before the amendments became effective for the rounding of the butterfat differential to the nearest cent rather than the nearest one-tenth cent.

In the final decision of April 28, 1962 (27 F.R. 4115), official notice of which is taken, which resulted in the July 1, 1962 amendments, the Under Secretary of Agriculture found that this change was necessary to insure that the Connecticut market would be on comparable terms with the other markets in the month-to-month pricing of reserve milk. The reasons set forth in that decision for changing the butterfat differential are still appropriate. The proponent cooperative association, by reblending proceeds from the sale of member milk, has opportunity to advance its accounting objective with respect to member milk. The proposal, therefore, is denied.

(d) A proposal was made to modify the seasonal adjustments in the New England basic Class I price formula, which formula is used in each of the New England orders, in their application to the Southeastern New England market. Because it is concluded elsewhere in this decision that the Southeastern New England order should be consolidated with the three Massachusetts orders, this proposal for change in the application of the seasonal adjustments under the Southeastern New England order becomes moot. No evidence was presented which indicates a need for modifying the present seasonal adjustments in the New England basic Class I price formula as they apply to each of the Massachusetts markets to be merged which together constitute the major portion of the market to be covered by the consolidated order. Moreover, for the merged area there is no tendency toward seasonal shortage in the summer months when the proposal would have increased prices on a seasonal basis. Thus, the present seasonal adjustments applicable under the four orders proposed to be merged should be adopted without change for use in the Massachusetts-Rhode Island order. The proposal therefore is denied.

6. *Producer-handler definition, "dairy farmer-distributors", and exemption of "own farm" production.* (a) The same general basis for producer-handler exemption set forth in the four orders proposed herein to be merged should be provided in the Massachusetts-Rhode Island order. Only minor change should be made in the basis for producer-handler exemption as contained in the Connecticut order.

A number of proposals to change the producer-handler exemption provisions in one or more of the five orders were made. Certain of the proposals would provide that there be no separate treatment under the orders of producer-handlers in their capacity as handlers, but would provide instead an exemption from pooling of a handler's own farm production in an amount such as 1,000 quarts, or possibly as much as 1,500 quarts, per day. Another proposal would limit to a greater degree than is presently the case both the sources and quantities of milk, other than his own production, which the producer-handler might employ and still retain his exemption from pooling. Certain other proposals would remove from one or more of the Boston, Springfield, Worcester, or Southeastern New England orders the present limitations on the quantities of a producer-handler's Class I sales and of his receipts from own production, receipts from other producer-handlers, and receipts from other sources such as regulated plants, any of which limitations may affect the exempt status of the producer-handler.

The New England orders essentially provide that a person who is a dairy farmer and who processes and distributes milk primarily of his own production may be defined as a producer-handler under that order and may be accorded exemption from all payment obligations normally applicable to handlers fully regulated under the order. A producer-handler must meet certain requirements to maintain such status, however, principal of which are a limitation on the sources from which he may receive milk, and, in the case of the large producer-handler, the quantities of such milk which he may receive.

The four orders to be merged are identical in this respect and provide two conditions for exemption from pricing and pooling. In the first instance, every producer-handler's source of supply for fluid milk products must be limited to his own production and plants regulated under any of the New England Federal orders. Secondly, if his own production and his Class I disposition both exceed a daily average in the month of 2,150 pounds, a producer-handler must limit his receipts to his own production plus a quantity of receipts from regulated plants under New England Federal orders not in excess of two percent of his own production. The Connecticut order requires that a producer-handler limit his sources of supply of fluid milk products to his own production and to pool plants under the Connecticut order. No quantity limitations on purchases related to the volume of own production or Class I sales are stipulated under the latter order.

Record evidence does not reveal that the status of producer-handlers in the New England markets has changed sufficiently since the adoption of the present producer-handler provisions to warrant any substantial revision of these provisions. The number of producer-handlers in each of the markets has decreased slightly since September 1961. During the period September 1959 through September 1962, there was little change in the Boston, Southeastern New England, and Connecticut markets in the percentage of the total receipts of milk in the market represented by producer-handlers' receipts of milk from own production. Such percentage in the smaller Springfield market, however, increased from 2.0 percent to 5.8 percent during this period and a somewhat comparable percentage increase, from 1.5 percent to 6.1 percent, occurred also in the Worcester market.

The removal of the present basis for producer-handler exemption and the substitution therefor of a pool exemption of a limited quantity of a handler's own production was suggested as a means by which regulatory treatment could be applied to operations of producer-handlers according to size. Proponents contended that certain producer-handlers in the Springfield and Worcester markets had enlarged their operations to the extent that they no longer could be considered as typical of the type for which pooling exemption originally had been designed. Proponents stated that these larger producer-handlers have an advantage in competing with pool handlers distributing milk in these markets.

It is recognized that the operations of some producer-handlers now exceed the historical concept of a producer-handler as a person with a "family-size" operation. It was not substantiated, however, that producer-handlers in general in the New England markets are affecting adversely the competitive position of pool handlers operating in these markets. It likewise was not shown that those producer-handlers with larger than average operations are adversely affecting the position of pool handlers or producers. Thus, there is little reason to effect more stringent conditions for exemption from pooling, or to deny producer-handler status to persons who now so qualify. On the other hand, liberalization of the requirements for producer-handler status, also considered at the hearing, could result in producer-handlers obtaining a more favorable competitive position. Accordingly, it is concluded that the proposals to change the producer-handler exemption provisions should not be adopted.

The producer-handler provisions now contained in the four orders to be merged should be modified slightly, however, upon their incorporation in the Massachusetts-Rhode Island order. Presently, producer-handler status is contingent upon the distribution of at least a portion of own production on routes. The cur-

rent limitation on the maximum purchases of fluid milk products which a producer-handler may make and still maintain this status is based on total "Class I sales", however. To make this limitation comport with the above-mentioned contingency, the consolidated order provisions should refer to "route disposition" rather than "Class I sales".

The Massachusetts-Rhode Island and Connecticut orders should provide also that a producer-handler's own route disposition must constitute a majority of the total route disposition from his plant. This modification of the producer-handler provisions clarifies their present application to persons desiring producer-handler exemption. Currently, other milk route operators purchase from some producer-handlers for distribution on their own routes varying amounts of milk which the latter persons have processed and packaged at their plants. This action relieves the producer-handler of much of the risk normally associated with the distribution of milk.

In supporting their position for continued exemption from the pooling and pricing provisions of the New England orders, producer-handlers predicated their need for such exemption in part on the basis that they do assume substantial risks in the production of milk and in the movement of the milk from the farm into distribution channels in salable form. If producer-handlers are to be given exempt status under the orders, it is reasonable that the manner in which they operate coincide with the general grounds upon which such status is feasible. It has been a principal consideration in the exemption of producer-handlers that they personally assume the risks involved in the marketing of their milk. It is therefore desirable that the orders specifically indicate that such persons must be engaged in the distribution of their milk in more than a token way to warrant the exemption permitted. It is expected that the status of few, if any, persons currently operating as producer-handlers would be affected by the more specific terms of the definition of producer-handler adopted.

A distinction between the terms "skim milk" and "skimmed milk", as used in this decision and the accompanying order language, should be noted at this point. "Skim milk" means the quantity remaining after subtracting (mathematically) the weight of the butterfat in a given quantity of milk or milk product from the total weight of the milk or milk product. "Skimmed milk" means that fluid product of milk which remains after the removal of cream.

Proprietary handlers proposed that the Southeastern New England and Connecticut orders provide, in the same manner as now provided under the other three New England orders, that a handler report and account for his receipts and utilization of milk to the market administrator on a volume basis rather than on the present basis of the separate quantities of skim milk and butterfat handled. A cooperative association proposed, in conjunction with its proposals on order consolidation, that milk handled under all the New England orders be reported and accounted for on the basis of the separate quantities of skim milk and butterfat as under the present Southeastern New England and Connecticut orders.

The skim milk-butterfat reporting and accounting procedure used under the Southeastern New England and Connecticut orders is essentially that in use in most Federally regulated fluid milk markets outside New England. This procedure is considered to facilitate most satisfactorily the classification and pricing of milk and also the verification of the receipts and utilization of milk by handlers which is necessary to the integrity of the regulation. The continued use of the skim milk-butterfat reporting and accounting procedure under the Connecticut order and the incorporation of this procedure in the Massachusetts-Rhode Island order will promote uniformly effective milk regulation in New England markets.

As to handlers in the present Boston, Springfield, and Worcester markets, use of the skim milk-butterfat method of accounting under the merged order would require that they report separately the quantities of butterfat and skim milk received and used, whereas they are now reporting receipts and utilization on a volume basis. It would not cause any basic change in the verification procedure since verification of the receipts and uses of milk and milk products in these three markets already covers the butterfat component as well as the total volume. Even the proponents of the volume reporting and accounting procedure supported continuance of verification of butterfat receipts and disposition under the New England orders.

(b) A proprietary handler in the Worcester market proposed that the Worcester order be changed to provide for an exemption from pooling of a handler's own production of milk up to a daily average of 800 pounds. Proponent stated that approximately 250 quarts of milk were bottled daily at proponent's plant. Since the time of the hearing at which this issue was considered, the Worcester order has been amended (28 F.R. 12719), and the order now provides that any distributing plant otherwise meeting the pooling requirements will be exempt from regulation under the order if the route disposition in the marketing area in the month from the plant does not exceed a daily average of 300 quarts and is not more than 700 quarts on any day. The recent order amendments, which are proposed herein to be incorporated in the merged order, accommodate proponent's situation and, accordingly, this proposal need not be considered further.

(c) It was proposed that the Boston, Springfield, Worcester, and Connecticut orders be amended to provide that a dairy farmer's milk which is processed and packaged in a handler's regulated plant and then returned to the dairy farmer for distribution on routes by him be exempt from pooling. Such a provision, which once had been contained in the three Massachusetts orders and was applicable to persons commonly referred to as "dairy farmer-distributors", should not be adopted.

Under this provision a dairy farmer-distributor would be accorded a preferential position in the Class I market with respect to such milk inasmuch as he would be operating outside the scope of regulation while other producers would be required to share proportionately the Class I sales through the equalization pool. No distinction should be made between the dairy farmer-distributor and other producers. The former has no additional investment in processing and packaging facilities to distinguish his position in the market. An exempt dairy farmer-distributor would be able to participate in the Class I sales in the market without sharing to the same extent as other producers the burden of the necessary reserve supply to which he, as well as other producers, is a proportionate contributor. If there is gain to be realized in the distribution of the milk, it should not be at the expense of producers generally. The proposal is denied.

7. *Accounting and reporting.* (a) The Massachusetts-Rhode Island order proposed herein should provide that a handler's receipts and utilization of milk and milk products be reported and accounted for on the basis of the separate quantities of skim milk and butterfat contained therein. Similar procedure for reporting and accounting, as currently in effect under the Connecticut order, should be continued under that order.

The most important effect of the change to the skim milk-butterfat method of accounting, insofar as handlers in the three Massachusetts markets are concerned, is that it would provide a basis for making appropriate, separate producer - settlement fund account charges for butterfat overages, and for butterfat shrinkages in excess of the maximum shrinkage allowance of 2 percent now applicable in those markets. As a result of standardization or fortification, the relationship between the butterfat and skim milk content of receipts of milk and milk products frequently varies from such relationship in the uses of the milk and milk products. Without dual concern of accounting for both butterfat and the skim milk residual of total products, understatements of producers' deliveries of butterfat, or relatively high "disappearances" of skim milk or butterfat, might be obscured by recording only in terms of total product. The proposed plan would give the maximum incentive to responsible accounting.

Handler reports which show the receipts and utilization of skim milk and butterfat separately also provide the market administrator with detailed information on the uses of milk with greater promptness than do reports which show only milk volumes handled. The prompt receipt of the more detailed information expedites release of necessary statistical data and verification of handlers' reports. It is concluded, therefore, that the Massachusetts-Rhode Island and Connecticut orders should provide for skim milk and butterfat reporting and accounting procedure.

(b) Handlers whose plants are regulated under the Massachusetts-Rhode Island order should account to the market administrator for their receipts and

utilization of milk on an individual plant basis. This accounting procedure, now in use under the Southeastern New England and Connecticut orders as well as under many other Federal orders, generally is considered to facilitate most satisfactorily the appropriate classification and pricing of milk. In particular, milk is priced under this procedure more nearly in line with its actual use at individual plants inasmuch as each plant's utilization experience is considered by itself. Accordingly, it is desirable upon merging the Southeastern New England order with the Massachusetts orders that individual plant accounting now in use under the former order be extended in application to the consolidated market.

(c) No testimony was received concerning a proposal listed in the hearing notice that a handler under any New England order should account to the pool at the Class I price for the "skim milk equivalent" of nonfat milk solids which he adds in processing Class I fluid milk products. Other record evidence does not support the adoption of the proposal and it is therefore denied.

(d) A proprietary handler operating plants in all the New England markets proposed that handlers be allowed an additional day for filing reports of receipts and utilization under each order when two Sundays, or a Sunday and a holiday, occur within the first eight days of the month when the report must be made.

No additional time as proposed for filing monthly reports of receipts and utilization with the market administrator should be provided under the New England orders. The present filing dates provide reasonable time for handlers to file such reports for the preceding month and any extension would add to the problems of insuring reasonably prompt payments to producers. The record does not reveal a marketwide problem in this respect for any of the New England markets.

(e) A minor change should be made in the Connecticut order provisions which relate to notices to producers of composite butterfat tests. Presently, a handler is required to notify a producer of the butterfat test of composite milk samples which the handler has taken. This notice is required within seven days after the end of the sampling period. Because this time requirement conflicts with certain rules and regulations of the State of Connecticut, an exception to the requirement is appropriate.

Official notice is taken of the Dairy Laws of the State of Connecticut, as amended, and Rules and Regulations of the Milk Regulation Board, as amended, as published in Bulletin No. 12, sixteenth edition. It is provided therein that State representatives shall collect and test, under certain circumstances, composite samples of milk which is received by a handler who is subject to these rules and regulations. The State representatives are required to give monthly notice to the handler and the producer of the butterfat tests of these samples.

It is apparent that a handler operating under these rules and regulations would not know the butterfat tests determined by the State in time to comply with the notification requirement now specified in the Connecticut order. Accordingly, the seven-day notification requirement should not be applicable when the composite butterfat tests are made by an agency of the State of Connecticut.

3. *Classification and assignment provisions.* (a) Representatives of the State of Wisconsin made several proposals relating to the assignment under the New England orders of receipts of milk from various sources and in various forms.

A decision by the Assistant Secretary issued October 31, 1963 (28 F.R. 12006) dealt extensively with the appropriate treatment of receipts of nonpool milk at regulated plants relative to receipts of producer milk. Official notice is taken of such decision. The amendatory action based on that decision incorporated in the orders certain provisions quite similar to the Wisconsin proposals. The provisions which were adopted are designed to deal with the same problems of assignment of nonpool milk. The present record provides no new grounds which would warrant different treatment in the assignment process of nonpool milk except as to movements of nonpool milk within New England.

On the basis of the amendatory action just referred to, the New England orders were changed to provide that receipts of bulk fluid milk products at a regulated distributing plant from a plant regulated under a Federal order outside New England shall be assigned pro rata to the handler's combined utilization at all his plants regulated under the order. No change was made, however, in the procedure for assigning milk which is moved from one New England Federally regulated market to another. It was concluded at that time that evidence obtained at the hearing on which this decision is based should be considered before changing the assignment provisions as they apply to milk moved between New England markets.

Although merger of the Boston, Southeastern New England, Springfield, and Worcester orders will reduce considerably the volume of inter-order movements of milk within New England, some movements between plants regulated under the Connecticut order and the Massachusetts-Rhode Island order can be expected to continue. Free movement of milk between these two adjacent Federal order markets will be facilitated if each makes no distinction for assignment purposes between bulk milk received from a Federally regulated market outside New England and bulk milk received from the other New England Federal order market. It is concluded, therefore, that the Connecticut and Massachusetts-Rhode Island orders should provide that bulk milk received at a regulated distributing plant from any other Federal order market be prorated to the receiving handler's combined Class I and Class II uses at all of his pool plants.

Minor modification of the Connecticut order should be made to "dovetail" the classification provisions of the Connecticut order and the proposed Massachusetts-Rhode Island order with respect to disposition in another New England market by Connecticut handlers of a fluid cream product containing at least 12 percent but less than 16 percent butterfat. Under the four orders proposed herein to be merged, a fluid cream product containing at least 10 percent but less than 16 percent butterfat is termed "half and half" and 50 percent by weight of the quantity is classified as Class I milk. Under the Connecticut order, on the other hand, "half and half", though it must contain at least 10 percent butterfat, must contain less than 12 percent butterfat. Under this latter order, also, 50 percent by weight of the quantity is classified as Class I milk. Fluid cream with 12 percent or more butterfat, however, is a Class II product.

Connecticut handlers disposing of fluid cream containing 12–16 percent butterfat (a Class II product) in the other New England market has a cost advantage on such cream relative to handlers in the other market who must pay the Class I price for producer milk obtained for comparable use. It is desirable to remove this cost advantage. Accordingly, the Connecticut order should be changed to provide for a Class I classification of 50 percent by weight of the quantity of any fluid cream product containing at least 12 percent but less than 16 percent butterfat which is disposed of in another New England Federally regulated market, either on routes or by transfer, if the other order provides for similar classification of such type of product.

Further minor modification of the Connecticut and Massachusetts-Rhode Island orders within the framework of the recently adopted assignment provisions should be made. In the October 1963 decision previously referred to, it was concluded that the kind of regulatory treatment under the New England orders of nonpool milk should be based in part on the type and location of the plant from which the milk is received. In this connection it was established that milk received from non-Federally regulated plants located within 400 miles of Boston should be treated under the orders somewhat differently than milk received from such plants located at greater distances.

The 400-mile distance encompasses all six New England states except for the northernmost part of Maine. There is no reason to distinguish marketing circumstances at any plant located in this small area in northern Maine from those at plants located in other parts of New England. Different regulatory treatment of milk received from a plant located in this northernmost area would not be in conformity with the general regulatory program for nonpool milk set forth in the decision just referred to. It is appropriate, therefore, that milk received from any non-Federally regulated plant which is located in New England be treated in the same manner now prescribed for milk received from such plants located within 400 miles of Boston.

(b) A cooperative association proposed that the Springfield and Worcester orders should no longer provide that bulk milk received from Boston order

pool plants be assigned to Class I milk at the receiving plant prior to the assignment of producer receipts at such plant. The consolidation of the Springfield and Worcester orders with the Boston and Southeastern New England orders makes this proposal moot and it therefore is denied.

(c) Another cooperative association proposed a change in the Southeastern New England order provisions which, in making assignments of milk receipts to Class I, would give greater priority to receipts of milk from pool supply plants than was the case under the order as in effect at the time of the hearing. At that time milk received at a regulated distributing plant from supply plants under other Federal orders was assigned to any available Class I utilization before assigning receipts from pool supply plants. Proponent stated that this provision encouraged handlers operating distributing plants to import milk from other Federal order markets rather than to draw upon the available supplies of milk in the local market. Such handlers, proponent stated further, desire to have the Class I transportation credit apply to as much milk obtained from country plant sources as possible and, accordingly, they tend to purchase milk from those sources which are given preferential treatment with respect to Class I assignments.

Since the hearing, the procedure for assigning receipts of nonpool milk from Federally regulated sources has been altered. In addition, further change in the assignment of bulk receipts from other New England markets is proposed herein. These changes, under which bulk receipts at a distributing plant from other Federally regulated markets are assigned pro rata to both classes, have been determined as necessary to provide for the appropriate regulatory treatment of inter-order transfers of bulk milk.

The consolidation of the Southeastern New England order with the Boston, Springfield, and Worcester orders undoubtedly will alter the conditions presently influencing Southeastern New England handlers' decisions on where to procure milk. It is expected that the handlers now under the Southeastern New England, Springfield, and Worcester orders, when operating under the Massachusetts-Rhode Island order, will find less need to draw upon sources under other Federal orders. No specific change in the assignment provisions on the basis of this proposal is therefore appropriate.

(d) The Massachusetts-Rhode Island order proposed herein should not assure the application of city plant Class II pricing on a specific portion of the milk used in Class II at a city distributing plant.

A proprietary handler proposed that the Boston, Springfield, Worcester, and Southeastern New England orders (proposed herein for merger) assign to direct receipts of producer milk at any city distributing plant, for pricing purposes only, up to a certain quantity of the plant's Class II milk before the assignment of any such Class II use to receipts from country plants. Under this proposal, the quantity of Class II milk to be so assigned would be limited to an amount equal to 5 percent of the city plant's Class I utilization. It was suggested by another proprietary handler that such "5 percent" limitation be increased to a maximum 9 percent. Such a provision would guarantee the city plant operator the Class I transportation allowance on the quantity involved even though he receives at the city plant an equivalent amount of milk directly from farms.

To provide similar transportation allowance on Class II milk to those city plant operators who obtain all their milk from country plants, proponent proposed also that the country plant shipper's basic cost under the order on a similar quantity of Class II milk shipped to such a city distributing plant be the applicable country plant Class II price minus the difference between the Class I and Class II zone differentials applicable at the location of the country plant. Proponent apparently presumes that, under such a provision, the country plant operator would offer milk to the city plant operator for Class II use on a price basis, f.o.b. city plant, comparable with that of the city plant operator with direct-delivered milk assigned to Class II under the limit proposed.

Proponent contended that, under the present order provisions, handlers who rely on country plant sources for most or all the milk handled at their city distributing plants are disadvantaged as to the cost of Class II milk necessarily associated with the fluid milk processing and packaging operation. It is normal, proponent stated, to have at least a small Class II use at the city distributing plant since some milk is used for thinning cream, other milk is dumped because of off-flavor or as route returns, and some milk is lost through normal shrinkage, all of which "uses" are considered Class II under the respective orders. Proponent contended, however, that the cost under the orders for this Class II milk varies for the city distributing plant operator depending upon the proportions of supply received from direct-delivered and country plant sources. For example, proponent pointed out that the city plant operator's cost, f.o.b. the city plant, for Class II milk derived from country plants in the 21st zone is the 21st zone Class II price plus whatever cost is incurred in moving the milk to his city plant in fluid form, making the operator's cost for such Class II milk significantly greater than the Class II milk cost of the city plant operator who receives only direct-delivered producer milk on which the producer pays the cost of the farm-to-plant haul.

It was stated further that, under the respective orders, any Class II utilization at a distributing plant which is supplied entirely by direct-delivered producer milk presently is assigned to such producer milk and the city plant Class II price (which ranges from 5.8 cents to 7 cents per hundredweight over the 21st zone Class II price) applies. If the direct-delivered producer milk supply for the plant is supplemented with milk from country sources, however, the plant's Class II utilization is assigned, to the fullest extent possible, to the receipts from country plants. Producers sharing in the market pool thus are not required to bear any of the cost of moving, at the transportation rate for Class I milk, whole milk from the country to the city while any locally-produced milk is available for Class I purposes.

The proposed provisions would not provide for uniform pricing on Class II milk at country plant locations. Moreover, they would assess unnecessary transportation charges against pool proceeds, with adverse effect on producer returns, since producers generally would bear the cost of shipping milk in fluid form at the transportation allowance for Class I milk, which milk ultimately would be used in lower-valued Class II uses. In view of the foregoing, the proposal is denied.

(e) Certain cooperative associations operating in the Connecticut market proposed a change in the percentage of producer milk that may be assigned under the Connecticut order to Class II milk before assigning receipts of bulk fluid milk products from other Federal order plants and from pool supply plants.

At the time the proposal was made, the order provided that during the months of July through November up to 15 percent of producer receipts could be set aside for assignment to Class II milk before assigning receipts of bulk milk from (1) plants regulated under another Federal order and (2) pool supply plants. It should be noted that on the basis of the January 1, 1964 amendments to the order, however, any receipts at regulated distributing plants from plants regulated under other Federal orders outside New England are now prorated to the handler's combined utilization at all his pool plants. This decision adopts a similar basis of allocation as to any receipts from plants under the Massachusetts-Rhode Island order. The Connecticut order currently provides also that during the months of December through June there may be a priority of assignment to Class I milk, but only to the extent of 5 percent of the Class I utilization at the receiving plant, for receipts of bulk milk from pool supply plants.

It was proposed that the 15 percent "set-aside" be reduced to 10 percent for the months of September, October, and November. The associations further proposed that the corresponding preferential assignment of receipts from pool supply plants for the remaining months of December through June be eliminated.

Proponents contended that the availability of direct deliveries of producer milk to distributing plants removes the need for preferential assignment to Class I milk of receipts of bulk milk from these more distant regulated sources. They contended that such assignments to Class I milk cause producers to bear unnecessary transportation costs.

Setting aside a certain percentage of producer receipts for assignment to Class II milk enables handlers to purchase supplemental milk from distant sources at times of short direct-delivered supply without having such purchases assigned wholly to Class II milk. For the September through November period in 1960,

1961, and 1962, the percentage of producer receipts to total Class I utilization averaged 111 percent. In this circumstance of a relatively short milk supply, handlers who rely primarily on milk from direct-delivery producers may find it necessary, because of variations in daily receipts and sales, to obtain supplemental milk from other, more distant sources. Thus, a reduction in the percentage of direct-delivered receipts which may be set aside during the months of September through November for specific assignment to Class II milk would not be warranted.

Also, the evidence does not indicate that producers are being burdened with costs arising from unnecessary shipments of milk from pool supply plants to distributing plants during the months of December through June. Accordingly, there is no reason at this time to discontinue the preferential assignment to Class I milk of a limited amount of bulk receipts from pool supply plants over direct-delivered receipts during these months.

There is no need for providing any set-aside of producer receipts for preferential assignment purposes at a supply plant. It is not customary for handlers to receive milk at their supply plants from other Federal order plants or from other pool supply plants for Class I purposes. The present order therefore should be changed accordingly.

(f) The assignment procedure for beginning and ending inventory under the Connecticut order should be modified. Presently, a handler's inventory at the end of the month is classified as Class II milk and is considered part of the handler's Class II utilization for that month. The following month this inventory is included in the handler's current receipts. When assigning receipts of milk to the handler's utilization, the order now provides that a quantity of Class II milk equal to the quantity of ending inventory shall be set aside before assigning receipts of bulk milk from other Federal order plants and other pool plants and before assigning beginning inventory. After these assignments, the ending inventory is added back to the Class II utilization and the remaining assignments of receipts are made. The assignment procedure should be changed to eliminate this set-aside of ending inventory.

This change will make the assignment procedure under the Connecticut order similar in this respect to that of the Boston order. Under the modified assignment procedure in the Connecticut order, the beginning inventory of fluid milk products will be assigned to classes before the assignment of receipts of bulk milk from other Federal order markets. If no change were made, the two orders would not treat receipts of bulk milk from the other New England Federal order market on a reciprocal basis. In accordance with the general plan of providing in Federal orders comparable treatment of inter-market transfers, it is appropriate that the Connecticut order assignment provisions be changed in this manner.

(g) The classification provisions in the Boston, Springfield, and Worcester orders are virtually identical but differ somewhat from the classification provisions in the Southeastern New England order. The consolidation of these four orders, however, necessitates a resolution of these differences.

Inventories of fluid milk products at the end of the month should be classified under the merged order as Class II milk pending final disposition of the products, as is currently required under the Southeastern New England order. Except in limited circumstances, similar procedure applies under the three Massachusetts orders. The option to have inventory classified as Class I milk which is provided in certain instances in the present Massachusetts orders should be provided in the merged order in slightly modified terms. Those handlers who either do not receive milk from producers or do not claim any Class II utilization of fluid milk products on their handler reports should be permitted to request such classification.

It is consistent with the nature of the plant operation to allow handlers with virtually a Class I business to classify their ending inventory as Class I milk. Under this arrangement ending inventory of such handlers will be classified commensurately with its probable final disposition. Burdensome detail with respect to inventory reclassification will be largely avoided for these handlers.

To prevent any abuse which might arise from classifying ending inventory in Class I, the Massachusetts-Rhode Island order should provide that a handler choosing this arrangement be debited or credited, as the case requires, in his pool obligation for any difference in the total values of his beginning Class I inventory as determined on the basis of the Class I prices for the current month and the preceding month. Thus, if the inventory value is increased because of an increase in the Class I price, the handler should be debited for the increased value and, conversely, a handler should receive a credit for any inventory value decrease resulting from a Class I price decrease. Under this arrangement a handler would not be able to gain a cost advantage by accumulating during a month a large inventory for future Class I use in anticipation of an increase in the Class I price in the following month.

Presently, the price used under the three Massachusetts orders for pricing reclassified inventory is the difference between the Class I and Class II prices for the current month. The price used under the Southeastern New England order for this purpose, however, is the difference between the Class I price for the current month and the Class II price for the preceding month. This latter pricing method should be used under the Massachusetts-Rhode Island order. This method is consistent with the fact that the inventory was classified as Class II milk in the preceding month and was accounted for at that month's Class II price. Also, it will correspond with the method of pricing reclassified inventory presently used under the Connecticut order.

The Massachusetts-Rhode Island order should provide that fluid milk products disposed of to bakeries, soup manufacturers, and candy manufacturers be classified as Class II milk as is presently provided under the Southeastern New England order. Products manufactured at such establishments are not required to be made with milk which has been approved for fluid uses by local health authorities. Class II classification of milk sold for use in these products will result in the milk being competitively priced with alternative milk supplies available for the manufacture of such products.

All fluid milk products which are disposed of as livestock feed or are dumped should be classified as Class II milk under the consolidated order. Under the present orders to be merged, the exception to such a classification pertains to whole milk suitable for human consumption, which milk is classified as Class I milk even though disposed of in this manner. Under the classification plan the use or disposition of the fluid milk product should be controlling rather than its general condition at the time of disposition. Therefore, no distinction in classification should be made for milk eligible for human consumption when put to such use.

9. *Method and scope of pooling.* (a) The marketwide pooling plan for distributing returns to producers presently in use under the Boston, Springfield, Worcester, and Southeastern New England orders should be provided under the Massachusetts-Rhode Island order.

A proprietary handler in the Southeastern New England market proposed that the method of pooling returns to producers in that market be changed from marketwide pooling to individual-handler pooling. Another proposal listed in the hearing notice but not supported by proponents or other parties would require that individual-handler pooling replace the present marketwide pooling under each of the four orders proposed herein to be merged.

The conclusion that the Southeastern New England order should be merged with the Boston, Springfield, and Worcester orders into a single regulation renders moot the question of individual-handler pooling under any one of the now separate orders. The question then is raised as to the propriety of individual-handler pooling under the Massachusetts-Rhode Island order.

Under such form of pooling all producers supplying the same regulated handler would be paid a blended price (subject to butterfat and location differentials) based upon the uses of milk made by such handler. With this arrangement it is usual that producers supplying one handler receive a blended price different from that paid by other regulated handlers in the market inasmuch as the proportions of milk used in the different classes usually vary among handlers. This method of pooling is in contrast to marketwide pooling now provided in each New England order, whereby the values of milk delivered by all producers to all

regulated handlers in the market are combined into one fund and all producers supplying the market are paid the same blended price except for adjustments for butterfat and location of the plant of receipt.

Individual-handler pools generally are more practicable for markets where milk supplies are relatively short and where reserve supplies are distributed rather evenly among all handlers in the market. These conditions do not prevail in the Boston market, and would not prevail in the consolidated market because of the predominance of the Boston market's position among the four markets proposed to be merged. Most distributing plants in New England are not equipped to handle reserve milk in any volume. Consequently, operators of such plants customarily have relied on the relatively limited number of manufacturing plants, most of which are presently associated with the Boston market, for the disposal of often substantial quantities of reserve milk. In this situation the institution of individual-handler pooling under the consolidated order would result in widely differing blended prices as between those producers whose milk is received directly at distributing plants and those whose milk is received at country supply plants where available manufacturing facilities are maintained.

It is logical to expect that individual handlers and cooperative associations would find it necessary to make substantial changes in the present patterns of milk movements and disposal in order to obtain for their respective producers the highest possible returns. The major readjustment of the entire marketing structure in New England which undoubtedly would accompany the institution of individual-handler pooling would add to marketing costs and thus be uneconomical and undesirable. The differences in producer prices which could be expected to ensue from such method of pooling would not promote the objective of more uniform alignment of prices to producers which, as elsewhere described in this decision, is important to orderly marketing in New England. The application of marketwide pooling under a merged order will promote market stability by insuring that all producers supplying the Massachusetts-Rhode Island market will share on a uniform basis the Class I and Class II utilization in the entire market and thus assist to permit the assembly of supplies in an economical manner for available outlets. Accordingly, the proposals for individual-handler pooling are denied.

(b) The definition of "handler" under the Connecticut order should be modified to include, for certain purposes, a cooperative association with respect to milk of its producer members which is picked up in bulk at the farm by tank trucks owned by, operated by, or under contract with such association and delivered in such trucks (or in trucks into which the milk is reloaded) to pool plants.

A cooperative association operating in the Connecticut market proposed that it be allowed to be the handler, for limited purposes, when it assumes responsibility for farm-to-plant delivery of bulk tank milk of its producer members. Proponent stated that in cases where the association supplies a number of pool distributing plants with their entire fluid milk requirements this provision would promote more efficient marketing by providing greater flexibility in the movement of producer milk.

In the interest of marketing efficiency and convenience to cooperative associations and handlers in the market, it is appropriate that the Connecticut order provide for such an arrangement. At a time when over 70 percent of the producers in the market are shipping milk in bulk form, many handlers are finding it advantageous to rely entirely upon cooperative associations for their entire fluid milk needs rather than upon their own facilities for procuring milk from individual producers. Cooperative associations in this market presently arrange for and direct the movement of milk from members' farms to distributing plants, or to surplus disposal outlets, as necessary. The adoption of the proposal would facilitate the associations' efforts in performing these marketing functions.

To meet the supply requirements of the individual handler, particularly small-volume handlers, it is often necessary for an association to "split" a tank truck load of milk among them. Under the present order, however, this is not easily accomplished inasmuch as the handler who first receives producer milk from a tank truck is required to be the reporting handler for not less than the milk contained in a compartment on the truck. Accommodating handlers' requirements therefore often involves inefficient routing of tank trucks and hauling of partial loads in order to deliver the desired amounts of milk. It would be advantageous for cooperative associations to be able to vary routing arrangements from day to day as milk is moved to handlers' pool plants in the particular quantities, and at the hours, desired by handlers.

Where a single producer's milk may be received at several handlers' plants during the month, it would be advantageous to both the cooperative association and the receiving handler for the association to be the reporting handler for the monthly receipts of milk from such producer. Allowing a cooperative association the option of being the handler for the bulk tank milk of its producer members for this purpose would make possible the elimination of duplicate accounting on producer milk. At least certain of the cooperative associations operating in the Connecticut market collect proceeds from handlers and make uniform price payments to their producer members. Such an arrangement requires, of course, that the association maintain detailed producer payroll records. In order to comply with the current order provisions, however, it is necessary that handlers who receive milk from association members also keep detailed producer payroll records. If a cooperative association had handler status for reporting purposes, it would not be necessary for proprietary handlers also to maintain such records.

A cooperative association requesting to be the handler for the bulk tank milk of its producer members should be required to notify the market administrator and the handler to whom the delivery is made that it intends to act in this capacity. To be workable, such notification must be given prior to the time of delivery of the milk. The association also should report to the market administrator the quantity as measured at the farm and the butterfat test of each producer's milk for which it elects to be the handler. In addition, the association should be accountable to the producer-settlement fund for any differences in the quantities of milk received from producers, based on farm measurements, and the quantities of milk which purchasing handlers claim as received at their plants from the association. Further, the association should pay the administration expense assessment on the quantities of milk involved in these differences.

The proprietary handler receiving bulk tank milk from the association should report to the market administrator the quantities of milk (though not necessarily on an individual producer basis) which he receives from the association and the utilization of the milk. The handler should be accountable to the producer-settlement fund for such milk and should pay to the market administrator the pro rata share of the expense of administration of the order which normally applies to producer milk received.

The Connecticut order presently provides that a handler who receives milk directly from producers shall be allowed one-half of one percent shrinkage on such receipts and an additional one and one-half percent shrinkage if the milk is processed in the handler's plant. It is appropriate that the cooperative association, as the first receiving handler, be allowed one-half of one percent shrinkage on the producer milk for which it is the handler. The plant operator who receives and processes the milk should be allowed the remaining portion of the allowable two percent shrinkage on the milk.

This arrangement is desirable under the prevailing circumstances where, under bulk tank delivery, the plant operator who receives the milk from the association may purchase the milk on the basis of plant weights while the association pays its producer members on the basis of measurements taken at the individual farms. In this case it is not unusual for minor differences to prevail in the quantities of milk for which the two parties believe they are accountable. It is generally acknowledged by the dairy industry that there are limits of accuracy regarding the accepted methods for determining milk quantities, and, therefore, some allowance for such differences reasonably may be provided for under the order. It is appropriate that the plant operator be limited to one and one-half percent shrinkage when buying the milk on the basis of plant weights since by this practice he avoids normal shrinkage at one point in the handling process. If the plant operator elects to purchase

such milk on the basis of measurements at the farm, however, the order should allow the entire two percent shrinkage allowance to accrue to the plant operator. A plant operator making this election should give notice to the market administrator that the purchase of the milk is made on the basis of the farm measurement.

Under the plan adopted herein, the plant operator who receives bulk milk for which a cooperative association is the reporting handler would not have the privilege of diversion with respect to such milk. The function which the association performs in this instance is essentially one of balancing the plant operator's day-to-day milk requirements. The plant operator, therefore, has no need for diversion as to milk which he receives in this manner and the duplication of diversion privileges should be avoided.

(c) A Connecticut cooperative association's proposal to price diverted milk under the Connecticut order at the location of the plant to which the milk is diverted rather than at the location of the plant from which the milk is diverted, as at present, should not be adopted.

Proponent contended that the present method of pricing diverted milk encourages unwarranted diversion of the market's daily and seasonal reserve supplies to distant plants outside the Connecticut marketing area while at the same time additional supplies of milk beyond market needs may be brought in to become permanently associated with the market, thus tending to dilute pool returns to regular producers. It was contended, also, that any extensive diversion of reserve milk to distant plants for disposal would affect adversely the maintenance of adequate and efficient supply-balancing and manufacturing facilities within the Connecticut market.

The method of pricing diverted milk proposed by proponent was provided in the Connecticut order from its inception on April 1, 1959 until September 1, 1960. At that time the pricing point for diverted milk was changed, following a hearing, from the location of the plant to which the milk was diverted to the location of the plant from which the milk was diverted on the basis that producers were not receiving equitable returns inasmuch as the diversion of certain producers' milk caused a disturbing variance in prices to such producers.

There is no indication that the present method of pricing diverted milk is not resulting in the orderly and economical disposition of reserve milk in the Connecticut market, or that marketing conditions have changed substantially from the time the present provision was determined to be appropriate. Proponent's contentions were speculative and were not supported by evidence of actual marketing problems. There is no indication that the present diversion provisions, in fact, are being abused. With the change in handler definition proposed herein, the handling of surplus supplies should be facilitated. The proposal therefore is denied.

A cooperative association recently began operating a large, newly-constructed plant at Newington, Connecticut, for balancing handlers' fluid needs and disposing of market reserves of member milk. In view of the presence of these facilities at a central location in the Connecticut market, it is appropriate that the Connecticut order not deter in any manner the use of this outlet for reserve milk of other cooperative associations performing similar balancing services when such plant facilities are available to receive such milk. In this connection, it is appropriate to modify the Connecticut order to allow a cooperative association to be the handler for milk which it moves directly from the farm to the pool plant of another cooperative association. The association responsible for moving the milk from the farm would account to the producer-settlement fund and would be liable for the administrative assessment. The transaction would be treated in a manner similar to transfers of milk between two pool plants in the same zone location and would be priced at the location of the plant where the milk was received. This arrangement will tend to provide greater flexibility in the disposal of milk not needed for fluid use.

(d) The Connecticut order should be revised to delete a provision which provides pool status thereunder to any plant also qualifying for pool status under the Boston order when the plant operator requests exemption from regulation under the latter order.

The provision in question applies in the circumstance where a supply-type plant currently meets the minimum requirements for pooling under both the Connecticut order and the Boston order but makes greater qualifying milk shipments under the latter order. When the handler requests nonpool status for the plant under the Boston order and has no milk from that plant assigned to Class I under that order, the plant is pooled under the Connecticut order.

Proponent contended that a plant should be pooled in that market to which a greater portion of the plant's qualifying shipments are made. It was further contended that the lack of any need for this provision is supported by the fact that no supply plants have held pool status under the Connecticut order by means of this provision.

Consolidation of the Boston, Springfield, Worcester, and Southeastern New England markets will remove many of the complex problems which have arisen in New England regarding the pooling of the many supply plants in New England and because of which numerous changes in the New England orders have evolved over time. On adoption of a consolidated order there no longer would be need for continuing in the Connecticut and Massachusetts-Rhode Island orders this and other special arrangements now provided in the New England orders by which a supply plant can obtain pool plant status in a New England market even though greater shipments are made from the plant to another New England market. Accordingly, the Connecticut and the merged orders should reflect this situation.

In connection with coordination among New England orders of pooling requirements for supply plants, minor change should be made in the present Boston order requirements for pooling a supply plant as a part of a handler's "system" of supply plants upon incorporation of these requirements in the merged order. Presently, the "system" pooling requirements differ as between the Boston and Connecticut orders. The latter order uses as a basis for pooling the qualifying shipments of milk made to any New England market. Under the Boston order, however, qualifying shipments are limited to those made to regulated distributing plants under the Boston order. It is desirable to reflect in the supply plant pooling provisions of each order the concept that a supply plant's qualifying shipments for pooling under one or the other order will be based on the aggregate of shipments to all New England regulated markets. Accordingly, the plant system pooling provision now in the Boston order should be so modified on being incorporated in the consolidated order.

(e) A proposal listed in the hearing notice but not supported by proponents or other parties would require a handler under the Connecticut order to be the reporting handler for all the producer's deliveries in the month if the producer's milk is received at the handler's plant on more than one-half of the delivery days in the month. In the absence of any evidence which would support this proposal, the proposal is denied.

(f) Question was raised at the hearing as to the continued necessity for the present Boston order provision for "emergency milk". Such milk is that which is received from a normally unregulated source at a time when the market administrator declares that there is insufficient producer milk to meet the fluid needs of the marketing area. No such declaration has been made for many years and, in view of the ample milk supplies in New England, no future action of this nature is expected. Moreover, recent amendments to the New England orders provide a revised procedure for integrating nonproducer sources of milk into the regulatory scheme. It is concluded that special provision for treating emergency milk in the pooling procedure is not necessary and that the current provision therefore should not be included in the Massachusetts-Rhode Island order.

10. *Payments to producers and cooperative associations.*

(a) The Massachusetts-Rhode Island order proposed herein should not provide for minimum payments, within prescribed time limits, by a handler with respect to milk received from a cooperative association having handler status.

Certain proprietary handlers and cooperative associations proposed that a provision requiring minimum payments, within prescribed time limits, for milk received from cooperative associations which are handlers be incorporated in the Boston, Springfield, and Worcester orders. Similar provisions are now contained in the Southeastern New England and Connecticut orders. The proponents contended that the former three orders do not prohibit a proprietary handler regulated under the Boston,

Springfield, or Worcester order from obtaining extended credit from a cooperative association for milk purchased from the association inasmuch as the handler is not specifically required by the order to pay the association for the milk by a prescribed date.

Evidence does not reveal that the lack of a requirement in the three Massachusetts orders for scheduled minimum payments by proprietary handlers on milk purchased from cooperative associations has resulted in disorderly marketing. The lack of widespread interest in such a provision by the principal cooperative associations operating in these markets is a strong indication that there is no real need for incorporating the provision in the merged order at this time. Moreover, if it were their desire to do so, the handler and a cooperative association could make legitimate credit arrangements which would involve the question of payment of class prices by a given date and which, in any case, would be beyond the scope of the regulation. The proposal therefore is denied. There was no proposal to revise the payment provisions in the Connecticut order as to time of payment and they are retained in their present form in this respect.

(b) A proprietary handler proposed that the provisions in the Boston, Worcester, and Southeastern New England orders stating the conditions under which deductions from payments to producers are considered allowable be changed to provide that any deduction which is authorized by the producer in writing "shall be conclusively presumed to be a properly authorized deduction and shall be conclusively presumed to be properly chargeable to the producer."

These orders now provide that the burden is on the handler to prove that any deduction from payments to a producer which he makes is properly authorized and properly chargeable to the producer. If any such deduction is determined not to meet either of these conditions, the handler is required to make the necessary adjustment by subsequent payment to the producer.

Proponent contended that any deduction which is authorized in writing by a producer should not be subject to such review and possible adjustment. He stated that the market administrator's action in those cases involving written authorizations constitutes an infringement upon both a contractual arrangement between the handler and the producer and the producer's control of his own money.

Adoption of this proposal would seriously impair the effectiveness of the orders by substituting the producer's consent to a deduction for well-established principles governing propriety of deductions from producer payments. Also, it would limit the market administrator's right to verify the accuracy and propriety of deductions from producer payments, and in this additional respect, would not be consistent with the purpose of the regulation. The proposal therefore must be denied.

The handler proposed also that in the event the above proposal were not adopted, these orders should be changed to eliminate the requirement that a proprietary handler must make authorized deductions from payments to producers who are members of a qualified cooperative association when the association files with the handler a claim for such deductions. Proponent contended that such change would insure comparable treatment of both members and non-members of cooperative associations with respect to deductions from producer payments which are made by handlers. No inequity as between such members and non-members was shown to exist regarding deductions from producer payments, however, and the proposal therefore is denied.

(c) No provision should be made in the New England orders for a "base-excess" plan of distributing producer returns. A cooperative association in the Southeastern New England market proposed that such a plan, which would provide for a system of Class I bases for all producers presently shipping to the New England markets, be incorporated in the New England orders. Proponent contended that the present method of pricing milk under these orders does not provide sufficient incentive for producers to adjust their production to the Class I utilization of milk in the market.

The Agricultural Marketing Agreement Act of 1937, as amended, authorizes the inclusion of base plans in Federal orders. Such plans have been incorporated in a number of Federal orders, but only for the statutory purpose of minimizing seasonal fluctuations in milk production. The objective of the type of base plan proposed, i.e., the reduction of aggregate deliveries of milk by producers to pool plants in relation to the market's fluid needs irrespective of price, would supplant the function which is intended under the Act to be performed by prices established at the levels required by the Act. Prices under milk orders must be established at levels which will tend to equate demand and supply for the market, insure a sufficient supply of pure and wholesome milk, and be in the public interest. Order pricing is intended to operate under conditions where milk supplies will remain reasonably free to respond to changing price conditions. Under a base plan of the type proposed, total production would be influenced greatly by the impact of the base plan rather than by the level of prices provided under the order and would be in conflict with the price criteria of the Act. The proposal therefore is denied.

(d) A proposal listed in the hearing notice but not supported by proponent or other parties would require under the Southeastern New England order that payments to individual producers be related to the nonfat solids content of producer milk. In the absence of evidence to support such a pricing scheme, the proposal is denied.

(e) No change should be made in the seasonal incentive plan now in use under the Connecticut order. A cooperative association proposed that this plan be changed by:

(1) Increasing the "take-out" rate from 15 cents to 25 cents per hundredweight;

(2) Eliminating June and adding January, February, and March to the "take-out" months, and adding October to the "pay-back" period; and

(3) Revising the "pay-back" schedule to provide for distribution of the monies collected during the "take-out" months at the rate of 40 percent of accumulated funds in July, 30 percent in August, 20 percent in September, and 10 percent in October.

Proponent contended that a change in the production pattern during recent years makes desirable a change in the months which are included in the "take-out" and "pay-back" periods. Also, an additional incentive for increased production in July was expressed by proponent as desirable.

The present "take-out" and "pay-back" months and rate schedule have been in the Connecticut order since its inception on April 1, 1959. This plan was incorporated in the order to encourage producers to level out their seasonal variations in production by increasing their milk production during the summer months when the supplies of milk are at their lowest level of the year, and decreasing their milk production during the spring months when the supplies of milk are at their highest level. For example, during 1963 the daily average receipts of milk in Connecticut during May, the month of highest production were only 18 percent more than the daily average receipts during July, the month of lowest production. This is a more uniform seasonal pattern of milk production than exists in any of the other neighboring markets where production conditions are generally similar. Therefore, it is concluded that the present seasonal incentive plan is accomplishing its objective and the proposal is denied.

(f) The Massachusetts-Rhode Island order should provide that a handler, upon request by a cooperative association, shall make payment to the association of the total amount due the association's producer-members for milk which the handler has received from them. This manner of payment by a handler is now specifically provided for in the Southeastern New England order. Under the other three orders proposed to be consolidated, such payment, if requested, is permitted but not required. A witness for a cooperative association in the Southeastern New England market stated that, in accordance with the provisions of that order, the association was collecting from handlers at the time of the hearing the payments due a number of its producer-members. Accordingly, the appropriate provision regarding this matter should be incorporated in the consolidated order.

11. *Marketing service deductions.* The provision under each of the present orders for a deduction from producers' returns to cover marketing services performed by the market administrator should be continued under the Massachusetts-Rhode Island order and the Connecticut order. The maximum de-

duction under each order should be three cents per hundredweight of milk.

Certain proprietary handlers and a small producer organization proposed that the nonmember marketing service provisions be deleted from one or more of the New England orders. Proponent handlers contended that nonmember producers do not desire such services, and that the marketing services rendered by the market administrators often duplicate services rendered by other parties. The proponent producer organization, and another producer organization which supported the proposal, contended that such deductions impose a hardship on their members since the organizations themselves are performing marketing services which are supported by the organizations' assessments on their members' milk, thereby resulting in a "double assessment" on such producers. Representatives of these organizations indicated that their members were not exempt from the marketing service deductions under the orders inasmuch as the organizations have not yet met the qualifications to perform as cooperative associations under the marketing service provisions.

Under each of the New England orders, the market administrator presently performs certain marketing services, including the dissemination of market information and the verification of weights and tests of producer milk, for producers who are not members of qualified cooperative associations which the Secretary has found are performing similar services. Such producers bear the cost of these services. When the Secretary determines that a qualified cooperative association is performing adequate marketing services for its producer members, the members are not subject to a specified marketing service deduction but to a deduction as agreed to by the association and its members.

The continuance of the marketing service program under the New England orders will promote orderly marketing by assuring individual producers who are not members of cooperative associations that the weights and tests of their milk are accurately made and also by keeping such producers fully informed of marketing developments. This type of service to such a producer, to be furnished at his expense, is authorized by the Act. No evidence was offered which indicates that such services are being performed in a continuing manner by other parties which make unnecessary such services as rendered by the market administrator. Moreover, the contention that marketing services are not desired by nonmember producers was not affirmed by any widespread support for their elimination. The proposals relating to marketing service deductions therefore are denied.

While the market volume of nonmember milk has been the most important factor in determining the individual rates of deduction needed to carryout the marketing service program in the separate markets, the performance of such services to nonmember producers under a merged order should not require a rate of deduction as great as the highest of the rates now in effect for these markets. It may be reasonably estimated that a maximum deduction of three cents per hundredweight of milk received from each producer for whom such services are to be performed will provide the necessary funds to carry on an adequate marketing service program under the Massachusetts-Rhode Island order. This rate of deduction is somewhat less than the average of the present maximum rates of deduction of two cents under the Boston order, three cents under the Springfield and Worcester orders, and five cents under the Southeastern New England order but should be adequate to carry on the services under a unified program. However, if it should appear at any time that the marketing services can be performed adequately at an even lower rate, provision is made whereby the Secretary may set a lower rate without the necessity of amending the order. The Connecticut order presently provides for a comparable maximum deduction of three cents and this rate would be continued.

12. *Administrative provisions.* To accomplish the merger of the Boston, Southeastern New England, Springfield, and Worcester orders effectively and equitably, the assets in the administrative and marketing service funds which have accrued under the separate orders should be combined. Similar procedure should be carried out with respect to the producer-settlement fund reserves. Any liabilities of such funds under the individual orders should be paid from the new funds so created. Similarly, obligations which are due and owning to the funds under the separate orders should remain and be paid to the combined funds under the merged order. This procedure would assure and maintain the continuity of the regulatory program in these markets.

The Massachusetts-Rhode Island order should provide for a maximum rate of four cents per hundredweight of milk which handlers should pay as their pro rata share of the expense of administration of the order. This maximum rate appears reasonable in view of the present maximum rates of three cents under the Boston order, four cents under the Springfield and Worcester orders, and five cents under the Southeastern New England order and the plan to transfer the present reserves in the separate administrative funds to the market administrator of the merged order for similar use thereunder. The order should provide, however, that if it appears at any time that a lower rate will cover administration expenses the Secretary may set the actual rate at a lower rate without the necessity of amending the orders.

As a proper pro rata assessment on handlers, payment under the merged order should apply to all of a handler's receipts of fluid milk products except (1) those receipts on which an administration expense assessment already has been applied under a Federal order, and (2) those receipts of exempt milk processed at plants other than pool plants. The payment should apply also to pool milk distributed on routes in the marketing area from nonpool plants.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

In accordance with § 900.9(b) of the rules of practice (7 CFR Part 900), an interested party requested in its brief a reversal of the Presiding Officer's ruling to exclude from the record certain opposition testimony which it desired to give concerning the several merger proposals listed in the hearing notice. In this regard, an offer of proof was made in accordance with § 900.8(d)(6) of the rules of practice.

The proffered testimony pertained to specific changes in the terms and provisions of the New York-New Jersey Federal order which this party considered necessary to effectuate a consolidation of the New York-New Jersey, Connecticut, and Springfield marketing areas and the extension of such consolidated area to include Berkshire County, Massachusetts. This merger plan, which was not embraced by the hearing notice, was suggested as an alternative to the merger proposals specifically set forth in the hearing notice. In ruling on the admission of this testimony, the Presiding Officer stated that the merger proposals listed in the hearing notice may be opposed by showing through the presentation of testimony on general economic and marketing conditions that this alternate merger plan would be preferable. It was indicated by the Presiding Officer, however, that testimony on specific changes in the New York-New Jersey order which would be necessary to effectuate this alternate plan did not constitute opposition testimony but constituted, instead, testimony of the proponent for the alternate plan and such testimony was, therefore, beyond the scope of the hearing notice.

A review of the statements in the record concerning this matter, and of the Presiding Officer's ruling, has been made. Such ruling is hereby affirmed.

Several parties requested in their brief that certain testimony relating to one of the merger proposals listed in the hearing notice be stricken from the record. The parties contended that this testimony, which was given on behalf of certain cooperative associations, should not be considered in the formulation of any amendments to the New England orders since the associations did not have members associated with the New England markets at the time of the hearing.

No ruling by the Presiding Officer concerning the admissability of such evidence was requested at the hearing. Under § 900.8(d)(2) of the rules of practice, only those objections to the admissability of evidence which are made at the time of the hearing may be subsequently relied upon in the proceeding.

It should be noted, however, that any interested person shall be given the opportunity to be heard with respect to matters relevant and material to the proceeding. Further, the Presiding Officer is charged with the responsibility of excluding evidence which does not meet these requirements. After review of the record, it is concluded that the testimony in question is relevant to this proceeding. Accordingly, the request is denied.

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

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

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

Recommended marketing agreements and orders amending the orders. The following order amending and consolidating the orders, as amended, regulating the handling of milk in the Greater Boston, Springfield, and Worcester, Massachusetts; and Southeastern New England marketing areas, and the following order amending the order, as amended, regulating the handling of milk in the Connecticut marketing area, are recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended:

Amendments to, and consolidation of, the Greater Boston, Springfield, and Worcester, Massachusetts, and Southeastern New England order provisions:

PART 1001—MILK IN THE MASSACHUSETTS-RHODE ISLAND MARKETING AREA

Subpart—Order Regulating Handling

AUTHORITY: The provisions of this Part 1001 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL DEFINITIONS

§ 1001.1 Act.

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

§ 1001.2 Massachusetts-Rhode Island marketing area.

"Massachusetts-Rhode Island marketing area", referred to in this part as the "marketing area", means all territory within the places listed below, all waterfront facilities connected therewith and craft moored thereat, and all territory therein occupied by any governmental installation, institution, or other establishment:

MASSACHUSETTS

COUNTIES

Barnstable.
Bristol.
Dukes.
Norfolk.
Plymouth.
Suffolk.

CITIES AND TOWNS

Agawam.
Andover.
Arlington.
Ashland.
Auburn.
Ayer.
Bedford.
Belmont.
Beverly.
Billerica.
Blackstone.
Boylston.
Burlington.
Cambridge.
Charlton.
Chelmsford.
Chicopee.
Clinton.
Dracut.
Dudley.
Easthampton.
East Longmeadow.
Everett.
Fitchburg.
Framingham.
Gardner.
Grafton.
Groveland.
Haverhill.
Holden.

Holliston.
Holyoke.
Hopedale
Hopkinton.
Lancaster.
Lawrence.
Leicester.
Leominster.
Lexington.
Littleton.
Longmeadow.
Lowell.
Ludlow.
Lunenburg.
Lynn.
Lynnfield.
Malden.
Marblehead.
Marlborough.
Medford.
Melrose.
Mendon.
Merrimac.
Methuen.
Milford.
Millbury.
Millville.
Nahant.
Natick.
Newton.
Northampton.
North Andover.
Northborough.
North Reading.
Oxford.
Paxton.
Peabody.
Princeton.
Reading.
Rutland.
Salem.
Saugus.
Sherborn.
Shrewsbury.
Somerville.
Southborough.
Southbridge.
South Hadley.
Spencer.
Springfield.
Sterling.
Stoneham.
Sutton.
Swampscott.
Tewksbury.
Tyngsborough.
Upton.
Wakefield.
Waltham.
Watertown.
Wayland.
Webster.
Westborough.
West Boylston.
Westfield.
Westford.
Westminster.
West Newbury.
Weston.
West Springfield.
Wilbraham.
Wilmington.
Winchester.
Woburn.
Worcester.

RHODE ISLAND

All cities and towns except New Shoreham (Block Island).

§ 1001.3 Route disposition.

"Route disposition" means distribution of Class I milk by a handler to retail or wholesale outlets, which include vending machines but do not include plants or distribution points. The route disposition of a handler shall be attributed to the processing and packaging plant from which the Class I milk is moved to retail or wholesale outlets without intermediate movement to another processing and packaging plant.

DEFINITIONS OF PERSONS

§ 1001.5 Person.

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

§ 1001.6 Secretary.

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

§ 1001.7 Producer.

"Producer" means a dairy farmer who produces milk which is moved, other than in packaged form, from his farm to a pool plant, or to any other plant as diverted milk. The term shall not include:

(a) A producer-handler under any Federal order;

(b) A dairy farmer with respect to milk which is considered as a receipt from a producer under the provisions of another Federal order;

(c) A dairy farmer for other markets;

(d) A dairy farmer with respect to certified milk received from him; or

(e) A dairy farmer who is a local or state government and has nonproducer status for the month under § 1001.26(d).

§ 1001.8 Cooperative association.

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

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

(b) To have full authority in the sale of milk of its members; and

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

§ 1001.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any person who operates any other plant, or a pool bulk tank unit as defined under another Federal order, from which fluid milk products are disposed of, directly or indirectly, in the marketing area; or

(c) Any person who does not operate a plant but who engages in the business of receiving fluid milk products for resale and distributes to retail or wholesale outlets packaged fluid milk products received from any plant described in paragraph (a) or (b) of this section.

§ 1001.10 Producer-handler.

"Producer-handler" means any person who, during the month, is both a dairy farmer and a handler and who meets the conditions specified in each of the paragraphs of this section.

(a) He provides as his own enterprise and at his own risk the maintenance, care, and management of the dairy herd and other resources and facilities which he uses to produce milk, to process and package such milk at his own plant, and to distribute it as route disposition.

(b) His own route disposition constitutes the majority of the route disposition from his plant.

(c) The quantity of route disposition in the marketing area from his plant is greater than in any other Federal marketing area.

(d) He receives no fluid milk products except from his own production and pool plants under any New England Federal order. If his receipts from own production and the total route disposition from his plant each exceed 2,150 pounds per day for the month, his receipts from New England Federal order pool plants are not in excess of 2 percent of his receipts from own production. For the purposes of this paragraph, his receipts of fluid milk products shall include receipts from plants of other persons at all retail and wholesale outlets which are located in New England Federal marketing areas and which are operated by him, an affiliate, or any person who controls or is controlled by him.

§ 1001.11 Dairy farmer for other markets.

"Dairy farmer for other markets" means any dairy farmer described in this section. For the purposes of this section, the acts of any person who is an affiliate of, or who controls or is controlled by, a handler or dealer shall be considered as having been performed by the handler or dealer. Receipts from a "dairy farmer for other markets" shall be considered as receipts from the plant to which his milk was delivered on a majority of the delivery days during the 12 months ending with the current month.

(a) The term includes a dairy farmer with respect to milk which is purchased from him during the month by a dealer who operates a plant but does not operate a pool plant, if the milk is moved to a pool plant directly from the dairy farmer's farm. The term shall not apply to the dairy farmer, however, if all the nonpool milk purchased from him during the month by the same dealer is a receipt of producer milk under the provisions of another Federal order or will be such if the dairy farmer is a producer under this part.

(b) The term includes a dairy farmer with respect to milk which is purchased from him during the month by a handler and moved to a pool plant, if that handler caused milk from the same farm to be moved as nonpool milk to any plant during the same month. The term shall not apply to the dairy farmer, however, if all the nonpool milk is a receipt of producer milk under the provisions of another Federal order or will be such if the dairy farmer is a producer under this part.

(c) The term includes a dairy farmer with respect to milk which is received by a handler at a pool plant during any of the months of December through June, if the handler received nonpool milk from the same farm during any of the preceding months of July through November at a plant which is not a pool plant under any Federal order in the current month. The term shall not apply to the dairy farmer, however, if all the nonpool milk was a receipt of producer milk under the provisions of another Federal order or represented receipts from own production by a producer-handler under any Federal order.

DEFINITIONS OF PLANTS

§ 1001.15 Plant.

"Plant" means the land and buildings, together with their surroundings, facilities, and equipment, constituting a single operating unit or establishment which is operated exclusively by one or more persons engaged in the business of handling fluid milk products for resale or manufacture into milk products, and which is used for the handling or processing of milk or milk products. The term "plant" does not include:

(a) Distribution points (separate premises used primarily for the transfer to vehicles of packaged fluid milk products moved there from processing and packaging plants); or

(b) Bulk reload points (separate premises used for the transfer of milk en route from dairy farmers' farms to a plant, at which premises facilities for washing and sanitizing cans or tank trucks are not maintained and used).

§ 1001.16 Pool plant.

"Pool plant" means any plant which meets the applicable conditions for pool plant status as:

(a) A pool distributing plant, under § 1001.35;

(b) A cooperative association plant located in the marketing area, under § 1001.36; or

(c) A pool supply plant, under § 1001.37.

§ 1001.17 Exempt distributing plant.

"Exempt distributing plant" means a plant, other than a pool supply plant or a regulated plant under another Federal order, which meets all the requirements for status as a pool distributing plant except that its route disposition in the marketing area in the month does not exceed 700 quarts on any day or a daily average of 300 quarts.

§ 1001.18 Distributing plant for unregulated markets.

"Distributing plant for unregulated markets" means a processing and packaging plant from which the route disposition outside any Federal marketing area amounts to more than 50 percent of its total receipts of fluid milk products during the month. The term shall not apply to a pool plant, an exempt distributing plant under any New England Federal order, a producer-handler's plant under any Federal order, or a regulated plant under another Federal order.

§ 1001.19 Regulated plant under another Federal order.

"Regulated plant under another Federal order" means a pool plant or any other plant at which all fluid milk products handled become subject to the classification and pricing provisions of another Federal order. The term shall also include a pool bulk tank unit as defined under another Federal order.

DEFINITIONS OF MILK AND MILK PRODUCTS

§ 1001.22 Fluid milk products.

"Fluid milk products" means milk, skimmed milk, flavored milk or skimmed milk, cultured skimmed milk, buttermilk, concentrated milk, any mixture of milk or skimmed milk and cream containing less than 10 percent butterfat, and 50 percent of the quantity by weight of any mixture of milk or skimmed milk and cream containing at least 10 percent but less than 16 percent butterfat. The term includes these products in fluid, frozen, fortified, or reconstituted form but does not include sterilized products in hermetically sealed containers and such products as eggnog, yogurt, whey, ice cream mix, ice milk mix, milk shake base mix, and evaporated or condensed milk or skimmed milk, in either plain or sweetened form. Fluid milk products which have been placed in containers for disposition to retail or wholesale outlets are referred to in this part as packaged fluid milk products.

§ 1001.23 Cream.

"Cream" means that portion of milk, containing not less than 16 percent butterfat, which rises to the surface of milk on standing, or is separated from it by centrifugal force. The term also includes soured cream, frozen cream, fortified cream, reconstituted cream, any mixture of milk or skimmed milk and cream containing 16 percent or more of butterfat, and 50 percent of the quantity by weight of any mixture of milk or skimmed milk and cream containing at least 10 percent but less than 16 percent butterfat.

§ 1001.24 Producer milk.

"Producer milk" means milk which the handler has received from producers. The quantity of milk received by a handler from producers shall include any milk of a producer which was not received at a plant but which the handler or an agent of the handler has accepted, measured, sampled, and transferred from the producer's farm tank into a tank truck during the month, and such milk shall be considered as having been received at the pool plant at which other milk from the same farm of that producer is received by the handler during the month.

§ 1001.25 Pool milk.

"Pool milk" means fluid milk products (other than exempt milk) received or disposed of as specified in this section:

(a) Receipts of producer milk;

(b) The following receipts of fluid milk products at pool plants (exclusive of receipts from other pool plants, producer-handlers under any Federal order, exempt distributing plants under any New England Federal order, and receipts from regulated plants under other Federal orders which are classified and priced under the other orders):

(1) Receipts at pool distributing plants from plants located outside the New England states and beyond zone 40;

(2) Receipts at pool plants, other than pool distributing plants, to the extent assigned to Class I milk under § 1001.55 (g), from plants located outside the New England states and beyond zone 40; and

(3) Receipts at pool plants, to the extent assigned to Class I milk under § 1001.55(h), from plants located within one of the New England states or in zone 40 or a nearer zone, exclusive of bulk fluid milk products from distributing plants for unregulated markets;

(c) Receipts of bulk fluid milk products at pool distributing plants, to the extent assigned to classes under § 1001.56, from regulated plants under other Federal orders with individual-handler pools;

(d) Receipts of bulk fluid milk products at pool plants, other than pool distributing plants, to the extent assigned to Class I milk under § 1001.57(1), from regulated plants under other Federal orders with individual-handler pools; and

(e) Route disposition in the marketing area from any processing and packaging plant (except a pool plant, a producer-handler's plant under any Federal order, an exempt distributing plant under any New England Federal order, or a regulated plant under another Federal order) to the extent of all such disposition in the month which is in excess of a daily average of 300 quarts or of 700 quarts on any day, whichever is greater. In determining the quantity of pool milk under this paragraph, the total quantity of route disposition in the marketing area from the plant first shall be reduced by the quantity of fluid milk products received at the plant during the month which is classified and priced as Class I milk or the equivalent thereof under any marketwide pool Federal order and which is not used to offset route disposition in any other Federal marketing area. The reduction shall be made first in any route disposition which is in excess of 700 quarts on any day.

§ 1001.26 Exempt milk.

"Exempt milk" means:

(a) Milk received at a pool plant in bulk from a nonpool plant to be processed and packaged, for which an equivalent quantity of packaged fluid milk products is returned to the operator of the nonpool plant during the same month, if the receipt of bulk milk and return of packaged fluid milk products occur during an interval in which the facilities of the nonpool plant at which the milk is usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the dealer's control;

(b) Packaged fluid milk products received at a pool plant from a nonpool plant in return for an equivalent quantity of bulk milk moved from a pool plant for processing and packaging during the same month, if the movement of bulk milk and receipt of packaged fluid milk products occur during an interval in which the facilities of the pool plant at which the milk is usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the handler's control;

(c) Milk produced and processed in accordance with the standards of purity and quality for certified milk established by the American Association of Medical Milk Commissions and disposed of as packaged certified milk or packaged certified skimmed milk; and

(d) Milk received at a pool plant in bulk from the dairy farmer who produced it, to the extent of the quantity of any packaged fluid milk products returned to the dairy farmer, if:

(1) The dairy farmer is a state or local government which is not engaged in the route disposition of any of the returned products; and

(2) The dairy farmer has, by written notice to the market administrator and the receiving handler, elected nonproducer status for a period of not less than 12 months beginning with the month in which the election was made and continuing for each subsequent month until canceled in writing, and the election is in effect for the current month.

§ 1001.27 Diverted milk.

"Diverted milk" means milk which a handler reports as having been moved from a dairy farmer's farm to one of his pool plants, but which he caused to be moved from the farm to another plant, if such movement is specifically reported and the conditions of paragraph (a) or (b) of this section have been met. Diverted milk shall be considered to have been received at the pool plant from which it was diverted.

(a) The handler caused milk from the farm to be moved to such pool plant on a majority of the delivery days, during the 12 months ending with the current month, on which the handler either caused milk to be moved from the farm as producer milk, or caused milk to be moved as producer milk from the farm by tank truck.

(b) The handler caused the milk to be moved from the farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted from the same pool plant during the month in accordance with the preceding provisions of this section.

MARKET ADMINISTRATOR

§ 1001.30 Designation.

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

§ 1001.31 Powers.

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

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

§ 1001.32 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part. His duties shall include but not be limited to those specified in this section.

(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, he shall execute and deliver to the Secretary a bond effective as of the date on which he enters upon his duties. The bond shall be conditioned upon the faithful performance of those duties and shall be in an amount and with surety thereon satisfactory to the Secretary.

(b) He shall employe and fix the compensation of any persons necessary to enable him to administer the terms and provisions of this part.

(c) He shall obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator.

(d) He shall pay from the funds provided by § 1001.87 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties except those expenses incurred under § 1001.75.

(e) He shall keep books and records to reflect clearly the transactions provided for in this part and, upon request by the Secretary, surrender them to any other person the Secretary may designate.

(f) He shall submit his books and records to examination by the Secretary and furnish any information and reports requested by the Secretary.

(g) He shall prepare and make available for the benefit of producers, handlers, and consumers, statistics and information concerning the operation of this part.

(h) He shall verify handlers' reports and payments to the extent necessary, by any appropriate means including audit of the handlers' records and, if made available, of the records of any other persons upon whose utilization the classification of butterfat and skim milk depends. If verification discloses that the original classification was incorrect, the market administrator shall make appropriate reclassification of the butterfat and skim milk.

(i) At his discretion and unless otherwise directed by the Secretary, he shall publicly announce (by posting in a conspicuous place in his office and by such other means as he deems appropriate) the name of any handler the value of whose fluid milk products is not included in the computation of the basic blended price because of failure to file reports under § 1001.40 or make payments under § 1001.82.

(j) He shall publicly announce (by posting in a conspicuous place in his office and by such other means as he deems appropriate):

(1) By the 25th day of the month, the Class I price for the following month, as computed under § 1001.60;

(2) By the 5th day of the month, the Class II price and the butterfat differential for the preceding month, as computed under §§ 1001.61 and 1001.71(b), respectively;

(3) By the 12th day of each month, the zone blended prices resulting from the adjustment of the basic blended price for the preceding month, as computed under § 1001.64, by the zone differentials contained in § 1001.62(d); and

(4) By the 25th day of each January, the monthly base Class I percentage factors computed under § 1001.65(a).

POOL PLANT REQUIREMENTS

§ 1001.35 Distributing plants.

Each processing and packaging plant (other than a producer-handler's plant under any Federal order or a regulated plant under another Federal order) shall be a pool distributing plant in any month in which it meets the conditions specified in this section.

(a) Its total Class I disposition in the month, or in either of the two preceding months, is not less than 40 percent of its total receipts of fluid milk products in the corresponding month.

(b) Its route disposition in the marketing area in the month:

(1) Is not less than 10 percent of its total receipts of fluid milk products;

(2) Exceeds its route disposition in any other Federal marketing area; and

(3) Exceeds 700 quarts on any day or a daily average of 300 quarts.

§ 1001.36 Cooperative association plants located in the marketing area.

Each plant which is located in the marketing area and which is operated by a cooperative association shall be a pool plant in any month in which its route disposition does not exceed 2 percent of its total receipts of fluid milk products.

§ 1001.37 Supply plants.

Each plant (other than a plant described in paragraph (e) of this section) shall be a pool supply plant in any month in which it meets the conditions specified in paragraph (a), and in either paragraph (b), (c), or (d), of this section.

(a) It is a plant at which facilities are maintained and used for washing and sanitizing cans or tank trucks and to which milk is moved from dairy farmers' farms in cans and is there accepted, weighed or measured, sampled, and cooled, or to which milk is moved from dairy farmers' farms in tank trucks and is there transferred to stationary equipment or to other vehicles.

(b) It is a plant from which at least 15 percent of its total receipts of milk from dairy farmers' farms is shipped as fluid milk products, other than as diverted milk:

(1) To pool distributing plants; or

(2) To plants to which qualifying shipments may be made under any New England Federal order and a greater quantity of fluid milk products is shipped to pool distributing plants under this order than to the other plants.

(c) For any month of July through November, it is one of a group of plants which meets the conditions specified in this paragraph.

(1) The handler's written request for continuation of pool supply plant status, which the plant held under his operation in the preceding month, is received by the market administrator on or before the 16th day of the month.

(2) The plant does not qualify for pool plant status under another New England Federal order on the basis of shipments of fluid milk products which exceed those made to pool distributing plants under this order, and the group of plants, considered as a unit, meets the shipping requirements specified in paragraph (b) of this section.

(3) To qualify as a pool supply plant under this paragraph in November of any year, the plant, considered individually, shall have met the shipping requirements specified in paragraph (b) of this section in one of the months of July through October of that year.

(d) For any month of December through June, it is a plant which meets the requirements for automatic pool plant status specified in this paragraph. The automatic pool plant status of a

plant shall be revoked for any month for which the market administrator has received the handler's written request for revocation on or before the 16th day of that month. In that event, the plant shall not have automatic pool plant status in any subsequent month of the current December through June period.

(1) The plant was a pool supply plant in each of the preceding months of July through November; or

(2) The plant was a pool supply plant under one or another of the New England Federal orders in at least two of the preceding months of July through November and would have been such a plant in all other months in that period had it not been a pool plant under the New York-New Jersey Federal order, and a greater quantity of its receipts from dairy farmers' farms during the July through November period was pooled under this order than under any other New England Federal order.

(e) No plant shall be a pool supply plant in any month in which it is operated as:

(1) A pool distributing plant;

(2) The plant of a producer-handler under any Federal order;

(3) A regulated plant under another Federal order with a marketwide pool, including any plant which has automatic pool plant status under another New England Federal order; or

(4) A plant qualifying for pooling under a Federal order with individual-handler pools on the basis of its route disposition or on the basis of shipments of fluid milk products which exceed the shipments of fluid milk products qualifying the plant for pooling under this order.

REPORTS, RECORDS, AND FACILITIES

§ 1001.40 Monthly reports of receipts and utilization.

On or before the 8th day after the end of the month, each handler who operates a pool plant or any other plant from which there is route disposition in the marketing area shall file with the market administrator a report for the month for each such plant. The report shall be in the detail and on forms prescribed by the market administrator and shall show the quantities of butterfat and of skim milk and the total thereof contained in:

(a) Receipts of milk and milk products in the form of:

(1) Producer milk (including the specific quantities of diverted milk and of receipts from the handler's own production);

(2) Pool milk other than producer milk;

(3) Fluid milk products and cream from all other plants; and

(4) Fluid milk products and cream from all other sources (including the quantities of fluid milk products or cream reconstituted from other milk products and the quantities of other milk products used to fortify fluid milk products or cream);

(b) Inventories of fluid milk products and cream at the beginning and at the end of the month; and

(c) The respective quantities of fluid milk products and cream sold, distributed, used, or otherwise disposed of, classified in accordance with the provisions of §§ 1001.47 through 1001.51.

§ 1001.41 Other reports of receipts and utilization.

(a) Within 5 days after the first receipt at his pool plant of fluid milk products during the month from each plant which is neither a pool plant nor a producer-handler's plant under any New England Federal order, each handler shall file with the market administrator a report showing the identity of the operator of the shipping plant, the plant location, the quantities of bulk and packaged fluid milk products received, and such other information respecting the receipt as the market administrator may prescribe.

(b) For any month in which it is claimed that the farm of any dairy farmer from whom he received milk is located in a farm location differential area described in § 1001.72, each handler from whose plant pool milk other than producer milk is moved to a pool plant and each handler with route disposition of pool milk in the marketing area from a nonpool plant shall file with the market administrator a report showing the name, post office address, and farm location of each dairy farmer from whom he received milk at the plant during the month, and the total pounds of milk received from each farm. The report shall be submitted within 10 days after the market administrator's request, made not earlier than the 20th day after the end of the month.

(c) Each handler who does not operate a pool plant, or any other plant with route disposition in the marketing area, shall file with the market administrator reports relating to his receipts and utilization of milk and milk products at the time and in the manner prescribed by the market administrator.

§ 1001.42 Reports regrading individual producers.

(a) Within 20 days after a producer moves from one farm to another, begins or resumes deliveries to a handler's pool plant, or begins to deliver his milk to the handler's plant by tank truck, the handler shall file with the market administrator a report showing the applicable date and the producer's name, post office address, and farm location. The report shall indicate, if known, the plant to which the producer had been delivering prior to beginning or resuming deliveries.

(b) Within 15 days after the 5th consecutive day on which a producer has failed to deliver to a handler's pool plant, the handler shall file with the market administrator a report showing the date of the last delivery and the producer's name, post office address, and farm location. The report shall indicate, if known, the reason for the producer's failure to continue deliveries.

(c) Each handler who is not a cooperative association, upon request from any such association, shall furnish it with information with respect to each of its producer members who begins, resumes, or stops deliveries to the handler's pool plant. Such information shall include the applicable date, the producer member's post office address and farm location, and, if known, the plant to which he previously delivered, or the reason for his failure to continue deliveries. In lieu of his providing the information directly to the association, the handler may authorize the market administrator to furnish the association with such information, derived from the handler's reports and records.

§ 1001.43 Notices to producers.

Each handler shall furnish each producer from whom he receives milk with information regarding the daily weight and composite butterfat test of the producer's milk, as follows:

(a) Within 3 days after each day on which he receives milk from the producer, the handler shall give the producer written notice of the daily quantity so received; and

(b) Within 7 days after the end of any sampling period for which the composite butterfat test of the producer's milk was determined, the handler shall give the producer written notice of such composite test.

§ 1001.44 Records and facilities.

(a) Each handler shall maintain detailed and summary records showing the quantities of butterfat and of skim milk and the total thereof contained in all receipts, movements, and disposition of milk and milk products during each month, and inventories of milk and milk products at the beginning and end of the month.

(b) For the purpose of ascertaining the correctiveness of any report made to the market administrator as required by this part, or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, each handler shall permit the market administrator or his agent, during the usual hours of business, to:

(1) Verify the information contained in the reports submitted in accordance with this part;

(2) Verify the payments to producers, including any deductions, and the disbursement of money so deducted;

(3) Weigh, sample, and test milk and milk products; and

(4) Make whatever examination of records, operations, equipment, and facilities as the market administrator deems necessary for the purpose specified in this section.

(c) Each handler shall submit to the market administrator, within 10 days after his request made not earlier than 20 days after the end of the month, his producer payroll for the month, which shall show for each producer:

(1) The daily and total pounds of milk delivered and its average butterfat test; and

(2) The net amount of the handler's payments to the producer, with the prices, deductions, and charges involved.

§ 1001.45 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

the books and records pertain. If, within the three-year period, the market administrator notifies the handler in writing that the retention of the 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 the books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1001.47 Classification of milk and milk products—in general.

All butterfat and skim milk in milk and milk products required to be reported under § 1001.40 shall be classified as Class I milk or Class II milk under §§ 1001.48 through 1001.51.

§ 1001.48 Class I milk.

Subject to the provisions of §§ 1001.50 and 1001.51, Class I milk shall be all butterfat and skim milk (including that used to produce concentrated milk):

(a) Disposed of in the form of fluid milk products other than as specified in § 1001.49; or

(b) Not established as Class II milk under § 1001.49.

§ 1001.49 Class II milk.

Subject to the provisions of §§ 1001.50 and 1001.51, Class II milk shall be all butterfat and skim milk for which the handler who first receives the butterfat and skim milk proves that the butterfat and skim milk were:

(a) Disposed of in the form of cream;

(b) Used to produce milk products other than fluid milk products or cream;

(c) Disposed of as livestock feed or to bakeries, soup factories and similar establishments;

(d) Contained in fluid milk products in inventory at the end of the month to the extent not classified as Class I milk under § 1001.51;

(e) Contained in fluid milk products dumped or discarded;

(f) Contained in fluid milk products destroyed or lost under extraordinary circumstances; and

(g) In shrinkage not in excess of 2 percent of the respective quantities of butterfat and skim milk contained in receipts of fluid milk products and cream, exclusive of diverted milk and inventory at the beginning of the month.

§ 1001.50 Classification of fluid milk products moved to other plants.

Butterfat and skim milk in fluid milk products moved from a pool plant to any other plant shall be classified as follows:

(a) As Class I milk if moved as packaged fluid milk products to any other plant;

(b) As Class I milk if moved to the plant of a producer-handler under any Federal order;

(c) In the class to which assigned under § 1001.57 if moved as bulk fluid milk products to any other pool plant;

(d) In the class to which assigned under the other order if moved as bulk fluid milk products to a regulated plant under another Federal order;

(e) As Class I milk, to the extent of the total quantity of the same form of fluid milk products so moved which is utilized as Class I milk at the plant to which transferred, if moved as bulk fluid milk products to any plant other than a plant to which movements of bulk fluid milk products are subject to classification under the preceding paragraphs of this section, and as Class II milk to the extent of any remainder; and

(f) As Class I milk if moved as bulk fluid milk products to any plant other than a pool plant or a regulated plant under another Federal order and thence to another plant, not regulated under a Federal order, located outside the New England States and New York State.

§ 1001.51 Classification of inventories.

All butterfat and skim milk contained in inventories of fluid milk products at the end of each month shall be classified as Class I milk pending final disposition of the fluid milk products, if the handler requests such classification and either receives no milk from producers or does not claim classification as Class II milk of any fluid milk products.

ASSIGNMENT OF RECEIPTS

§ 1001.53 Assignment of receipts to classes—in general.

(a) The total quantities of butterfat and of skim milk received at each pool plant during the month (including those quantities in inventory at the beginning of the month) shall be assigned separately, in the manner and sequence provided in §§ 1001.54 through 1001.58, to the respective quantities of butterfat and of skim milk classified as Class I milk and Class II milk under §§ 1001.47 through 1001.51.

(b) Except as provided in § 1001.56, whenever receipts have been assigned under §§ 1001.54 through 1001.58 to the remaining pounds in a class, all remaining receipts shall be assigned to the other class.

(c) If receipts from more than one plant are to be assigned under a paragraph in § 1001.55 or § 1001.57, or under § 1001.58, the receipts shall be assigned in sequence according to the zone locations of the plants, beginning with the plant in the nearest zone to Boston for assignments to Class I milk and beginning with the plant in the most distant zone from Boston for assignments to Class II milk.

§ 1001.54 Initial assignments to Class I milk.

(a) Assign to Class I milk the quantities received in exempt milk.

(b) Assign to Class I milk the quantities in packaged fluid milk products received from regulated plants under other Federal orders, if the fluid milk products received are classified and priced under the other orders as Class I milk or the equivalent thereof or in accordance with their assignment under this part.

(c) Assign to Class I milk the quantities in packaged fluid milk products received from other pool plants.

(d) Assign to Class I milk the quantities in fluid milk products in inventory at the beginning of the month which were classified as Class I milk under § 1001.51 in the preceding month.

§ 1001.55 Initial assignments to Class II milk.

(a) Assign to Class II milk the quantities, in fluid milk products or cream reconstituted from other milk products, and the quantities in other milk products used to fortify fluid milk products or cream. If the quantity of any reconstituted product is not known, the quantities assigned shall be the quantity of butterfat used in the reconstitution and the quantity of skim milk required to produce the milk products so used. Any unaccounted-for plain condensed milk or skimmed milk, dry whole milk, or nonfat dry milk shall be considered to have been used in the reconstitution of fluid milk products.

(b) Assign to Class II milk the quantities in cream in inventory at the beginning of the month and received during the month.

(c) Assign to Class II milk the quantities in fluid milk products (other than exempt milk) received from a local or state government which has elected nonproducer status for the month under § 1001.26(d).

(d) Assign to Class II milk the quantities in fluid milk products in inventory at the beginning of the month not assigned under § 1001.54(d).

(e) Assign to Class II milk the quantities in fluid milk products received from producer-handlers under any Federal order and from exempt distributing plants under any New England Federal order, and in milk products other than fluid milk products from dairy farmers.

(f) Assign to Class II milk the quantities in bulk fluid milk products received from distributing plants for unregulated markets located within one of the New England States or in zone 40 or a nearer zone.

(g) At pool plants other than pool distributing plants, assign to Class II milk the quantities in fluid milk products received from plants located outside the New England States and beyond zone 40, if the fluid milk products received are not classified and priced under any Federal order.

(h) Assign to Class II milk the quantities in fluid milk products received from plants located within one of the New England States or in zone 40 or a nearer zone, except receipts assigned under paragraph (f) of this section and receipts which are classified and priced under any Federal order.

§ 1001.56 Prorated assignment to classes.

(a) At pool distributing plants, assign to Class I milk and Class II milk, in proportion to the respective remaining pounds in each class at all of the handler's pool plants, the quantities in bulk fluid milk products received from each regulated plant under another Federal order, if such receipts are classified and priced under the other order as Class I

milk or the equivalent thereof or in accordance with their assignment under this part.

(b) If the quantity to be assigned to a class exceeds the respective quantity remaining in that class at the pool distributing plant, the remaining quantity shall be increased to the quantity to be assigned to that class and the respective remaining quantity in that class at the handler's other pool plants shall be decreased to the same extent, in sequence beginning with the plant in the zone nearest to Boston. The respective quantity remaining in the other class thereupon shall be decreased correspondingly at the pool distributing plant and shall be increased correspondingly at those other pool plants involved in the adjustment.

(c) The quantities assigned under this section shall be limited to the excess of the receipts from a plant over the respective quantities in bulk fluid milk products moved to that plant from the pool distributing plant.

§ 1001.57 Additional assignments to Class I milk.

(a) At pool plants located outside the nearby plant zone, assign to Class I milk the quantities received in producer milk to the extent of the respective quantities in route disposition in the States of Maine, New Hampshire, and Vermont and in Class I milk moved to nonpool plants from which no fluid milk products were disposed of as Class I milk, either directly or indirectly, outside those States.

(b) Assign to Class I milk the quantities in bulk fluid milk products received from the handler's pool plants located in the nearby plant zone.

(c) Assign to Class I milk the quantities received from other handlers' pool plants in bulk fluid milk products for which classification as Class II milk has not been requested by both handlers.

(d) At pool plants located outside the nearby plant zone, assign to Class I milk the quantities in bulk fluid milk products received from the handler's pool plants located outside the nearby plant zone but in a zone nearer to Boston than that of the receiving plant.

(e) Assign to Class I milk the quantities received in producer milk not assigned under paragraph (a) of this section.

(f) Assign to Class I milk the quantities received from the handler's pool plants in bulk fluid milk products not assigned under paragraph (b) or (d) of this section.

(g) At pool distributing plants, assign to Class I milk the quantities received from plants located outside the New England States and beyond zone 40 in pool milk other than producer milk, if the fluid milk products received are not classified and priced under any Federal order.

(h) Assign to Class I milk the quantities received from other handlers' pool plants in bulk fluid milk products for which classification as Class II milk has been requested by both handlers.

(i) At pool plants other than pool distributing plants, assign to Class I milk the quantities in bulk fluid milk products received from regulated plants under other Federal orders, if such receipts are classified and priced under the other order as Class I milk or the equivalent thereof or in accordance with their assignment under this part.

§ 1001.58 Additional assignment to Class II milk.

Assign to Class II milk the quantities received from regulated plants under other Federal orders in fluid milk products not previously assigned to classes under §§ 1001.54 through 1001.57.

MINIMUM PRICES

§ 1001.60 Class I price.

The Class I price per hundredweight of milk containing 3.5 percent butterfat, at plants located in zone 21, shall be computed for each month as specified in this section. The latest reported figures available to the market administrator on the 25th day of the preceding month shall be used in making the computations, except that if the 25th day of the preceding month falls on a Sunday or legal holiday the latest figures available on the next succeeding workday shall be used.

(a) Compute an economic index, with the year 1958 as the base period, as follows:

(1) Calculate a United States wholesale commodity price index by dividing the monthly wholesale price index for all commodities (as reported by the Bureau of Labor Statistics, United States Department of Labor, with the years 1957–59 as the base period) by 1.0025.

(2) Calculate a New England consumer income index by multiplying the current annual rate of per capita disposable personal income in the United States (based upon the quarterly figure released by the United States Department of Commerce or the Council of Economic Advisers to the President) by the New England adjustment percentage and dividing the result by 20.50. The New England adjustment percentage shall be the current percentage relationship of per capita personal income in New England to per capita personal income in the United States (using data on per capita personal income by States and regions as published by the United States Department of Commerce).

(3) Calculate a New England dairy ration index by dividing the monthly average price paid by farmers in the New England region for 100 pounds of mixed dairy feed containing less than 29 percent protein (as reported by the United States Department of Agriculture) by 0.04041.

(4) Calculate a New England farm wage rate index by dividing the weighted average farm wage rate for the New England region by 1.9833. The weighted average farm wage rate for the New England region shall be the average of the farm wage rates for the New England region (as reported by the United States Department of Agriculture) weighted by the factors indicated in the following table.

Rate	Weighting factor
Per month with board and room	1.00
Per month with house	1.00
Per week with board and room	4.33
Per week without board or room	4.33
Per day without board or room	26.00

(5) Calculate a New England grain-labor cost index by multiplying the New England dairy ration index by 0.6 and the New England farm wage rate index by 0.4, and combining the two results.

(6) The economic index shall be the result of dividing by seven the sum of three times the United States wholesale commodity price index, the New England consumer income index, and three times the New England grain-labor cost index.

(b) Compute an economic index price as follows:

(1) Multiply the economic index by $0.0557, expressing the result to the nearest mill.

(2) Divide the Class I–A price for the month computed under the New York-New Jersey Federal order, applicable to milk containing 3.5 percent butterfat received at plants located in the 201–210-mile freight zone, by the product of the utilization adjustment percentage and the seasonal adjustment factor which entered into the computation of that price, expressing the result to the nearest mill.

(3) The economic index price shall be the price computed in subparagraph (1) of this paragraph, except that its deviation from the result obtained in subparagraph (2) of this paragraph shall be limited to $0.05.

(c) Compute a supply-demand adjustment factor (using quantities announced in the statistical reports of the respective market administrators for the New England Federal orders for the second, third, and fourth months preceding the month for which the price is being computed) as follows:

(1) For each of the three months, determine the total Class I producer milk and the total producer milk for the New England Federal order markets by combining the respective totals for the individual markets.

(2) For each of the three months, divide the total Class I producer milk for the New England Federal order markets by the base Class I percentage factor for the same month as determined under § 1001.65(a). The result shall be the New England base supply for that month.

(3) For each of the three months, express the total producer milk for the New England Federal order markets as a percentage of the New England base supply for the same month. The simple average of the three resulting percentages shall be the percentage of base supply.

(4) The supply-demand adjustment factor shall be the figure in the following table opposite the bracket within which the percentage of base supply falls. When the percentage of base supply falls in an interval between brackets, the supply-demand adjustment factor shall be the figure shown for the next higher bracket if the factor for the previous month was based on a bracket higher than such interval, and shall be the figure

for the next lower bracket if the factor for the previous month was based on a bracket lower than such interval.

Percentage of base supply: [1]	Supply-demand adjustment factor
90.5–91.5	1.06
92.0–93.0	1.05
93.5–94.5	1.04
95.0–96.0	1.03
96.5–97.5	1.02
98.0–99.0	1.01
99.5–100.5	1.00
101.0–102.0	.99
102.5–103.5	.98
104.0–105.0	.97
105.5–106.5	.96
107.0–108.0	.95
108.5–109.5	.94

[1] If the percentage of base supply calculated according to subparagraph (3) of this paragraph falls outside the extremes shown in this column, the supply-demand adjustment factor shall be determined by extending the table at the indicated rate of extension.

(d) The seasonal adjustment factor shall be the factor listed below for the month for which the price is being computed.

Month:	Seasonal adjustment factor
January and February	1.04
March	1.00
April	.92
May and June	.88
July	.96
August	1.00
September	1.04
October, November, and December	1.08

(e) Multiply the economic index price determined under paragraph (b) of this section by the product of the supply-demand adjustment factor determined under paragraph (c) of this section and the seasonal adjustment factor determined under paragraph (d) of this section. The Class I price shall be the price set forth in column 3 of the following table opposite the range within which the result of this computation falls.

Range		Class I price
At least—	But less than—	
$4.72 [1]	$4.94	$4.83
$4.94	5.16	5.05
$5.16	5.38	5.27
$5.38	5.60	5.49
$5.60	5.82	5.71
$5.82	6.04	5.93
$6.04	6.26	6.15
$6.26	6.48	6.37
$6.48	6.70	6.59
$6.70	[1] 6.92	6.81

[1] If the result of the computation specified in this paragraph is less than $4.72 or is $6.92 or more, the Class I price shall be determined by extending the table at the indicated rate of extension.

(f) Notwithstanding the provisions of the preceding paragraphs of this section, the Class I price for November or December of each year shall not be lower than the Class I price for the immediately preceding month.

§ 1001.61 Class II price.

The Class II price per hundredweight of milk containing 3.5 percent butterfat, at plants located in zone 21, shall be computed for each month as specified in this section.

(a) Adjust the average price for milk for manufacturing purposes, f.o.b. plants United States, as reported by the United States Department of Agriculture on a preliminary basis for the month, by subtracting for each one-tenth of one percent of average butterfat content above 3.5 percent, or adding for each one-tenth of one percent of average butterfat content below 3.5 percent, an amount per hundredweight which shall be calculated by multiplying by 0.125 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported by the United States Department of Agriculture for the period beginning with the 16th day of the preceding month and ending with the 15th day of the current month.

(b) Adjust the result obtained in paragraph (a) of this section by the amount shown below for the applicable month:

Month:	Amount
January	+$0.08
February	+.07
March	.00
April	−.04
May	−.07
June	−.06
July	+.08
August	+.15
September	+.11
October	+.11
November	+.11
December	+.11

§ 1001.62 Zone differentials.

The class prices and blended prices computed under §§ 1001.60, 1001.61, and 1001.64 shall be subject to zone differentials based upon the zone location of the plant at which producer milk is received and of the plant from which pool milk other than producer milk is received or distributed, as specified in this section.

(a) Each plant which is located in the marketing area, in either farm location differential area specified in § 1001.72, or in the State of Connecticut, shall be in the "nearby plant" zone.

(b) The zone location of each plant which is outside the "nearby plant" zone shall be based upon its highway mileage distance to Boston, as determined by use of Mileage Guide No. 7, and supplements to and revisions thereof, issued by Household Goods Carriers' Bureau, Agent, Washington, D.C. The mileages used shall be those shown between designated key points in the mileage charts, and between named points on the appropriate State road maps, as published in the mileage guide. In any instance in which the map does not clearly show the mileage between points on a road, the mileage used shall be the mileage as determined by the highway authority for the State in which the road is located.

(c) The distance for each plant shall be the mileage between Boston and the named point nearest to the plant, as shown in the mileage charts. If that named point is not listed in the mileage charts, the distance for the plant shall be the lowest mileage distance between Boston and that named point, computed as follows:

(1) Determine from the charts the mileage between Boston and each of the three key points nearest to the named point which are nearer to Boston than the named point.

(2) For each of these key points, add to the result in subparagraph (1) of this paragraph the mileage between the key point and the named point, measured to the greatest possible extent over roads designated as paved all-weather roads.

(d) The zone differentials for each plant shall be those applicable to its zone location as shown in the following table.

DIFFERENTIALS FOR DETERMINATION OF ZONE PRICES

Distance to Boston (miles)	Plant location zone	Class I and blended price differentials (cents per hundredweight)	Class II price differentials (cents per hundredweight)
Various	Nearby plant	+47.0	+5.8
81 to 90	9	+14.4	+3.2
91 to 100	10	+13.2	+3.0
101 to 110	11	+12.0	+2.9
111 to 120	12	+10.8	+2.6
121 to 130	13	+9.6	+2.4
131 to 140	14	+8.4	+2.1
141 to 150	15	+7.2	+1.6
151 to 160	16	+6.0	+1.3
161 to 170	17	+4.8	+1.2
171 to 180	18	+3.6	+.6
181 to 190	19	+2.4	+.4
191 to 200	20	+1.2	+.1
201 to 210	21	.0	.0
211 to 220	22	−1.0	−.6
221 to 230	23	−2.0	−.7
231 to 240	24	−3.0	−.9
241 to 250	25	−4.0	−.9
251 to 260	26	−5.0	−1.2
261 to 270	27	−6.0	−1.3
271 to 280	28	−7.0	−1.5
281 to 290	29	−8.0	−1.6
291 to 300	30	−9.0	−1.8
301 to 310	31	−10.0	−2.3
311 to 320	32	−11.0	−2.4
321 to 330	33	−12.0	−2.5
331 to 340	34	−13.0	−2.8
341 to 350	35	−14.0	−2.8
351 to 360	36	−15.0	−3.0
361 to 370	37	−16.0	−3.1
371 to 380	38	−17.0	−3.3
381 to 390	39	−18.0	−3.4
391 to 400	40	−19.0	−3.5
401 and over	41 and over	[1]	−3.5

[1] Class I and blended price differentials applicable to plants located more than 400 miles from Boston shall be obtained by extending the table at the rate of 1 cent for each additional 10 miles except that in no event shall the Class I or blended price at any zone be less than the Class II price for the month for plants in the same zone.

(e) Notwithstanding the provisions of paragraphs (b) and (c) of this section, the zone location of each plant which is not in the "nearby plant" zone and which was a regulated plant under any of the New England Federal orders in the month immediately preceding the effective date of this paragraph shall be determined by the method described in this paragraph until Mileage Guide No. 7 is canceled. The zone location of the plant shall be based upon its highway mileage distance to Boston as determined by use of the appropriate State maps contained in Mileage Guide No. 7, and revisions thereof, issued by Household Goods Carriers' Bureau, Agent, Washington, D.C. The distance shall be the lowest highway mileage between Boston and the named point on the map which is nearest to the plant, over roads designated thereon as paved, all-weather roads. In the event that the named point is not located on a paved, all-weather road, such other roads shall be used to reach a paved, all-weather road as will result in the lowest highway mileage to Boston, except that such other roads shall not be used for a distance of more than 15 miles if it is

otherwise possible to connect with a paved, all-weather road. In any instance in which the map does not clearly show the mileage between points on a road, the mileage used shall be the mileage as determined by the highway authority for the State in which the road is located.

§ 1001.63 Value of fluid milk products at plants.

For each month, the market administrator shall compute, as specified in this section, the value of fluid milk products at each plant other than that of a producer-handler under any Federal order. The prices used shall be those for the zone location of the plant for which the value is being computed, except that under paragraphs (a)(2), (b)(2), and (e)(2) of this section the prices used shall be the prices for the zone locations of the plants from which the respective quantities of fluid milk products were received.

(a) Multiply by the applicable class prices the quantities of:

(1) Producer milk assigned under § 1001.57 (a) and (e); and

(2) Pool milk other than producer milk, assigned under §§ 1001.55 (g) and (h), 1001.56, and 1001.57 (g) and (l).

(b) Multiply by the applicable Class I prices the quantities of:

(1) Product assigned to Class I milk under § 1001.54(d) and § 1001.55 (a) through (d); and

(2) Product assigned to Class I milk under §§ 1001.55 (e) and (f), and 1001.58.

(c) If the total quantity of butterfat or of skim milk classified in Class I milk or Class II milk under §§ 1001.47 through 1001.51 exceeds the respective total quantity assigned to that class under §§ 1001.53 through 1001.58, multiply the excess (overage) by the applicable class price, adjusted by the butterfat differential.

(d) Multiply by the applicable Class I price the quantity of pool milk distributed as route disposition in the marketing area from the handler's nonpool plant.

(e) Multiply by the applicable Class II prices the quantities of:

(1) Product assigned to Class I milk under § 1001.55 (a) through (c); and

(2) Product assigned to Class I milk under §§ 1001.55 (e) and (f), and 1001.58.

(f) Multiply by the applicable Class I price for the preceding month the product assigned to Class I milk under § 1001.54(d).

(g) Multiply by the applicable Class II price for the preceding month the product assigned to Class I milk under § 1001.55(d).

(h) Add together the amounts obtained under paragraphs (a) through (d) of this section and subtract therefrom the sum of the amounts obtained under paragraphs (e) through (g) of this section. The remainder shall be the value of fluid milk products at the plant.

§ 1001.64 Basic blended price.

The basic blended price per hundredweight of pool milk containing 3.5 percent butterfat, applicable to plants located in Zone 21, shall be computed for each month as specified in this section.

(a) Combine into one total the respective values of fluid milk products computed under § 1001.63 for each plant operated by a handler from whom the market administrator has received at his office, prior to the 11th day after the end of the month, the reports for the month prescribed in § 1001.40 and the payment for the preceding month required under § 1001.82(a).

(b) Deduct the amount of the plus differentials, and add the amount of the minus differentials, which are applicable under §§ 1001.62, 1001.72, and 1001.81 (a)(3).

(c) Add the amount of the unobligated balance of the producer settlement fund as at the close of business on the 10th day after the end of the month.

(d) Divide the resulting amount by the total hundredweight of pool milk for which a value is included under paragraph (a) of this section.

(e) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in the producer settlement fund.

§ 1001.65 Factors used in formulas.

(a) The base Class I percentage factors to be used in the computation of the Class I price under § 1001.60 for each of the 12 months beginning with February of each year shall be computed on or before January 25 of that year as specified in this paragraph.

(1) For each month of the three preceding years and for December of the fourth preceding year (using the most recent statistical reports of the market administrators for the New England Federal orders) compute the daily average of the total Class I producer milk under all the New England Federal orders and the daily average of the total receipts from producers under all the New England Federal orders.

(2) For each of the two series of daily averages, using the median link-relative method, compute a seasonal index for each month, rounded to two decimal places.

(3) For each month, multiply the seasonal index of Class I producer milk by .6812 and divide the product by the seasonal index of receipts from producers for the same month. The result, rounded to one decimal place, shall be the base Class I percentage factor for the month.

(b) If for any reason a price, index, or wage rate specified in this part for use in computing class prices or for other purposes is not reported or published in the manner described in this part, the market administrator shall use one determined by the Secretary to be equivalent to the factor which is specified.

PAYMENTS—GENERAL

§ 1001.70 Payments to producers.

(a) On or before the 5th day after the end of the month, each handler shall pay each producer for the approximate value of milk received from him during the first 15 days of the month. This payment shall be at a rate not less than the applicable zone Class II price for the month.

(b) On or before the 20th day after the end of the month, each handler shall make final payment to each producer for the total value of milk received from him during the month at not less than the basic blended price per hundredweight computed under § 1001.64, adjusted by the zone, butterfat, and farm location differentials applicable under §§ 1001.62, 1001.71, and 1001.72, minus the amount of the payment made to the producer under paragraph (a) of this section.

(c) If the handler's net payment to a producer is for an amount less than the total amount due the producer under this section, the burden shall rest upon the handler to prove to the market administrator that each deduction from the total amount due is properly authorized, and properly chargeable to the producer.

(d) In making payments to producers under paragraph (b) of this section, the handler may use the simple average of the butterfat tests of semimonthly composite samples of the milk unless the difference between the semimonthly tests is more than two points (0.2%) or the quantity of milk received from the producer in either semimonthly period is as much as three times as large as the quantity received from him in the other semimonthly period.

§ 1001.71 Butterfat differential.

(a) In making the payments to producers required under § 1001.70, each handler shall add for each one-tenth of one percent of average butterfat content above 3.5 percent, or may deduct for each one-tenth of one percent of average butterfat content below 3.5 percent, as a butterfat differential, an amount per hundredweight which shall be computed by the market administrator under paragraph (b) of this section.

(b) Multiply by 1.20 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported by the United States Department of Agriculture for the period beginning with the 16th day of the preceding month and ending with the 15th day of the current month, and divide the result by 10.

§ 1001.72 Farm location differentials.

In making the payments to producers required under § 1001.70, each handler shall add any applicable farm location differential specified in this section.

(a) With respect to milk received from a producer whose farm is located within any of the places specified in this paragraph, the differential shall be 46 cents per hundredweight, unless the addition of 46 cents gives a result greater than the Class I price determined under §§ 1001.60 and 1001.62 which is effective at the plant at which the milk is received. In that event there shall be added a rate which will produce that price.

CONNECTICUT

All of the State of Connecticut east of the Connecticut River and the towns of:

Granby. Suffield.

MAINE

The towns of:

Eliot. Kittery.

MASSACHUSETTS

All counties other than Berkshire County.

NEW HAMPSHIRE

Rockingham County, and the following cities and towns:

Allenstown.
Amherst.
Barrington.
Bedford.
Bow.
Brookline.
Chichester.
Deering.
Dover.
Durham.
Epsom.
Francestown.
Goffstown.
Greenfield.
Greenville.
Hinsdale.
Hollis.
Hooksett.
Hudson.
Lee.
Litchfield.
Lyndeborough.
Madbury.
Manchester.
Mason.
Merrimack.
Milford.
Mount Vernon.
Nashua.
New Boston.
New Ipswich.
Pelham.
Pembroke.
Pittsfield.
Rochester.
Rollinsford.
Strafford.
Temple.
Weare.
Wilton.
Winchester.

RHODE ISLAND

All of the State of Rhode Island.

VERMONT

The towns of:

Guilford.
Halifax.
Readsboro.
Vernon.
Whitingham.

(b) With respect to milk received from a producer whose farm is located within any of the following cities and towns, the differential shall be 23 cents per hundredweight, unless the addition of 23 cents gives a result greater than the Class I price determined under §§ 1001.60 and 1001.62 which is effective at the plant at which the milk is received. In that event there shall be added a rate which will produce that price.

MAINE

Berwick.
Kennebunk.
Kennebunkport.
Lebanon.
Lyman.
North Berwick.
Sanford.
South Berwick.
Wells.
York.

MASSACHUSETTS

Becket.
Florida.
Hinsdale.
Otis.
Peru.
Sandisfield.
Savoy.
Washington.
Windsor.

NEW HAMPSHIRE

Antrim.
Barnstead.
Bennington.
Boscawen.
Bradford.
Canterbury.
Chesterfield.
Concord.
Dublin.
Dunbarton.
Farmington.
Fitzwilliam.
Gilmanton.
Gilsum.
Hancock.
Harrisville.
Henniker.
Hillsborough.
Hopkinton.
Jaffrey.
Keene.
Loudon.
Marlborough.
Middleton.
Milton.
Nelson.
Northfield.
Peterborough.
Richmond.
Rindge.
Roxbury.
Sharon.
Somersworth.
Stoddard.
Sullivan.
Surry.
Swanzey.
Troy.
Webster.
Westmoreland.
Windsor.

VERMONT

Brattleboro.
Brookline.
Dover.
Dummerston.
Marlboro.
Newfane.
Putney.
Wilmington.

§ 1001.73 Statements to producers.

In making the payments to producers required under § 1001.70, each handler shall furnish each producer with a supporting statement, in such form that it may be retained by the producer, which shall show:

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

(b) The total pounds and average butterfat test of milk received from the producer;

(c) The minimum rate or rates at which payment to the producer is required under § 1001.70;

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

(e) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deductions claimed under §§ 1001.75 and 1001.76, together with a description of the respective deductions; and

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

§ 1001.74 Adjustment of payments to producers.

Whenever the market administrator's verification of a handler's payments to producers discloses payment to a producer of an amount less than is required by § 1001.70, the handler shall make payment of the balance due the producer not later than the 20th day after the end of the month in which the handler is notified of the deficiency.

§ 1001.75 Marketing service deductions.

(a) In making the payments required by § 1001.70 to producers, other than himself and any producer who is a member of a cooperative association which the Secretary determines is performing the services specified in this section, each handler shall deduct 3 cents per hundredweight, or such lesser rate as the Secretary shall determine to be sufficient, for marketing services. The handler shall pay the amount deducted to the market administrator on or before the 18th day after the end of the month.

(b) The market administrator shall expend amounts received under paragraph (a) of this section only in providing for market information to such producers and for verification of weights, samples, and tests of milk received from them. The market administrator may contract with a cooperative association for the furnishing of the whole or any part of these services.

§ 1001.76 Payments to members of cooperative associations.

(a) Each cooperative association may file with a handler who is not a cooperative association a claim either for the payments which the handler is required to make to the association's producer members under § 1001.70 or for authorized deductions from such payments. The claim shall contain a list of the producers to whom the payments are due or to whom the deductions apply, an agreement to indemnify the handler in the making of such payments or deductions, and a certification that the association has, with each producer listed, an unterminated membership contract authorizing the payment or deduction.

(b) The handler shall withhold from the association's producer members the payments or the deductions specified in paragraph (a) of this section in accordance with the association's claim. He shall pay the amounts withheld to the association on or before the dates on which such amounts otherwise would have been due to the producer members under § 1001.70.

(c) For each producer member from whom payment was withheld, the handler shall furnish the association a supporting statement showing the information required to be furnished to the producer under § 1001.73. For each producer member from whom a deduction is made under this section, the handler shall furnish the association a statement showing the pounds of milk received.

PAYMENTS—PRODUCER SETTLEMENT FUND

§ 1001.80 Producer settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer settlement fund". He shall deposit into the fund all amounts received from handlers under §§ 1001.82, 1001.83, and 1001.84. He shall pay from the fund all amounts due handlers under §§ 1001.82, 1001.83, and 1001.84, subject to his right to offset any amounts due from the handler under these sections.

§ 1001.81 Handlers' producer settlement fund debits and credits.

On or before the 15th day after the end of the month, the market administrator shall render a statement to each handler showing the amount of the handler's producer settlement fund debit or credit, as calculated in this section.

(a) The handler's producer settlement fund debit or credit for each of his plants shall be computed as specified in this paragraph.

(1) Multiply the quantities of pool milk by the basic blended price computed under § 1001.64 adjusted by any zone differential applicable under § 1001.62.

(2) Multiply the quantities of producer milk which are subject to farm location differentials under § 1001.72 (a) and (b) by the respective rates applicable under those paragraphs.

(3) With respect to any nonpool plant from which pool milk other than producer milk was received or distributed, divide the respective quantities of milk received at the plant directly from dairy farmers' farms located in the farm location differential areas described in § 1001.72 (a) and (b) by the total receipts of fluid milk products at the plant, multiply by 100, and apply the resulting percentages to the total quantity of pool milk received or distributed from the

plant. Multiply each resulting quantity by the respective farm location differential rate specified in § 1001.72 (a) or (b). Until such time as full information relative to all receipts at the plant, including the respective quantities of milk received directly from dairy farmers' farms in each farm location differential area, is submitted to the market administrator, it shall be considered that none of the farms from which milk was received at the plant is located in a farm location differential area.

(4) Combine the values obtained under subparagraphs (1), (2), and (3) of this paragraph.

(5) If the value of the plant's fluid milk products as determined under § 1001.63 is greater than the result obtained under subparagraph (4) of this paragraph, the difference shall be the handler's producer settlement fund debit for the plant.

(6) If the value of the plant's fluid milk products as determined under § 1001.63 is less than the result obtained under subparagraph (4) of this paragraph, the difference shall be the handler's producer settlement fund credit for the plant.

(b) If the handler operates more than one plant, his producer settlement fund debit or credit shall be the net of the producer settlement fund debits and credits as computed for all of his plants under paragraph (a) of this section.

§ 1001.82 Payments to and from the producer settlement fund.

(a) On or before the 18th day after the end of the month, each handler shall make payment to the market administrator of the amount of the handler's producer settlement fund debit for the month as determined under § 1001.81.

(b) On or before the 20th day after the end of the month, the market administrator shall make payment to each handler of the amount of the handler's producer settlement fund credit for the month as determined under § 1001.81.

§ 1001.83 Adjustment of errors in producer settlement fund payments.

Whenever the market administrator's verification of reports or payments of any handler discloses an error in producer settlement fund payments made under § 1001.82, the market administrator shall promptly issue to the handler a charge bill or a credit, as the case may be, for the amount of the error. Adjustment charge bills issued during the period beginning with the 11th day of the prior month and ending with the 10th day of the current month shall be payable by the handler to the market administrator on or before the 18th day of the current month. Adjustment credits issued during that period shall be payable by the market administrator to the handler on or before the 20th day of the current month.

§ 1001.84 Adjustment of overdue producer settlement fund accounts.

Any producer settlement fund account balance due from or to a handler under §§ 1001.82, 1001.83, or 1001.84, for which remittance has not been received in or paid from the market administrator's office by the close of business on the 20th day of any month, shall be increased one-half of one percent effective the following day. Any remittance received by the market administrator after the 20th day of any month in an envelope which is postmarked not later than the 18th day of the month shall be considered to have been received by the 20th day of that month.

ADMINISTRATION EXPENSE

§ 1001.87 Payment of administration expense.

On or before the 18th day after the end of the month, each handler shall make payment to the market administrator of his pro rata share of the expense of administration of this part. The payment shall be at the rate of 4 cents per hundredweight, or such lesser rate as the Secretary may prescribe. The payment shall apply to all of a handler's receipts at pool plants during the month of fluid milk products from all sources, except receipts from pool plants, receipts from regulated plants under other Federal orders if such receipts were subject to an administration expense assessment under the other order, and receipts of exempt milk processed at plants other than pool plants. The payment shall also apply to the quantity of pool milk distributed as route disposition in the marketing area from a handler's nonpool plant.

MISCELLANEOUS PROVISIONS

§ 1001.90 Effective time.

The provisions of this part, or any amendments to its provisions, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated under § 1001.91.

§ 1001.91 Suspension or termination.

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

§ 1001.92 Continuing obligations.

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

§ 1001.93 Liquidation.

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

§ 1001.94 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, except as provided in paragraphs (b) and (c) of this section, shall terminate two years after the last day of the month during which the market administrator received the handler's utilization report on the milk involved in the obligation, unless within the two-year period of the market administrator notifies the handler in writing that the money is due and payable. Service of the 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 during which the milk, with respect to which the obligation exists, was received or handled; and

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

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator, within the two-year period provided for in paragraph (a) of this section, may notify the handler in writing of the failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to the obligation shall not begin to run until the first day of the month following the month during which all the books and records pertaining to the 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 the handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on the payment is claimed, unless the handler, within the applicable period of time, files

a petition under section 8c(15)(A) of the Act, claiming the money.

§ 1001.95 Agents.

The Secretary, by designation in writing, may 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.

§ 1001.96 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.

Amendments to the Connecticut order provisions:

PART 1015—MILK IN CONNECTICUT MARKETING AREA

Subpart—Order Regulating Handling

GENERAL DEFINITIONS

AUTHORITY: The provisions of this Part 1015 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL DEFINITIONS

§ 1015.1 Act.

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

§ 1015.2 Connecticut marketing area.

"Connecticut marketing area", referred to in this part as the "marketing area", means all territory within the State of Connecticut, together with all waterfront facilities connected therewith and craft moored thereat, and all territory therein occupied by government (municipal, State or Federal) installations, institutions or other establishments.

§ 1015.3 Route disposition.

"Route disposition" means distribution of Class I milk by a handler to retail or wholesale outlets, which include vending machines but do not include plants or distribution points. The route disposition of a handler shall be attributed to the processing and packaging plant from which the Class I milk is moved to retail or wholesale outlets without intermediate movement to another processing and packaging plant.

DEFINITION OF PERSONS

§ 1015.5 Person.

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

§ 1015.6 Secretary.

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

§ 1015.7 Producer.

(a) "Producer" means for any month:

A dairy farmer who produces cow's milk which is received, other than in packaged form, by a handler during the month directly from the dairy farmer's farm under one of the following conditions and who does not meet the conditions specified in paragraph (b) of this section.

(1) The milk is received by the handler at a pool plant.

(2) The milk is reported by the handler as diverted milk under § 1015.28.

(3) The milk is transferred by a handler or his agent from the dairy farmers' farm tank into a tank truck and is not delivered to any plant because of loss or destruction by accident or faulty equipment en route to the plant and milk from the same farm was received at a pool plant as producer milk during the month.

(b) No dairy farmer shall be considered a producer for any month:

(1) If he is a producer-handler under any Federal order;

(2) With respect to milk delivered which is considered as a receipt from a producer under the provisions of another Federal order; or

(3) With respect to exempt milk delivered.

§ 1015.8 Cooperative association.

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

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

(b) To have full authority in the sale of milk of its members; and

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

§ 1015.9 Handler.

"Handler" means, for any month:

(a) Any person who operates a pool plant.

(b) Any person who operates any other plant or a pool bulk tank unit as defined under another Federal order, from which fluid milk products are disposed of, directly or indirectly, in the marketing area.

(c) Any cooperative association:

(1) With respect to producer milk lost or destroyed under conditions specified in § 1015.24(a);

(2) With respect to milk which it causes to be diverted to a nonpool plant and which it reports as diverted milk under § 1015.28;

(3) With respect to producer milk which it causes to be delivered to the pool plant of another cooperative association, if it elects to report the milk under § 1015.40 as a receipt of producer milk at the location of the plant to which it was delivered; and

(4) With respect to producer milk transferred by a handler described in paragraph (d) of this section from a

producer's farm tank into a tank truck owned or operated by or under contract to such association and not delivered to the pool plant of another handler, if the handler who operates the pool plant does not purchase such milk on the basis of farm tank measurements and butterfat tests determined from farm tank samples.

(d) Any cooperative association with respect to producer milk delivered from the farm to a pool plant in a tank truck owned and operated by or under contract to such association if prior to delivery it gives notice in writing to both the market administrator and the receiving handler of its intention to file the reports required under § 1015.41(c) and to furnish the information required under § 1015.24(c).

(e) Any person who does not operate a plant but who engages in the business of receiving fluid milk products for resale and distributes to retail or wholesale outlets packaged fluid milk products received from any plant described in paragraph (a) or (b) of this section.

§ 1015.10 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and a handler during the month and who meets all the conditions specified in this section. Sections 1015.60 to 1015.65, 1015.70 to 1015.75, 1015.80 to 1015.82, and 1015.87 to 1015.89 shall not apply to a producer-handler as defined under this or any other Federal order.

(a) His only sources of milk supply are his own production and fluid milk products transferred from pool plants, except that a State-owned and operated institution or establishment otherwise meeting this definition which processes and packages milk produced by another such institution or establishment may receive such milk without having it regarded as a source of supply for fluid milk products. For the purposes of this paragraph, any fluid milk products which were acquired or purchased from a nonpool plant by him, his agent, partner or other associate and which he or such other person caused to be delivered at retail or wholesale outlets (including vending machines) in any Federal marketing area without being first received at his plant shall be included in such person's nonpool source of fluid milk products.

(b) He provides as his own enterprise and at his own risk the maintenance, care and management of the dairy herd and other resources and facilities which he uses to produce milk, to process and package such milk at his own plant, and for route disposition.

(c) His own route disposition constitutes the majority of the route disposition from his plant.

(d) The quantity of route disposition in the marketing area from his plant is greater than in any other Federal marketing area.

DEFINITIONS OF PLANTS

§ 1015.15 Plant.

"Plant" means the land and buildings, whether owned or operated by one or more persons, at which are maintained stationary holding tanks for milk, facilities and other equipment for the receiving, handling or processing of milk or milk products, constituting a single operating unit or establishment. The term "plant" does not include:

(a) Distribution points (separate premises used primarily for the transfer to vehicles of packaged fluid milk products moved there from processing and packaging plants); or

(b) Bulk reload points (separate premises used for the transfer of milk en route from dairy farmers' farms to a plant, at which premises facilities for washing and sanitizing cans or tank trucks are not maintained and used).

§ 1015.16 Pool plant.

"Pool plant" means any plant specified in paragraph (a) or (b) of this section.

(a) "Pool distributing plant" means any processing and packaging plant (other than a producer-handler's plant under any Federal order or a regulated plant under another Federal order) with route disposition in the marketing area in the month which is not less than 10 percent of its total receipts of fluid milk products and which meets each of the following conditions:

(1) Its total Class I disposition in the month, or in either of the two preceding months, is not less than 40 percent of its total receipts of fluid milk products in the corresponding month; and

(2) Its route disposition in the marketing area in the month exceeds:

(i) Its route disposition in any other marketing area as defined under a Federal order; and

(ii) 700 quarts on any day or a daily average of 300 quarts.

(b) "Pool supply plant" means any plant specified in subparagraph (1), (3), (4), or (5) of this paragraph, (other than a plant specified in subparagraph (2) of this paragraph) at which facilities are maintained and used for washing and sanitizing cans or tank trucks and to which milk is moved from dairy farmers' farms in cans and is there accepted, weighed or measured, sampled and cooled, or to which milk is moved from dairy farmers' farms in tank trucks and is there transferred to stationary equipment or to other vehicles:

(1) Any plant, other than as provided in subparagraphs (2) through (5) of this paragraph, from which is shipped at least 15 percent of its total receipts of milk from dairy farmers as fluid milk products, other than as diverted milk, to pool distributing plants, producer-handlers and plants to which qualifying shipments may be made under another New England Federal order, if a greater quantity of qualifying shipments are made to pool distributing plants and producer-handlers under this order than to the other plants.

(2) No plant shall be a pool supply plant in any month in which it is operated as:

(i) A pool distributing plant;

(ii) The plant of a producer-handler as defined under any Federal order;

(iii) A regulated plant under another Federal order with a marketwide pool, including any plant which has automatic pool plant status for the month under another New England Federal order; or

(iv) A plant qualifying for pooling under a Federal order with individual-handler pooling on the basis of its route disposition or on the basis of shipments of fluid milk products which exceed the shipments of fluid milk products qualifying the plant for pooling under this order.

(3) Any plant holding pool supply plant status under this order or another New England Federal order in each of the months of July through November, or any plant holding pool supply plant status under this order or another New England Federal order in not less than two of the preceding months of July through November and would have been a pool supply plant under one of such orders in each of the remaining months of such period were it not a pool plant under the New York-New Jersey Federal order, and, in either case, has a greater proportion of its receipts from dairy farmers pooled under this order during such period than under another New England Federal order shall have automatic pool plant status in the immediately succeeding months of December through June, unless the handler submits to the market administrator by the 16th day of the month his written request for revocation of the plant's automatic pool plant status for such month. In that event the revocation also shall apply to all subsequent months of the current December through June period.

(4) Any two plants, each of which meets the pooling requirements of this paragraph in at least one of the months of July through November, which are operated by the same handler or for which one handler is responsible for the movement of milk to pool distributing plants or to producer-handlers may be considered, during the remaining months of August through November, as a unit for the single purpose of having qualifying shipments therefrom combined for determining pool plant status under this paragraph, subject to the following conditions:

(i) The operator of such plants submits written notice to the market administrator by the 15th day of the first month for which such status is to apply specifying the plants to be considered as a unit and the period during which such consideration should apply;

(ii) Any plant included in a unit under this subparagraph may be a nonpool plant if, by the 15th day of the month in which such nonpool status shall apply, the operator of such plant submits a written request to the market administrator to withdraw such plant from pool plant status, and shall be a nonpool plant if fully regulated under another Federal order. Such nonpool status shall be effective until the plant requalifies as a pool plant on the basis of shipments as provided in this paragraph, and in no case shall it be included in a unit prior to the next following August; and

(iii) If the combined shipments of the unit are less than would be required to qualify each of such plants separately

under this paragraph, the individual plants may regain pool plant status on the basis of shipments as provided in this section, but shall not be included in a unit prior to the next following August.

(5) Any plant operated by a cooperative association (which shall be the plant closest to Hartford, Connecticut, if more than one plant is operated by such association) shall be a pool plant in any month in which the total quantity of milk shipped therefrom to a pool distributing plant or to a producer-handler, plus the total quantity of milk received directly from farms at pool distributing plants from producers who are members of such association, is at least 50 percent of the milk delivered by dairy farmer-members of such association to all pool plants and to the plant for which pooling qualification pursuant to this subparagraph is requested in writing by the 15th day of such month, subject to the following conditions:

(i) Any plant which has pooling status under this subparagraph may be a nonpool plant for the month if the operating association submits, by the 15th day of such month, a written request to the market administrator to withdraw such plant from pool plant status under this subparagraph and, if so withdrawn, such plant may not requalify under this subparagraph prior to the next following July; and

(ii) Qualification for pooling under this subparagraph shall not affect in any way the requirements of subparagraph (4) of this paragraph for unit pooling.

§ 1015.17 Exempt distributing plant.

"Exempt distributing plant" means a plant, other than a pool supply plant or a regulated plant under another Federal order, which meets all the requirements for status as a pool distributing plant except that its route disposition in the marketing area in the month does not exceed 700 quarts on any day or a daily average of 300 quarts.

§ 1015.18 Distributing plant for unregulated markets.

"Distributing plant for unregulated markets" means a processing and packaging plant from which the route disposition outside any marketing area defined under any Federal order amounts to more than 50 percent of its total receipts of fluid milk products during the month. The term shall not apply to a pool plant, an exempt distributing plant under any New England Federal order, a producer-handler's plant under any Federal order, or a regulated plant under another Federal order.

§ 1015.19 Regulated plant under another Federal order.

"Regulated plant under another Federal order" means a pool plant or any other plant at which all fluid milk products handled become subject to the classification and pricing provisions of another Federal order. The term shall also include a pool bulk tank unit as defined under another Federal order.

DEFINITIONS OF MILK AND MILK PRODUCTS

§ 1015.22 Fluid milk products.

"Fluid milk products" means milk, skimmed milk, flavored milk or skimmed milk, cultured skimmed milk, buttermilk, concentrated milk, any mixture of milk or skimmed milk and cream containing less than 10 percent butterfat, and 50 percent of the quantity by weight of any mixture of milk or skimmed milk and cream containing at least 10 percent but less than 12 percent butterfat. The term includes these products in fluid, frozen, fortified, or reconstituted form but does not include sterilized products in hermetically sealed containers and such products as eggnog, yogurt, whey, ice cream mix, ice milk mix, milk shake base mix, and evaporated or condensed milk or skimmed milk in either plain or sweetened form. Fluid milk products which have been placed in containers for disposition to retail or wholesale outlets are referred to in this part as packaged fluid milk products.

§ 1015.23 Cream.

"Cream" means that portion of milk, containing not less than 12 percent butterfat which rises to the surface of milk on standing, or is separated from it by centrifugal force. The term also includes soured cream, frozen cream, fortified cream, reconstituted cream, any mixture of milk or skimmed milk and cream containing 12 percent or more of butterfat, and 50 percent of the quantity by weight of any mixture of milk or skimmed milk and cream containing at least 10 percent but less than 12 percent butterfat.

§ 1015.24 Producer milk.

(a) "Producer milk" means for any month:

(1) Milk which a handler has received at a pool plant from producers or from a cooperative association in its capacity as a handler under § 1015.9(d);

(2) Milk received from dairy farmers' farms by a handler (other than a cooperative association in its capacity as a handler under § 1015.9(d)) which he has reported as diverted milk under § 1015.28;

(3) Milk transferred by a handler or his agent from a producer's farm tank into a tank truck and not delivered to any plant because of loss or destruction by accident or faulty equipment enroute to the plant. The milk shall be considered as a receipt by such handler at the pool plant where milk from the same farm was received as producer milk during the month except that if the milk was transferred at the farm by a cooperative association into a truck owned and operated by or under contract to the association, the milk shall be considered as a receipt by the association in its capacity as a handler under § 1015.9(c)(1) at the same plant zone location as the pool plant at which milk from the same farm was received as producer milk during the month.

(b) In the case of milk moved from the farm in a tank truck, it shall be considered as having been received by the handler on the date the milk was taken into the truck.

(c) In the case of milk received by a handler at a pool plant from a cooperative association in its capacity as a handler under § 1015.9(d), the operator of the pool plant shall report the milk as having been received from farm location differential areas in accordance with information which shall be furnished to him by the association on or before the 7th day after the end of the month.

§ 1015.25 Pool milk.

"Pool milk" means fluid milk products (other than exempt milk) received or disposed of as specified in this section:

(a) Receipts of producer milk;

(b) The following receipts of fluid milk products at pool plants from other plants (exclusive of receipts from other pool plants, producer-handlers under any Federal order, exempt distributing plants under any New England Federal order and receipts from regulated plants under other Federal orders which were classified and priced under the other orders). The highway mileage distance between each transferor-plant and Boston, Massachusetts shall be determined in a manner similar to that described under § 1015.62.

(1) Receipts at pool distributing plants from plants located outside the New England States and more than 400 miles from Boston, Massachusetts;

(2) Receipts at pool supply plants, to the extent assigned to Class I milk under § 1015.55(b)(5), from plants located outside the New England States and more than 400 miles from Boston, Massachusetts; and

(3) Receipts at pool plants, to the extent assigned to Class I milk under § 1015.55(b)(6), from plants located within one of the New England States or not more than 400 miles from Boston, Massachusetts, exclusive of bulk fluid milk products from distributing plants for unregulated markets;

(c) Receipts of bulk fluid milk products at pool distributing plants from regulated plants under other Federal orders with individual-handler pools which are assigned to classes under § 1015.55(c);

(d) Receipts of bulk fluid milk products at pool supply plants, to the extent assigned to Class I milk under § 1015.55(j), from regulated plants under other Federal orders with individual-handler pools;

(e) Route disposition in the marketing area from any processing and packaging plant (except a pool plant, a regulated plant under another Federal order, or a producer-handler's plant under any Federal order) to the extent of all such disposition in the month which is in excess of 700 quarts on any day, or of a daily average of 300 quarts, whichever is greater. In determining the quantity of pool milk pursuant to this paragraph, the total quantity of route disposition in the marketing area from such plant shall first be reduced by the quantity of fluid milk products received at such plant during the month which is classified and

priced as Class I milk or its equivalent under any marketwide pool Federal order and which is not used to offset route disposition in any other Federal marketing area. Such reduction shall first be made in any route disposition which is in excess of 700 quarts on any day; and

(f) Route disposition in the marketing area from a regulated plant under another Federal order of fluid milk products which are not both classified and priced under the other order to the extent of all such disposition in the month which is in excess of 700 quarts on any day or of a daily average of 300 quarts, whichever is greater.

§ 1015.26 Exempt milk.

"Exempt milk" means:

(a) Fluid milk products received at a pool plant during the month from the operator of a nonpool plant if such transfers occur during an interval in which the facilities of one of the plants at which the milk is usually processed and packaged are temporarily unusable because of fire, flood, storm or similar extraordinary circumstances completely beyond the dealer's or handler's control and if either of the following conditions is applicable:

(1) Fluid milk products were received in bulk form for processing and packaging and an equivalent quantity of packaged fluid milk products was returned to the operator of the nonpool plant during the same month.

(2) Packaged fluid milk products were received and an equivalent quantity of bulk fluid milk products was moved to the nonpool plant for processing and packaging during the same month.

(b) Milk produced and processed in accordance with the standards of purity and quality for certified milk established by the American Association of Medical Milk Commissions and disposed of as packaged certified milk or packaged certified skim milk.

(c) Milk produced by a State-owned and operated institution which milk is processed and packaged at a plant operated by a similar institution to the extent that such milk is used only to serve residents of either institution on the premises thereof.

§ 1015.27 Other source milk.

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

(a) Receipts (including any Class II milk products produced in the handler's plant during a prior month) in a form other than fluid milk products or cream which are reprocessed, converted or combined into another product during the month, including any disappearances of nonfat milk products not otherwise accounted for; and

(b) Receipts (other than pool milk and exempt milk) of fluid milk products from any source other than a pool plant. This term shall not include the inventory of fluid milk products at the beginning of the month.

§ 1015.28 Diverted milk.

(a) "Diverted milk" means for any month milk produced by a dairy farmer which meets the conditions specified under paragraphs (b) and (d) of this section, which a handler under § 1015.9 (a) or (c) elects to report under § 1015.40 as a receipt of producer milk and which the handler caused to be moved in bulk from the dairy farmer's farm to a nonpool plant (other than the plant of a producer-handler). If a cooperative association is the first handler under § 1015.9(d) of the milk, the election to report as diverted milk any of the milk delivered by the producer shall be limited to the association.

(b) The following conditions shall apply to milk which is reported as diverted to a nonpool plant:

(1) During any month of July through March:

(i) The handler caused milk to be moved from the farm to a nonpool plant during any month of July through September on not more than 10 days (5 days in the case of every-other-day delivery) during such month, or during any month of October through March on not more than 12 days (6 days in the case of every-other-day delivery). If the milk is caused to be moved to a nonpool plant by a cooperative association which is also the first handler under § 1015.9(d) and the milk cannot be identified as representing the total delivery of one or more farmers, it shall be considered for the purpose of counting the number of days of diversion that the milk of each producer whose milk was commingled in the tank truck was moved to the nonpool plant.

(ii) The farmer delivered producer milk to a pool plant earlier in the month or during the immediately preceding month. This requirement shall not be applicable, however, if the farmer's milk is moved from the farm in a tank truck in which it is commingled with milk produced by other farmers, the majority of whom meet this requirement.

(2) During any month of April through June, the handler caused milk to be moved from the farm to a nonpool plant and the farmer producing the milk held producer status throughout the two months immediately preceding such month. This requirement shall not be applicable, however, if the farmer's milk is moved from the farm in a tank truck in which it is commingled with milk produced by other farmers, the majority of whom meet this requirement.

(c) Milk which qualifies under this section shall be treated for the purpose of pricing as a receipt of producer milk by the handler at the location of the pool plant from which the milk was diverted. If during the two months immediately preceding any month of April through June, the farmer's milk was treated as producer milk at pool plants in two or more zone locations, the milk shall be deemed in this month to have been received at the zone locations of such plants in the proportion that the respective quantities of producer milk at each such plant were considered to have been delivered during such two-month period, by the dairy farmers.

(d) Any dairy farmer whose milk is physically diverted to a nonpool plant(s) during any month of July through March on more than the number of days specified in paragraph (b) of this section shall not be considered to qualify under this section with respect to any milk diverted to a nonpool plant(s) during the month.

MARKET ADMINISTRATOR

§ 1015.30 Designation.

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

§ 1015.31 Powers.

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

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

§ 1015.32 Duties.

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

(a) Within 45 days following the date on which he enters upon his duties, he shall execute and deliver to the Secretary a bond conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

(b) He shall employ and fix the compensation of any persons deemed necessary to enable him to exercise his powers and perform his duties.

(c) He shall obtain a bond in a reasonable amount and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator.

(d) He shall pay out of the funds provided by § 1015.87 the cost of his bond and of the bonds of his employees, his own compensation and all other expenses necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties, except those expenses incurred under § 1015.75.

(e) He shall keep books and records to reflect clearly the transactions provided for in this part and, upon request by the Secretary, surrender them to any other person the Secretary may designate.

(f) He shall submit his books and records to examination by the Secretary and furnish any information and reports requested by the Secretary.

(g) He shall publicly announce (by posting in a conspicuous place in his office and by such other means as he deems appropriate):

(1) By the 25th day of the month, the Class I price for the following month as computed under § 1015.60;

(2) By the 5th day of the month, the Class II price and butterfat differential

for the preceding month, as computed under §§ 1015.61 and 1015.71, respectively;

(3) By the 14th day of each month, the basic uniform price for the preceding month computed under § 1015.64 and the zone uniform prices resulting from the adjustment of the basic uniform price by the zone price differentials under § 1015.62; and

(4) By the 25th day of each January, the monthly base Class I percentage factors computed under § 1015.65(a).

(h) He shall prepare and make available for the benefit of producers, handlers, and consumers, statistics and information concerning the operation of this part.

(i) He shall verify handlers' reports and payments to the extent necessary, by any appropriate means including audit of the handlers' records and of the records of any other persons upon whose utilization the classification of skim milk and butterfat depends. If verification discloses the original classification was incorrect, the market administrator shall make appropriate reclassification of such skim milk and butterfat.

(j) At his discretion and unless otherwise directed by the Secretary, he shall publicly announce (by posting in a conspicuous place in his office and by such other means as he deems appropriate) the name of any handler the value of whose fluid milk products is not included in the computation of the basic uniform price (computed under § 1015.64) because of failure to make reports pursuant to § 1015.40 or payments pursuant to § 1015.81.

REPORTS, RECORDS AND FACILITIES

§ 1015.40 Monthly reports of receipts and utilization.

On or before the 8th day after the end of each month, or not later than the 10th day if the report is delivered in person to the office of the market administrator, each handler with respect to each of his pool plants or any other plant from which there is route disposition in the marketing area and handlers specified in § 1015.9(c) shall report to the market administrator in the detail and on forms prescribed by the market administrator showing the respective quantities of skim milk and butterfat contained in:

(a) Receipts of milk:

(1) From own farm production; and

(2) As producer milk from other dairy farmers;

(b) Receipts of pool milk other than producer milk;

(c) Receipts of exempt milk;

(d) Receipts of fluid milk products from other pool plants;

(e) Receipts of other source milk and cream;

(f) Inventories of fluid milk products and cream at the beginning and end of the month; and

(g) The utilization of all skim milk and butterfat required to be reported pursuant to this section classified in accordance with the provisions of §§ 1015.50 to 1015.53.

§ 1015.41 Other reports of receipts and utilization.

(a) Within 5 days after the first receipt at his pool plant of fluid milk products during the month from each plant which is neither a regulated plant nor a producer-handler's plant under Federal Order No. 2 or any New England Federal order, each handler shall file with the market administrator a report showing the identity of the operator of the shipping plant, the plant location, and such other information respecting the receipt as the market administrator may prescribe. However, until such time as full information relative to the receipts and utilization during the month at any shipping plant located within one of the New England States, or not more than 400 miles from Boston, Massachusetts, is submitted to the market administrator, it shall be considered with respect to any receipts of fluid milk products in bulk that such shipping plant is a distributing plant for unregulated markets.

(b) For any month in which it is claimed that the farm of any dairy farmer from whom he received milk is located in a farm location differential area described in § 1015.72, each handler from whose plant pool milk other than producer milk is moved to a pool plant, and each handler with route disposition of pool milk in the marketing area from a nonpool plant, shall file with the market administrator a report showing the name, post office address, and the farm location of each dairy farmer from whom he received milk at the plant during the month, and the total pounds of milk received from each farm. The report shall be submitted within 5 days after the market administrator's request, made not earlier than the 22d day after the end of the month.

(c) Each handler under § 1015.9(d) shall report to the market administrator in detail and on forms prescribed by the market administrator by the date on which reports are due under § 1015.40 after the end of each month, the quantities of skim milk and butterfat in producer milk delivered to each pool plant in such month and in the milk transferred into the tank truck at each producer's farm.

(d) Each handler other than as specified under § 1015.40 and paragraph (c) of this section shall file with the market administrator reports relating to his receipts and utilization of milk and milk products during the month at the time and in the manner prescribed by the market administrator.

(e) Each handler who dumps milk and milk products under § 1015.52(d) at his pool plants shall:

(1) Mail or deliver to the market administrator within 48 hours following each dumping not witnessed by the market administrator or his agent, a report in writing, as prescribed by the market administrator, showing the date on which the dumping was made and the quantity dumped, such report to be signed by both the person who performed the dumping operation and the person authorized to sign reports for the handler under § 1015.40 (if the latter person is not available to sign the report within the 48-hour period, the signature of the plant manager or plant superintendent shall be substituted on the report); and

(2) Give the market administrator, at the request of and in accordance with instructions issued by the market administrator, advance notice of intention to make such disposition and of the quantities involved.

§ 1015.42 Reports regarding individual producers.

(a) Within 5 days after a producer moves from one farm to another, begins or resumes delivery to any of a handler's pool plants, or begins to deliver his milk to the handler's plant by tank truck, other than a producer whose milk was directed to such pool plant by a cooperative association, the handler shall file with the market administrator a report showing the applicable date, the producer's name, post office address, and the farm and plant locations involved. The report shall also indicate, if known, the plant to which the producer had been delivering prior to beginning or resuming deliveries.

(b) Promptly after the 5th consecutive day on which a producer has failed to deliver to any of a handler's pool plants, other than a producer whose milk was directed to such pool plant by a cooperative association, the handler shall file with the market administrator a report showing the date of last delivery, the producer's name, post office address, and the farm and plant locations involved. The report shall also indicate, if known, the reason for the producer's failure to continue deliveries.

(c) On or before the 8th day after the end of each month, each handler shall file with respect to each producer whose milk was directed to his pool plant by a cooperative association such of the information specified in paragraphs (a) and (b) of this section as the market administrator shall request except that if the milk is directed to the plant by a cooperative association in its capacity as a handler under § 1015.9(d), the cooperative association shall file the information.

§ 1015.43 Notices to producers.

Within 7 days after the end of each sampling period for which a composite butterfat test of a producer's milk was determined, each handler shall give each producer from whom he receives milk written notice of such composite test. This requirement, however, shall not be applicable if the test was determined by a State agency in accordance with laws and regulations of the State and if the handler and the producer are required to be notified at least monthly by such agency of the results of such tests and the computation of the average test to be used as a basis of payment for the milk for the month.

§ 1015.44 Records and facilities.

(a) Each handler shall maintain detailed and summary records showing all receipts, movements and disposition of milk and milk products during each month, and the quantities of milk and milk products in the inventories at the beginning and end of each month.

(b) For the purpose of ascertaining the correctness of any report made to the market administrator as required by this part or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, each handler shall permit the market administrator or his agent, during the usual hours of business, to:

(1) Verify the information contained in the reports submitted in accordance with this part;

(2) Weigh, sample and test milk and milk products; and

(3) Make such examination of records, operations, equipment and facilities as the market administrator deems necessary for the purpose specified in this paragraph.

(c) Each handler under § 1015.9 (a), (c), and (d) shall submit to the market administrator, within 5 days after his request made not earlier than 22 days after the end of the month, his producer payroll for the month, which shall show for each producer or with respect to producer milk received from a cooperative association in its capacity as a handler under § 1015.9(d):

(1) The daily and total pounds of milk delivered and its average butterfat test; and

(2) The net amount of the handler's payments to the producer, or cooperative association with the prices, deductions and charges involved.

§ 1015.45 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. 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, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION AND ASSIGNMENT OF MILK AND MILK PRODUCTS

§ 1015.50 Skim milk and butterfat to be classified.

All skim milk and butterfat which is required to be reported pursuant to § 1015.40 shall be classified pursuant to the provisions of §§ 1015.51 to 1015.53. Bulk milk which a cooperative association causes to be delivered under § 1015.9(c)(3) to the pool plant of another cooperative association shall be considered as if it were transferred between two pool plants located in the same zone location. When nonfat milk solids derived from nonfat dry milk, condensed skim milk or any other product condensed from milk or skim milk are utilized or unaccounted for by the handler, the total pounds of skim milk classified shall reflect a volume equivalent to the skim milk used to produce such nonfat milk solids, except that if the solids are utilized to fortify fluid milk products or cream, the actual weight of any such products shall be included in classifying the total product weight.

§ 1015.51 Class I milk.

Class I milk shall be all skim milk and butterfat:

(a) Disposed of in the form of fluid milk products (except as provided in §§ 1015.52 and 1015.53);

(b) Disposed of in the form of cream excepted under § 1015.52(a); and

(c) Not accounted for as Class II milk.

§ 1015.52 Class II milk.

Class II milk shall be all skim milk and butterfat for which the handler who first receives the skim milk and butterfat proves that the skim milk and butterfat were:

(a) Disposed of as cream, except 50 percent of the quantity by weight of any cream testing at least 12 percent but less than 16 percent butterfat disposed of in a marketing area, or to a plant, regulated under another New England Federal order if it is Class I milk under such other order;

(b) Used to produce any product except a fluid milk product or cream;

(c) Disposed of for livestock feed or to bakeries, soup factories, and similar establishments;

(d) Contained in milk, skim milk, flavored milk, flavored milk drink, or buttermilk dumped, if the conditions of § 1015.41(e) are met by the handler;

(e) Contained in inventory of fluid milk products and cream at the end of the month;

(f) Contained in the quantity of shrinkage prorated to the receipts of skim milk and butterfat as specified in § 1015.54(a);

(g) Contained in the quantity of shrinkage prorated to the receipts of skim milk and butterfat as specified in § 1015.54(b) but not in excess of the quantity computed as follows:

(1) 2.0 percent of pool milk under § 1015.25 (a), (b)(1), and (c) exclusive of diverted milk, producer milk received from a handler under § 1015.9(d) and producer milk received by a handler under § 1015.9(c)(3);

(2) Plus 1.5 percent of producer milk received from a handler under § 1015.9 (d) and milk received at the pool plant of a cooperative association from another cooperative association as specified in § 1015.9(c)(3) unless the handler receiving the milk at a pool plant notifies the market administrator in writing by the date reports are due under § 1015.40 that he is purchasing the milk on the basis of farm tank measurements and butterfat tests determined from farm tank samples, in which case the applicable percentage shall be 2.0 percent;

(3) Plus 0.5 percent of producer milk received by a handler under § 1015.9 (c)(3) and (4) and (d) which it caused to be delivered to the pool plant of another handler if the latter handler has not notified the market administrator in writing by the date reports are due under § 1015.40 that it is purchasing the milk on the basis of farm tank measurements and butterfat tests determined from farm tank samples;

(4) Plus 1.5 percent of bulk fluid milk products and cream received from pool plants and regulated plants under other Federal orders with marketwide pools; and

(5) Less 1.5 percent of bulk fluid milk products and cream transferred to other plants;

(h) Contained in fluid milk products lost or destroyed under extraordinary circumstances completely beyond the control of the handler, if such loss is substantiated by records satisfactory to the market administrator; or

(i) Contained in fluid milk products transferred or diverted from a pool plant to another plant other than the plant of a producer-handler under any Federal order if the conditions of § 1015.53 are met.

§ 1015.53 Class II transfers and diversions of fluid milk products.

Class II transfers and diversions shall be all skim milk and butterfat in any fluid milk product moved:

(a)(1) In bulk from a pool plant subject to a zone price differential to another pool plant to the extent assigned to Class II milk at the transferee-plant under § 1015.55.

(2) In bulk from a pool plant in the nearby plant zone to another pool plant if a Class II use is indicated on the reports submitted under § 1015.40 by the operators of both plants. However, the quantity classified as Class II milk shall not exceed the quantity assigned to Class II milk at the transferee-plant under § 1015.55.

(b)(1) In bulk to a regulated plant under another Federal order, except as provided in subparagraph (2) of this paragraph, to the extent assigned to Class II milk or a comparable class under the other Federal order.

(2) In packaged form containing at least 3 percent butterfat or in bulk to a pool plant as defined in Federal Order No. 2 or to any plant from which a greater aggregate quantity of fluid milk products is disposed of as route disposition in the New York-New Jersey marketing area than in the Connecticut marketing area to the extent it is not assigned to Class I–B or is assigned to Class I–A but not subjected to charges specified in § 1002.44 of such order.

(c) In bulk to a nonpool plant which is not a regulated plant under another Federal order if Class II utilization is established, except that to the extent the transferee-plant has route disposition in the marketing area at least an equivalent quantity of the transferred or

diverted fluid milk products shall not be assigned to Class II milk. The quantities classified as Class II milk shall not be greater than the volume of fluid milk products received from regulated plants under other Federal orders, which is in excess of the Class I utilization at such transferee-plant.

(d) In bulk to a nonpool plant which is not a regulated plant under another Federal order and thence to another such plant to the extent provided by applying the provisions of paragraph (c) of this section. However, classification shall not be as Class II milk if the other nonpool plant to which such movement is made is not regulated under a Federal order and is located outside the New England States and New York State.

§ 1015.54 Shrinkage.

For the purposes of § 1015.52 (f) and (g), the total shrinkage of skim milk and butterfat, respectively, for the month shall be prorated to the total pounds of skim milk and butterfat received which are included in paragraphs (a) and (b) of this section.

(a) Pool milk under § 1015.25 (b) (2) and (3) and (d); cream receipts; and other source milk in fluid milk products and cream except that received from regulated plants under other Federal orders with marketwide pools.

(b) All other receipts exclusive of exempt milk, diverted milk, and remaining other source milk.

§ 1015.55 Assignment to classes of skim milk and butterfat received.

The total quantity of skim milk and butterfat received at each pool plant and by handlers specified in § 1015.9(c) during the month and required to be reported under § 1015.40, shall be assigned separately, in the manner and sequence provided below, to the respective quantities of skim milk and butterfat classified in each class under §§ 1015.50 through 1015.53.

(a) To the pounds in Class I milk, assign the pounds in:

(1) Exempt milk; and

(2) Packaged fluid milk products from regulated plants under any Federal order, if the fluid milk products are classified and priced as Class I milk or are subject to such classification and pricing or the equivalent thereof under the order if assigned to Class I milk under this order.

(b) To the remaining pounds in each class, beginning with Class II milk, assign the pounds in:

(1) Cream in inventory at the beginning of the month and received during the month;

(2) Receipts of other source milk in a form other than fluid milk products and cream;

(3) Fluid milk-products from producer-handlers under any Federal order and from exempt distributing plants under any New England Federal order in sequence beginning with the plant most distant from Hartford according to its zone location;

(4) Bulk fluid milk products from distributing plants for unregulated markets located within one of the New England States or not more than 400 miles from Boston, Massachusetts, in sequence beginning with the plant most distant from Hartford according to its zone location;

(5) Fluid milk products received at pool supply plants from plants located outside the New England States and outside the 400 miles from Boston, Massachusetts, not previously assigned, in sequence beginning with the plant most distant from Hartford according to its zone location, except receipts from regulated plants under other Federal orders which are classified and priced under the orders;

(6) Fluid milk products not previously assigned received from plants located within one of the New England States or not more than 400 miles from Boston, Massachusetts, in sequence, beginning with the plant most distant from Hartford according to its zone location, except bulk receipts from regulated plants under other Federal orders which are classified and priced under the orders; and

(7) Fluid milk products in inventory at the beginning of the month.

(c) For pool distributing plants, to the remaining pounds in each class, in proportion to the respective remaining pounds in each class at all of the handler's pool plants, assign the pounds in bulk fluid milk products received from each regulated plant under another Federal order, to the extent that such receipts are not offset by transfers of bulk fluid milk products to the same plants, if such receipts are classified and priced under the other order as Class I milk or are subject to such classification and pricing or the equivalent thereof, if assigned to Class I milk under this order. Should the quantity to be assigned to either class exceed the respective quantity remaining in that class at the plant of receipt, the respective quantity remaining in that class shall be increased to the quantity to be assigned and the respective quantity remaining in the other class shall be decreased by an identical quantity. If such an adjustment is required at the receiving plant, an offsetting adjustment shall be made to the respective remaining quantities in each class at the handler's other pool plants, in sequence beginning with the plant nearest Hartford.

(d) To the remaining pounds in each class, beginning with Class II milk, assign the pounds of fluid milk products received during the month from regulated plants under another Federal order which are classified and priced other than as Class I milk or the equivalent thereof under the other order irrespective of the classification assigned under this order, and were not previously assigned, in sequence beginning with the plant most distant from Hartford according to its zone location.

(e) For pool supply plants, assign to the remaining pounds in Class II milk a quantity equal to such remainder or the pounds of bulk fluid milk products received during the month from regulated plants under other Federal orders not previously assigned, whichever is less.

(f) (1) During the months of July through November, subtract from the remaining pounds in Class II milk, a quantity equal to such remainder or 15 percent of the receipts of producer milk, whichever is less; and

(2) During the months of December through June, for pool distributing plants in the nearby plant zone, subtract from the remaining pounds in Class II milk a quantity equal to such remainder or 5 percent of the Class I utilization at such plants, whichever is less.

(g) (1) Assign to the remaining pounds in Class II milk, a quantity equal to such remainder or the pounds of bulk fluid milk products received during the month from other pool plants subject to a zone price differential, whichever is less, in sequence, beginning with the plant most distant from Hartford according to its zone location.

(2) If bulk fluid milk products are received from pool plants in the "nearby plant" zone and a Class II use of such products is indicated on the reports submitted under § 1015.40 by the operators of both the transferor-plant(s) and transferee-plant, assign to the remaining pounds in Class II milk a quantity equal to such remainder or the pounds of bulk fluid milk products received during the month from such pool plants, whichever is less.

(h) Add to the remaining pounds in Class II milk, the pounds subtracted pursuant to paragraph (f) of this section.

(i) To the remaining pounds in each class, beginning with Class I milk, assign the pounds of bulk fluid milk products received during the month from other pool plants which were not previously assigned. The receipts of fluid milk products shall be assigned to any remainder in Class I milk in sequence beginning with receipts from the plant nearest to Hartford.

(j) To the remaining pounds in each class, beginning with Class I milk, assign the pounds of bulk fluid milk products received during the month from regulated plants under other Federal orders which were not previously assigned.

(k) To the remaining pounds in each class, beginning with Class I milk, assign, in sequence, the pounds of pool milk received during the month from the following sources:

(1) Receipts of producer milk; and

(2) Receipts of pool milk under § 1015.25(b)(1). Receipts of pool milk assigned to Class I milk under this subparagraph shall be assigned to transferor-plants in sequence beginning with the receipts from the plant nearest to Hartford.

(l) Any remaining pounds in each class shall be known as "overage".

MINIMUM PRICES

§ 1015.60 Class I price.

The Class I price per hundredweight of milk containing 3.5 percent butterfat, at plants in the nearby plant zone under § 1015.62 shall be the amount computed for each month as specified in this section. The latest reported figures available to the market administrator on the

25th day of the preceding month shall be used in making the computations, except that if the 25th day of the preceding month falls on a Sunday or legal holiday the latest figures available on the next succeeding workday shall be used.

(a) Compute an economic index, with the year 1958 as the base period, as follows:

(1) Calculate a United States wholesale commodity price index by dividing the monthly wholesale price index for all commodities (as reported by the Bureau of Labor Statistics, United States Department of Labor, with the years 1957–59 as the base period) by 1.0025.

(2) Calculate a New England consumer income index by multiplying the current annual rate of per capita disposable personal income in the United States (based upon the quarterly figure released by the United States Department of Commerce or the Council of Economic Advisers to the President) by the New England adjustment percentage and dividing the result by 20.50. The New England adjustment percentage shall be the current percentage relationship of per capita personal income in New England to per capita personal income in the United States (using data on per capita personal income by States and regions as published by the United States Department of Commerce).

(3) Calculate a New England dairy ration index by dividing the monthly average price paid by farmers in the New England region for 100 pounds of mixed dairy feed containing less than 29 percent protein (as reported by the United States Department of Agriculture) by 0.04041.

(4) Calculate a New England farm wage rate index by dividing the weighted average farm wage rate for the New England region by 1.9833. The weighted average farm wage rate for the New England region shall be the average of the farm wage rates for the New England region (as reported by the United States Department of Agriculture) weighted by the factors indicated in the following table.

Rate	Weighting factor
Per month with board and room	1.00
Per month with house	1.00
Per week with board and room	4.33
Per week without board or room	4.33
Per day without board or room	26.00

(5) Calculate a New England grain-labor cost index by multiplying the New England dairy ration index by 0.6 and the New England farm wage rate index by 0.4, and combining the two results.

(6) The economic index shall be the result of dividing by seven the sum of three times the United States wholesale commodity price index, the New England consumer income index, and three times the New England grain-labor cost index.

(b) Compute an economic index price as follows:

(1) Multiply the economic index by $0.0557, expressing the result to the nearest mill.

(2) Divide the Class I–A price for the month computed under the New York-New Jersey Federal order, applicable to milk containing 3.5 percent butterfat received at plants located in the 201–210-mile freight zone, by the product of the utilization adjustment percentage and the seasonal adjustment factor which entered into the computation of that price, expressing the result to the nearest mill.

(3) The economic index price shall be the price computed in subparagraph (1) of this paragraph, except that its deviation from the result obtained in subparagraph (2) of this paragraph shall be limited to $0.05.

(c) Compute a supply-demand adjustment factor (using quantities announced in the statistical reports of the respective market administrators for the New England Federal orders for the second, third, and fourth months preceding the month for which the price is being computed) as follows:

(1) For each of the three months, determine the total Class I producer milk and the total producer milk for the New England Federal order markets by combining the respective totals for the individual markets.

(2) For each of the three months, divide the total Class I producer milk for the New England Federal order markets by the base Class I percentage factor for the same month as determined under § 1015.65(a). The result shall be the New England base supply for that month.

(3) For each of the three months, express the total producer milk for the New England Federal order markets as a percentage of the New England base supply for the same month. The simple average of the three resulting percentages shall be the percentage of base supply.

(4) The supply-demand adjustment factor shall be the figure in the following table opposite the bracket within which the percentage of base supply falls. When the percentage of base supply falls in an interval between brackets, the supply-demand adjustment factor shall be the figure shown for the next higher bracket if the factor for the previous month was based on a bracket higher than such interval, and shall be the figure for the next lower bracket if the factor for the previous month was based on a bracket lower than such interval.

Percentage of base supply: [1]	Supply-demand adjustment factor
90.5–91.5	1.06
92.0–93.0	1.05
93.5–94.5	1.04
95.0–96.0	1.03
96.5–97.5	1.02
98.0–99.0	1.01
99.5–100.5	1.00
101.0–102.0	.99
102.5–103.5	.98
104.0–105.0	.97
105.5–106.5	.96
107.0–108.0	.95
108.5–109.5	.94

[1] If the percentage of base supply calculated according to subparagraph (3) of this paragraph falls outside the extremes shown in this column, the supply-demand adjustment factor shall be determined by extending the table at the indicated rate of extension.

(d) The seasonal adjustment factor shall be the factor listed below for the month for which the price is being computed.

Month:	Seasonal adjustment factor
January and February	1.04
March	1.00
April	.92
May and June	.88
July	.96
August	1.00
September	1.04
October, November, and December	1.08

(e) Multiply the economic index price determined under paragraph (b) of this section by the product of the supply-demand adjustment factor determined under paragraph (c) of this section and the seasonal adjustment factor determined under paragraph (d) of this section. The Class I price shall be the price set forth in column 3 of the following table opposite the range within which the result of this computation falls, plus 47 cents.

Range		Price
At least—	But less than—	
$4.72 [1]	$4.94	$4.83
$4.94	5.16	5.05
$5.16	5.38	5.27
$5.38	5.60	5.49
$5.60	5.82	5.71
$5.82	6.04	5.93
$6.04	6.26	6.15
$6.26	6.48	6.37
$6.48	6.70	6.59
$6.70	[1] 6.92	6.81

[1] If the result of the computation specified in this paragraph is less than $4.72 or is $6.92 or more, the price shall be determined by extending the table at the indicated rate of extension.

(f) Notwithstanding the provisions of the preceding paragraphs of this section, the Class I price for November or December of each year shall not be lower than the Class I price for the immediately preceding month.

§ 1015.61 Class II price.

The Class II price per hundredweight of milk containing 3.5 percent butterfat at plants located in the nearby plant zone shall be computed for each month as specified in this section.

(a) Adjust the average price for milk for manufacturing purposes, f.o.b. plants United States, as reported by the United States Department of Agriculture on a preliminary basis for the month, by subtracting for each one-tenth of 1 percent of average butterfat content above 3.5 percent, or adding for each one-tenth of 1 percent of average butterfat content below 3.5 percent, an amount per hundredweight which shall be calculated by multiplying by 0.125 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported by the United States Department of Agriculture for the period beginning with the 16th day of the preceding month and ending with the 15th day of the current month.

(b) Adjust the result obtained in paragraph (a) of this section by the amount shown below for the applicable month:

Month	Amount	Month	Amount
January	+$0.138	July	+$0.138
February	+.128	August	+.208
March	+.058	September	+.168
April	+.018	October	+.168
May	−.012	November	+.168
June	−.002	December	+.168

§ 1015.62 Plant zone price differentials.

The class prices and the basic uniform price computed under §§ 1015.60, 1015.61 and 1015.64 shall be subject to zone price differentials based upon the zone location of the plant at which producer milk is received or from which pool milk other than producer milk or other source milk is received or distributed if the plant is located outside Connecticut or a town of Massachusetts or Rhode Island which borders on the State boundary of Connecticut and is more than 50 miles from Hartford, Connecticut.

(a) Each plant located in the State of Connecticut or in a town of Massachusetts or Rhode Island which borders on the State boundary of Connecticut and any other plant located not more than 50 miles from Hartford, Connecticut, as determined in the manner specified in paragraph (c) of this section, shall be in the "nearby plant" zone.

(b) The zone location of each plant which is not in the "nearby plant" zone shall be based upon its highway mileage distance to Hartford, as determined by use of Mileage Guide No. 7 and supplements to and revisions thereof, issued by Household Goods Carriers' Bureau, Agent, Washington, D.C. The mileage used shall be those shown between designated key points in the mileage charts, and between named points on the appropriate State road maps, as published in the mileage guide. In any instance the map does not clearly show the mileage between points on a road, the mileage used shall be the mileage as determined by the highway authority for the State in which the road is located.

(c) The distance for each plant shall be the mileage between Hartford and the named point nearest to the plant, as shown in the mileage charts. If that named point is not listed in the mileage charts, the distance for the plant shall be the lowest mileage distance between Hartford and that named point, computed as follows:

(1) Determine from the charts the mileage between Hartford and each of the three key points nearest to the named point which are nearer to Hartford than the named point. If there are fewer than three key points which are so located, Hartford shall be used as one of the key points.

(2) For each of these key points, add to the result in subparagraph (1) of this paragraph, the mileage between the key point and the named point, measured to the greatest extent possible over roads designated as paved, all-weather roads.

(d) The zone price differentials for each plant shall be those applicable to its zone location as shown in the following table:

PLANT ZONE PRICE DIFFERENTIALS

Distance to Hartford (miles)	Plant location zone	Class I and uniform price differentials (cents per hundredweight)	Class II price differentials (cents per hundredweight)
Various	Nearby plant	0.0	0.0
51 to 60	6	−26.0	−1.4
61 to 70	7	−27.4	−1.7
71 to 80	8	−28.8	−2.0
81 to 90	9	−30.2	−2.6
91 to 100	10	−31.6	−2.8
101 to 110	11	−33.0	−2.9
111 to 120	12	−34.4	−3.2
121 to 130	13	−35.8	−3.4
131 to 140	14	−37.2	−3.7
141 to 150	15	−38.6	−4.2
151 to 160	16	−40.0	−4.5
161 to 170	17	−41.4	−4.6
171 to 180	18	−42.8	−5.2
181 to 190	19	−44.2	−5.4
191 to 200	20	−45.6	−5.7
201 to 210	21	−47.0	−5.8
211 to 220	22	−48.4	−6.4
221 to 230	23	−49.8	−6.5
231 to 240	24	−51.2	−6.7
241 to 250	25	−52.6	−6.7
251 to 260	26	−54.0	−7.0
261 to 270	27	−55.4	−7.1
271 to 280	28	−56.8	−7.3
281 to 290	29	−58.2	−7.4
291 to 300	30	−59.6	−7.6
301 to 310	31	−61.0	−8.1
311 to 320	32	−62.4	−8.2
321 to 330	33	−63.8	−8.3
331 to 340	34	−65.2	−8.6
341 to 350	35	−66.6	−8.6
351 to 360	36	−68.0	−8.8
361 to 370	37	−69.4	−8.9
371 to 380	38	−70.8	−9.1
381 to 390	39	−72.2	−9.2
391 to 400	40	−73.6	−9.3
401 and over	41 and over	(1)	−9.3

[1] Class I and uniform price differentials applicable to plants located more than 400 miles from Hartford shall be obtained by extending the table at the rate of 1.4 cents for each additional 10 miles, except that in no event shall the Class I or uniform price at any zone be less than the Class II price for the month for plants in such zone.

(e) Notwithstanding the provisions of paragraphs (b) and (c) of this section, the zone location of each plant which is not in the "nearby plant" zone and which was a regulated plant under any of the New England Federal orders in the month immediately preceding the effective date of this paragraph shall be determined by the method described in this paragraph until Mileage Guide No. 7 is canceled. The zone location of the plant shall be based upon its highway mileage distance to Hartford as determined by use of the appropriate State maps contained in Mileage Guide No. 7, and revisions thereof, issued by Household Goods Carriers' Bureau, Agent, Washington, D.C. The distance shall be the lowest highway mileage between Hartford and the named point on the map which is nearest to the plant, over roads designated thereon as paved, all-weather roads. In the event that the named point is not located on a paved, all-weather road, such other roads shall be used to reach a paved, all-weather road, as will result in the lowest highway mileage to Hartford, except that such other roads shall not be used for a distance of more than 15 miles if it is otherwise possible to connect with a paved, all-weather road. In any instance in which the map does not clearly show the mileage between points on a road, the mileage used shall be the mileage as determined by the highway authority for the State in which the road is located.

§ 1015.63 Value of each handler's fluid milk products.

For each month, the market administrator shall compute the value of fluid milk products for each handler under § 1015.9 (a), (b), and (c) except a producer-handler under any Federal order. The prices used shall be those for the zone location of the plant for which the value is being computed or at which it has been considered that a handler under § 1015.9(c) received producer milk, except that under paragraphs (a)(2), (b)(2), and (f)(2) of this section the prices used shall be those applicable at the zone locations of the plants from which the fluid milk products were received, and under paragraph (c) of this section, the prices which are specified therein shall be used.

(a) Multiply by the applicable class prices the quantities of:

(1) Producer milk assigned under § 1015.55; and

(2) Pool milk other than producer milk assigned under § 1015.55.

(b) Multiply by the applicable Class I prices the quantities of:

(1) Other source milk and cream assigned to Class I milk under § 1015.55(b)(1) and (2); and

(2) Other source milk assigned to Class I milk under § 1015.55 (b) (3) and (4) and (d).

(c) Multiply the difference between the Class II price for the preceding month and the Class I price for the current month applicable at the nearest plant location from which an equivalent quantity of skim milk and butterfat, respectively, was allocated to Class II milk in the preceding month, by the hundredweight of skim milk and butterfat, respectively, assigned to Class I milk under §1015.55(b)(7) for the month which is in excess of the hundredweight of skim milk and butterfat, respectively, allocated to Class II milk under § 1015.55 (i) and (j) during the preceding month and classified and priced as Class I milk or the equivalent thereof under the provisions of any Federal order.

(d) Multiply the quantity of overage in each class under § 1015.55(l) by the applicable class price as adjusted by the butterfat differential computed under § 1015.71.

(e) Multiply the quantity of pool milk under § 1015.25 (e) and (f) distributed as route disposition in the marketing area from the handler's nonpool plant by the applicable Class I price.

(f) Multiply by the applicable Class II prices the quantities of:

(1) Other source milk assigned to Class I milk under § 1015.55 (b) (1) and (2); and

(2) Other source milk assigned to Class I milk under § 1015.55 (b) (3) and (4) and (d).

(g) Add together the values resulting from the computations described in paragraphs (a) through (e) of this section and subtract therefrom the values resulting from the computations described in paragraph (f) of this section. The remainder shall be known as the value of fluid milk products.

For each month, the market administrator shall compute a basic uniform price per hundredweight for pool milk containing 3.5 percent butterfat received at or distributed from a plant in the nearby plant zone as follows:

(a) Combine into one total the value of fluid milk products computed under § 1015.63 for each handler who made the reports prescribed in § 1015.40 for the month and who was not in default of payments under § 1015.81 for the preceding month.

(b) Deduct the amount of the plus differentials applicable under § 1015.72 and add the amount of the minus differentials applicable under § 1015.62.

(c) Subtract for each of the months of April, May and June an amount computed by multiplying the total hundredweight of pool milk for such month by 15 cents.

(d) Add for each of the months of July, August and September an amount representing one-third of the aggregate amount subtracted pursuant to paragraph (c) of this section for the immediately preceding three-month period, April–June.

(e) Add an amount equal to not less than one-half of the unreserved cash balance on hand in the producer-settlement fund.

(f) Divide the resulting amount by the total hundredweight of pool milk included under paragraph (a) of this section.

(g) Subtract not less than 4 cents nor more than 5 cents. The result is the "basic uniform price".

§ 1015.65 Factors used in formulas.

(a) The base Class I percentage factors to be used in the computation of the Class I price under § 1015.60 for each of the 12 months beginning with February of each year shall be computed on or before January 25 of that year as specified in this paragraph.

(1) For each month of the three preceding years and for December of the fourth preceding year (using the most recent statistical reports of the market administrators for the New England Federal orders) compute the daily average of the total Class I producer milk under all the New England Federal orders and the daily average of the total receipts from producers under all the New England Federal orders.

(2) For each of the two series of daily averages, using the median link-relative method, compute a seasonal index for each month, rounded to two decimal places.

(3) For each month, multiply the seasonal index of Class I producer milk by 0.6812 and divide the product by the seasonal index of receipts from producers for the same month. The result, rounded to one decimal place, shall be the base Class I percentage factor for the month.

(b) If for any reason a price, index, or wage rate specified in this part for use in computing class prices or for other purposes is not reported or published in the manner described in this part, the market administrator shall use one determined by the Secretary to be equivalent to the factor which is specified.

PAYMENTS—GENERAL

§ 1015.70 Payments to producers and cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall pay each producer as follows:

(1) On or before the 5th day after the end of each month for milk received from such producer during the first 15 days of such month at a rate not less than the Class II price for the preceding month.

(2) On or before the 22nd day after the end of the month, each handler shall make final payment to each producer for the total value of milk received from him during the month, at not less than the basic uniform price per hundredweight computed under § 1015.64 subject to the differentials under §§ 1015.62, 1015.71 and 1015.72, minus the amount of the partial payment made to the producer under subparagraph (1) of this paragraph.

(3) If the net payment to a producer is for an amount less than the total amount due the producer under this paragraph, the burden shall rest upon the handler to prove to the market administrator that each deduction from the total amount due is properly authorized and properly chargeable to the producer. If, on the date payments are due under subparagraph (2) of this paragraph, the handler has not received full payment from the market administrator under § 1015.82, he may reduce pro rata his payment to producers by an amount not to exceed such underpayment. This payment shall be completed after receipt of the balance due from the market administrator by the next following date for making payments under subparagraph (2) of this paragraph.

(b) Each handler who receives producer milk from a cooperative association which is determined by the Secretary to be authorized to collect payments for its members, exercises such authority and has so notified the handler in writing, shall make payment in accordance with the provisions of paragraph (a) of this section to the association for the total amount of producer milk received from the association as follows:

(1) On or before the 1st day after the end of the month for producer milk received during the first 15 days of the month; and

(2) On or before the 21st day after the end of the month for producer milk received during the month.

(c) Each handler who receives fluid milk products from a cooperative association in its capacity as the operator of a pool plant or as a handler under § 1015.9(c) shall make a payment to such association as follows:

(1) On or before the 1st day after the end of the month at a rate not less than the Class II price for the immediately preceding month for such fluid milk products received during the first 15 days of the month; and

(2) On or before the 21st day after the end of the month for not less than the value of such fluid milk products classified under § 1015.55 at the applicable class prices for the month adjusted by the zone price and butterfat differentials under §§ 1015.62 and 1015.71 less the amount paid pursuant to subparagraph (1) of this paragraph.

§ 1015.71 Butterfat differential.

In making the payments to producers and cooperative associations required under § 1015.70 or for overages under § 1015.63(d) each handler shall add or subtract for each one-tenth of one percent that the average butterfat content of milk received from producers or the overage is above or below 3.5 percent, respectively, an amount per hundredweight which shall be computed by the market administrator as follows: Multiply by 0.12 the average of the daily prices using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported by the United States Department of Agriculture for the period beginning with the 16th day of the preceding month and ending with the 15th day of the current month and round to the nearest one-tenth cent.

§ 1015.72 Farm location differentials.

(a) In making payments to producers for milk received from a farm located in Connecticut, Rhode Island, in that portion of New York State east of the Hudson River and south of the Berkshire Section of the New York State Thruway, or in that portion of Massachusetts south of the Massachusetts Turnpike, there shall be added 46 cents per hundredweight.

(b) In making payments to producers for milk received from a farm located outside the area described in paragraph (a) of this section, but within that portion of New York State east of the Hudson River and south of the northern boundaries of North Greenbush, Sand Lake, and Stephentown townships in Rensselaer County, and within that portion of Berkshire County, Massachusetts north of the Massachusetts Turnpike, there shall be added 23 cents per hundredweight.

(c) The uniform price for pool milk other than producer milk shall be subject to the applicable differentials for milk received from farms located in the areas set forth in paragraphs (a) and (b) of this section. In applying the differentials such pool milk shall be considered to have been delivered from farms of dairy farmers located in such areas in quantities computed as follows: Divide the respective quantities of milk received directly from dairy farmers' farms located in each nearby farm location differential area at the plant from which the pool milk was received or distributed by the total receipts of fluid milk products at the plant, multiply by 100 and apply each of the resulting percentages to the total quantity of pool milk other than producer milk received or distributed from such plant. Until such time as full information relative to the receipts at the plant from dairy farmers, including the respective quantities of milk received from dairy farmers' farms in each farm location differential area, is submitted to the market admin-

istrator, it shall be considered that none of the farms from which milk was received at the plant is located in any nearby farm location differential area.

§ 1015.73 Statements to producers.

In making the payments to producers or cooperative associations under § 1015.70 (a) or (b), each handler shall furnish a supporting statement, in such form that it may be retained by the recipient. In making final payment to a cooperative association under § 1015.70(b)(2) the information specified in paragraphs (a), (b) and (e) of this section shall be furnished on or before the 14th day after the end of each month; and for partial payment under § 1015.70(b)(1) the information specified in paragraphs (a), (b) and (d) of this section shall be furnished on or before the 25th day of each month. The supporting statement shall show:

(a) The month and the identity of both the handler and producer;

(b) The total pounds and average butterfat test of milk received from the producer except that the butterfat test shall not be required on statements accompanying payment for the first 15 days of the month;

(c) The minimum rate or rates at which payment to the producer is required under § 1015.70;

(d) The rate which is used in making the payment;

(e) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deductions under § 1015.75, together with a description of the respective deductions; and

(f) The net amount of payment to the producer or cooperative association.

§ 1015.74 Adjustment of payments to producers and cooperative associations.

Whenever the market administrator's verification of a handler's payments to producers discloses payment to a producer or a cooperative association of an amount less than is required by § 1015.70 the handler shall make payment of the balance due the producer or cooperative association not later than the date for making payment under § 1015.70 for the month in which the handler is notified by the market administrator of the deficiency.

§ 1015.75 Marketing service deductions.

(a) In making the payments required by § 1015.70 (a)(2) and (b) for producer milk, other than milk delivered by himself and any producer who is a member of a cooperative association which the Secretary determines is performing the services specified in paragraph (b) of this section, each handler shall deduct 3 cents per hundredweight, or such lesser amount as the Secretary shall determine to be sufficient, for marketing services. The handler shall pay the amount deducted to the market administrator on or before the 19th day after the end of the month.

(b) The market administrator shall expend amounts received under paragraph (a) of this section only in providing market information to the producers who delivered the milk which was subject to such deduction and for verification of weights, samples, and tests of milk received by handlers from them. The market administrator may contract with a cooperative association for the furnishing of the whole or any part of these services.

(c) Each handler in making the payments required by § 1015.70 (a)(2) or (b) for producer milk delivered by members of a cooperative association which the Secretary determines is performing the services specified in paragraph (b) of this section shall deduct from such payments, in lieu of the deductions specified in paragraph (a) of this section, an amount authorized by such producers. He shall pay the amount deducted to the association on or before the 20th day after the end of the month accompanied by a statement showing the pounds of milk received from each producer from whom the deduction was made.

PAYMENTS—PRODUCER-SETTLEMENT FUND

§ 1015.80 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund". He shall deposit all amounts received from handlers under §§ 1015.81, 1015.88 and 1015.89 into the fund. He shall pay all amounts due handlers under §§ 1015.82 and 1015.88 from the fund, subject to his right to offset a payment due to a handler from the producer-settlement fund against any payment due from the handler to the fund. All amounts subtracted under § 1015.64(c) shall remain therein as an obligated balance until it is withdrawn for the purpose of effectuating § 1015.64(d). The market administrator shall render a statement to each handler who made the reports prescribed in § 1015.40, by the 16th day of the month showing the amount due to or from the producer-settlement fund computed in accordance with §§ 1015.63, 1015.81 and 1015.82.

§ 1015.81 Payments to the producer-settlement fund.

On or before the 19th day after the end of each month, each handler shall pay to the market administrator for deposit into the producer-settlement fund the amount by which the value of fluid milk products computed for the handler under § 1015.63 is greater than the sum of (a) the amount required to be paid his producers, and (b) the value of his receipts of pool milk other than producer milk, both as determined by the application of the basic uniform price computed under § 1015.64 adjusted by the differentials applicable under §§ 1015.62 and 1015.72.

§ 1015.82 Payments out of the producer-settlement fund.

On or before the 21st day after the end of the month, the market administrator shall pay to each handler the amount by which the sum of (a) the amount required to be paid his producers, and (b) the value of his receipts of pool milk other than producer milk, both as determined by the application of the basic uniform price computed under § 1015.64 adjusted by the differentials applicable under §§ 1015.62 and 1015.72 is greater than the value of fluid milk products computed for the handler under § 1015.63. If the unobligated balance in the producer-settlement fund is insufficient to make all payments under this section, the market administrator shall reduce uniformly such payments and shall complete them as soon as the necessary funds are available.

ADMINISTRATION EXPENSE

§ 1015.87 Payment of administration expense.

On or before the 19th day after the end of the month, each handler shall make payment to the market administrator of his pro rata share of the expense of administration of this part. The payment shall be at the rate of 4 cents per hundredweight, or such lesser rate as the Secretary may prescribe, as follows:

(a) The payment shall apply to all of a handler's receipts at pool plants during the month of pool milk, exempt milk received in bulk from a nonpool plant for processing and packaging and other source milk assigned to Class I milk under § 1015.55 except that the payment shall not apply to any receipts which are subject to an administration assessment under another Federal order; and

(b) The payment shall also apply to the quantity of pool milk distributed as route disposition in the marketing area from a handler's nonpool plant and to the quantity of producer milk for which a cooperative association is the handler under § 1015.9(c).

ADJUSTMENT OF ACCOUNTS

§ 1015.88 Adjustment of errors in payments.

Whenever the market administrator's verification of reports or payments of any handler discloses an error in payments to or from the market administrator made under §§ 1015.75, 1015.81, 1015.82 or 1015.87 the market administrator shall promptly issue to the handler a charge bill or a credit, as the case may be, for the amount of the error. Payment of any such adjustment by the handler or the market administrator shall be made on or before the payment date for the month in which such notification is given.

§ 1015.89 Adjustment of overdue accounts.

Any unpaid obligation of a handler under §§ 1015.75, 1015.81, 1015.87 and 1015.88 shall be increased one-half of one percent effective the 22d day of such month and on the 22d day of each month thereafter until the obligation is paid.

MISCELLANEOUS PROVISIONS

§1015.90 Effective time.

The provisions of this part, or any amendments to its provisions, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 1015.91.

§ 1015.91 Suspension or termination.

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

§ 1015.92 Continuing obligations.

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

§ 1015.93 Liquidation.

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

§ 1015.94 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, except as provided in paragraphs (b) and (c) of this section, shall terminate two years after the last day of the month during which the market administrator received the handler's utilization report on the milk involved in the obligation, unless within the two-year period the market administrator notifies the handler in writing that the money is due and payable. Service of the 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 during which the milk, with respect to which the obligation exists, was received or handled; and

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

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator, within the two-year period provided for in paragraph (a) of this section, may notify the handler in writing of the failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to the obligation shall not begin to run until the first day of the month following the month during which all the books and records pertaining to the 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 the handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on the payment is claimed, unless the handler, within the applicable period of time, files a petition under section 8c(15)(A) of the Act, claiming the money.

§ 1015.95 Agents.

The Secretary, by designation in writing, may 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.

§ 1015.96 Separability of provisions.

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

Signed at Washington, D.C., on April 20, 1964.

CLARENCE H. GIRARD,
Deputy Administrator,
Regulatory Programs.

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