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FEDERAL REGISTER

VOLUME 29 NUMBER 169

Washington, Friday, August 28, 1964

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Codification Guide

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Rules and Regulations

Title 45—PUBLIC WELFARE

Chapter I—Office of Education, Department of Health, Education, and Welfare

PART 104—VOCATIONAL EDUCATION; FEDERAL ALLOTMENTS TO STATES

The regulations in this part are applicable to programs of vocational education administered by State Boards for Vocational Education under both the Vocational Education Act of 1963 and the Smith-Hughes, George-Barden, and supplementary acts as amended, or under the Vocational Education Act of 1963 alone. In those States not administering programs under the 1963 Act, the regulations in 45 CFR Part 102 issued on February 18, 1958, as heretofore amended (applicable to the Smith-Hughes Act, the supplementary acts, and titles I and III of the George-Barden Act), and the regulations in 45 CFR Part 103 issued on August 2, 1956 (applicable to title II of the George-Barden Act) continue to apply to programs of vocational education administered by State Boards for Vocational Education under those Acts.

The grants under this part provide Federal financial assistance subject to the requirements of Title VI of the Civil Rights Act of 1964, approved July 2, 1964 (78 Stat. 252; Public Law 88-352). Section 601 of that Act provides that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Therefore, grants made pursuant to the regulations set forth below are subject to this provision and to such applicable rules, regulations, or ordinances as may hereafter be issued with the approval of the President to effectuate the provisions of section 601.

Separate regulations are promulgated in Part 105A applicable to special grants pursuant to section 4(c) of the Vocational Education Act of 1963 for research, training, and experimental, developmental, or pilot programs.

Separate regulations are promulgated in Part 105B applicable to grants pursuant to section 14 of the Vocational Education Act of 1963 for residential vocational education schools.

Sec.

Authority: The provisions of this Part 104 issued under 39 Stat. 929 as amended, 46 Stat. 1489 as amended, 49 Stat. 1488 as amended, 64 Stat. 27 as amended, 70 Stat. 909 as amended, 76 Stat. 586 as amended, 77

Stat. 403; 20 U.S.C. 11–15, 16–28, 30–34, 35–35n, 15i–15q, 15aa–15jj, 15aaa–15ggg, 48 U.S.C. 1667.

Subpart A—Definitions

§ 104.1 Definitions.

As used in this part:

(a) "Acts", "vocational education acts", or "Federal acts" means the Smith-Hughes Act, the three titles of the George-Barden Act, the supplementary acts, and the Vocational Education Act of 1963.

(1) "Smith-Hughes Act" means the Act of February 23, 1917 (Public Law 347, 64th Congress, 39 Stat. 929, 20 U.S.C. 11–15, 16–28).

(2) "George-Barden Act" means the Vocational Education Act of 1946 with all amendments and additions, including the original Vocational Education Act of 1946 in "Title I—Vocational Education in Agriculture, Home Economics, Trades and Industry, and Distributive Occupations" (Act of June 8, 1936, Public Law 673, 74th Congress, 49 Stat. 1488 as amended by Act of August 1, 1946, Public Law 586, 79th Congress, 60 Stat. 775, and Act of August 8, 1956, Public Law 1027, 84th Congress, 70 Stat. 1126, 20 U.S.C. 15i–15q); "Title II—Vocational Education in Practical Nursing" (Title III, Act of August 2, 1956, Public Law 911, 84th Congress, 70 Stat. 925, as amended in Act of April 24, 1961, Public Law 87–22, 75 Stat. 44, 20 U.S.C. 15aa–15ii); and "Title III—Area Vocational Education Programs" (Title VIII, National Defense Education Act of 1958, Public Law 85–864, 72 Stat. 1597, 20 U.S.C. 15aaa–15ggg).

(3) "Supplementary acts" means section 1 of the Act of March 3, 1931, relating to vocational education in Puerto Rico (Public Law 791, 71st Congress, 46 Stat. 1489, 20 U.S.C. 30); the Act of March 18, 1950, relating to vocational education in the Virgin Islands (Public Law 462, 81st Congress, 64 Stat. 27, 20 U.S.C. 31–33); section 9 of the Act of August 1, 1956, relating to vocational education in Guam (Public Law 896, 84th Congress, 70 Stat. 909, 20 U.S.C. 34); and section 2 of the Act of September 25, 1962, relating to vocational education in American Samoa (Public Law 87–688, 76 Stat. 586, 48 U.S.C. 1667).

(4) "1963 Act" means the Vocational Education Act of 1963 (Part A of Public Law 88–210, 77 Stat. 403, 20 U.S.C. 35–35n).

(b) "Area vocational education school" means any public school or public institution the facilities of which can be constructed with Federal funds under the provisions of section 4(a)(5) of the 1963 Act.

(1) These may include only:

(i) A specialized high school used exclusively or principally for the provision of vocational education to persons who are available for full-time study in preparation for entering the labor market;

(ii) The department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to persons who are available for full-time study in preparation for entering the labor market;

(iii) A technical or vocational school used exclusively or principally for the provision of vocational education to persons who have completed or left high school and who are available for full-time study in preparation for entering the labor market; and

(iv) The department or division of a junior college or community college or university which, under the supervision of the State board, provides vocational education in no less than five different occupational fields leading to immediate employment but not leading to a baccalaureate degree.

(2) An "area vocational education school" shall be available to all residents of the State or an area of the State designated and approved by the State board. In the case of a technical or vocational school described in subparagraph (1)(iii) of this paragraph or a department or division of a junior college or community college or university described in subparagraph (1)(iv) of this paragraph, such school must admit as regular students both persons who have completed high school and persons who have left high school.

(c) "Business and office occupations" means those occupations pursued by individuals in public or private enterprises or organizations which are related to the facilitating function of the office and includes such activities as recording and retrieval of data, supervision and coordination of office activities, internal and external communication, and reporting of information.

(d) "Commissioner" means the Commissioner of Education, U.S. Department of Health, Education, and Welfare.

(e) "Construction project" means a specific proposal for construction of an area vocational school facility which will be accomplished at a single site as provided in § 104.44.

(f) "Employment" means lawful work in a recognized occupation.

(g) "Equipment" means a fixed or movable article or set of articles which meet all the following conditions: (1) The article retains its original shape and general appearance with reasonable care and use over a period of at least one year; (2) it is nonexpendable; that is, if the article is damaged or some of its parts are lost or worn out, it is usually more feasible to repair it than to replace it with an entirely new unit; and (3) it does not lose its identity through incorporation into a different or more complex unit or substance. See for example § 104.1(n)(2) and § 104.48.

(h) "Funds", unless otherwise specified, means any public funds available for expenditure under the State plan, whether derived from Federal grants or State or local appropriations or other sources. (See § 104.27 for further explanation.)

(i) "Gainful employment" means employment in a recognized occupation for which persons normally receive a wage, salary, fee, or profit.

(j) "High school" or "secondary school" shall not be applicable to instruction at any grade beyond grade 12.

(k) "Local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program (except as otherwise provided in section 210(d) of the George-Barden Act for health occupations training). In the regulations of this part, anything modified by the adjective "local" pertains to a "local educational agency" herein defined.

(l) "Occupational field" means a group of recognized occupations having substantial similarities common to all occupations in the group, e.g., similarity in the work performed; similarity in the abilities and knowledge required of the worker for successful job performance; similarity in the tools, machines, instruments and other equipment used; and similarity in the basic materials worked on or with. The term is applied, in the case of Federal participation in the construction of an area vocational school, to determine whether a department of a certain type of high school, or a department or division of a junior college, community college, or university provides "vocational education in no less than five different occupational fields". (See § 104.1(b)(1)(ii) and (iv).) The purpose is to assure that such schools will have offerings that will afford prospective students of varying interests a reasonably broad choice of the type of occupation for which they are to be trained. Determinations of what is an "occupational field" will be made in the light of this purpose.

(m) "Recognized occupation" means a lawful occupation that the Commissioner finds is identifiable by employers, employee groups, and governmental and non-governmental agencies and institutions concerned with the definition and classification of occupations.

(n) "School facilities" means the facilities of an area vocational education school which may be constructed with Federal funds under section 4(a)(5) of the 1963 Act, including

(1) Instructional and auxiliary rooms and space necessary to operate a program of vocational instruction at normal capacity (in accordance with the State plan and the laws and customs of the State), such as classrooms, libraries, laboratories, workshops, cafeterias, office space and utility space. This would not include facilities intended primarily for events for which admission is to be charged to the public such as single purpose auditoriums, indoor arenas, or outdoor stadiums.

(2) Initial equipment of the school facilities described in subparagraph (1) of this paragraph includes all necessary building fixtures and utilities, furnishings (including conventional classroom and office furniture), and instructional equipment as defined in § 104.48.

(i) In connection with the erection of new or the expansion of existing facilities, initial equipment shall include only that equipment which must be placed in the proposed facility to accommodate the

type of instruction or other vocational education purpose for which the facility is designed.

(ii) In connection with the remodeling and alteration of existing facilities, initial equipment also may include equipment installed to replace obsolete or wornout equipment. Any reimbursement for salvage or trade-in value of any such equipment shall be deducted in computing the cost of such replacement equipment to be included in the construction costs of a proposed project.

(3) Interests, whether in fee, leasehold, or otherwise, in land on which such facilities are to be constructed.

(o) "State" means a State of the Union, the District of Columbia, Puerto Rico, Virgin Islands, Guam, or American Samoa, except that, with respect to funds under the Smith-Hughes Act, the term does not include the District of Columbia, Virgin Islands, Guam, or American Samoa.

(p) "State board" means the State Board for Vocational Education designated or created pursuant to section 5 of the Smith-Hughes Act and described in § 104.3.

(q) "Vocational education" includes programs, services, or activities related to vocational or technical training or retraining and provided for under the acts, the regulations of this part, and the State plan. In these regulations, anything modified by the adjective "vocational" pertains to "vocational education" as herein defined. See §§ 104.13 to 104.21 for description of programs, services, or activities related to vocational and technical training or retraining.

Subpart B—State Plan Provisions

General

§ 104.2 State plan.

(a) *Submission and approval.* As a condition for the allotment of Federal funds, the State board is required to adopt and submit to the Commissioner a State plan. If found by the Commissioner to be in conformity with the provisions and purposes of the Acts and regulations, the plan will be approved. The Commissioner shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing has been offered to the State board. The effective date of the State plan is the date on which it is received by the Commissioner in substantially approvable form.

(b) *Amendment.* The administration of vocational education programs under the State plan must be kept in conformity with the approved State plan. Whenever there is any material change in the content or administration of such program, or in pertinent State law, or in the organization, policies, and operations of the State board affecting the programs under the plan, the State plan shall be appropriately amended by the State board, and such amendment shall be submitted to the Commissioner. The effective date of such amendment is the date on which it is received by the Commissioner in substantially approvable form.

(c) *Laws, policies, and procedures.* The State plan is a description of the State's vocational education programs. It shall set forth the State's authority under State law for its administration of such programs. It shall include the policies to be followed by the State in maintaining, extending, and improving existing programs and developing new programs of vocational education so that persons of all ages in all communities of the State will have ready access to vocational training or retraining which is of high quality, with offerings that have been developed in the light of actual or anticipated opportunities for employment, and which is suited to the needs, interests, and ability of such persons to benefit from such training.

(1) For State plan requirements applicable to vocational education under the Acts:

(i) Regarding vocational education in general, see § 104.2 to § 104.12.

(ii) Regarding specific vocational education programs, services, and activities, see § 104.13 to 104.26.

(iii) Regarding Federal financial participation, see appropriate sections in Subpart C.

(2) For specific State requirements regarding funds not transferred from the various allotments under the Smith-Hughes, George-Barden and supplementary acts to the allotment under section 3 of the 1963 Act, see sections 8, 10, 11, and 12 of the Smith-Hughes Act and section 7 of title I of the George-Barden Act and § 104.56 to § 104.76; section 205 (a) of title II of the George-Barden Act and § 104.77 to 104.80 of the regulations; and section 305(a) of title III of the George-Barden Act and § 104.81 to § 104.84.

(d) *Certification of State plan*—(1) *Certification by State board.* The State plan and all amendments thereto shall include as an attachment a certificate of the officer of the State board authorized to submit the State plan to the effect that the plan or amendment has been adopted by the State board and that the plan, or plan as amended, will constitute the basis for operation and administration of the vocational education programs in which Federal financial participation will be made.

(2) *Certification by State Attorney General.* The State plan shall also include as an attachment a certificate by the State's Attorney General, or other official designated in accordance with State law to advise the State board on legal matters, to the effect that the State board named in the plan is the State board which has authority under the State law to submit the State plan and to administer or supervise the administration of the vocational education programs described therein as the sole agency responsible for administration of the plan; and that all the plan provisions are consistent with State law.

§ 104.3 State board.

(a) *Designation or creation.* As a condition for the receipt of its allotments of Federal funds, the Acts require that the State, through its legislative authority, designate or create a State board of not less than three members having all necessary power to cooperate with the Office of Education in the administration of the State plan. The State plan shall identify the State board so designated and created. In administering the vocational education programs for which allotments are made to the States under the Acts, the Office of Education will deal only through the State board and its authorized representatives except as otherwise provided for in the State plan. (See for example § 104.9.)

(b) *Composition of State board or State advisory council.* (1) The State plan shall provide that either the State board or a State advisory council created or designated by the State board to consult with the State board in carrying out the State plan include as members (i) persons familiar with the vocational education needs of management and labor in the State, and (ii) a person or persons representative of junior colleges, technical institutes, or other institutions of higher education which provide programs of technical or vocational training meeting the description and requirements of vocational instruction provided in § 104.13. The State plan shall describe the criteria to be followed in determining whether such persons meet such qualifications. With respect to persons familiar with the vocational needs of management and labor in the State, such criteria shall indicate that such familiarity will have been acquired directly through recent actual experience and work in or association with the fields of management and labor in the State. With respect to a person or persons representative of junior colleges, technical institutes, and other institutions of higher education in the State administering vocational education programs meeting the standards and requirements outlined in § 104.13, such criteria shall indicate the necessity of recent association with such an institution in the State (or, if no institution exists within the State, association with such an institution outside the State) and familiarity with that institution's vocational education programs.

(2) In its annual report submitted pursuant to § 104.55, the State board shall include an appendix listing the members of the State board (or State advisory council if one is appointed or designated in compliance with paragraph (a) of this section), indicating the members who meet the qualifications required by paragraph (a) of this section. The report shall indicate what past experience or association, particularly recent experience or association, qualify such members as persons meeting such requirements.

(3) The State board shall indicate in its annual report for each fiscal year submitted pursuant to § 104.55(b):

(i) Its consideration of the vocational education needs of management and labor in the State in formulating and carrying out its vocational education programs, and the extent to which it relied on members of the State board or advisory council familiar with such needs in formulating and carrying out such programs.

(ii) The actual or anticipated role of junior colleges, technical institutes, and other institutions providing education beyond the high school level which make

available vocational education to persons who have completed or left high school, to persons who have already entered the labor market, and to persons with academic, socioeconomic or other handicaps preventing them from succeeding in the regular vocational education programs, and the extent to which the State board relied on representatives of such institutions in developing such a role.

(c) *Authority of State board.* Authority to administer vocational education at the State level or to supervise the administration of vocational education at the local level shall rest solely with the State board. The State plan shall set forth the authority of the State board under State law to submit the State plan and administer the program contained therein. If there is any administration by local educational agencies, the basis under State law for the supervision of such administration by the State board shall also be set forth. Copies of, or citations to, all directly pertinent laws and interpretations of laws by appropriate State officials or courts shall be furnished as part of the State plan.

§ 104.4 State administration and leadership.

(a) *Adequate State board staff.* The State plan shall provide for a State staff sufficiently adequate to enable the State board to administer, supervise, and evaluate vocational education programs, services, and activities under the State plan to the extent necessary to assure quality in all vocational education programs which are realistic in terms of actual or anticipated employment opportunities and suited to the needs, interests, and abilities of those being trained.

(b) *Organization of State board staff.* The State plan shall describe the organizational structure of such a staff, including a description of its units, the functions assigned to each, and the relationships among the units within the State board staff and with other State agencies and institutions responsible for conducting programs of vocational and technical education. The titles of all State officials who are to have authority in the administration and supervision of the program shall be given in the State plan, and their responsibilities described. This description shall be sufficient to enable the Commissioner to find that the State board has an adequate staff to provide requisite administration and supervision of the federally aided vocational education programs. If the scope and responsibilities of the program aided by Federal funds under the Acts require it, the plan shall provide for a full-time director or a full-time executive officer who shall have no substantial duties outside the vocational education program.

§ 104.5 Custody of Federal funds.

The State plan shall provide that the State, through its legislative authority, will designate its State treasurer (or, if there be no State treasurer, the officer exercising similar functions for the State) to receive and provide proper custody of all Federal funds granted under the Acts to be disbursed under applicable State laws and regulations on requisition or order of the State board. The State plan shall identify the official so designated to receive the funds. Copies of, or citations to, all directly pertinent laws and interpretations of laws by appropriate State officials or courts indicating the authority of the State treasurer or other official designated to receive, hold, and disburse funds on requisition or order of the State board shall be furnished as part of the State plan.

§ 104.6 Allocating Federal Funds under the 1963 Act.

(a) *Policies and Procedures.* The State plan shall set forth the policies and procedures to be used by the State as criteria in allocating Federal funds allotted to it under section 3 of the 1963 Act among the various uses indicated in section 4(a) of the 1963 Act and § 104.41 (b), and in allocating funds to local educational agencies in the State. Such policies and procedures shall be designed to insure that:

(1) Due consideration is given to

(i) The vocational education needs of all persons of all age groups in all communities of the State, and

(ii) The results of periodic evaluation of State and local vocational education programs and services in light of

(*a*) Current and projected manpower needs and job opportunities;

(*b*) The need for maintaining, extending and improving existing programs and developing new programs of vocational education.

(2) Federal funds allotted to the State under section 3 of the 1963 Act shall not be used to supplant State or local funds, and, to the extent practical, shall be used to increase the amounts of State and local funds that would in the absence of such Federal funds be made available for the purposes in section 4(a) of the 1963 Act and in § 104.41(b), toward the end that

(i) All persons in all communities in the State will have ready access to vocational education.

(ii) Such vocational education is of high quality.

(iii) Such vocational education is suited to the needs, abilities, and interests of the students.

(3) In developing policies and procedures for determining whether and what amount of Federal funds will be allocated for direct expenditure by the State board or for expenditure by a local educational agency in a manner pursuant to subparagraph (2) of this paragraph, the State board shall set forth in its State plan criteria for making such determination which take into consideration, among other relevant factors, the following:

(i) The amount of State or local funds budgeted for expenditure by such board or agency for vocational education in the fiscal year in which the allocation of Federal funds is to be made; as compared with

(ii) The amount of State or local funds expended by such board or agency for vocational education in the preceding fiscal year or years, with allowances made for unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of area vocational school facilities.

(b) *Reports.* (1) In the State's annual estimate for the current fiscal year submitted pursuant to § 104.55(a), the State board shall indicate (i) which amounts of Federal funds to be allotted will be allocated to each of the uses referred to in paragraph (a) of this section, and (ii) how such allocations of Federal funds are designed to insure that the State is meeting the requirements set forth in paragraph (a) of this section. The State board shall also indicate how its allocation of Federal funds among the local educational agencies within the State is designed to insure that the State is meeting such requirements.

(2) In the State's annual report for the previous fiscal year submitted pursuant to § 104.55(b), the State board shall also provide the same type of information relating to allocations of Federal funds as that provided in the annual estimate pursuant to subparagraph (1) of this paragraph, and to what degree expenditures from such allocations enabled the State to meet the requirements set forth in paragraph (a) of this section.

(c) *Responsibility of Commissioner.* To aid in disclosing situations where Federal funds may be or might have been allocated or used in a manner contrary to the State's policies and procedures set forth in its State plan pursuant to paragraph (a) of this section, the Commissioner shall initially consider the information submitted by the States pursuant to paragraph (b) of this section, including data indicating whether the total amount of State and local funds estimated for expenditure or expended for vocational education in the fiscal year under question appears to be less than that expended for the previous fiscal year, or that such amount was not increased to a degree commensurate with the current needs for vocational education in the State. In the event of such a disclosure the Comissioner or his designated representatives shall obtain such further information as he may require to determine whether a State has in fact complied with such policies and procedures.

§ 104.7 Cooperative arrangements with State employment service.

The State plan shall provide for cooperative arrangements with the public employment service system in the State. Such arrangements shall be approved by the State board and by the State head of such system. Under such cooperative arrangements:

(a) The employment offices will make available to the State board and local educational agencies occupational information regarding reasonable present and future prospects of employment in the community and elsewhere. The State plan shall provide how such information, along with all other pertinent information available, will be considered by the State board or local educational agencies in providing vocational guidance and counseling to students and prospective students and in determining the occupations for which persons

are to be trained, and in providing such training.

(b) Guidance and counseling personnel of the State board and local educational agencies working through the cooperative arrangement will make available to the local public employment offices information regarding the occupational qualifications of persons having completed or completing vocational education courses in schools. The State plan shall provide how such information will be considered in the occupational guidance and placement of such persons.

§ 104.8 Cooperative arrangements with other agencies.

In order to provide all individuals with ready access to suitable vocational education of high quality with offerings which have been developed in light of actual or anticipated opportunities for employment, the State plan may provide for cooperative arrangements between the State board or local educational agency, or both, and other public or non-public agencies, institutions and organizations concerned with vocational education programs under the State plan, or having knowledge of or information concerning individuals who have received, are receiving, or are in need of receiving vocational education.

§ 104.9 Metropolitan and other special areas.

(a) The State plan may provide for special arrangements for metropolitan and other areas having special vocational education needs which are not otherwise being sufficiently satisfied. Such arrangements may contain (1) special administrative arrangements and communications channels between the State board and local educational agency or group of agencies in such areas as may be required for the effective development and administration of vocational education programs in such areas, (2) special administrative relationships and communications channels between the local education agency or group of agencies in such areas and the U.S. Office of Education, and (3) special provisions for such agency or group of agencies designed to enable the vocational education needs of persons in such areas and communities to be satisfied more adequately, without being inconsistent with the State board's general responsibility for the administration and supervision of vocational education programs within the State.

(b) Upon entering into a special arrangement between the State board and a local educational agency or group of agencies pursuant to paragraph (a) of this section, the State board shall submit to the Commissioner an appendix to the State plan indicating

(1) The location and extent of each metropolitan or other area covered by such an arrangement, and

(2) The provisions of such special arrangement including whatever special administrative relationships and communications channels between such agency or group of agencies and the U.S. Office of Education have been organized.

(c) Provisions in the State plan or its appendix pursuant to paragraphs (a) and (b) of this section shall be kept current in accordance with the procedure outlined in § 104.2(b).

§ 104.10 Cooperative agreements with other States.

In order to provide all individuals with ready access to suitable vocational education of high quality with offerings which have been developed in light of actual or anticipated opportunities for employment, the State plan may provide that the State enter into a cooperative arrangement with one or more other States for the conduct and administration of vocational education programs, services, and activities described in § 104.13 to § 104.26. The State plan shall describe the policies and procedures of the State for approval of and participation in such arrangements. Copies of such cooperative agreements (including joint fiscal arrangements, if any) shall be forwarded by each participating State to the U.S. Office of Education for filing with the State plan.

§ 104.11 Minimum qualifications of personnel.

The State plan shall describe the duties and contain the minimum qualifications for all professional personnel having responsibilities in connection with vocational education programs under the State plan. Such minimum qualifications shall apply to all personnel engaged directly or substantially in activities for which funds are used under the State plan regardless of whether there is to be Federal financial participation in their salaries. Such minimum qualifications shall contain standards of experience and education, and other requirements which are reasonable in relation to the duties to be performed.

§ 104.12 State reports.

The State plan shall provide that the State board will make and submit to the Commissioner the reports described in § 104.55, and such other reports in such form and containing such information as the Commissioner may from time to time reasonably require to carry out his functions under the Act; and will keep such records, afford such access thereto and comply with such other provisions as the Commissioner may find necessary to assure the correctness and verification of such reports.

VOCATIONAL EDUCATION PROGRAMS AND SERVICES

§ 104.13 Programs for vocational instruction.

The State plan shall outline and describe the State board's programs for vocational instruction with information on the types of schools, classes, and programs in which instruction is provided, and the standards and requirements of schools or classes providing such instruction which is of high quality and suited to the needs, abilities, and interests of the students. Among such standards and requirements, the State plan shall provide for the following:

(a) *Arrangements for instruction.* (1) Such instruction will be provided either (i) by the State board or local educational agency in schools or classes conducted under public supervision and control meeting the criteria of subparagraph (2) of this paragraph, or (ii) with respect to funds provided under the 1963 Act, under contract with the State board or a local educational agency.

(2) To be under "public supervision and control," a school or class must meet the following criteria:

(i) It is organized and operated under the direction of the State board or a local educational agency responsible for expenditure of public school funds for vocational eduaction in the State or community, and

(ii) The teachers are employed as public school teachers under the conditions generally applicable to the employment of other public school teachers employed by the State board or local educational agency responsible for vocational education, and

(iii) Officials on the staff of the State board or a local educational agency responsible for vocational education have full charge of

(*a*) Employing teachers

(*b*) Determining whether pupils qualify for admission to classes

(*c*) Determining content and organization of courses and curricula.

(3) If the instruction is provided under contract with the State board or local educational agency, such arrangements will comply with the provisions in § 104.14.

(b) *Objective of instruction.* (1) Vocational instruction will be designed to fit individuals for employment in a recognized occupation. Such instruction will include vocational or technical training or retraining for (i) those preparing to enter a recognized occupation upon the completion of instruction and (ii) those who have already entered an occupation, but desire to upgrade or update their occupational skills and knowledge in order to achieve stability or advancement in employment. When supported by funds allotted under section 3 of the 1963 Act, vocational instruction shall be designed only to fit individuals for gainful employment.

(2) All students receiving vocational instruction in perparatory classes under the State plan will have an occupational objective which is a matter of record. This objective may either be a specific recognized occupation or a cluster of closely related occupations in an occupational field.

(c) *Occupational orientation of instruction.* (1) The instruction will be related to the occupation for which the student is being trained, except that:

(i) Funds allocated under section 3 of the 1963 Act may be used to provide instruction necessary for a bona fide vocational student to benefit from instruction related to the occupation for which he is being trained, and

(ii) Funds allotted under the Smith-Hughes Act and Title I of the George-Barden Act for certain fields of vocational education may be used for part-time general continuation classes as provided for in § 104.73(a)(3).

(2) As used in this section:

(i) "Instruction related to the occupation for which the student is being trained" means instruction which is designed to fit individuals for employment in a recognized occupation and which is especially and particularly suited to the needs of those engaged in or preparing to engage in such occupation. Such instruction shall include classroom instruction and field, shop, laboratory, cooperative work, or other occupational experience.

(ii) "Instruction which is necessary for a student to benefit from vocational instruction" means instruction which is designed to enable individuals to profit from instruction related to an occupation for which he is being trained by correcting whatever educational deficiencies or handicaps prevent him from benefiting from such instruction. Such instruction must be provided in courses which are an integral part of the vocational education program in which the student is enrolled.

(d) *Non-reimbursable instruction*—(1) *General.* Funds under the Acts will be available for instruction in general education subjects only if such subjects fit in one of the two categories specified in paragraph (c)(1) of this section. A program of vocational instruction under the State plan may be supplemented with such other general education subjects as may be necessary to develop a well-rounded individual.

(2) *Professional.* Funds under the 1963 Act will not be available for instruction which is designed to fit individuals for employment in recognized occupations which are generally considered to be professional or as requiring a baccalaureate or higher degree. The Commissioner has determined and specified the following as examples of occupations which are generally considered professional or as requiring a baccalaureate or higher degree, and are therefore excluded from those occupations for which instruction may be provided: [1]

Accountants and auditors.
Actors and actresses.
Architects, artists and sculptors.
Athletes, professional.
Authors, editors, and reporters.
Clergymen.
Engineers, professional.
Lawyers.
Librarians, archivists and curators.
Life scientists, including agronomists, biologists and psychologists.
Mathematicians.
Medical and health professions, including physicians, surgeons, dentists, osteopaths, veterinarians, pharmacists and professional nurses.
Musicians.
Physical scientists, including chemists, physicists and astronomers.
Social and welfare workers.
Social scientists, including economists, historians, political scientists, and sociologists.
Teachers and other educators.

The above is not intended to exclude from vocational instruction those semi-professional, technical, or other occupations which are related to those listed, but which do not themselves require a baccalaureate degree.

[1] Tentative list of professional occupations.

(3) Funds under the Smith-Hughes and George-Barden Acts will not be available for instruction offered or designated by the institution offering it as providing credit leading to a baccalaureate or higher degree; or, if offered by an institution which does not grant a baccalaureate degree, is applied for credit toward such a degree as indicated by transfer policies of baccalaureate degree granting institutions to which students of the offering institution generally transfer.

(e) *Offerings of vocational instruction.* In establishing, continuing, or terminating a program of vocational instruction, consideration will be given to the following:

(1) The interest, needs, and abilities of all persons in the community or area who have need for, desire, and can benefit from the instruction;

(2) The need and opportunity in the employment market for the occupational skills and knowledge for which instruction is being provided.

(f) *Access to vocational instruction offered.* (1) In determining which individuals should have access to programs of vocational instruction offered within the State, consideration will be given to all individuals residing in the State who are available and qualified to receive such instruction in accordance with the standards and requirements in the State plan. If it is not economically or administratively feasible to provide each type of program in all areas and communities of the State served by a local educational agency, individuals residing in an area or community served by one local educational agency will be permitted to enroll, in accordance with policies and procedures established by the State board or the local educational agencies involved, in a program of instruction offered by another local educational agency, so long as

(i) The local educational agency serving the area or community in which the individual resides does not offer a reasonably comparable type of program.

(ii) The student is otherwise available and qualified to receive such instruction.

(iii) Facilities are reasonably available for additional enrollees in the program offered by the receiving local educational agency.

(2) To the extent that facilities are available, each type of program of vocational instruction offered by the State board will be made available to all individuals residing in the State, and each program of instruction offered by a local educational agency will be made available to all individuals residing in the district or community served by the local educational agency offering such instruction, if such individual is otherwise available and qualified to receive such instruction in accordance with the standards and requirements in the State plan. The fact that an individual resides in a certain attendance area within such district or community shall not preclude his access to a program of instruction available to other individuals residing in other attendance areas within the district or community, if access to a reasonably comparable program is not otherwise available to him.

(g) *Admission of students.* (1) Individuals will be admitted for enrollment in classes and provided instruction for each type of occupation or occupational field on the basis of their potential for achieving competence in the occupation or occupational field through such instruction, except as provided in subparagraph (2) of this paragraph.

(2) Individuals will be admitted to and provided instruction in special classes for persons with special needs if such individuals have academic, socio-economic, and other handicaps that have prevented or would prevent them from succeeding in the other vocational education programs and therefore require instruction which is especially designed to enable such individuals to develop competencies adequate for employment in a recognized occupation.

(h) *Soundness and quality of instruction.* The following standards will be followed to assure soundness and quality of instruction designed to fit individuals for an occupational objective:

(1) The program of instruction will be based on a consideration of the skills and knowledge required in the occupation for which the instruction is being provided, and includes a planned logical sequence of those essentials of education or experience (or both) deemed necessary for the individual to meet his occupational objective.

(2) The program of instruction will be developed and conducted in consultation with potential employers and other individuals or groups of individuals having skills in and substantive knowledge of the occupation or occupational field representing the occupational objective.

(3) The program of instruction will include the most up-to-date knowledge and skills necessary for competencies required in the occupation or occupational field in which the individual is being prepared, or upgraded, or updated.

(4) The program of instruction will be sufficiently extensive in duration and intensive within a scheduled unit of time to enable the student to develop competencies necessary to fit him for employment in the occupation or occupational field for which he is being trained.

(5) The program of instruction will combine and coordinate related instruction with field, shop, laboratory, cooperative work, or other occupational experience which (i) is appropriate to the vocational objective of the students, and (ii) is of sufficient duration to develop competencies necessary to fit him for employment in the occupation or occupational field for which he is being trained, and (iii) is supervised, directed, or coordinated by a person qualified under the State plan. See special requirements for classes providing cooperative work experience in § 104.16.

(i) *Adequate facilities and materials for instruction.* Classrooms, libraries, shops, laboratories, and other facilities (including instructional equipment, supplies, teaching aids, and other materials) will be adequate in supply and quality to

meet the standards approved by the State board so that such facilities enable those who are to be trained to meet the occupational objective for which the education is intended. If the State board or local educational agency cannot provide such facilities and materials, but they are available in a business or industrial or other establishment, the State plan may provide for vocational instruction in such establishments provided that such instruction meets all the standards and requirements of the State plan. See § 104.48 for provisions governing use of funds for instructional equipment, supplies, and teaching aids, and §§ 104.22, 104.23, and 104.44 for provisions governing use of funds for construction of area vocational education school facilities.

(j) *Qualified teachers and supervisors.* The instruction will be conducted and supervised by qualified teachers and supervisors as provided for in § 104.11. To the extent necessary to provide for a sufficient supply of qualified teachers and supervisors in the State, the program of instruction shall be accompanied by a teacher training program as provided in § 104.19.

(k) *Vocational guidance and counseling.* The program of instruction will provide for vocational guidance and counseling personnel and services sufficient to enable such a program to meet and continue to meet the standards and requirements of this section. See § 104.18 for provisions governing the use of funds for vocational guidance programs.

(l) *Youth organizations.* When the activities of vocational education youth organizations complement the vocational instruction offered, such activities will be supervised by persons who are qualified as vocational education teachers or supervisors within the State.

(m) *Evaluation.* Evaluation of the program of instruction will be made periodically on the State level and continuously on the local level with the results being used for necessary change or improvement in the program through experimentation, curriculum improvement, teacher training and other means. The results of such evaluation, including changes and improvements, shall be described in the State's annual descriptive report submitted pursuant to § 104.55(b) and such other reports which the Commissioner may require.

§ 104.14 Vocational instruction under contract.

(a) If any portion of the program of instruction is provided by public or nonpublic agencies or institutions under contract with a State board or local educational agency pursuant to § 104.13(a)(1)(ii), the State plan shall include a provision for a written contract describing the portion of instruction to be provided by such agency or institution and incorporating the standards and requirements of vocational instruction set forth in the State plan and prescribed by the State board. The State board shall determine in advance of such contract that (1) the contract is in accordance with State and local law, and (2) the instruction to be provided under contract will be conducted as a part of the vocational education program of the State and will constitute a reasonable and prudent use of funds available under the State plan. Such contracts shall be reviewed at least annually by the parties concerned.

(b) All contracts described under paragraph (a) of this section shall include an assurance that Federal, State, and local funds paid over to a contracting agency or institution will be used only to lower the rate of or eliminate tuition, fees and other charges which otherwise would be collected from persons benefiting from such portion of the program.

§ 104.15 Apprenticeship program.

The State plan may provide related vocational instruction to apprentices which is supplemental to their on-the-job training. The term "apprentice" means a worker who is learning a recognized apprenticeable occupation in accordance with a written apprentice training agreement between the apprentice and an individual employer or group of employers which either provides for or makes reference to a document which provides for (a) a given length of planned work experience through employment on the job, supplemented by appropriate related instruction, and (b) other recognized standards and requirements of apprenticeship.

§ 104.16 Cooperative programs.

In providing cooperative work experience pursuant to § 104.13(h)(5), the State plan shall provide for cooperative programs for persons enrolled in a school who, through a cooperative arrangement between the school and employers, receive part-time vocational instruction in the school and on-the-job training through part-time employment. When vocational instruction is provided in such programs meeting the standards and requirements in § 104.13, the State plan shall provide that such classes be organized through cooperative arrangements (preferably in writing) between the schools providing vocational instruction to student-learners in the class and the employers providing on-the-job training through part-time employment of such student-learners. Such arrangements shall provide for (a) the employment of student-learners in conformity with Federal, State, and local laws and regulations and in a manner not resulting in exploitation of such student-learner for private gain, (b) an organized program of training on the job, and (c) supplemental vocational instruction in school.

§ 104.17 Business and office education.

Pursuant to the general State plan requirements of vocational instruction in § 104.13, the State plan shall require that instruction in business and office occupations be provided through courses and curricula which include both the subject matter and practical experience needed in the occupations for which instruction is provided.

§ 104.18 Vocational guidance and counseling services.

(a) The State plan shall provide for such vocational guidance and counseling personnel and services as are required by the program of instruction pursuant to § 104.13(k) and describe such provisions on both the State and local levels with information on the types of expenditures to be included and the standards and requirements of vocational guidance and counseling services which are designed to (1) identify and encourage the enrollment of individuals needing vocational education, (2) provide the individuals with information necessary for realistic vocational planning, (3) assist them while pursuing the plan, (4) aid them in vocational placement, and (5) conduct follow-up procedures to determine the effectiveness of the vocational instruction and guidance and counseling program.

(b) The State plan shall provide that the State board maintain an adequate staff to (1) develop, secure, and distribute occupational information; (2) provide consultative services concerning the vocational aspect of guidance; and (3) give leadership to the promotion and supervision of better vocational guidance and counseling services at the local level. In carrying out these responsibilities, the State board shall utilize the resources of the State employment service pursuant to the cooperative arrangements provided for in § 104.7.

§ 104.19 Program of teacher training.

(a) The State plan shall provide for teacher training programs (both preemployment and in-service) to the extent necessary to provide qualified vocational education personnel. The State plan shall describe the State board's plans for the development of teacher training programs with information on the types of expenditures and the types of teacher training programs to be included, and the standards and requirements designed to develop and maintain programs of such character and efficiency as are needed to provide an adequate supply of qualified teachers and other vocational education personnel.

(b) *Arrangements for teacher training.* The State plan shall provide that (1) teacher training will be provided either by (i) the State board or (ii) public or, in the case of teacher training supported under the George-Barden and the 1963 Acts, nonpublic agencies or institutions.

(2) When teacher training is provided by an agency or institution other than the State board, the State plan shall provide for cooperatively developed written agreements between the State board and the agency or institution providing such training. Such agreements shall describe the program for teacher training included in the State plan developed by the State board in cooperation with such agency or institution, and the policies and procedures which the State board and the agency or institution agree to utilize in evaluating the effectiveness of the programs so described.

(c) *Eligibility of enrollees.* (1) The State plan shall provide that vocational teacher training will be offered only to persons who are teaching or are prepar-

ing to teach vocational education students or who are undertaking or are preparing to undertake other professional duties and responsibilities in connection with vocational education programs under the State plan to whom such education would be useful professionally.

(2) Vocational teacher training supported with funds under Smith-Hughes, George-Barden and supplementary Acts, will be given only to persons who have had adequate vocational experience or contact in the line of work for which they are preparing themselves as teachers and other vocational education personnel, or who are acquiring such experience or contact as a part of their training.

§ 104.20 Research, demonstration and experimental programs.

(a) The State plan shall describe the provisions for research, demonstration and experimental programs designed to improve the quality of vocational education programs authorized under the acts and provided for in the State plan. (For provisions governing special grants by the Commissioner for research and training programs and experimental, developmental, or pilot programs under section 4(c) of the 1963 Act, see provisions in 45 CFR Part 105A.) The State plan shall describe the policies and procedures to be followed by the State board in approving such programs and the methods to be used in evaluating their results. Such programs shall meet the standards and requirements set forth in the acts, regulations, and State plan, which are applicable to the activities affected by such programs, except to the extent provided in paragraph (b) of this section.

(b) A State may, in special cases as a part of program development:

(1) Depart from the standards and requirements in its State plan referred to in paragraph (a) of this section, if (i) the expenditures are directed toward carrying out the purposes of the acts and the regulations and (ii) the State board approves each program and promptly furnishes the Commissioner information regarding the purpose and duration of the program and the standards or requirements to be waived.

(2) Depart from the standards and requirements in the regulations of this part, if, in addition to the two conditions set forth in subparagraph (1) of this paragraph, the Commissioner approves each such program and notifies the State boards of all States.

§ 104.21 Administration, supervision, and other ancillary services.

The State plan shall provide for and describe such other ancillary services and activities as are required to assure quality in all vocational education programs which are realistic in terms of actual or anticipated employment opportunities and suited to the needs, interests, and abilities of those being trained. Such other ancillary services and activities may include State and local administration, supervision, and evaluation of vocational education programs and services, and development, dissemination, and evaluation of curricula and instructional materials. (See § 104.4 regarding State Board staff.)

CONSTRUCTION

§ 104.22 Policies and procedures for approval of area vocational education school facility projects.

The State plan shall set forth the following policies and procedures to be followed by the State board and local educational agencies in approving and undertaking area vocational education school facility projects:

(a) The procedure to be followed in the application process and State level actions on them.

(b) The criteria to be followed by the State board in determining relative priorities of projects, and the procedures to be followed in applying those criteria in determining which project will be approved by the State board.

(c) The terms and conditions required by the State board for approval of projects and the procedures to be followed by the State board in assuring compliance with such terms and conditions by the State board or local educational agency administering the facility and the contractor or subcontractor hired to construct the facility (see § 104.23).

§ 104.23 Terms and conditions for approval of projects.

In prescribing terms and conditions for the approval of projects for Federal financial participation pursuant to § 104.22(c), the State board shall require the following assurances:

(a) That the facility will be functional and will meet the needs of those persons and communities to be served.

(b) That the projects will be undertaken in an economic manner and will not be elaborate or extravagant in design or materials.

(c) That sufficient funds will be available to meet the State and local share of the cost of constructing the facility.

(d) That, when construction is completed, sufficient State and local funds will be available for effective use of the facility for the purposes for which it is being constructed.

(e) That the interest of the State board or the local educational agency in the facility and in the land on which the facility is located will be sufficient to assure undisturbed use and possession for the purpose of construction and operation of the school facility covered in the project during the expected usable life of such facility.

(f) That representatives of the U.S. Office of Education and such other persons as the Commissioner may designate will have access at all reasonable times to the project wherever it is in preparation or progress, and the contractor will provide proper facilities for such access and inspection.

(g) That all laborers and mechanics employed by contractors and subcontractors on all construction projects assisted under the 1963 Act will be paid wages at rates not less than those prevailing as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (Act of March 3, 1931, P.L. 798, 71st Congress, 46 Stat. 1494 as amended, 40 U.S.C. 276a–276a–5, and 29 CFR Part 1 (See 29 F.R. 95); and shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours Standards Act (P.L. 87–581, 76 Stat. 357, 40 U.S.C. 327–332), that such contractors and subcontractors shall comply with the provisions of 29 CFR Part 3 (See 29 F.R. 97), and that all construction contracts and subcontracts shall incorporate the contract clauses required by 29 CFR 5.5 (a) and (c) (See 29 F.R. 100, 101).

WORK-STUDY PROGRAMS

§ 104.24 Supplement to State plan.

All work-study programs for vocational education students supported by a State's allotment of Federal funds under section 13(a) of the 1963 Act shall be included in the State plan pursuant to § 104.2 of these regulations and shall be governed by all provisions contained in such plan applicable to work-study programs. As a condition for the allotment of Federal funds under section 13(a) of the 1963 Act, the State board is required to include in its plan or submit to the Commissioner an amendment to the State plan containing the provisions required in § 104.25 and § 104.26. Such amendment shall be submitted and approved pursuant to § 104.2(b). (See § 104.45 for allowable expenditures of work-study programs.)

§ 104.25 Requirements of work-study program.

The State plan shall provide that a work-study program meet the following requirements:

(a) *Administration.* The work-study program will be administered by the local educational agency and made reasonably available (to the extent of available funds) to all qualified youths, in the area served by such agency, who are able to meet the requirements in paragraph (b) of this section.

(b) *Eligible students.* Employment under the work-study program will be furnished only to a student who (1) has been accepted for enrollment or, if he is already enrolled, is in good standing and in full-time attendance as a full-time student in a program which meets the standards prescribed by the State board and the local educational agency for vocational education programs under the 1963 Act; (2) is in need of the earnings from such employment to commence or continue his vocational education program; and (3) is at least fifteen years of age and less than twenty-one years of age at the date of the commencement of employment and is capable in the opinion of the appropriate school authorities of maintaining good standing in his school program while employed under the work-study program.

(c) *Limitation on hours and compensation.* No student will be employed more than fifteen hours in any week during which classes in which he is enrolled are in session, or for compensation which exceeds $45 per month or $350 per academic year or its equivalent, unless the student is attending a school which is not within reasonable commuting distance from his house, in which case

his compensation may not exceed $60 per month or $500 per academic year or its equivalent.

(d) *Place of employment.* Employment under work-study programs will be for the local educational agency or for some other public agency or institution (Federal, State, or local) pursuant to a written arrangement between the local educational agency and such other agency or institution, and work so performed will be adequately supervised and coordinated and will not supplant present employees of such agency or institution who ordinarily perform such work. In those instances where employment under work-study programs is for a Federal agency or institution, the written arrangement between the local educational agency and the Federal agency or institution will state that students so employed are not Federal employees for any purpose.

(e) *Maintenance of effort.* In each fiscal year during which the work-study program remains in effect, the local educational agency will expend for employment of its students an amount in State or local funds (in addition to those required for matching Federal funds) that is at least equal to the average annual expenditure for work-study programs of a similar nature during the three fiscal years preceding that in which the plan provisions for its work-study program are approved.

§ 104.26 Approval of work-study programs.

The State plan shall: (a) Set forth the policies and procedures to be followed by the State board in approving work-study programs submitted by local educational agencies and meeting the requirements of § 104.25; (b) set forth principles for determining the priority to be accorded applications from local educational agencies for work-study programs, giving preference to applications submitted by local educational agencies serving communities having substantial numbers of youths who have dropped out of school or who are unemployed; and (c) provide, insofar as financial resources are available, for the undertaking of such programs in the order determined by the application of such principles.

Subpart C—Federal Financial Participation

General

§ 104.27 Application of Federal requirements.

Federal funds may be used to share only in expenditures which are made in accordance with the State plan and which meet the requirements of the acts and the regulations in this part. State and local funds used to match these Federal funds must also meet such requirements. As used in these regulations, phrases such as "expenditures may be made under the plan . . ." or "funds may be expended . . ." mean that the Federal allotments are available for payment of the Federal share thereof.

§ 104.28 Transfer of allotments.

(a) Any portion of any amount alloted to a State in the current fiscal year for use in a particular field of vocational education under the Smith-Hughes, George-Barden, and supplementary vocational education acts may, upon the Commissioner's approval as described in paragraph (c) of this section, be transferred to or combined with (1) one or more of the other allotments to such State for the same fiscal year for use in a particular field of vocational education under the Smith-Hughes, George-Barden, or supplementary acts, or (2) the allotment to such State in the same fiscal year under section 3 of the 1963 Act. The amount so transferred is then subject to the same conditions and requirements as the allotment to which it is transferred, and is no longer subject to the conditions and requirements as the allotment from which it was transferred. Thus, any reference in these regulations to "funds allotted under the Act or Acts" refers also to funds transferred to the same allotment under such Act or Acts.

(b) A State board desiring to transfer funds from one allotment to another shall submit to the Commissioner a request for such a transfer. The annual estimate of the State board submitted pursuant to § 104.55(a) may include a request for any desired transfer of funds from one allotment to another, or special requests for that purpose may be made to the U.S. Office of Education subsequent to the submission of the annual estimate. Such requests shall indicate how the current annual estimate will be affected by the transfer and will provide information to permit application of the following criteria:

(1) The transfer will provide vocational training which is more realistic in the light of actual or anticipated manpower needs and employment opportunities.

(2) The transfer will more nearly achieve the objective that all persons in all groups and in all communities of the State will have access to vocational training.

(3) The transfer will assure vocational training of high quality.

(4) The transfer will provide vocational training which is suited to the needs, abilities, and interests of the students who would benefit from such training.

If the State board requests transfer of funds to allotments under section 3 of the 1963 Act, the request shall indicate how the funds will be allocated to the various uses set forth in § 104.41(b) or in section 4(a) of the 1963 Act.

(c) The Commissioner shall approve the State board's request for transfer of funds if he is satisfied that the transfer will promote the objectives set forth in paragraph (b) of this section. Such approval or disapproval shall be based upon the information submitted by the State board with its request pursuant to paragraph (b) of this section, or any other estimates, reports, and information available to the Commissioner which have been submitted by the State board or obtained by the Commissioner through independent investigation.

(d) For the purposes of this section, an allotment under the Smith-Hughes, George-Barden, or supplementary acts from which funds may be transferred refers to the State's share of each appropriation of Federal funds under these Acts.

§ 104.29 Date of allowable expenditures.

Since the Federal Government participates only in amounts expended under the State plan, Federal financial participation shall be available only for expenditures which are made after the effective date of the State plan (as defined in § 104.2(a)), except as provided with respect to allowable costs under the 1963 Act for construction as specified in § 104.44, and work-study programs as specified in § 104.45.

§ 104.30 Allotment availability.

Federal funds allotted or reallotted to a State under the acts shall be available only for expenditure for programs and activities carried on under the plan during the fiscal year in which such allotments or reallotments are made. (See § 104.33.)

§ 104.31 Application of State rules.

Subject to the provisions and limitations of the acts and regulations in this part, Federal financial participation under the State plan shall be available only for expenditures made in accordance with applicable State and local laws, rules, regulations, and standards governing expenditures by the States and their political subdivisions, or agencies thereof.

§ 104.32 State fiscal and accounting procedures.

(a) *General.* The State plan shall set forth such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the States, including such funds paid by the State to local educational agencies. Such procedures shall be in accordance with applicable State laws and regulations which shall be set forth in the plan or an appendix thereto. Accounts and supporting documents relating to any vocational education program involving Federal financial participation shall be adequate to permit an accurate and expeditious audit of the program.

(b) *Audit of local expenditures.* All expenditures of local educational agencies claimed for Federal financial participation shall be audited either by the State or by appropriate auditors at the local level. The State plan shall indicate how the expenditures of local educational agencies and other agencies participating in the State plan will be audited; and, if the audit is to be carried out at the local level, how the State agency will secure information necessary to assure proper use of funds expended under the Acts by such local educational agencies.

§ 104.33 Determination of fiscal year's allotment to which expenditure is chargeable.

(a) Each allotment or reallotment to a State under the acts is made with respect to a fiscal year commencing on July 1 and ending the following June 30. An expenditure made under the State plan will be charged to that fiscal year in which the expenditure was incurred, as determined pursuant to paragraphs (b) and (c) of this section.

(b) State and local laws and regulations shall be followed by the State in determining to which Federal fiscal year an expenditure by the State board, local educational agency, or other agency or institution concerned with vocational education, is chargeable for the purpose of earning the Federal allotment. Each State, therefore, shall use the accounting basis applicable to its State or local accounting. The State plan shall specify for State and for local expenditures the particular accounting basis to be so used and cite the authority under State law for such basis. If the State or local educational agencies utilize other than a cash accounting basis, the State plan shall indicate the time period or other factors governing the liquidation of obligations. If the State or local educational agency is on an obligation basis, an obligation shall mean only a bona fide commitment which is supported by a contract or other evidence of legal liability consistent with State purchasing procedures.

(c) For the purpose of the regulations of this part, an "expenditure" shall not include administrative approval of a program or project by the State board or local educational agency, or the advance or reimbursement by the State board of funds which are or will be expended under the State plan.

§ 104.34 Payment of funds to local educational agency.

The State plan shall provide whether funds are paid to local educational agencies or other agencies and institutions concerned with vocational education under the State plan on the basis of either (a) a reimbursement for actual expenditures already incurred or (b) an advance prior to the expenditure of funds, or both. Under the Smith-Hughes and title I of the George-Barden Acts, no funds may be used to make payments in advance of expenditures.

§ 104.35 Proration of costs.

To cover situations where an expenditure is only partly attributable to an eligible purpose or activity under the State plan or where an expenditure is attributable to two or more eligible purposes or activities, the State plan shall specify a justifiable basis for identifying such expenditures and the method to be used in prorating the expenditure between the eligible and non-eligible purposes or activities or among the various eligible and non-eligible activities, as the case may be. The State board shall also maintain records, documented on an after-the-fact basis, to substantiate the proration of expenditures for applicable items such as salaries, travel, rent, supplies, and equipment. (See also § 104.44 (b) and (c).)

§ 104.36 Fiscal audit and retention of records.

All fiscal transactions by a State which involve Federal funds under the acts are subject to audit by the Commissioner in order to determine whether expenditures have been made in accordance with the acts, the regulations in this part, and the State plan. State and local educational agencies receiving grants under the acts shall keep accessible and intact all records supporting claims for Federal grants or relating to the accountability of the grantee for expenditures of Federal grants and of matching funds, until notified of the completion of program reviews and of the fiscal audit covering such records. Inventory and records supporting accountability for and disposition of school facilities constructed and nonconsumable equipment costing $100 or more purchased under the State plan (whether from Federal or matching funds) shall be maintained until notified in writing of the completion of the review and audit covering the disposition of such school facilities and equipment.

§ 104.37 Disposition of facilities and equipment.

(a) Whenever area vocational education school facilities or items of equipment, each initially costing $100 or more, in which cost the Federal Government has participated (whether with funds derived from Federal grants or State or local matching funds), are sold or no longer used for a purpose permitted under the acts, the Federal Government shall be credited with its proportionate share of the value of such facilities and equipment at that time, the value being determined on the basis of the sale price in the case of a bona fide sale or on the fair market value in the case of discontinuance of use or diversion for other than vocational education purposes.

(b) Inventories and records are required to be kept for all area vocational education school facilities or items of equipment, as described in paragraph (a) of this section. Although the title to such facilities and equipment may rest with either the State board or a local educational agency, the State board is responsible for having available in the State office information sufficient for a determination of whether such facilities and equipment continue to be used for a purpose provided for under the Acts.

MATCHING REQUIREMENTS AND PURPOSES

§ 104.38 Matching of Federal funds; amounts required.

(a) The acts require that, for each dollar of Federal funds expended under the State plan, at least a dollar of State or local funds, or both, be expended for the same purpose, except as provided in paragraph (b) of this section.

(b) In fiscal years 1965 and 1966, Federal funds allotted under section 13 (a) (2) of the 1963 Act for work-study program (see § 104.41(c)) need not be matched by State or local funds. In fiscal years 1967 and 1968, every three dollars of Federal funds must be matched by one dollar of State or local funds.

§ 104.39 Sources of matching funds.

(a) Only public funds may be used for expenditures under the plan. In addition to appropriated funds, such funds may include funds derived from donations by private organizations or individuals which are deposited in accordance with State or local law to the account of the State board or local educational agency without such conditions or restrictions on their use as would negate their character as public funds.

(b) Tuition and fees collected from students enrolled in a course may not be used as State or local funds for the purpose of matching the Federal funds.

§ 104.40 Basis for matching.

(a) Except as provided in paragraph (b) of this section, matching of Federal funds with State or local funds for each of the purposes set forth in § 104.41 may be on a State-wide basis. It is not necessary that Federal funds be matched by State or local funds for each individual school or class—only the totals for the State are to be considered.

(b) Matching of Federal funds allocated for construction of area vocational education school facilities (See § 104.41 (b) (5)) must be on a project basis. This means that every dollar of Federal funds must be matched with a dollar of State or local funds for each area vocational education school facility project supported by Federal funds in the State.

(c) State or local funds used to match Federal funds may be expended only for programs which meet all the conditions and requirements of the acts, regulations, and State plan. This means that every school, class, or other vocational education activity supported in whole or in part by State or local funds used for matching must meet the same conditions and requirements as those supported by Federal funds. The State's annual report submitted pursuant to § 104.55(a) shall indicate and describe the expenditures of Federal, State, or local funds used for matching Federal funds.

§ 104.41 Matching purposes.

(a) In matching Federal funds with State or local funds, a "matching purpose" means an area of activities or of expenditures within which Federal funds allotted to the States under the acts must be matched by State and local funds in accordance with the provisions of § 104.38. A matching purpose may either embrace (1) an entire allotment of Federal funds to the State under the acts, or (2) a portion of such allotment which the acts require to be applied only to certain types of activities or expenditures. (See § 104.42.)

(b) Under the provisions of section 4(a) of the 1963 Act, the matching purposes are:

(1) Vocational education for persons attending high school.

(2) Vocational education for persons who have completed or left high school and who are available for full-time study in preparation for entering the labor market.

(3) Vocational education for persons who have already entered the labor market and who need training or retraining to achieve stability or advancement in employment.

(4) Vocational education for persons who have academic, socio-economic, or other handicaps that prevent them from succeeding in the regular vocational education programs provided for in subparagraphs (1), (2), and (3) of this paragraph.

(5) Construction of area vocational education school facilities.

(6) Ancillary services and activities to assure quality in all vocational education programs.

(c) Under the provisions of section 13 of the 1963 Act, the matching purposes are:

(1) Compensation of students in work-study programs.

(2) Development and administration of State plan provisions for work-study programs.

(d) Under the provisions of the George-Barden Act, the matching purposes are:

(1) Vocational education in agriculture.

(2) Vocational education in home economics preparing students for gainful employment.

(3) Vocational education in home economics preparing students for useful employment in the home.

(4) Vocational education in trades and industry.

(5) Vocational education in distributive occupations.

(6) Vocational education in fishery trades and distributive occupations therein.

(7) Vocational education in health occupations under title II of the George-Barden Act.

(8) Technical education programs under title III of the George-Barden Act.

(e) Matching purposes under the Smith-Hughes Act are:

(1) Salaries of teachers, supervisors, or directors of agricultural subjects.

(2) Salaries of teachers of trade and industrial subjects.

(3) Salaries of teachers of home economics subjects preparing students for gainful employment in (i) part-time schools or classes or (ii) other than part-time schools or classes.

(4) Salaries of teachers of home economics subjects preparing students for useful employment in the home in (i) part-time schools or classes or (ii) other than part-time schools or classes.

(5) Maintenance of training of teachers, supervisors, or directors of agricultural subjects.

(6) Maintenance of training of teachers of trade and industrial subjects.

(7) Maintenance of training of teachers of home economics subjects.

§ 104.42 Matching purposes within specific allotments of Federal funds.

(a) *Allotment under section 3 of the 1963 Act.* (1) Funds allotted to the States under section 3 of the 1963 Act may be allocated by the States to each of the matching purposes set forth in § 104.41(b) in accordance with the policies and procedures set forth by the State board in its State plan pursuant to § 104.6, provided that

(i) At least 33⅓ percent of each State's allotment for any fiscal year ending prior to July 1, 1968, and at least 25 percent of each State's allotment for each subsequent fiscal year may be used only:

(*a*) For vocational education for persons who have completed or left high school and who are available for full-time study in preparation for entering the labor market as specified in § 104.41(b)(2); or

(*b*) For constructing area vocational education school facilities as specified in § 104.41(b)(5); or

(*c*) For both.

(ii) At least 3 percent of each State allotment may be used only for ancillary services and activities as specified in § 104.41(b)(6).

(2) The Commissioner may, upon the request of a State, permit the State to use a smaller percentage of its allotment in any fiscal year for one or more of the matching purposes specified in subparagraph (1) of this paragraph if he determines that such smaller percentage will adequately meet such purposes in the State.

(b) *Allotment under section 13 of the 1963 Act.* Funds allotted to the States under section 13 of the 1963 Act for work-study programs may be allocated by the States to each matching purpose set forth in § 104.41(c), provided that no more than 1 percent of such allotment or $10,000 (whichever is the greater) may be used for development and administration of the supplementary State plan as specified in § 104.41(c)(2).

(c) *Allotments under Smith-Hughes and George-Barden Acts.* (1) Funds allotted under section 3 of the Smith-Hughes Act for the salaries of teachers of trade, home economics, and industrial subjects may be allocated by the States to each of the matching purposes specified in § 104.41(e)(2), (3)(i) and (ii), and (4)(i) and (ii), provided that

(i) No more than 20 percent of such allotment may be used for salaries of teachers of home economics subjects as specified in § 104.41(e)(3) and (4).

(ii) At least one-third of the portion of the allotment allocated to salaries of teachers of home economics subjects may be used only for salaries of such teachers for time spent in part-time schools or classes as specified in § 104.41(e)(3)(i) and (e)(4)(i).

(2) Funds allotted for teacher training under section 4 of the Smith-Hughes Act may be allocated by the States to each of the matching purposes specified in § 104.41(e)(5), (6), and (7), provided that no less than 20 percent and no more than 60 percent of such allotment be allocated to each such matching purpose.

(3) Funds allocated by the States under the Smith-Hughes Act for salaries of teachers of home economics subjects pursuant to subparagraph (1)(i) of this paragraph, and funds allotted to the State under section 3(b) of the George-Barden Act for vocational education in home economics may be allocated by the States to each of the matching purposes specified in § 104.41(d)(2) and (3) and (e)(3) and (4), provided that in each fiscal year beginning after June 30, 1965, at least 10 percent of such allocations or allotments may be used only for home economics for gainful employment as specified in § 104.41(d)(2) and (e)(3), and

ALLOWABLE EXPENDITURES

§ 104.43 Allowable expenditures for programs and services.

(a) Federal funds allotted to the States under section 3 of the 1963 Act and under the George-Barden Act may be used for programs of vocational instruction, vocational guidance and counseling services, programs of pre-employment and in-service teacher training (including requisite professional and subject matter training), research, demonstration, and experimental programs, and administration, supervision, and other ancillary services, all meeting the standards and requirements provided in the State plan pursuant to §§ 104.13 to 104.21. Such funds may be applied to the following expenditures which are reasonably attributable to such programs and services:

(1) Salaries of professional vocational education personnel for time spent on activities reasonably related to vocational education programs and services under the State plan. Such salaries shall include educational and sabbatical leave to the extent provided for in § 104.46 and employees' contributions to retirement, workmen's compensation, and welfare funds. (See § 104.49(b)(3) for employers' contributions.)

(2) Fees and approved expenses of consultants, advisory committees, and other persons or groups acting in an advisory capacity to the State board and, with the approval of the State board, to local educational agencies.

(3) Travel and transportation expenses to the extent provided in § 104.47.

(4) Acquisition, maintenance, and repair of instructional equipment, supplies, and teaching aids to the extent provided in § 104.48.

(5) Other related expenses to the extent provided in § 104.49.

(b) In determining which expenditures are to be included in each of the four matching purposes of vocational education under section 4(a) of the 1963 Act as specified in § 104.41(b)(1) through (4), there may be applied to each such matching purpose the following expenditures as specified in paragraph (a) of this section:

(1) Those attributable to vocational instruction.

(2) Those attributable to vocational guidance and counseling services.

(3) Those attributable to vocational teacher training.

(4) Those attributable to vocational administration and supervision on the local level.

(c) In determining which expenditures are included in the matching purpose of ancillary services and activities under the 1963 Act as specified in § 104.41(b)(6), there may be applied to such matching purpose the following expenditures as specified in paragraph (a) of this section:

(1) Those attributable to vocational guidance and counseling services.

(2) Those attributable to vocational teacher training.

(3) Those attributable to vocational research, demonstration, and experimental projects.

(4) Those attributable to vocational administration, supervision, and other ancillary services and activities on both the State and local levels.

(d) In determining what expenditures are included in each of the matching purposes under the George-Barden Act specified in § 104.41(d), there shall be applied to each purpose those expenditures specified in paragraph (a) of this section which can be reasonably attributed to each such matching purpose, to the extent provided in the sections referred to therein.

(e) Federal funds allotted to the States under the Smith-Hughes Act may be applied to the following expenditures:

(1) Salaries of teachers, supervisors or directors of agricultural subjects, and teachers of trade, home economics, and industrial subjects as specified in § 104.41 (e) (1) to (4), including the cost of sabbatical and educational leave pursuant to § 104.46 and employee benefits pursuant to § 104.43(a)(1).

(2) Costs for training teachers, supervisors or directors of agricultural subjects, and teachers of trade, home economics, and industrial subjects as specified in § 104.41(e) (5) to (7). These may include all expenditures specified in paragraph (a) of this section which can be reasonably attributable to training of teachers, to the extent provided in the sections referred to therein.

§ 104.44 Allowable expenditures for construction of area vocational education school facilities under the 1963 Act.

(a) Federal funds allotted to the States under section 3 of the 1963 Act may be used for the cost of area vocational education school facility projects (as specified in § 104.41(b)(5) undertaken by the State board or by local educational agencies with the approval of the State board. Funds so allotted may be applied to the following expenditures:

(1) Construction of new buildings to the extent they contain such school facilities and initial equipment as defined in § 104.1(n)(2)(i).

(2) Expansion, remodeling, and alteration (as distinguished from maintenance and repair) of existing buildings to the extent they contain such school facilities and initial equipment as defined in § 104.1(n)(2)(ii).

(3) Expenses related to the acquisition of the fee, leasehold, or other interest in land from non-public sources on which there is to be construction of new buildings or expansion of existing buildings.

(4) Site grading and improvement of land on which such facilities are located.

(5) Architectural, engineering, and inspection expenses incurred subsequent to the date of site selection.

(b) If the total proposed construction plan includes facilities which will be used for both eligible and ineligible purposes, the State board shall include in its State plan the policies and procedures to be followed by the State board in determining what facilities or portions of facilities are assignable to purposes eligible for funds under the 1963 Act.

(c) If the total proposed construction plan includes facilities which are eligible for Federal financial participation under the 1963 Act and under any other Federal statute, the State board shall set forth in its State plan an assurance that Federal financial participation under the 1963 Act will not be made available for a facility or portion thereof supported by Federal financial participation under such other Federal statute.

§ 104.45 Allowable expenditures for work-study programs.

Federal funds allotted to the States under section 13 of the 1963 Act for work-study programs may be applied to the following expenditures:

(a) Compensation of students employed in work-study programs meeting the requirements in § 104.25.

(b) All expenditures specified in § 104.43(a) attributable to development of the provisions of the State plan applicable to work-study programs, pursuant to § 104.24 to § 104.26, which are incurred before the effective date of such provisions.

(c) All expenditures specified in § 104.43(a) attributable to administration and supervision of the work-study program under the State plan.

§ 104.46 Sabbatical and educational leave.

(a) Funds used under the State plan for salaries paid to approved vocational education personnel who have been engaged in activities under the State plan may include that part of the salary paid for the time spent (1) on sabbatical leave, or (2) on educational or other leave needed to obtain additional education, occupational experience or training of benefit to the vocational education programs under the State plan, provided in either case that such leave is in conformity with the policy of the employing board, agency, or institution which applies also to the other employees of similar rank or grade.

(b) The fact that funds are used for the salary of an employee on such leave does not preclude Federal financial participation in the salary of the person employed to replace him, as long as the replacement is otherwise eligible.

(c) In the case of sabbatical leave earned by the employee on the basis of time of service, Federal financial participation will be based on the prorated portion of the employee's time that was given to various reimbursable vocational education activities during the period in which the leave was earned.

(d) In the case of educational or other leave not earned on the basis of time of service, Federal financial participation will be based on the relative benefit of such leave to the various education programs under the plan. Prorations required under this section will be made in accordance with the principles set out in § 104.35.

§ 104.47 Travel and transportation expenses.

Funds may be used for necessary and appropriate travel and transportation expenses attributable to vocational education programs under the State plan which shall set forth provisions governing the specific kinds of travel and transportation allowed and provide that travel and transportation expenditures be in accordance with State laws and regulations as required in § 104.31. Included in allowable travel and transportation expenses are the following:

(a) Travel expenses of vocational education personnel when performing official duties recognized by the State board and related to vocational education programs under the State plan:

(1) Travel expenses of State and local vocational education personnel whose salaries are supported by funds under the State plan.

(2) Travel expenses of members of the State board.

(3) Travel expenses of consultants, members of State advisory committees, and other persons or groups acting in an advisory capacity, whose fees and approved expenses are supported by Federal funds under the State plan when annually approved by the State board.

(b) Transportation expenses of vocational education students (with funds other than those available under the Smith-Hughes Act and title I of the George-Barden Act) which include only

(1) Transportation for one round trip per semester or shorter period determined by the duration of the program from the student's home to the place where he will reside while enrolled in the program.

(2) Transportation for one round trip daily between a student's place of residence and the school.

(3) Transportation between schools, in one of which the student is enrolled.

(4) Transportation between a school and the place where work experience for students is being provided.

(5) Transportation of classes for field work.

(c) Transportation expenses of prospective teachers enrolled in an approved teacher training program when they are sent to serve as student teachers in approved vocational education schools or classes in communities so located as to require transportation expense. Participation is not allowed for any travel expense other than transportation.

(d) All travel and transportation included in paragraphs (a), (b), and (c) of this section may be by common carrier, official conveyance, or private conveyance. Costs may not be paid in excess of costs of transportation by common carrier, or in the absence of suitable transportation by common carrier, in excess of reasonable rates established by the State or such other rates approved by the State board.

§ 104.48 Instructional equipment, supplies, and teaching aids.

(a) Under the George-Barden and 1963 Acts, funds may be used for the

acquisition, maintenance and repair of instructional equipment, supplies, and teaching aids for vocational education programs provided that:

(1) No more than 10 percent of the funds appropriated in each allotment to each State under title I of the George-Barden Act may be used for the acquisition of equipment, and

(2) No funds allotted under title I of the George-Barden Act may be used for the maintenance and repair of equipment.

(b) "Instructional equipment, supplies and teaching aids" means equipment, supplies and teaching aids (including reference materials and textbooks to be retained by the local educational agency) used by authorized vocational education personnel in instructing, or by their students in learning, in an instructional situation in the classroom, library, laboratory, shop, or field. It may not include supplies to be made into equipment or products to be sold, or to be used by pupils, teachers, or other persons; except that supplies made into equipment for vocational instruction may be considered as equipment for instruction under the same conditions as apply to purchased equipment.

(c) Annual appropriation acts for the Department of Health, Education, and Welfare such as the Department of Health, Education, and Welfare Appropriation Act, 1964 (P.L. 88–136, title II, 77 Stat. 231), have provided that no part of the funds appropriated for "Defense Education Activities" shall be available for the purchase of science, mathematics, and modern language teaching equipment, or equipment suitable for use for teaching in such fields of education, which can be identified as originating in or having been exported from a Communist country, unless such equipment is unavailable from any other source. Such a prohibition applies to expenditures for the purchase of instructional equipment with funds allotted under title III of the George-Barden Act (including such funds transferred to another allotment pursuant to § 104.28).

§ 104.49 Other related expenditures.

(a) Funds may be used for the expenditures described in paragraph (b) of this section which are related to the vocational education programs, services, and activities specified in § 104.43, except that:

(1) Funds allotted under the Smith-Hughes Act may be used only for such expenditures which are related to teacher training, and

(2) Funds allotted under titles I and III of the George-Barden Act may be used only for such expenditures which are related to teacher training, research, demonstration, and experimental programs, and administration and supervision.

(b) Such expenditures shall include the following:

(1) Administrative overhead expenses such as salaries of clerical and custodial personnel, communications, utilities, office equipment, supplies, printing and printed materials, and rental of space to the extent provided in subparagraph (2) of this paragraph.

(2) Rental of space (including the cost of utilities and janitorial services) in privately or publicly owned buildings if: (i) The expenditures for the space are necessary, reasonable, and properly related to the efficient administration of the program; (ii) the State board or local educational agency will receive the benefits of the expenditures during the period of occupancy commensurate with such expenditures; (iii) the amounts paid by the State board or local educational agency are not in excess of comparable rental in a particular locality; (iv) expenditures represent a current cost to the State board or local educational agency; and (v) in publicly owned buildings like charges are made to other agencies occupying similar space for similar purposes.

(3) Employer's contributions to retirement, workmen's compensation, or other welfare funds maintained for one or more general classes of employees of a State or local educational agency, to the extent that such contributions benefit vocational education personnel whose salaries are supported with funds under the State plan.

Subpart D—Payment and Reports

§ 104.50 Certification of Federal funds.

(a) *Conditions for certification.* Payment to the States under the acts will be made only after the Commissioner has certified that the State is entitled to such payment. Such certification shall be made only when:

(1) The Commissioner determines that the State has on file in the Office of Education a State plan (including all amendments) which was adopted by the State board and approved by the Commissioner, and which has not been so changed that it no longer complies with the acts and regulations.

(2) An examination of the lastest records, estimates and reports on file in the Office of Education indicates to the Commissioner's satisfaction that (i) the program of vocational education for the preceding fiscal year was conducted substantially in accordance with the acts, regulations, and the State plan, and (ii) the State will be and is able to conduct its program for vocational education during the current fiscal year substantially and in accordance with the acts, regulations, and the State plan.

(3) The estimates and reports required for submission to the Commissioner (including information supporting a request for transfer of allotments pursuant to § 104.28) have been submitted and reviewed prior to the date of payment of funds pursuant to § 104.55.

(4) The Commissioner has determined that the State has met and will meet the various matching requirements under the acts (see § 104.38 to § 104.42) and all other conditions for payment of Federal funds under the Smith-Hughes Act (see § 104.57), and title III of the George-Barden Act (see § 104.84).

(b) *Time of certification.* Certification by the Commissioner shall be made on January 1 for payment of Federal funds during the succeeding fiscal year, except that certification for payment of Federal funds appropriated under titles II and III of the George-Barden Act and the 1963 Act may be made on such other dates as the Commissioner may determine.

(c) *Certificate modification and withholding of funds.* (1) The Commissioner may from time to time modify the amount certified to the State for the fiscal year on the basis of periodic requests for payment of Federal funds, estimates and reports, reallotments, audits, program reviews, and other information and data available to the Commissioner.

(2) Whenever the Commissioner, after reasonable notice and opportunity for hearing to the State board administering the State plan, finds that the State no longer complies with the requirements for certification set forth in paragraph (a) of this section, the Commissioner shall notify such State board that his certification for payment has been withdrawn and that payment of Federal funds will be withheld from such State until he is satisfied that the State has complied with such requirements. At his discretion, the Commissioner may notify the State board that payment of Federal funds will be limited to support of programs under or portions of the State plan not affected by the State's failure to comply with such requirements, and that certification for payment will be modified to that extent.

§ 104.51 Method of payment.

Payments will be made in advance to a State of the amount to which the Commissioner certifies the State is entitled for the fiscal year, taking into account necessary adjustments for previously made overpayments and underpayments. Under the Smith-Hughes Act, payments to the State will be made quarterly; under title I of the George-Barden Act payments will be made semi-annually; and under the other acts payments will be made in such installments and at such times as the Commissioner may determine to be reasonably required for expenditures by the States of the funds so allotted.

§ 104.52 Effect of Federal payments.

(a) *No waiver.* Neither the approval of the State plan nor any payment to the State pursuant thereto shall be deemed to waive the right or duty of the Commissioner to withhold funds by reason of the failure of the State to observe, before or after such administrative action, any Federal requirements.

(b) *Settlement of accounts.* The final amount to which the State is entitled for any period is determined on the basis of expenditures under the State plan with respect to which Federal financial participation is authorized.

§ 104.53 Disposition of unexpended Federal funds and reallotment.

(a) Whenever any portion of any annual allotment to any State under the acts has not been expended in the State for the purpose provided for in the regulations, State plan, and acts, and has not been reallotted to other States pursuant to paragraphs (b) and (c) of this section during the fiscal year in which such allotment is made, a sum equal

to such portion shall be deducted from the next following payment of funds allotted to such State for the following fiscal year.

(b) *Reallotment under George-Barden Act.* (1) Under titles II and III of the George-Barden Act, the amount of any allotment to a State which is certified, on or before a date fixed by the Commissioner, as not being required for carrying out the State's plan or program thereunder, shall be reallotted to other States. Such a reallotment shall be made under title II pursuant to section 202(b), and under title III pursuant to section 302(b) of the George-Barden Act.

(2) Reallotments will be made in proportion to the original allotments to the States for the same fiscal year, except that, subject to the provisions of subparagraph (3) of this paragraph, (i) no reallotment will be made to any State which has certified that it will not require the full amount of its allotment for such year, and (ii) the total of the amounts and the amounts reallotted to a State will not exceed the amount which it has certified will be needed for such year.

(3) Any State which (i) has certified that it will not require the full amount of its allotment, or (ii) has certified as to the amount in excess of its original allotment which will be required to carry out the State plan for a fiscal year, may nevertheless amend such certification by filing the appropriate form with the Commissioner on or before a date fixed pursuant to subparagraph (1) of this paragraph. The amended certification will then be used in computing all reallotments for that fiscal year made subsequent to such date.

(c) *Reallotment under the 1963 Act,* (1) Pursuant to sections 3(c) and 13(a) (2) of the 1963 Act, any amount of any State's allotment which the Commissioner determines is not required for carrying out the State's plan shall be reallotted to other States on such dates as the Commissioner may fix. Such determination by the Commissioner shall be made on the basis of (i) a certified statement submitted by the State affirming that the State does not require the full amount of its original allotment to carry out its plan, (ii) reports and information acquired by the Commissioner either from the State board or from independent invesigation indicating that the State does not require the full amount of its original allotment to carry out its plan, or (iii) both. Within a reasonable time prior to the date fixed for reallotment of funds, the Commissioner shall notify the State of his determination affecting the State's allotment and either modify the amount certified for payment to the State or, if payment has already been made, direct the State to return to the United States whatever amount the Commissioner determines the State does not need.

(2) Reallotment shall be made to other States in proportion to their original allotment for the fiscal year in which the original allotment was made; except that, subject to the provisions in subparagraph (3) of this paragraph, such reallotments to such other States shall be reduced to the extent which the Commissioner estimates such State needs and will be able to use under its plan for such fiscal year. The total of such reduction shall then be allotted among those States not suffering such a reduction in proportion to their original allotment. Such estimate by the Commissioner shall be made on the basis of (i) the certified statement submitted by the State pursuant to subparagraph (1) of this paragraph affirming that the State does not require the full amount of its original allotment to carry out its plan, (ii) a request for reallotment by the State and its supporting certified statement indicating the amount of additional funds it needs and will be able to use effectively to carry out its plan, (iii) reports and information acquired by the Commissioner either from the State board or from independent investigation, or (iv) any two or all of the above. Within a reasonable time before the date fixed for reallotment, the Commissioner shall notify the State of the amount of realloted funds (if any) the State shall receive.

(3) Any State which the Commissioner has determined, either on the basis of certified statements from the State or from other reports or information available to him, (i) does not require the full amount of its original allotment to carry out its plan, or (ii) does not need or will not be able to use effectively the full amount of its proportionate share of funds to be reallotted, may, on or before the date fixed for reallotment, request that the Commissioner reconsider his determination affecting the original allotment or anticipated reallotment to such State, and submit with his request additional supporting information and data. If the Commissioner's determination is based in whole or in part on certified statements submitted by the State itself, the State may submit to the Commissioner an amendment to such certification on or before the date fixed for reallotment. The Commissioner, in making his reallotment of funds to the States, shall take into consideration all such amendments and additional information furnished by the State with their requests for reconsideration of the Commissioner's determination. All decisions made by the Commissioner regarding the reallotment of funds are final once reallotment is made.

§ 104.54 Interest.

Interest earned on Federal funds paid to a State shall accrue to the benefit of the United States Government. The State board shall submit, as a part of its annual fiscal report, a statement showing the amounts of Federal funds received under the acts during the fiscal year covered by the report, and the amount of interest earned on such funds during such year. Checks in the amount of interest earned must be made payable to the U.S. Office of Education and mailed to the Fiscal Management Section or reported as an unexpended balance in the annual fiscal report.

§ 104.55 State annual reports.

(a) *Annual estimate of projected program plans*—(1) *Content.* The State board, in accordance with procedures established by the Commissioner, shall submit an annual estimate containing a description of the activities to be carried on under the plan during the ensuing fiscal year, including information regarding the use to be made of transferred funds pursuant to § 104.28. Such description shall include the estimated annual receipts and expenditures for activities under the plan, indicating the estimated receipts and expenditures for each semi-annual fiscal period and the amount of State and local funds available to pay the non-Federal share of the amount estimated. Such information shall be forwarded on forms furnished to the State board by the U.S. Office of Education.

(2) *Effect of estimates.* Subsequent payment of Federal funds to the States will not be precluded because of deviations in actual State expenditures during the fiscal year from those submitted in the estimate for such fiscal year, provided that they are otherwise made in accordance with the approved State plan and the acts and regulations.

(b) *Annual report of program activities.* On or before September 1 of each year, each State board shall submit in accordance with procedures established by the Commissioner, an annual report describing the activities carried out under the State plan and setting forth the total receipts and expenditures of funds for the previous fiscal year. This report shall consist of three parts: Fiscal, statistical, and descriptive.

(1) The fiscal report shows the expenditures for each of the several purposes provided for in the acts, that the Federal funds expended for each purpose in the State have been matched by State or local funds or both, and that all other fiscal conditions of the acts have been met. Expenditures of State and local funds which meet the requirements of the acts, regulations, and State plan and are therefore eligible for Federal financial participation are to be included. Such information shall be forwarded on forms furnished to the State board by the U.S. Office of Education.

(2) The statistical report includes supporting data with respect to vocational education classes for which expenditures are reported in the fiscal report. Such data shall be forwarded on forms furnished to the State board by the U.S. Office of Education.

(3) The descriptive report is a narrative account of the program of vocational education within the State during the fiscal year, describing conditions and situations in the program for which fiscal or statistical data have been reported. The U.S. Office of Education will provide a suggested outline of this report for the States.

Subpart E—Smith-Hughes and George-Barden Acts; Special Provisions.

General

§ 104.56 Applicability of regulations to existing programs under the Smith-Hughes, George-Barden, and supplementary acts.

In addition to the general requirements in subparts A to D governing voca-

tional education under all the acts, the provisions in Subpart E govern vocational education under the Smith-Hughes, George-Barden, and supplementary acts as amended by subsections (b), (c), (d), and (e) of section 10 of the 1963 Act.

(a) The provisions in Subparts A to D (but not Subpart E) shall apply to vocational education under the State plan in those States which receive allotments under the 1963 Act and transfer all funds allotted under the Smith-Hughes, George-Barden, and supplementary acts to the allotment under section 3 of the 1963 Act pursuant to § 104.28.

(b) The provisions in Subpart A to D and Subpart E shall apply to vocational education under the State plan in those States which either

(1) Receive no allotment under the 1963 Act but transfer all or part of the funds allotted under the Smith-Hughes, George-Barden, and supplementary acts to the allotment under section 3 of the 1963 Act; or

(2) Receive allotments under the 1963 Act but transfer no funds or only part of the funds allotted under the Smith-Hughes, George-Barden, and supplementary acts to the allotment under section 3 of the 1963 Act.

(c) The regulations in 45 CFR Parts 102 and 103, shall continue to apply to programs in States which neither receive an allotment under the 1963 Act nor transfer any funds alloted under the Smith-Hughes, George-Barden, and supplementary acts to the allotment under section 3 of the 1963 Act. In such cases a State may

(1) Retain its current State plan under the Smith-Hughes, George-Barden, and supplementary acts, amending it to the extent it chooses to take advantage of the amendments to the Smith-Hughes, George-Barden, and supplementary acts in subsections (b), (c), (d), and (e) of section 10 of the 1963 Act, and

(2) Transfer funds from one allotment under the Smith-Hughes, George-Barden, and supplementary acts to another such allotment as provided for in section 10(a) of the 1963 Act and in § 104.28.

§ 104.57 Condition for payment of Federal funds under Smith-Hughes Act.

(a) Payment of a State's allotment of Federal funds for salaries of teachers, directors, and supervisors of agricultural subjects under section 2 of the Smith-Hughes Act is subject to the condition that the State accepts and makes full use of at least the minimum share (20 percent) of the State's teacher training allotment under section 4 of the Smith-Hughes Act for training of teachers, supervisors, and directors of agricultural subjects.

(b) Payment of a State's allotment of Federal funds for salaries of teachers of trade, home economics, and industrial subjects under section 3 of the Smith-Hughes Act is subject to the condition that the State accepts and makes full use of

(1) At least the minimum share (20 percent) of the State's teacher training allotment under section 4 of the Smith-Hughes Act for training of teachers of trade and industrial subjects, and

(2) At least the minimum share (20 percent) of the State's teacher training allotment under section 4 of the Smith-Hughes Act for training of teachers of home economics subjects.

§ 104.58 Interrelationships among the various education fields.

Funds may be used to develop and operate vocational programs that draw on knowledge and skills from two or more vocational education fields provided for in separate allotments to the States under the Smith-Hughes and George-Barden Acts and this subpart.

§ 104.59 Minimum age of enrollment.

Except as indicated in § 104.72, Smith-Hughes and title I George-Barden funds may be used only for such vocational instruction as is designed to meet the needs of persons over 14 years of age. Since this requirement is in terms of the age level for which the education is "designed," enrollment of persons who have attained a 9th grade status, as well as those who have attained the age of 14, is permitted.

Agricultural Education

§ 104.60 Vocational education in agriculture.

Vocational education in agriculture under the State plan shall be designed to meet the needs of persons over 14 years of age who have entered upon or are preparing to enter: (a) Upon the work of the farm or farm home, or (b) any occupation involving knowledge and skills in agricultural subjects, whether or not such occupation involves work of the farm or of the farm home.

§ 104.61 Agricultural occupations defined.

An agricultural occupation means an occupation involving knowledge and skills in agricultural subjects, which has the following characteristics:

(a) The occupation includes the functions of producing, processing, and distributing agricultural products and includes services related thereto.

(b) The occupation requires competencies in one or more of the primary areas of plant science, soil science, animal science, farm management, agricultural mechanization and agricultural leadership.

§ 104.62 Plan requirements for agricultural education.

In addition to the general State plan requirements for vocational instruction in § 104.13 the State plan shall describe how the following essential characteristics of the program of instruction are to be met:

(a) The instruction deals with practical agricultural problems and includes subject matter and learning experience necessary in the production and marketing of plants or animals or their products.

(b) Preparatory programs of instruction shall provide for:

(1) Directed or supervised practice in agriculture on a farm for those persons who are engaged in or preparing for farming.

(2) Practical field, laboratory or cooperative work experience as provided in § 104.13(h)(5) for those training for other occupations involving knowledge and skills in agricultural subjects.

Distributive Education

§ 104.63 Vocational education in distributive occupations.

Vocational education in distributive occupations under the State plan shall be designed to meet the needs of persons over 14 years of age who have entered or are preparing to enter a distributive occupation.

§ 104.64 Distributive occupations defined.

A distributive occupation means an occupation that is followed by proprietors, managers, or employees engaged primarily in marketing or merchandising of goods or services. These occupations are commonly found in various business establishments such as retailing, wholesaling, manufacturing, storing, transporting, financing, and risk bearing.

§ 104.65 State plan requirements; distributive education.

In addition to the general State plan requirements for vocational instruction in § 104.13, the State plan shall describe how the following requirements for instruction in distributive education are to be met:

(a) The content of the program of instruction shall be derived from the functions of marketing and a knowledge of products and services in reference to the occupational objective of the student.

(b) Preparatory instruction shall be provided either in preparatory classes utilizing participation activities or in cooperative classes utilizing on-the-job training through part-time employment.

Vocational Education in Home Economics

§ 104.66 Vocational education in home economics.

Vocational education in home economics under the State plan shall be designed for persons over 14 years of age who have entered upon or who are preparing to enter upon (a) useful employment in the home (hereinafter referred to as homemaking) or (b) gainful employment in an occupation involving knowledge and skills of home economics subjects.

§ 104.67 Home economics defined.

(a) *Homemaking.* Vocational education in homemaking means education which provides instruction which will enable families to improve their family life through more effective development and utilization of human resources.

(b) *Home economics directed toward gainful employment.* Vocational education in home economics directed toward gainful employment provides instruction that qualifies individuals to engage in occupations involving knowledge and skills in home economics subject-matter areas, i.e., child development, clothing and textiles, food and nutrition, home

and institutional management, home furnishings and equipment, etc. Included are such occupations as those which provide services to families in the home and similar services to others in group situations; those which provide assistance to professional home economists and professionals in fields related to home economics in business, agencies, and organizations; and other occupations directly related to one or more home economics subject-matter areas.

§ 104.68 State plan requirements for home economics.

In addition to the general State plan requirements for vocational instruction in § 104.13, the State plan shall describe how the following special requirements for instructions are to be met:

(a) Instruction in homemaking shall meet the following standards and requirements:

(1) The curriculum is concerned with fundamental values and problems in the several aspects of homemaking, and deals with these in such a way as to develop needed skills, understandings, attitudes, and appreciations.

(2) The nature and content of instruction are derived from the needs and concerns of individuals and families served, taking into consideration the maturity and experience of individuals enrolled.

(3) The total program of instruction is sufficiently intensive and extensive to enable the individual served to develop competencies necessary for effective participation in homemaking and in community activities affecting the home.

(4) The program of instruction for youths provides a variety of kinds of learning experiences in all of the major phases of homemaking, including participation in directed home and community experience.

(b) Smith-Hughes funds allocated by the States for salaries of home economics teachers in part-time classes pursuant to § 104.42(c)(1)(ii) may be used to reimburse instruction in part-time classes only if they provide 144 clock hours of classroom instruction per year for persons who have already entered gainful employment or the work of the home. (See § 104.73(b) for definition of 144-hour requirement.)

(c) When Smith-Hughes funds allocated by the States for salaries of home economics teachers in other than part-time classes pursuant to § 104.42(c)(1)(ii) are used to reimburse preparatory instruction in full-time day school classes for persons who have not entered upon employment, such classes shall extend over not less than nine months per year and thirty hours per week and shall have at least one-half of the total time of instruction devoted to practical work on a useful or productive basis, i.e., field, laboratory, home, cooperative work, or other occupational experience, except that in cities and towns with less than 25,000 population, the State board, with the approval of the Commissioner, may modify the conditions as to the length of the course and the hours per week in order to meet the particular needs of such cities and towns.

TRADE AND INDUSTRIAL EDUCATION

§ 104.69 Vocational education in trades and industries.

Vocational education in trades and industries under the State plan shall be designed for persons over 14 years of age who have entered upon or are preparing to enter upon the work of a trade or industrial occupation.

§ 104.70 Trade and industrial education defined.

(a) Trade and industrial education means education which includes any subject which is necessary to develop the manipulative skills, technical knowledge, and related information such as job attitudes, safety practices and trade judgment necessary for employment in a trade and industrial occupation.

(b) Such an occupation shall include:

(1) Any craft, skilled trade, or semi-skilled occupation which directly functions in the designing, producing, processing, fabricating, assembling, testing, modifying, maintaining, servicing, or repairing of any product or commodity.

(2) Any other occupation, including a service occupation, which is not covered in subparagraph (1) of this paragraph but which is usually considered to be technical or trade and industrial in nature.

§ 104.71 State plan requirements for trade and industrial education.

In addition to the State plan requirements for vocational instruction in § 104.13, the State plan shall provide that funds available for trade and industrial education be used only for instruction in pre-employment classes for those who are preparing for employment and part-time and evening classes for those who have entered upon employment. These classes will meet the conditions and requirements as set forth in §§ 104.72 to 104.75.

§ 104.72 Evening classes.

An evening class is defined as a class conducted during the non-working hours of the enrollees. Evening classes may enroll only workers 16 years of age or over who are employed in a trade and industrial occupation. Instruction must be confined to that which is supplemental to the daily employment of those enrolled. To be considered supplemental to the daily employment, the instruction must be such as to increase the skill or knowledge of the worker in the trade or industrial occupation in which the person is employed. Such classes may include instruction for apprentices as provided in § 104.15.

§ 104.73 Part-time classes.

(a) A part-time class is defined as a class for persons who have entered upon employment which is conducted during what would be the usual working hours of the enrollees. The three types of part-time classes are:

(1) *Part-time preparatory classes.* These classes are for persons who have entered upon employment and are enrolled for instruction designed to prepare them for employment in a trade and industrial occupation other than that in which they are or have been employed.

(2) *Part-time extension classes.* These classes are for workers employed in a trade or industrial occupation who have left the full-time day school and are enrolled for instruction which is supplemental to their employment. Such classes may include instruction for apprentices as provided in § 104.15.

(3) *Part-time general continuation classes.* These classes are for persons who have left the full-time day school to enter upon employment and are enrolled for instruction which is designed to increase their civic intelligence rather than to develop specific occupational competence. Such part-time general continuation classes are limited to those under 18 years of age.

(b) *Time requirements under the Smith-Hughes Act.* All part-time schools or classes reimbursed from funds under the Smith-Hughes Act shall provide not less than 144 hours of classroom instruction per year. The 144-hour requirement is satisfied when either of the following conditions is met during a period of any twelve consecutive months or less:

(1) A class is organized and conducted for at least 144 hours.

(2) Two or more classes, or a series of short units of instruction, covering at least 144 hours of instruction, are organized and conducted so that the schedule of the meetings and the content of each of the units are such that an individual may enroll in the entire series and derive sufficient benefit therefrom.

(c) *Age of enrollees.* (1) Enrollment in all part-time classes reimbursed from funds under the Smith-Hughes Act is limited to workers over 14 years of age.

(2) Enrollment in all part-time classes reimbursed from funds under the George-Barden Act is limited to workers 16 years of age or over.

(3) All part-time classes reimbursed from funds under either the Smith-Hughes or George-Barden Act may be conducted without upper age limit except for general continuation classes as provided for in paragraph (a)(2) of this section.

§ 104.74 Pre-employment day trade classes.

Pre-employment day trade classes are classes for persons who have not entered upon employment but who are preparing to enter a trade and industrial occupation. Pre-employment day trade classes include the regular day trade classes, Types A and B (described in paragraph (a) of this section), and special Type C trade classes (described in paragraph (b) of this section).

(a) *Regular day trade classes, Types A and B*—(1) *Description.* Regular day trade classes are pre-employment classes for persons who are enrolled in a full-time day school.

(i) In Type A classes, the related instruction is offered as units separate from the field, laboratory, shop, cooperative work, or other occupational experience.

(ii) In Type B classes, the related instruction is offered by the shop or laboratory instructor as an integral part of the shop or laboratory experience, rather than as separate units.

(2) *Length of instruction.* The instruction must be given not less than 30 hours per week and not less than nine months per year, except that for towns of less than 25,000 population, the length of the course and hours of instruction per week may be modified by the State board, with the approval of the Commissioner, in order to meet the particular needs of such cities and towns.

(3) *Practical experience.* At least one half of the total time of instruction shall be given to work on a useful or productive basis, i.e., field, shop, laboratory, cooperative work, or other occupational experience which meets the requirements of § 104.13(h)(5) and § 104.16.

(4) *Related instruction.* The instruction in related subjects for which funds are used must have a direct functional value in the trade or occupation for which training is being given. Related subjects courses are in addition to and an extension of the instruction given in the shop. Related subjects may be taught by the shop instructor. When other than the shop instructors are utilized, the State plan shall specify qualifications which assure that such instructors have sufficient experience in and knowledge of the occupation to teach such specific subjects effectively.

(b) *Special Type C trade classes.* Special Type C trade classes are preemployment classes, which need not meet the requirements in subparagraphs (2) and (3) of paragraph (a) of this section; i.e., they may be operated for less than nine months per year and for less than 30 hours per week without the requirement that at least one-half of the total time of instruction shall be given to field, shop, laboratory, cooperative work, or other occupational experience. Such classes shall include the following:

(1) *Special classes for out-of-school youth and adults.* These are classes which may be reimbursed only with funds under title I of the George-Barden Act for (i) persons over 18 years of age or (ii) persons over 14 years of age who have left the full-time day school.

(2) *Special classes for single-skilled or semi-skilled occupations.* These are classes which may be reimbursed with both Smith-Hughes and George-Barden funds for persons preparing for gainful employment in some type of single-skilled or semi-skilled occupation.

§ 104.75 Employment in trade and industrial occupation.

(a) For the purposes of §§ 104.72 and 104.73(a)(2), a person is considered employed in a trade and industrial occupation when he:

(1) Is lawfully employed in such occupation; or has been lawfully employed in such occupation and is temporarily without employment, but has a promise of employment in such occupation; or can give satisfactory evidence of going into business for himself; or is employed by parents who are self-employed; and

(2) Receives the going rate of pay of the business in which he is employed or he participates in the earnings of the business in lieu of a wage or salary. In the latter case, working for a living in a family business without pay will be accepted as satisfactorily meeting the requirement.

(b) Employment in a trade or industrial business does not itself qualify a person for enrollment; such employment must be in a trade and industrial occupation as defined in § 104.70(b).

Vocational Education in Fishery Occupations

§ 104.76 Vocational education in fishery occupations.

Under title I of the George-Barden Act, special funds have been authorized for training in the trade and industrial and distributive occupations in the fishing industry. The general provisions in Subparts A to D applicable to all vocational education programs shall apply to vocational education in fishery occupations.

Vocational Education in Health Occupations

§ 104.77 Vocational education in health occupations.

Vocational education in health occupations under the State plan, pursuant to title II of the George-Barden Act, shall be designed for persons who are preparing to enter one of the health occupations, and for persons who are, or have been, employed in such occupations in hospitals or other health agencies. For purposes of this section, "other health agencies" means institutions or establishments other than hospitals which provide patients with medical or nursing services under the direction of a doctor or registered professional nurse.

§ 104.78 Health occupations defined.

The health occupations render supportive services to the health professions such as nursing, medical, and dental practice, all of which are concerned with providing diagnostic, therapeutic, preventive, restorative and rehabilitative services to people. As used in this program, such occupations:

(a) Include practical or vocational nursing.

(b) Include those occupations that require basic understandings and skills required in giving nursing care or other health services to people.

(c) Exclude occupations recognized as occupations in other than the health field. In applying this condition, the scope and nature of the duties rather than the title of the occupation govern.

§ 104.79 State plan provisions for vocational education in health occupations.

(a) In addition to the general State plan requirements for administration and supervision in § 104.21, the State plan shall provide that the individual supervising the functions of the State board relating to vocational education in health occupations under Title II of the George-Barden Act shall be a registered professional nurse or shall have the consultative services of a registered professional nurse available.

(b) In addition to the general State plan requirements for instruction in § 104.13, the State plan shall describe how the following requirements for preparatory instruction are being met.

(1) Full-time instruction will be provided.

(2) Instruction in theory will be closely correlated with supervised practical experience in the clinical phases of the curriculum.

(3) All supervisory and instructional personnel having responsibility for training in the health occupations will meet the qualifications for a teacher as set forth in the State plan.

(4) A major part of the supervised practical experience required in the curriculum will be spent on activities directly related to patient needs.

§ 104.80 Allowable uses of funds.

Funds available for vocational education in health occupations may be used as provided in § 104.43 and the sections referred to therein, except that

(a) Funds used for teacher education may be used only for in-service education of teachers and other professional personnel involved in vocational education for health occupations, and not for preservice preparation of such personnel.

(b) Funds used for instruction may be used for supplementary instruction for persons who may need training or retraining in special phases of their work as it affects the clinical instruction of students undertaking health occupations training.

Technical Education Under Title III

§ 104.81 Technical education—programs under title III.

Technical education under the State plan pursuant to title III of the George-Barden Act shall be designed to train persons for employment as highly skilled technicians in recognized occupations requiring scientific knowledge in fields necessary for the national defense. All enrollees shall have either completed the ninth grade or be at least 16 years of age.

§ 104.82 Occupations necessary for national defense.

Title III requires "that funds * * * shall be used exclusively * * * for the training of individuals as highly skilled technicians in recognized occupations * * * in fields necessary for the national defense." Both of the following criteria are to be used to determine occupations that are considered necessary for the national defense:

(a) The occupation will have a significant number employed, or an overall shortage exists or is developing:

(1) In the design, development, testing, manufacture, processing, construction, installation, operation, maintenance, repair or servicing of plant facilities, equipment or products (or parts or accessories thereof) which are of importance for military or other defense activity.

(2) In providing technical services.

(b) The industry or activity in which the occupation occurs is necessary to the defense program, such as:

(1) The military.

(2) Suppliers of products or services to the military.

(3) Suppliers of products or services directly connected with defense.

(4) Scientific research.

§ 104.83 State plan requirements.

In addition to the general State plan requirements for instruction set forth in § 104.13, the State plan shall include the following:

(a) *Geographic areas to be served.* To qualify under title III a program must be made available to residents of the whole State or of "an area thereof designated and approved by the State board." The State plan is to set forth the policies and criteria to be used by the State board in determining that the geographic area served by a program is sufficiently extensive (e.g., with reference to such factors as population served, area served, etc.) to qualify the program as an "area vocational education program" under title III.

(b) *Training programs.* Title III requires that funds "shall be used exclusively for the training of individuals designed to fit them for useful employment as highly skilled technicians in recognized occupations requiring scientific knowledge, as determined by the State board for such State, in fields necessary for the national defense." The State plan is to set forth the procedures and criteria to be used by the State board in determining which training programs meet this requirement. Within the foregoing requirements and procedures, funds may be used for the following kinds of courses concerned primarily with the application of technical knowledge and technical understanding in contrast with manipulative skill:

(1) Supplementary (extension) courses which are designed for employed persons, including journeymen, to obtain additional training in the direct application of specialized functional aspects of science, mathematics, and advanced technical skills and information required to meet the demands for highly skilled technicians in recognized occupations because of new and changing technologies. Such instruction may be organized to provide the required related instruction for apprentices as provided in § 104.15.

(2) Preparatory (pre-employment) courses which are designed to prepare persons for useful employment to meet the demands for highly skilled technicians in recognized occupations (and not for training persons for a skilled trade) which requires the direct application of specialized functional aspects of science, mathematics, and advanced technical skills and information.

§ 104.84 Special condition on payment of Federal funds.

Federal funds allotted under Title III of the George-Barden Act shall be paid on conditions that the total amount of State and local funds to be spent in any year for vocational education programs operated under the provisions of the Smith-Hughes Act and titles I and II of the George-Barden Act may not be reduced below the amount of such funds expended under such programs and reported to the Commissioner for the fiscal year immediately preceding that in which the State first uses funds under title III, except that such reduction below the amount expended in such preceding fiscal year may be made as long as

(a) In making such reduction, the amount of State and local funds used to match each of the several allotments under the Smith-Hughes Act and titles I and II of the George-Barden Act is not reduced below the amount needed for dollar-for-dollar matching of each allotment, and

(b) An amount of State and local funds at least equal to the amount of the total reduction is to be expended under title III.

[SEAL] WAYNE O. REED,
Acting U.S. Commissioner of Education.

Approved: August 21, 1964.

ANTHONY J. CELEBREZZE,
Secretary.

[F.R. Doc. 64-8689; Filed, Aug. 27, 1964; 8:45 a.m.]

Title 7—AGRICULTURE

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

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

Subpart—United States Standards for Grades of Brazil Nuts in the Shell [1]

On June 27, 1964, a notice of proposed rule making was published in the FEDERAL REGISTER (29 F.R. 8173) regarding the issuance of United States Standards for Grades of Brazil Nuts in the Shell (7 CFR 51.3500–51.3511).

Statement of considerations leading to the issuance of the grade standards. Following publication in the FEDERAL REGISTER, copies of the proposed standards were distributed to all known members of the Brazil nut industry. The industry responses generally favored the standards and indicated the need for recognized standards for use as an aid in marketing in-shell Brazil nuts.

The only adverse comments received from the industry on the proposal concerned the relationship of the count per pound to the screen sizing method and the absence of a specific maximum moisture content requirement in the standards.

Available data shows that the relationship of the two sizing methods as set forth in the standards is essentially sound. There is need for additional study of methods of moisture determination before specific moisture requirements can be established.

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

Changes from the standards as published under notice of proposed rule making include increasing the maximum count per pound for Extra Large from 40 to 45 nuts per pound. This is the recommendation of a number of handlers. Section 51.3507(b) is changed to read "split or broken shells", deleting "when the split or crack widens upon application of slight pressure". In §§ 51.3507 and 51.3511 the definitions of damage and serious damage by mold are reworded to clarify their meaning. In § 51.3511 rancidity and decay are added to the factors considered as serious damage.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, the following United States Standards for Grades of Brazil Nuts in the Shell are hereby promulgated pursuant to the Agricultural Marketing Act of 1946 (60 Stat. 1087, as amended; 7 U.S.C. 1621-1627).

GRADE

Sec.
51.3500 U.S. No. 1.

SIZE CLASSIFICATIONS

51.3501 Size classifications.

UNCLASSIFIED

51.3502 Unclassified.

APPLICATION OF STANDARDS

51.3503 Application of standards.

DEFINITIONS

51.3504 Well cured.
51.3505 Loose extraneous and foreign material.
51.3506 Clean.
51.3507 Damage.
51.3508 Reasonably well developed.
51.3509 Rancidity.
51.3510 Decay.
51.3511 Serious damage.

AUTHORITY: The provisions of this subpart issued under secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624.

GRADE

§ 51.3500 U.S. No. 1.

"U.S. No. 1" consists of well cured whole Brazil nuts in the shell which are free from loose extraneous and foreign material and meet one of the size classifications in § 51.3501. The shells are clean and free from damage caused by splits, breaks, punctures, oil stain, mold or other means, and contain kernels which are reasonably well developed, free from rancidity, mold, decay, and from damage caused by insects, discoloration or other means.

(a) In order to allow for variations incident to proper grading and handling, the following tolerances are provided:

(1) *For defects of the shell.* 10 percent, by count, may fail to meet the requirements of the grade, including therein not more than 5 percent for serious damage by split, broken or punctured shells, oil stains, mold or other means;

(2) *For defects of the kernel.* 10 percent, by count, may fail to meet the requirements of the grade, including therein not more than 7 percent for serious damage by any cause: *Provided*, That not more than five-sevenths of the latter amount, or 5 percent, shall be allowed

for damage by insects: *Provided further,* That included in this 5 percent tolerance not more than one-half of 1 percent shall be allowed for Brazil nuts with live insects inside the shell.

(3) *For loose extraneous and foreign material.* 1 percent, by weight: *Provided,* That such material is practically free from insect infestation.

SIZE CLASSIFICATIONS

§ 51.3501 Size classifications.

(a) Extra large: Not more than 15 percent, by count, of the Brazil nuts pass through a round opening $^{78}/_{64}$ inches in diameter, including not more than 2 percent which pass through a round opening $^{74}/_{64}$ inches in diameter; or count does not exceed 45 nuts per pound (see paragraph (d) of this section);

(b) Large: Not more than 15 percent, by count, of the Brazil nuts pass through a round opening $^{73}/_{64}$ inches in diameter, including not more than 2 percent which pass through a round opening $^{69}/_{64}$ inch in diameter; or count does not exceed 50 nuts per pound (see paragraph (d) of this section);

(c) Medium: Not more than 15 percent, by count, of the Brazil nuts pass through a round opening $^{59}/_{64}$ inch in diameter, including not more than 2 percent which pass through a round opening $^{59}/_{64}$ inch in diameter; or count is not less than 51 nuts per pound but not more than 65 nuts per pound (see paragraph (d) of this section); and,

(d) When size is based on count per pound, the 10 smallest nuts per 100 weigh at least 7 percent of the total weight of the 100 nut sample.

UNCLASSIFIED

§ 51.3502 Unclassified.

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

APPLICATION OF STANDARDS

§ 51.3503 Application of standards.

The grade of a lot of Brazil nuts shall be determined on the basis of a composite sample drawn at random from containers in various locations in the lot. However, any identifiable portion of the lot in which the Brazil nuts are obviously of a quality or size materially different from that in the majority of containers shall be considered as a separate lot, and shall be sampled and graded separately.

DEFINITIONS

§ 51.3504 Well cured.

"Well cured" means that the shell is free from surface moisture, and that the kernel is firm and crisp, not pliable or leathery.[2]

[2] The average moisture content of whole nuts or of kernels may be determined by moisture meter, subject to verification by oven drying.

§ 51.3505 Loose extraneous and foreign material.

"Loose extraneous and foreign material" means pieces of pod, pieces of shell, dirt, external insect infestation or any substance other than Brazil nuts in the shell or Brazil nut kernels.

§ 51.3506 Clean.

"Clean" means that the shell is practically free from dirt or other adhering substance.

§ 51.3507 Damage.

"Damage" means any specific defect described in this section; or an equally objectionable variation of any one of these defects, or any other defect, or any combination of defects, which materially detracts from the appearance or the edible or shipping quality of the individual Brazil nut or of the lot. The following defects shall be considered as damage:

(a) Insects when an insect or insect fragment, web or frass is present inside the shell, or the kernel shows distinct evidence of insect feeding;

(b) Split or broken shells;

(c) Oil stains when affecting an aggregate area of more than 20 percent of the surface of the shell;

(d) Mold when more than 20 percent of the surface of the shell is affected by a slight mold growth or when any mold growth materially detracts from the appearance of the shell or when any mold growth noticeably affects the kernel; and,

(e) Discoloration when the affected area penetrates more than one-sixteenth inch into the kernel.

§ 51.3508 Reasonably well developed.

"Reasonably well developed" means that the kernel fills at least one-half of the capacity of the shell.

§ 51.3509 Rancidity.

"Rancidity" means that state of deterioration in which any portion of the kernel has developed a rancid taste.

§ 51.3510 Decay.

"Decay" means that any portion of the kernel is decomposed.

§ 51.3511 Serious damage.

"Serious damage" means any specific defect described in this section; or an equally objectionable variation of any one of these defects, or any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or shipping quality of the individual Brazil nut. The following defects shall be considered serious damage:

(a) Split, broken or punctured shells when the kernel is plainly visible through a split, cracked or punctured shell without application of pressure;

(b) Oil stains when affecting an aggregate area of more than 50 percent of the shell;

(c) Mold when more than 50 percent of the surface of the shell is affected by a slight mold growth or when any mold growth seriously detracts from the appearance of the shell or when any mold growth noticeably affects the kernel;

(d) Discoloration when affecting more than 50 percent of the flesh of the kernel; and,

(e) Rancidity or decay.

The United States Standards for Grades of Brazil Nuts in the Shell contained in this subpart shall become effective October 1, 1964.

Dated: August 25, 1964.

ROY W. LENNARTSON,
Associate Administrator.

[F.R. Doc. 64-8765; Filed, Aug. 27, 1964; 8:49 a.m.]

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1961 and Succeeding Crop Years

APPENDIX: COUNTIES DESIGNATED FOR COTTON CROP INSURANCE

Arkansas County, Arkansas, is hereby deleted from the list of counties published in the FEDERAL REGISTER August 17, 1963 (28 F.R. 8441), which were designated for cotton crop insurance for the 1964 crop year pursuant to the authority contained in § 401.1 of the above-identified regulations.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

[SEAL] JOHN N. LUFT,
Manager,
Federal Crop Insurance Corporation.

[F.R. Doc. 64-8755; Filed, Aug. 27, 1964; 8:48 a.m.]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1961 and Succeeding Crop Years

APPENDIX: COUNTIES DESIGNATED FOR COTTON CROP INSURANCE

Arkansas County, Arkansas, is hereby deleted from the list of counties published in the FEDERAL REGISTER July 29, 1964 (29 F.R. 10488), which were designated for cotton crop insurance for the 1965 crop year pursuant to the authority contained in § 401.1 of the above-identified regulations.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

[SEAL] JOHN N. LUFT,
Manager,
Federal Crop Insurance Corporation.

[F.R. Doc. 64-8756; Filed, Aug. 27, 1964; 8:48 a.m.]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1961 and Succeeding Crop Years

APPENDIX: COUNTIES DESIGNATED FOR RICE CROP INSURANCE

Woodruff County, Arkansas, is hereby deleted from the list of counties pub-

lished in the FEDERAL REGISTER August 20, 1963 (28 F.R. 9141), which were designated for rice crop insurance for the 1964 crop year pursuant to the authority contained in § 401.1 of the above-identified regulations.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

[SEAL] JOHN N. LUFT,
Manager,
Federal Crop Insurance Corporation.

[F.R. Doc. 64-8757; Filed, Aug. 27, 1964; 8:48 a.m.]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1961 and Succeeding Crop Years

APPENDIX: COUNTIES DESIGNATED FOR RICE CROP INSURANCE

Woodruff County, Arkansas, is hereby deleted from the list of counties published in the FEDERAL REGISTER July 29, 1964 (29 F.R. 10491), which were designated for rice crop insurance for the 1965 crop year pursuant to the authority contained in § 401.1 of the above-identified regulations.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

[SEAL] JOHN N. LUFT,
Manager,
Federal Crop Insurance Corporation.

[F.R. Doc. 64-8758; Filed, Aug. 27, 1964; 8:48 a.m.]

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 728—WHEAT

Subpart—1965-66 Marketing Year

DETERMINATION OF COUNTY NORMAL YIELDS

Correction

In F.R. Doc. 64-8189, appearing at page 11690 of the issue for Saturday, August 15, 1964, the following corrections are made in the tabular matter of § 728.208(e):

1. In Georgia, District 1:

a. An entry reading "Murray ---- 22.7" should be inserted immediately after the entry for Gordon County.

b. The entry for Pauling County, which immediately follows the entry for Paulding County, should be deleted.

2. In Idaho, District 1, the entry for Boundary County should read "45.4" instead of "45.5".

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk) Department of Agriculture

[Milk Order 47]

PART 1047—MILK IN FORT WAYNE, IND., MARKETING AREA

Order Amending Order

§ 1047.0 Findings and determinations.

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

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Fort Wayne, Indiana, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

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

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

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

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than September 1, 1964. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator, Regulatory Programs, was issued August 10, 1964 and the decision of the Assistant Secretary containing all amendment provisions of this order, was issued August 19, 1964. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective September 1, 1964 and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001-1011)

(c) *Determinations.* It is hereby determined that:

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

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

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

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

Section 1047.14 is revised to read as follows:

§ 1047.14 Producer milk.

Producer milk means all skim milk and butterfat which is:

(a) Physically received at a pool plant directly from producers; or

(b) Diverted by the operator of a pool plant or by a cooperative association, subject to the following conditions:

(1) The operator of a pool plant may divert the milk production of a producer to the pool plant of another handler for not more than one-half of the days of production during the month.

(2) During January through August the operator of a pool plant or a cooperative association may divert the milk production of a producer from a pool plant to a nonpool plant (other than that of a producer-handler) on any number of days during the month.

(3) During September through December the milk of a producer which

may be diverted to a nonpool plant (other than that of a producer-handler) by the operator of a pool plant or a cooperative association, respectively, shall be limited to the amounts specified in subdivisions (i) and (ii) of this subparagraph:

(i) The operator of a pool plant may divert the milk of producers (except producer members of a cooperative association which is diverting milk under the percentage limit of subdivision (ii) of this subparagraph) on not more than one-half of the days of production of each such producer, respectively, or he may divert an aggregate quantity not exceeding 35 percent of the milk of all such producers whose milk has been received at his pool plant(s) for at least one day during the month.

(ii) A cooperative association may divert the milk of its individual member producers on not more than one-half of the days of production of each such producer, respectively, or it may divert an aggregate quantity of the milk of member producers whose milk has been received at pool plants for at least one day during the month not exceeding 35 percent of all such milk either caused to be delivered to pool plants or diverted to nonpool plants by the cooperative association.

(4) When milk is diverted in excess of the limit by a handler who elects to divert on the basis of days-of-production only that milk of the individual producer which was received at a pool plant or which was diverted to a nonpool plant for not more than one-half of the days-of-production shall be considered producer milk. Should milk be diverted to a nonpool plant in excess of the percentage limit by a handler who elects to divert on a percentage basis, eligibility as producer milk shall be forfeited on a quantity of milk equal to such excess. In such instances the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk. If a handler fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler.

(5) Milk diverted for the account of the operator of a pool plant shall be considered to have been received at the pool plant from which diverted and milk diverted for the account of a cooperative association shall be considered to have been received at the location of the pool plant from which diverted.

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

Effective date: September 1, 1964.

Signed at Washington, D.C., on August 25, 1964.

GEORGE L. MEHREN,
Assistant Secretary.

[F.R. Doc. 64–8766; Filed, Aug. 27, 1964; 8:49 a.m.]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[C.C.C. Grain Price Support Regs., 1964-Crop Grain Sorghum Supp., Amdt. 1]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1964-Crop Grain Sorghum Loan and Purchase Program

SUPPORT RATES

Correction

In F.R. Doc. 64–8390, appearing at page 11830 of the issue for Wednesday, August 19, 1964, the following correction is made in the tabular matter of § 1421.2531(f): The rate entry for Fort Bend County, Texas, should read "2.08" instead of "2.80".

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 78—BRUCELLOSIS

Subpart D—Designation of Modified Certified Brucellosis Areas, Public Stockyards, Specifically Approved Stockyards and Slaughtering Establishments

MODIFIED CERTIFIED BRUCELLOSIS AREAS

Pursuant to § 78.16 of the regulations in Part 78, as amended, Title 9, Code of Federal Regulations, containing restrictions on the interstate movement of animals because of brucellosis, under sections 4, 5, and 13 of the Act of May 29, 1884, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended; and section 3 of the Act of March 3, 1905, as amended (21 U.S.C. 111–113, 114a–1, 120, 121, 125), § 78.13 of said regulations designating modified certified brucellosis areas is hereby amended to read as follows:

§ 78.13 Modified certified brucellosis areas.

The following States, or specified portions thereof, are hereby designated as modified certified brucellosis areas:

Alabama. Baldwin, Barbour, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, De Kalb, Elmore, Escambia, Etowah, Fayette, Franklin, Geneva, Henry, Houston, Jackson, Jefferson, Lauderdale, Lawrence, Lee, Limestone, Macon, Madison, Marion, Marshall, Mobile, Morgan, Pike, Randolph, Russell, St. Clair, Shelby, Talladega, Tallapoosa, Walker, Washington, and Winston Counties;

Arizona. The entire State.

Arkansas. The entire State.

California. The entire State.

Colorado. Alamosa, Archuleta, Baca, Chaffee, Clear Creek, Conejos, Costilla, Custer, Delta, Denver, Dolores, Eagle, Garfield, Gilpin, Gunnison, Hinsdale, Huerfano, Jefferson, Kit Carson, La Plata, Las Animas, Lincoln, Logan, Mesa, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Phillips, Pitkin, Pueblo, Rio Grande, Saguache, San Juan, San Miguel, Sedgwick, Washington, and Yuma Counties; and Southern Ute Indian Reservation and Ute Mountain Ute Indian Reservation;

Connecticut. The entire State;

Delaware. The entire State;

Florida. Baker, Bay, Bradford, Calhoun, Columbia, Dixie, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, and Washington Counties;

Georgia. The entire State;

Hawaii. Honolulu County;

Idaho. The entire State;

Illinois. The entire State;

Indiana. Adams, Allen, Bartholomew, Benton, Blackford, Boone, Brown, Carroll, Cass, Clark, Clay, Clinton, Crawford, Daviess, Dearborn, Decatur, De Kalb, Delaware, Dubois, Elkhart, Fayette, Floyd, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Hamilton, Hancock, Harrison, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Johnson, Knox, Kosciusko, Lagrange, Lake, La Porte, Lawrence, Madison, Marion, Marshall, Martin, Miami, Monroe, Montgomery, Morgan, Newton, Noble, Ohio, Orange, Owen, Parke, Perry, Pike, Porter, Posey, Pulaski, Putnam, Randolph, Ripley, Rush, Saint Joseph, Scott, Shelby, Spencer, Starke, Steuben, Sullivan, Switzerland, Tippecanoe, Tipton, Union, Vanderburgh, Vermillion, Vigo, Wabash, Warrick, Washington, Wayne, Wells, White, and Whitley Counties;

Iowa. Adams, Audubon, Boone, Carroll, Cherokee, Clinton, Delaware, Dickinson, Emmet, Fayette, Floyd, Greene, Guthrie, Hamilton, Lyon, Mitchell, Monona, O'Brien, Osceola, Palo Alto, Pocahontas, Polk, Sac, Scott, Shelby, Story, Tama, Wapello, Warren, Winnebago, Woodbury, and Wright Counties;

Kansas. The entire State;

Kentucky. The entire State;

Louisiana. Ascension, Assumption, Bienville, Claiborne, St. Helena, St. James, St. John the Baptist, St. Mary, St. Tammany, Tangipahoa, Washington, and Webster Parishes;

Maine. The entire State;

Maryland. The entire State;

Massachusetts. The entire State;

Michigan. The entire State;

Minnesota. The entire State;

Mississippi. Alcorn, Amite, Attala, Benton, Chickasaw, Choctaw, Clay, Covington, De Soto, Forrest, Franklin, George, Greene, Hancock, Harrison, Itawamba, Jackson, Jasper, Jefferson Davis, Jones, Lamar, Lawrence, Leake, Lee, Lincoln, Lowndes, Marion, Monroe, Neshoba, Newton, Oktibbeha, Pearl River, Perry, Pike, Pontotoc, Prentiss, Simpson, Smith, Stone, Tallahatchie, Tippah, Tishomingo, Union, Walthall, Webster, Winston, and Yalobusha Counties;

Missouri. The entire State;

Montana. The entire State;

Nebraska. Adams, Antelope, Banner, Boone, Burt, Butler, Cass, Cedar, Chase, Cheyenne, Clay, Colfax, Cuming, Dakota, Deuel, Dixon, Dodge, Douglas, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Howard, Jefferson, Johnson, Kearney, Kimball, Lancaster, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee,

Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thurston, Washington, Wayne, Webster, and York Counties;

Nevada. The entire State;

New Hampshire. The entire State;

New Jersey. The entire State;

New Mexico. The entire State;

New York. The entire State;

North Carolina. The entire State;

North Dakota. Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cass, Cavalier, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grand Forks, Grant, Griggs, Hettinger, Kidder, La Moure, Logan, McHenry, McIntosh, McKenzie, McLean, Mercer, Morton, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, and Williams Counties;

Ohio. The entire State;

Oklahoma. Adair, Canadian, Choctaw, Cimarron, Delaware, Garfield, Grant, Haskell, Kingfisher, Latimer, McCurtain, Mayes, Noble, Nowata, Ottawa, Payne, Pushmataha, and Texas Counties;

Oregon. The entire State;

Pennsylvania. The entire State;

Rhode Island. The entire State;

South Carolina. The entire State;

South Dakota. Beadle, Brookings, Brown, Buffalo, Butte, Campbell, Clark, Clay, Codington, Custer, Day, Deuel, Edmunds, Faulk, Grant, Hamlin, Hand, Harding, Jerauld, Lake, Lawrence, Lincoln, McCook, McPherson, Marshall, Miner, Minnehaha, Moody, Perkins, Roberts, Sanborn, Spink, Turner, Union, Walworth, Yankton, and Ziebach Counties; and Crow Creek Indian Reservation;

Tennessee. The entire State;

Texas. Andrews, Armstrong, Bailey, Bandera, Baylor, Bexar, Blanco, Borden, Brewster, Briscoe, Burnet, Callahan, Cameron, Carson, Castro, Childress, Cochran, Coke, Coleman, Comal, Comanche, Concho, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Donley, Eastland, Ector, Edwards, El Paso, Fisher, Floyd, Gaines, Garza, Gillespie, Glasscock, Guadalupe, Hall, Hansford, Hardeman, Hartley, Haskell, Hays, Hidalgo, Hockley, Howard, Hudspeth, Hutchinson, Irion, Jeff Davis, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamb, Lampasas, Lipscomb, Llano, Loving, Lubbock, Lynn, McCulloch, Martin, Mason, Medina, Menard, Midland, Mills, Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Parmer, Pecos, Presidio, Randall, Reagan, Real, Reeves, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Ward, Winkler, Yoakum, and Young Counties;

Utah. The entire State;

Vermont. The entire State;

Virginia. The entire State;

Washington. The entire State;

West Virginia. The entire State;

Wisconsin. The entire State;

Wyoming. Albany, Big Horn, Campbell, Crook, Fremont, Goshen, Hot Springs, Laramie, Lincoln, Natrona, Niobrara, Park, Platte, Sublette, Sweetwater, Teton, Uinta, Washakie, and Weston Counties;

Puerto Rico. The entire area; and

Virgin Islands of the United States. The entire area.

(Secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791–792, as amended, sec. 3, 33 Stat. 1265, as amended, sec. 13, 65 Stat. 693; 21 U.S.C. 111–113, 114a–1, 120, 121, 125; 19 F.R. 74, as amended; 9 CFR 78.16)

Effective date. The foregoing amendment shall become effective upon publication in the FEDERAL REGISTER.

The amendment adds the following additional areas to the list of areas designated as modified certified brucellosis areas because it has been determined that such areas come within the definition of § 78.1(i): Tama County in Iowa: Sherman County in Nebraska; Yankton County in South Dakota; and Guadalupe and Hansford Counties in Texas.

The amendment imposes certain restrictions necessary to prevent the spread of brucellosis in cattle and should be made effective promptly in order to accomplish its purpose in the public interest. Accordingly, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 25th day of August 1964.

E. E. SAULMON,
Acting Director, Animal Disease Eradication Division, Agricultural Research Service.

[F.R. Doc. 64–8767; Filed, Aug. 27, 1964; 8:49 a.m.]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. G]

PART 207—COLLECTION OF NONCASH ITEMS

Terms of Collection

1. Effective September 1, 1964, paragraphs (a) and (b) of § 207.3 are revised to read as follows:

§ 207.3 Terms of collection.

(a) *Agreement of sending bank.* Each member and nonmember clearing bank and each Federal Reserve bank which sends noncash items to a Federal Reserve bank for collection shall by such action be deemed: (1) To authorize the Federal Reserve banks to handle such items subject to the terms and conditions of this part; (2) to warrant its own authority to give the Federal Reserve banks such authority; (3) to agree to indemnify any Federal Reserve bank for any loss or expense sustained (including but not limited to attorneys' fees and expenses of litigation) resulting from the failure of such sending bank to have such authority, or resulting from such Federal Reserve bank's guaranty of prior endorsements, or resulting from any action taken by the Federal Reserve bank within the scope of its authority for the purpose of collecting such noncash items, or resulting from any and all warranties given by the Federal Reserve bank, in respect of such items, under the law of any State applicable to the Federal Reserve bank as a collecting bank; (4) to guarantee all prior endorsements on such items whether or not a specific guaranty is incorporated in an endorsement of the sending bank; and (5) to warrant to the Federal Reserve bank, in respect of such items, all such matters and things as the Federal Reserve bank shall warrant in respect thereof under the law of any State applicable to the Federal Reserve bank as a collecting bank: *Provided,* That nothing herein contained shall, or shall be deemed to, constitute a limitation upon the effect of any warranty by such sending bank arising under the law of any State applicable to such sending bank as a collecting bank.

(b) *Federal Reserve bank as agent.* A Federal Reserve bank will act only as agent of the bank from which it receives such noncash items and will assume no liability except for its own negligence, its guaranty of prior endorsements and its warranties under the law of any State applicable to it as a collecting bank.

* * * * *

2a. The purposes of these amendments are (1) to provide that Federal Reserve Banks, as collecting banks, shall receive the same warranties from sending banks located in jurisdictions in which the Uniform Commercial Code is not in effect as Federal Reserve Banks located in jurisdictions in which the Code is in effect give to banks to which they forward noncash items, and (2) to make it clear that a Federal Reserve Bank which sends items to another Federal Reserve Bank makes the same warranties and agreements as are made by a member or nonmember bank which sends such items to a Federal Reserve Bank.

b. The amendments set forth herein were the subject of a notice of proposed rule making published in the FEDERAL REGISTER (29 F.R. 9725), and were adopted by the Board after consideration of all the relevant matter, including the data, views and arguments received from interested persons. The deferred effective date described in section 4(c) of the Administrative Procedure Act was not prescribed in connection with these amendments for the reasons and good cause found as stated in paragraph (e) of § 262.1 of the Board's rules of procedure (Part 262 of this chapter), and specifically because in connection with these amendments such procedure is unnecessary as it would not aid the persons affected and would serve no other useful purpose.

(12 U.S.C. 248(i). Interpret or apply 12 U.S.C. 248(o), 360)

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
[SEAL] KENNETH A. KENYON,
Assistant Secretary.

[F.R. Doc. 64–8717; Filed, Aug. 27, 1964; 8:45 a.m.]

[Reg. J]

PART 210—CHECK CLEARING AND COLLECTION

Terms of Collection

1. Effective September 1, 1964, the presently undesignated first paragraph of § 210.5 is designated as paragraph (a),

and the present paragraphs (a) through (i) of § 210.5 are redesignated as paragraphs (b) through (j), respectively, and newly redesignated paragraphs (a) and (b) are revised to read as follows:

§ 210.5 **Terms of collection.**

(a) The Board of Governors of the Federal Reserve System hereby authorizes the Federal Reserve banks to handle such checks subject to the following terms and conditions; and each member and nonmember clearing bank and each Federal Reserve bank which sends checks to a Federal Reserve bank for deposit or collection shall by such action be deemed: (1) To authorize the Federal Reserve banks to handle such checks subject to the following terms and conditions; (2) to warrant its own authority to give the Federal Reserve banks such authority; (3) to agree to indemnify any Federal Reserve bank for any loss or expense sustained (including but not limited to attorneys' fees and expenses of litigation) resulting from the failure of such sending bank to have such authority, or resulting from such Federal Reserve bank's guaranty of prior endorsements, or resulting from any action taken by the Federal Reserve bank within the scope of its authority for the purpose of collecting such checks, or resulting from any and all warranties by the Federal Reserve bank, in respect of such checks, under the law of any State applicable to the Federal Reserve bank as a collecting bank; (4) to guarantee all prior endorsements on such checks whether or not a specific guaranty is incorporated in an endorsement of the sending bank; and (5) to warrant to the Federal Reserve bank, in respect of such checks, all such matters and things as the Federal Reserve bank shall warrant in respect thereof under the law of any State applicable to the Federal Reserve bank as a collecting bank; *Provided*, That nothing herein contained shall, or shall be deemed to, constitute a limitation upon the effect of any warranty by such sending bank arising under the law of any State applicable to such sending bank as a collecting bank.

(b) A Federal Reserve bank will act only as agent of the bank from which it receives such checks and will assume no liability except for its own negligence, its guaranty of prior endorsements and its warranties under the law of any State applicable to it as a collecting bank.

* * * * *

2a. The purposes of these amendments are (1) to provide that Federal Reserve Banks, as collecting banks, shall receive the same warranties from sending banks located in jurisdictions in which the Uniform Commercial Code is not in effect as Federal Reserve Banks located in jurisdictions in which the Code is in effect give to banks to which they forward checks, and (2) to make it clear that a Federal Reserve Bank which sends checks to another Federal Reserve Bank makes the same warranties and agreements as are made by a member or nonmember bank which sends checks to a Federal Reserve Bank.

b. The amendments set forth herein were the subject of a notice of proposed rule making published in the FEDERAL REGISTER (29 F.R. 9725), and were adopted by the Board after consideration of all the relevant matter, including the data, views and arguments received from interested persons. The deferred effective date described in section 4(c) of the Administrative Procedure Act was not prescribed in connection with these amendments for the reasons and good cause found as stated in paragraph (e) of § 262.1 of the Board's rules of procedure (Part 262 of this chapter), and specifically because in connection with these amendments such procedure is unnecessary as it would not aid the persons affected and would serve no other useful purpose.

(12 U.S.C. 248(i). Interpret or apply 12 U.S.C. 248(o), 360)

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
[SEAL] KENNETH A. KENYON,
Assistant Secretary.

[F.R. Doc. 64-8718; Filed, Aug. 27, 1964; 8:45 a.m.]

[Reg. Y]

PART 222—BANK HOLDING COMPANIES

Computer Services for Customers of Subsidiary Banks

§ 222.118 **Computer services for customers of subsidiary banks.**

(a) The question has been presented to the Board of Governors whether a wholly-owned nonbanking subsidiary ("service company") of a bank holding company, which is now exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 ("the Act") because its sole business is the providing of services for the holding company and the latter's subsidiary banks, would lose its exempt status if it should provide data processing services for customers of the subsidiary banks.

(b) The Board understood from the facts presented that the service company owns a computer which it utilizes to furnish data processing services for the subsidiary banks of its parent holding company. Customers of these banks have requested that the banks provide for them computerized billing, accounting, and financial records maintenance services. The banks wish to utilize the computer services of the service company in providing these and other services of a similar nature. It is proposed that, in each instance where a subsidiary bank undertakes to provide such services, the bank will enter into a contract directly with the customer and then arrange to have the service company perform the services for it, the bank. In no case will the service company provide services for anyone other than its affiliated banks. Moreover, it will not hold itself out as, nor will its parent corporation or affiliated banks represent it to be, authorized or willing to provide services for others.

(c) Section 4(c)(1) of the Act permits a holding company to own shares in "any company engaged solely * * * in the business of furnishing services to or performing services for such holding company and banks with respect to which it is a bank holding company * * *." The Board has ruled heretofore that the term "services" as used in section 4(c)(1) is to be read as relating to those services (excluding "closely related" activities of "a financial, fiduciary, or insurance nature" within the meaning of section 4(c)(6)) which a bank itself can provide for its customers (12 CFR 222.104). A determination as to whether a particular service may legitimately be rendered or performed by a bank for its customers must be made in the light of applicable Federal or State statutory or regulatory provisions. In the case of a State-chartered bank, the laws of the State in which the bank operates, together with any interpretations thereunder rendered by appropriate bank authorities, would govern the right of the bank to provide a particular service. In the case of a national bank, a similar determination would require reference to provisions of Federal law relating to the establishment and operation of national banks, as well as to pertinent rulings or interpretations promulgated thereunder.

(d) Accordingly, on the assumption that all of the services to be performed are of the kinds that the holding company's subsidiary banks may render for their customers under applicable Federal or State law, the Board concluded that the rendition of such services by the service company for its affiliated banks would not adversely affect its exempt status under section 4(c)(1) of the Act.

(e) In arriving at the above conclusion, the Board emphasized that its views were premised explicitly upon the facts presented to it, and particularly its understanding that banks are permitted, under applicable Federal or State law, to provide the proposed computer services. The Board emphasized also that in respect to the service company's operations, there continues in effect the requirement under section 4(c)(1) that the service company engage solely in the business of furnishing services to or performing services for the bank holding company and its subsidiary banks. The Board added that any substantial change in the facts that had been presented might require re-examination of the service company's status under section 4(c)(1).

(Interprets 12 U.S.C. 1843(c)(1))

Dated at Washington, D.C., this 19th day of August 1964.

By order of the Board of Governors.

[SEAL] KENNETH A. KENYON,
Assistant Secretary.

[F.R. Doc. 64-8719; Filed, Aug. 27, 1964; 8:45 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Airspace Docket No. 64–WA–57]

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

Alteration of Control Area

On March 5, 1964, an amendment to Part 71 of the Federal Aviation Regulations was published in the FEDERAL REGISTER (29 F.R. 3000) which altered control 1485 to include that airspace N. of Fairbanks, Alaska, extending from 18,500 feet MSL to Flight Level 450 bounded by a line beginning at latitude 72°00'00'' N., longitude 144°13'15'' W., to latitude 72°00'00'' N., longitude 129°00'00'' W., to latitude 69°00'00'' N., longitude 141°00'00'' W., to latitude 64°39'30'' N., longitude 145°50'00'' W., to latitude 65°00'00'' N., longitude 149°10'00'' W., to point of beginning, excluding the portion under the jurisdiction of Canada.

This action which included airspace within Canada, was taken to encompass transpolar flights over Komakuk, Canada, and Fort Yukon, Alaska, and was in accordance with the recommendation for the Polar Flight Information Region (FIR) by the Fourth North Atlantic Regional Air Navigation Meeting of the International Civil Aviation Organization (Recommendation 14/4), and the FAA and the Canadian Department of Transport proposals for implementing the Arctic Flight Information Regions.

The Canadian Department of Transport has informed the United States that they are in a position to implement the Goose Upper Information Region (UIR) approximately September 17, 1964, and assume control therein. The UIR would coincide with the portion of Control of 1485 east of longitude 141°00'00'' W., and would result in dual jurisdiction of this airspace. Accordingly, action is taken herein to revoke the portion of Control 1485 east of longitude 141°00'00'' W.

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 10854.

Since this action reduces a burden on the public, compliance with the notice and public procedure provisions of section 4 of the Administrative Procedure Act is unnecessary and it may become effective without regard to the 30 day statutory period preceeding effectiveness.

In consideration of the foregoing, Part 71 [New] of the Federal Aviation Regulations is amended, effective 0001 e.s.t., September 17, 1964, as hereinafter set forth.

Section 71.163 (29 F.R. 1068, 3000) is amended as follows:

Control 1485

That airspace N of Fairbanks, Alaska, extending from 18,500 feet MSL to Flight Level 450 bounded by a line beginning at latitude 72°00'00'' N., longitude 144°13'15'' W., to latitude 72°00'00'' N., longitude 141°00'00'' W., to latitude 69°00'00'' N., longitude 141°00'00'' W., to latitude 64°39'30'' N., longitude 145°50'00'' W., to latitude 65°00'00'' N., longitude 149°10'00'' W., to point of beginning.

(Sec. 307(a) and sec. 1110 of the Federal Aviation Act of 1958; 49 U.S.C. 1348 and 1510 and Executive Order 10854, 24 F.R. 9565)

Issued in Washington, D.C., on August 24, 1964.

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

[F.R. Doc. 64–8720; Filed, Aug. 27, 1964; 8:45 a.m.]

[Airspace Docket No. 63–WA–81]

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

Alteration of Federal Airways and Transition Area; and Designation of Reporting Point

On July 31, 1964, there were published in the FEDERAL REGISTER (29 F.R. 11122) amendments to the Federal Aviation Regulations which would realign VOR Federal airways Nos. 5, 51, 157, 243, 819, 839 and 881 via a new VOR to be installed in the vicinity of Waycross, Ga. Action was also taken to alter the Macon, Ga., transition area and to designate the Waycross VOR as a reporting point. These amendments, after several delays in the effective date, were to become effective October 15, 1964. It now appears that the commissioning date of the Waycross VOR will be further postponed until November 12, 1964. Accordingly, action is taken herein to postpone the effective date of Airspace Docket No. 63–WA–81 until November 12, 1964.

Since 30 days will elapse from the time of publication of the rule as adopted to the new effective date, this change is made in compliance with section 4 of the Administrative Procedure Act.

In consideration of the foregoing, effective immediately, the following action is taken: In Airspace Docket No. 63–WA–81, "effective 0001 e.s.t. October 15, 1964." is deleted and "effective 0001 e.s.t. November 12, 1964." is substituted therefor.

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348)

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

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

[F.R. Doc. 64–8721; Filed, Aug. 27, 1964; 8:45 a.m.]

[Airspace Docket No. 63–EA–103]

PART 75—ESTABLISHMENT OF JET ROUTES [NEW]

Designation and Alteration of Jet Routes and Designation of Jet Advisory Area

On June 5, 1964, a notice of proposed rule making was published in the FEDERAL REGISTER (29 F.R. 7328) stating that the Federal Aviation Agency (FAA) proposed alteration to Jet Routes Nos. 55 and 77, and their associated jet advisory areas.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. Comments received did not object to the proposal.

Since publication of the notice it has been determined that a requirement exists for designation of a jet route between Kennedy, N.Y., and Boston, Mass., to provide route continuity for flights operating between New York City, N.Y., via Boston to Yarmouth, N.S. Since such a route would be identical to the existing segment of Jet Route No. 55 between Kennedy and Boston and would cause no undue burden on any persons, action is taken herein to designate Jet Route No. 575 between Kennedy and Boston.

The substance of the proposal has been published; therefore, for the reasons stated herein and in the notice, the following actions are taken:

1. In § 75.100 (29 F.R. 1287, 1561) the following changes are made:

a. In the text of Jet Route No. 55 "Boston, Mass.; INT of the Boston 014° and the Bangor, Maine, 225° radials; Bangor;" is deleted and "INT of the Kennedy 049° and the Kennebunk, Maine, 212° radials; Kennebunk; Bangor, Maine;" is substituted therefor.

b. In the text of Jet Route No. 77 "INT of the Boston 014° and the Bangor, Maine, 225° radials; Bangor;" is deleted and Kennebunk, Maine; Bangor, Maine" is substituted therefor.

2. In § 75.100 (29 F.R. 1287) the following is added:

Jet Route No. 575 (Kennedy, N.Y., to Boston, Mass.). From Kennedy, N.Y., to Boston, Mass.

3. In § 75.200 (29 F.R. 1300) the following is added:

Jet Route No. 575 jet advisory area. *Radar*—From the positive control area SW of Boston, Mass., to Boston.

These amendments shall become effective 0001 e.s.t., October 15, 1964.

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348)

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

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

[F.R. Doc. 64–8722; Filed, Aug. 27, 1964; 8:45 a.m.]

[Airspace Docket No. 64–WA–53]

PART 75—ESTABLISHMENT OF JET ROUTES [NEW]

Designation of Jet Routes and Jet Advisory Areas

The purpose of these amendments to § 75.100 and § 75.200 is to designate jet route segments from the Peck, Mich., VORTAC, the Buffalo, N.Y., VORTAC, the Massena, N.Y., VOR, the Erie, Pa., VORTAC, the Presque Isle, Maine, VOR and the Plattsburgh, N.Y., VOR to the

United States/Canadian border; and to designate jet advisory areas from the Massena, Presque Isle and Plattsburgh VOR's to the United States/Canadian border.

The Canadian Department of Transport plans to designate high altitude airways in Canadian airspace to the United States/Canadian border from: London, Ontario, toward Peck, Mich., and Buffalo, N.Y.; St. Eustache, Quebec, toward Massena, N.Y., and Plattsburgh, N.Y.; Kleinburg, Ontario, toward Erie, Pa.; Mont Joli, Quebec, toward Presque Isle, Maine; and Windsor, Ontario, toward Erie, Pa. The Canadian Department of Transport has requested that these airways be continued as jet routes from the border to the appropriate United States facilities. The Federal Aviation Agency concurs in this suggestion and action pertaining to United States territory is taken herein.

All of the new jet routes and jet advisory areas will coincide with existing jet routes and jet advisory areas. Therefore, compliance with the notice and public procedure requirements of section 4 of the Administrative Procedure Act is unnecessary. However, to allow sufficient time for appropriate changes to be made on aeronautical charts, these amendments will become effective more than 30 days after publication.

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

1. In § 75.100 (29 F.R. 1287) the following is added:

Jet Route No. 547 (Peck, Mich., to Buffalo, N.Y.). (Joins Canadian high level airway No. 547.) From Peck, Mich., via the Peck 100° radial to the United States/Canadian border. From the United States/Canadian border to Buffalo, N.Y., via the Buffalo 274° radial.

Jet Route No. 566 (Massena, N.Y., to the United States/Canadian border). (Joins Canadian high level airway No. 566.) From Massena, N.Y., to the INT of the Massena 037° radial and the United States/Canadian border.

Jet Route No. 549 (Erie Pa., to the United States/Canadian border.) (Joins Canadian high level airway No. 549.) From Erie, Pa., to Kleinburg, Ontario, Canada, excluding the portion which lies over Canadian territory.

Jet Route No. 582 (Presque Isle, Maine, to the United States/Canadian border). (Joins Canadian high level airway No. 582.) From Presque Isle, Maine, to the INT of the Presque Isle 357° radial and the United States/Canadian border.

Jet Route No. 550 (United States/Canadian border to Erie, Pa.) (Joins Canadian high level airway No. 550.) From the INT of the United States/Canadian border and the Erie Pa., 278° radial to Erie.

Jet Route No. 567 (Plattsburgh, N.Y., to the United States/Canadian border). (Joins Canadian high level airway No. 567.) From Plattsburgh, N.Y., to the INT of the Plattsburgh 334° radial and the United States/Canadian border.

2. In § 75.200 (29 F.R. 1300) the following is added:

Jet Route No. 566 jet advisory area. *Radar*—From Massena, N.Y., to the United States/Canadian border.

Jet Route No. 582 jet advisory area. *Radar*—From Presque Isle, Maine, to the United States/Canadian border.

Jet Route No. 567 jet advisory area. *Radar*—From Plattsburgh, N.Y., to the United States/Canadian border.

These amendments shall become effective 0001 e.s.t., October 15, 1964.

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Washington, D.C., on August 24, 1964.

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

[F.R. Doc. 64-8723; Filed, Aug. 27, 1964; 8:45 a.m.]

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 6178; Amdt. 803]

PART 507—AIRWORTHINESS DIRECTIVES

Hartzell Propellers

There have been incidents of failure of the plastic pitch change blocks in Hartzell HC-E2YL-2B and HC-C2YK-1 propellers which resulted in severe roughness or vibration in flight. To correct this condition, an airworthiness directive is being issued to require inspection of these propellers.

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 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 hereby amended by adding the following new airworthiness directive:

HARTZELL. Applies to Models HC-C2YK-1/7666-2 Serial Numbers AW-1 to AW-603 and HC-E2YL-2B/7663-4 propellers Serial Numbers BG-1 to BG-777.

Compliance required as indicated.

There have been incidents of failure of the plastic pitch change blocks in Hartzell HC-E2YL-2B and HC-C2YK-1 propellers which resulted in severe roughness or vibration in flight. To correct this condition, accomplish the following:

(a) Inspect propeller blades for pitch change movement and replace plastic pitch change blocks as necessary in accordance with Hartzell Service Bulletin No. 86 revised June 17, 1964, within 10 hours' time in service after the effective date of this AD unless already accomplished within the last 10 hours' time in service, and thereafter within every 10 hours' time in service from the last inspection.

(b) When the modification specified in Hartzell Service Bulletin No. 86, revised June 17, 1964, has been accomplished, the repetitive inspections specified in paragraph (a) may be discontinued.

(Hartzell Service Bulletin No. 86, revised June 17, 1964, covers this same subject.)

This amendment shall become effective August 28, 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 August 24, 1964.

JAMES F. RUDOLPH,
Acting Director, Flight Standards Service.

[F.R. Doc. 64-8724; Filed, Aug. 27, 1964; 8:45 a.m.]

PART 507—AIRWORTHINESS DIRECTIVES

Piper Model PA-24 Series Aircraft

A proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requiring inspection and repair of the wires on the main landing gear safety switch on Piper Model PA-24 Series aircraft was published in 29 F.R. 8274.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

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 Models PA-24 and PA-24-250 aircraft Serial Numbers 24-1 through 24-3284.

Compliance required within the next 50 hours' time in service after the effective date of this AD, unless already accomplished.

To eliminate possible breakage or loosening of the wires leading to the landing gear safety switch with resultant malfunction of the landing gear safety switch accomplish the following:

(a) On the left main landing gear, inspect for broken and loose wires and terminals at the connections to the landing gear safety switch. Repair any broken or loose wires and terminals before further flight.

(b) Install Piper Kit No. 754475, or FAA approved equivalent, leaving sufficient slack in the wires between the new clamp and the safety switch to prevent pulling of the wires.

(Piper Service Letter No. 379, dated July 12, 1962, pertains to this same subject.)

This amendment shall become effective September 28, 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 August 21, 1964.

JAMES F. RUDOLPH,
Acting Director, Flight Standards Service.

[F.R. Doc. 64-8725; Filed, Aug. 27, 1964; 8:45 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

CHLORTETRACYCLINE

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition (FAP 1327) filed by American Cyanamid Company, P.O. Box 400, Princeton, New Jersey, 08540, and other relevant material, has concluded that the food additive regulations should be amended to provide for the addition of sodium sulfate to low-calcium chicken

feeds containing chlortetracycline as an aid in the potentiation of chlortetracycline blood levels. 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 by the Secretary of Health, Education, and Welfare (21 CFR 2.90; 29 F.R. 471), § 121.208(d) is amended by changing items 7 and 8 in table 1 to read as follows:

§ 121.208 Chlortetracycline.

* * * * *

(d) * * *

TABLE 1—CHLORTETRACYCLINE IN COMPLETE CHICKEN AND TURKEY FEEDS

Principal ingredient	Gram per ton	Combined with—	Gram per ton	Limitations	Indications for use
* * *	* * *	* * *	* * *	* * *	* * *
7. Chlortetracycline	100–200			For chickens; not to be fed to laying chickens; as chlortetracycline hydrochloride, as follows: In low-calcium feed containing 0.8 percent dietary calcium, not to be fed continuously for more than 8 weeks; in low-calcium feed containing 0.40 percent to 0.55 percent dietary calcium, not to be fed continuously for more than 5 days; in low-calcium feed containing 0.8 percent dietary calcium and 1.0 percent to 1.5 percent sodium sulfate, to be fed continuously for not more than the first 3 weeks of life.	Treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis); prevention of synovitis.
8. Chlortetracycline	200			For chickens; not to be fed to laying chickens; as chlortetracycline hydrochloride, as follows: In low-calcium feed containing 0.8 percent dietary calcium, not to be fed continuously for more than 8 weeks; in low-calcium feed containing 0.8 percent dietary calcium and 1.0 percent to 1.5 percent sodium sulfate, to be fed continuously for not more than the first 3 weeks of life.	Prevention and control of coccidiosis caused by *E. necatrix* and *E. tenella*.

* * * * *

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 person 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: August 21, 1964.

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

[F.R. Doc. 64-8769; Filed, Aug. 27, 1964; 8:50 a.m.]

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

FUMARIC ACID AND SALTS OF FUMARIC ACID

No comments were received in response to the notice published in the FEDERAL REGISTER of July 9, 1964 (29 F.R. 9399), proposing an amendment to § 121.1130 (29 F.R. 560) to define ferrous fumarate used as a source of iron in foods for special dietary use based on total iron content including a maximum content of ferric iron. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (d), (e), 72 Stat. 1787; 21 U.S.C. 348 (d), (e)) 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), § 121.1130 is amended as proposed by changing paragraph (a)(2) to read as follows:

§ 121.1130 Fumaric acid and salts of fumaric acid.

(a) * * *

(2) The calcium, magnesium, potassium, and sodium salts contain a minimum of 99.0 percent by weight of the respective salt, calculated on the anhydrous basis. Ferrous fumarate contains a minimum of 31.3 percent total iron and not more than 2.0 percent ferric iron.

* * * * *

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 person 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(d), (e), 72 Stat. 1787; 21 U.S.C. 348(d), (e))

Dated: August 21, 1964.

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

[F.R. Doc. 64-8772; Filed, Aug. 27, 1964; 8:50 a.m.]

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

DISODIUM EDTA

The Commissioner of Food and Drugs, having evaluated the data in petitions (FAP 1428, 1438) filed by Geigy Industrial Chemicals, Division of Geigy Chemical Corporation, P.O. Box 430, Yonkers, N.Y., and other relevant material, has concluded that an amendment to § 121.1056 should issue to prescribe the safe use of disodium EDTA to promote color retention in dried banana products and canned cooked chickpeas. 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 by the Secretary of Health, Education, and Welfare (21 CFR 2.90; 29 F.R. 471), § 121.1056 is amended by adding alphabetically to the table in paragraph (b)(1) the following new items:

§ 121.1056 Disodium EDTA.

* * * * *

(b) * * *

(1) * * *

Food	Limitation (parts per million)	Use
* * *	* * *	* * *
Canned cooked chickpeas.	165	Promote color retention.
* * *	* * *	* * *
Ready-to-eat cereal products containing dried bananas.	315 in dried banana component of cereal product.	Promote color retention.

* * * * *

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 person 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: August 21, 1964.

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

[F.R. Doc. 64-8771; Filed, Aug. 27, 1964; 8:50 a.m.]

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

METHACRYLIC ACID-DIVINYLBENZENE COPOLYMER

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition (FAP 417) filed by Charles Pfizer and Company, 235 West 42d Street, New York 17, N.Y., and other relevant material, has concluded that the following regulation should issue to provide for the safe use of methacrylic acid-divinylbenzene copolymer as an adsorbing resin for vitamin B_{12}. 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 by the Secretary of Health, Education, and Welfare (21 CFR 2.90; 29 F.R. 471) the food additive regulations are amended by adding to Subpart D the following new section:

§ 121.1136 Methacrylic acid-divinylbenzene copolymer.

Methacrylic acid-divinylbenzene copolymer may be safely used in food in accordance with the following prescribed conditions:

(a) The additive is produced by the polymerization of methacrylic acid and divinylbenzene. The divinylbenzene functions as a cross-linking agent and constitutes a minimum of 5.0 percent of the polymer.

(b) Aqueous extractives from the additive do not exceed 0.2 percent (dry basis) after 24 hours at 25° C.

(c) The additive is used as a carrier of vitamin B_{12} in foods for special dietary use.

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 person 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: August 21, 1964.

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

[F.R. Doc. 64-8773; Filed, Aug. 27, 1964; 8:50 a.m.]

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

SUBCHAPTER C—DRUGS

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

Tylosin, Streptomycin

1. The Commissioner of Food and Drugs, having evaluated the data submitted in a petition (FAP 1151), filed by Elanco Products Company, A Division of Eli Lilly and Co., P.O. Box 1750, Indianapolis 6, Ind., and other relevant material, has concluded that the following amendment of § 121.217 should issue to provide for conditions under which tylosin with streptomycin may be safely administered to swine in feed for growth promotion and feed efficiency.

a. 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 by the Secretary of Health, Education, and Welfare (21 CFR 2.90; 29 F.R. 471), Table 3 of § 121.217 is amended as follows:

§ 121.217 Tylosin.

* * * * *

(d) * * *

TABLE 3—TYLOSIN IN ANIMAL FEED

Principal ingredient	Grams per ton	Combined with—	Grams per ton	Limitations	Indications for use
* * *	* * *	* * *	* * *	* * *	* * *
3. Tylosin+streptomycin	10-100			For swine; in a combination containing tylosin and streptomycin in a 1 to 1 ratio; as tylosin phosphate plus streptomycin sulfate as follows:	Growth promotion and feed efficiency.

Grams per ton	
40-100	Up to 40 lb. animal weight.
20-40	41-100 lb. animal weight.
10-20	101 lb. to market weight.

* * * * * * *

b. Correction: The amendatory language of amendment 10, published in the FEDERAL REGISTER of July 29, 1964 (29 F.R. 10508) is changed to read:

10. Section 121.217 *Tylosin* is amended by changing the introduction to paragraph (e) to read as follows:

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

2. Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507(c), 59 Stat. 463, as amended; 21 U.S.C. 357(c)), and delegated to the Commissioner of Food and Drugs by the Secretary (21 CFR 2.90; 29 F.R. 471), the Commissioner finds that animal feed containing tylosin phosphate and streptomycin is safe and efficacious for use in the amounts and under the conditions prescribed in Part 121 of this chapter. Therefore, in § 146.26 *Animal feed containing certifiable antibiotic drugs*, paragraph (b) is amended by adding thereto the following new subparagraph.

§ 146.26 Animal feed containing certifiable antibiotic drugs.

* * * * *

(b) * * *

(58) It is medicated feed for swine containing a combination of streptomycin and tylosin phosphate in the amounts and for the purposes indicated in § 121.217 of this chapter, and its labeling bears adequate directions and warnings for such use; *Provided, however,* That such medicated complete feed has been prepared from a feed additive premix or feed additive concentrate that contains streptomycin and not more than 500 grams of tylosin phosphate per ton. If the medicated feed is prepared from a feed additive premix or feed additive concentrate containing streptomycin and more than 500 grams of tylosin phosphate per ton, it is exempt from certification only under the condition that there has been submitted to the Commissioner, in triplicate, adequate information of the kind described in § 146.7 to establish the safety and efficacy of the article and to guarantee its identity, strength, quality, and purity. The exemption shall expire at the beginning of any act changing the composition or labeling of such drug, or the methods used in and the facilities and controls used for its manufacturing, processing, and packaging, or in its labeling, unless the person who obtains the exemption has submitted to the Commissioner, in triplicate, amended information that describes such proposed changes, and such amendment has been accepted by the Commissioner.

(Sec. 507(c), 59 Stat. 463 as amended; 21 U.S.C. 357(c))

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 person 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.

(Secs. 409(c)(1), 507(c), 59 Stat. 463 as amended; 72 Stat. 1786 as amended 76 Stat. 785; 21 U.S.C. 348(c)(1), 357(c))

Dated: August 21, 1964.

GEO P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 64-8770; Filed, Aug. 27, 1964; 8:50 a.m.]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release No. 34-7397]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Temporary Exemption From Application Requirements

Section 12(f)(1)(A), which has been added to the Securities Exchange Act of 1934 (Exchange Act) by the Securities Acts Amendments of 1964 (Amendments Act), continues unlisted trading privileges for securities admitted to such privileges pursuant to section 12(f) of the Exchange Act prior to July 1, 1964. The Amendments Act, however, does not continue unlisted trading privileges for securities admitted to unlisted trading on or after July 1, 1964.

The Securities and Exchange Commission has adopted a new rule under section 12 of the Exchange Act. The rule, designated Rule 12f-7 (17 CFR 240.12f-7), is intended to prevent a cessation of unlisted trading in securities admitted to unlisted trading privileges pursuant to section 12(f) of the Exchange Act between July 1, 1964, and the date of enactment of the Amendments Act.

By adoption of Rule 12f-7 (17 CFR 240.12f-7) the Commission has granted for securities admitted to unlisted trading privileges on or after July 1, 1964, a continuation of such privileges for thirty days following enactment of the Amendments Act, during which time exchanges may file new applications for such privileges under section 12(f)(1)(B) of the Exchange Act, as amended by the Amendments Act.

Statutory basis. The Securities and Exchange Commission acting pursuant to the Exchange Act, and particularly sections 3(a)(12) and 23(a) thereof, deeming it necessary for the exercise of the functions vested in it, and necessary and appropriate in the public interest and for the protection of investors, and finding that the provisions of subsections 4(a) and 4(b) of the Administrative Procedure Act regarding notice of proposed rule making and public procedure thereon are impracticable, unnecessary, and contrary to the public interest for the reasons that the termination of unlisted trading privileges in all securities admitted to such privileges on or after July 1, 1964, was not intended by the Amendments Act; and further finding that the provisions of subsection 4(c) of the Administrative Procedure Act regarding postponement of the effective date are inapplicable inasmuch as the foregoing rule grants or recognizes an exemption or relieves a restriction, hereby adopts Rule 12f-7 (17 CFR 240.12f-7) as set forth below, effective August 20, 1964.

The action of the Commission follows:

Title 17 of the Code of Federal Regulations is amended by adding a new § 240.12f-7 to read as follows:

§ 240.12f-7 Temporary exemption from § 240.12f-1 Application requirements.

Any security admitted to unlisted trading privileges on any national securities exchange between July 1, 1964 and August 20, 1964, pursuant to the provisions of section 12(f) of the Act as in effect prior to the amendment effective July 1, 1964, shall be exempt from the operation of section 12(a) of the Act until September 21, 1964; *Provided, however,* That such exemption shall continue until action is taken by the Commission on a new application for unlisted trading privileges for such security if such application is filed by the exchange with the Commission on or before September 21, 1964, pursuant to the provisions of section 12(f)(1)(B) of the Act, as amended.

(Secs. 3(a)(12), 23(a), 48 Stat. 834, 901, as amended, 15 U.S.C. 78c, 78w)

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

AUGUST 21, 1964.

[F.R. Doc. 64-8731; Filed, Aug. 27, 1964; 8:46 a.m.]

Title 32—NATIONAL DEFENSE

Chapter XVIII—Office of Civil Defense, Office of the Secretary of the Army

PART 1808—LABOR STANDARDS FOR FEDERALLY ASSISTED CONTRACTS

Part 1808 of Chapter XVIII, Title 32 of the Code of Federal Regulations is revised to read as follows:

Sec.
1808.1 Purpose and scope.
1808.2 Definitions.
1808.3 Project applications.
1808.4 Contract provisions.
1808.5 Examination of payrolls.
1808.6 Compliance.
1808.7 Certification of compliance.

AUTHORITY: The provisions of this Part 1808 issued under secs. 201(i), 401 of the Federal Civil Defense Act of 1950, as amended, 64 Stat. 1250, 1255, 50 U.S.C. App. 2253, 2281; Reorg. Plan No. 1 of 1958, as amended, 72 Stat. 1799-1801, 23 F.R. 4991; E.O. 10952, as amended, 26 F.R. 6577; Establishment of the Office of Civil Defense and Delegation of Authority Regarding Civil Defense Functions, published April 10, 1964, 29 F.R. 5017.

§ 1808.1 Purpose and scope.

The regulations in this part are supplemental to those contained in 29 CFR Part 5 and together they prescribe the labor standards applicable to construction work financed with the assistance of a contribution of Federal funds made under the provisions of section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281) to any State (and political subdivision thereof, where applicable). The regulations in this part, to the extent that they vary from those published in 29 CFR Part 5, have been approved by the Secretary of Labor under 29 CFR Part 5 to meet the particular needs of the Office of Civil Defense, Office of the Secretary of the Army. To assure full labor standards compliance reference should be made to the regulations contained in 29 CFR Part 5 as well as those published herein.

§ 1808.2 Definitions.

Except where otherwise clearly required by the context, each of the following terms shall have the meaning defined in this section when used in the regulations in this part:

(a) *Building or work.* Construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work; including without limitation, buildings, structures, and improvements of all types such as shelters, ramps, roadways, parking lots, tunnels, mains, power lines, pumping and generator stations, terminals, plants, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment is not a "building" or "work" within the meaning of the regulations in this part unless conducted in connection with and at the site of such building or work as defined hereunder.

(b) *Construction.* All types of work done on a particular building or work at the site thereof, including without limitation, altering, repairing, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or the construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work by persons employed by the contractor or the subcontractor.

(c) *Contract.* Any contract which is entered into for actual construction, alteration, or repair, including painting and decorating, of a building or work financed with the assistance of any contribution of Federal funds made under the provisions of section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281).

(d) *Employed.* Every person paid by a contractor or subcontractor in any manner for his labor on construction work financed with the assistance of any contribution of Federal funds made under the provisions of section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281) is "employed" and receiving "wages," regardless of any contractual relationship alleged to exist.

§ 1808.3 Project applications.

Each project application submitted by a State, involving construction work to be financed with the assistance of any contribution of Federal funds under the provisions of section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281) shall include as a condition thereof, the following provisions, verbatim:

(a) The State hereby agrees, as a condition of this project application, to conform to each and every obligation required on its part by the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251–2297) and by Regulations Part 1808 and guidance material of the Office of Civil Defense, Office of the Secretary of the Army as now or hereafter provided. The obligations of the State include without limitation the requirement that the State include, verbatim, in each contract involving construction work in excess of $2,000 and cause to be included, verbatim, in each subcontract thereunder, the provisions prescribed in § 1808.4 of the Regulations of the Office of Civil Defense, Office of the Secretary of the Army and cause to be attached the applicable wage determination decision of the Secretary of Labor.

(b) The State hereby agrees to and represents, as a condition of this project application, the following:

(1) Prior to entering into a contract involving construction work in excess of $2,000, a United States Department of Labor Form DB–11, requesting the Secretary of Labor to issue a wage determination decision in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a et seq.) for the project, shall be duly executed by the authorized official on behalf of the State (or political subdivision where applicable) and shall be submitted to the Office of Civil Defense, Office of the Secretary of the Army, in accordance with the procedures established by it, including any amendments thereto, for transmittal to the Department of Labor.

(2) Each advertisement of an invitation to bid shall indicate expressly that if the construction phase of the contract exceeds $2,000: (i) All laborers and mechanics employed by contractors or subcontractors in performance of the construction work shall be paid wages at rates not less than those determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a et seq.), and every such employee shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any workweek, as the case may be, as provided in section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281) and in the Contract Work Hours Standards Act (76 Stat. 357) and, (ii) bid specifications shall contain the labor standards provisions prescribed in section 1808.4 of the Regulations of the Office of Civil Defense, Office of the Secretary of the Army and shall have attached thereto the wage determination decision of the Secretary of Labor issued for the project.

(c) The State hereby agrees that the Office of Civil Defense, Office of the Secretary of the Army may withhold from the amount of any contributions otherwise due the State a sum sufficient to cover: (1) The amount of any restitution due laborers and mechanics employed by a contractor or subcontractor and (2) liquidated damages administratively determined due under section 104(a) of the Contract Work Hours Standards Act. Further, the maximum estimated total under payments and liquidated damages may be withheld from any advance or interim or final payment which otherwise would be due the State, pending the investigation and definite ascertainment of the amount. This provision shall in nowise reduce the efficacy of section 401(h) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2253) and regulations issued in furtherance thereof, as now or hereafter provided.

§ 1808.4 Contract provisions.

Each contract involving construction work in excess of $2,000 and all subcontracts thereunder shall include as a part thereof the following labor standards provisions, in completed form, verbatim:

(a) *Wage determination decision.* All mechanics and laborers employed by the contractor or subcontractor in the performance of construction work hereunder will be paid unconditionally and not less than once a week, and without subsequent deduction or rebate on any account except such payroll deductions as are permitted by the Copeland Regulations issued by the Secretary of Labor (29 CFR Part 3), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers.

(b) *Overtime requirements.* (As used in this clause, the terms "laborers" and "mechanics" include watchmen and guards.) No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic to be employed on such work in excess of eight hours in any calendar day or in excess of forty hours in any workweek unless such laborer or mechanic receives compensation at a rate of not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any such calendar day or in excess of forty hours in any such workweek, as the case may be.

(c) *Violations; liability for unpaid wages; liquidated damages.* In the event of any violation of clauses (a) or (b) the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, in the event of any violation of clause (b), such contractor and subcontractor shall be liable to the United States (in the case of work under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of clause (b), in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by clause (b).

(d) *Withholding for liquidated damages and unpaid wages.* The (write in the name of the State or political subdivision) may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in clause (c).

In the event of failure to pay any laborer or mechanic employed by the contractor or subcontractor in the performance of construction work hereunder, all or part of the wages required by the contract, the (write in the name of the State or political subdivision) may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased.

(e) *Payrolls and payroll records.* Payrolls and payroll records will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. The contractor will submit weekly a copy of all payrolls to (write in the name of the State or political subdivision) accompanied by a statement indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "weekly statement of compliance" which is required under this contract and the Copeland Regulations of the Secretary of Labor (29 CFR Part 3) shall satisfy this requirement. The contractor will make his employment records available for inspection by authorized representatives of the (write in the name of the State and the political subdivision, if any); the Office of Civil Defense, Office of the Secretary of the Army; and the Department of Labor; and will permit such representatives to interview employees during working hours on the job.

(f) *Apprentices.* Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, prior to using any apprentices on the contract work.

(g) *Compliance with Copeland Regulations (29 CFR Part 3).* The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference.

(h) *Ineligible bidders.* The contractor hereby certifies as a condition of the contract that he is not listed on the Comptroller General's list of ineligible bidders published pursuant to regulations issued by the Secretary of Labor (29 CFR Part 5) and the Davis-Bacon Act, as amended (40 U.S.C. 276a et seq.). This certification shall constitute a warranty, the falsity of which will render void this contract or subcontract, as the case may be.

(i) *Subcontracts.* The contractor will insert in any subcontracts clauses (a) through (h) and (j) and such other clauses as the Office of Civil Defense, Office of the Secretary of the Army may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

(j) *Contract termination; debarment.* A breach of any of clauses (a) through (i) may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

§ 1808.5 Examination of payrolls.

In cases where the contract involves construction work in excess of $2,000, a certified copy of all payrolls shall be checked by the State (or political subdivision, as applicable) against the applicable wage determination decision of the Secretary of Labor to verify labor standards compliance and to ascertain the following:

(a) That the rates paid to various classifications of employees are in conformity with the applicable wage determination decision.

(b) That the ratio of apprentices to journeymen is not disproportionate.

(c) That the ratio of laborers to journeymen is not disproportionate.

(d) That the ratio of helpers to journeymen is not disproportionate.

(e) That each classification shown in the payrolls is a classification for which a rate was predetermined in the applicable wage determination decision.

(f) That there are included in the payrolls those classifications of workers who would logically perform the work performed during the weeks in question.

§ 1808.6 Compliance.

In cases where the contract involves construction work in excess of $2,000:

(a) The State shall make (or cause the political subdivision to make) an "on the site" labor standards check, at least once during the project and at least every six months on projects of long duration, including without limitation the following:

(1) Interviewing of a representative number of employees including but not necessarily limited to one employee in each classification or craft to ascertain what work the employee is doing and his regular rate of pay. This information shall be checked against the payrolls and the applicable wage determination decision to verify compliance or noncompliance.

(2) Checking of the registration of all apprentices.

(b) In conducting investigations, including those of complaints of alleged violations, (which shall be given priority) all statements, written or oral, made by an employee are to be treated as confidential and shall not be disclosed to his employer without the consent of the employee. All indications, including but not limited to all complaints, of alleged violations of labor standards brought to its attention shall be investigated by the State (or political subdivision at the State's direction) and the State shall require that all such indications brought to the attention of a political subdivision shall be forthwith brought to the attention of the State.

(c) If there is evidence of labor standards noncompliance, restitution shall be required of the contractor or subcontractor and the State (or political subdivision, as applicable) shall, after written notice to the contractor, withhold from the contractor such advances, guarantees and accrued payments as are administratively determined necessary to cover any liquidated damages and the restitution due laborers and mechanics employed by the contractor or subcontractor. The State (or political subdivision, as applicable) also has the option of terminating the contract in accordance with its provisions. If there is evidence that that violations were aggravated, willful, or resulted in underpayments of $500 or more, a detailed report, including information as to restitution made, payments, advances and guarantees of funds withheld, contract terminations, and the name and address of each laborer and mechanic and contractor or subcontractor affected, and the day or days of such violations, shall be submitted by the State to the Office of Civil Defense, Office of the Secretary of the Army. Except where the Office of Civil Defense, Office of the Secretary of the Army has expressly requested that the investigation be made, no report need be made where the underpayments total less than $500, if nonwillful, restitution has been made and the State has received assurance of future compliance.

§ 1808.7 Certification of compliance

Before making final payment on any contract involving construction work in excess of $2,000, the State (or political subdivision, as applicable) shall submit to the Office of Civil Defense, Office of the Secretary of the Army, the following certification, verbatim, in completed form:

CERTIFICATE OF LABOR STANDARDS COMPLIANCE

Knowing that my statements will be relied upon by the Office of Civil Defense, Office of the Secretary of the Army, in its payment to the State under an approved project application for a Federal financial contribution under section 201(1) of the Federal Civil Defense Act of 1950, as amended, (50 U.S.C. App. 2281) I do hereby certify as follows:

1. That I am the Contracting Officer of ---------- (write in the name of the political subdivision and/or State, as applicable), applicant under Office of Civil Defense, Office of the Secretary of the Army, Project Application No. -------.

2. That in my official capacity I have personally, or through authorized employee(s) of the above named applicant for purposes of this certification, completed the following: (a) Examinations of all contracts involving construction work in excess of $2,000 on the civil defense project covered by the aforementioned project application, and all subcontracts thereunder; (b) examinations of all payrolls under such contracts and comparison with the applicable wage determination decision of the Secretary of Labor as required by § 1808.5 of Chapter XVIII, Title 32 of the Code of Federal Regulations; and (c) investigations of all indications of alleged labor standards violations including, without limitation, at least one "on the site" labor standards check, and other investigations as required by § 1808.6 of Chapter XVIII, Title 32 of the Code of Federal Regulations.

3. That, based upon the aforementioned examinations and investigations, I have determined that: (a) the labor standards provisions have been included and the applicable wage determination decision has been attached, all as a part of the conditions of each contract involving construction work in excess of $2,000 and all subcontracts thereunder as required by § 1808.4 of Chapter XVIII, Title 32 of the Code of Federal Regulations; and (b) the contractor and all subcontractors were in compliance, or have come into compliance, with the labor standards provisions, wage determination decision and Copeland Regulations (29 CFR Part 3) except ---------- (List names of all contractors not in compliance or if no exceptions, state "none") and $------ restitution is due the employees of the listed contractor and/or subcontractors (set forth the amount or "none," in accordance with the facts).

---------- (L.S.)
(Name of contracting officer)

(Name of State or political subdivision)

(Dated)

Effective date. This revision shall be effective upon publication in the FEDERAL REGISTER.

Dated: August 21, 1964.

HUBERT A. SCHON,
Acting Director of Civil Defense.

[F.R. Doc. 64-8741; Filed, Aug. 27, 1964; 8:47 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

REDUCTIONS AND DISCONTINUANCES DUE TO HOSPITALIZATION

1. In § 3.501(b), subparagraph (1) is amended to read as follows:

§ 3.501 Veterans.

* * * * *

(b) *Aid and attendance*—(1) *§ 3.552 (b)(1).* Last day of calendar month following month in which veteran is hospitalized at Veterans Administration expense.

* * * * *

2. In § 3.551, that portion of paragraph (a) preceding subparagraph (1), and subparagraph (2) are amended to read as follows:

§ 3.551 Reduction because of hospitalization.

(a) *General.* Pension, compensation or retirement pay in excess of $30 monthly is subject to reduction when a veteran who has neither wife, child nor dependent parent is hospitalized, unless the veteran is hospitalized for Hansen's disease. The provisions of this section apply to initial periods of hospitalization and to readmissions following discharge from a prior period of hospitali-

zation. If the veteran is hospitalized for observation and examination, the date treatment began is considered the date of admission. Special rules governing discontinuance of aid and attendance allowance are contained in § 3.552 and for discontinuance of awards for incompetent veterans in § 3.557. Except as otherwise indicated the terms "hospitalized" and "hospitalization" in §§ 3.551 through 3.559 mean:

* * * * *

(2) Institutional, domiciliary or nursing home care in a Veterans Administration institution or domiciliary or at Veterans Administration expense.

* * * * *

3. In § 3.552, paragraph (b) is amended to read as follows:

§ 3.552 Adjustment of allowance for regular aid and attendance.

* * * * *

(b) (1) Where a veteran is admitted for hospitalization on or after October 1, 1964, the additional compensation or increased pension for aid and attendance will be discontinued effective the last day of the month following the month in which the veteran is admitted for hospitalization at the expense of the Veterans Administration. Where a veteran was admitted for hospitalization before October 1, 1964, the additional compensation or increased pension for aid and attendance shall continue to be subject to the prior Veterans Administration regulations.

(2) When a veteran is hospitalized at the expense of the United States Government, the additional aid and attendance allowance authorized by 38 U.S.C. 314(r) will be discontinued effective the last day of the month following the month in which the veteran is admitted for hospitalization.

(3) Where a veteran affected by the provisions of subparagraphs (1) and (2) of this paragraph is discharged or released from the hospital against medical advice or as the result of disciplinary action, and is thereafter readmitted to such hospitalization, the allowance, additional compensation, or increased pension will be discontinued effective the day preceding the date of readmission. (38 U.S.C. 3203(f); Pub. Law 88-450)

* * * * *

4. In § 3.556, paragraph (a) is amended to read as follows:

§ 3.556 Adjustment on discharge or release.

(a) *Temporary absence; 30 days.* Where a competent veteran whose award was reduced under § 3.551(b) is placed on trial visit status or other authorized absence of 30 days or more, the full monthly rate, excluding any allowance for regular aid and attendance, will be restored effective the date of reduction. The full monthly rate for an incompetent veteran, or for a competent veteran whose pension was reduced under § 3.551(c), will be restored effective the date of departure from the hospital unless it is determined that apportionment for an estranged wife should be continued. In all instances, any allowance for regular aid and attendance will be restored effective the date of departure from the hospital. The award will again be reduced, if in order, effective the date of the veteran's return to the hospital.

* * * * *

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

These VA Regulations are effective October 1, 1964 except § 3.551(a)(2) which is effective August 19, 1964.

Approved: August 24, 1964.

By direction of the Administrator.

[SEAL] A. H. MONK,
Acting Deputy Administrator.

[F.R. Doc. 64-8760; Filed, Aug. 27, 1964; 8:49 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 168—DIRECTORY OF INTERNATIONAL MAIL

Malawi

The regulations of the Post Office Department in § 168.5 *Individual country regulations* are amended as follows:

I. Amend the country heading "Nyasaland" to read "Malawi" and redesignate with accompanying data in proper alphabetical order. The country "Nyasaland", as amended by 29 F.R. 258-260, is further amended to show a change in name of that country.

II. In "Places Not Included in Alphabetical List of Countries", as amended by 29 F.R. 258-260, 7509-7510, and 9338, make the following changes:

A. Amend "Federation of Rhodesia and Nyasaland (Northern Rhodesia, Southern Rhodesia, or Nyasaland)." to read as follows: Federation of Rhodesia and Nyasaland (Northern Rhodesia, Southern Rhodesia, or Malawi).

B. Insert in proper alphabetical order "Nyasaland (Malawi)".

(R.S. 161, as amended; 5 U.S.C. 22, 39 U.S.C. 501, 505)

LOUIS J. DOYLE,
General Counsel.

[F.R. Doc. 64-8753; Filed, Aug. 27, 1964; 8:47 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 3442]

[Arizona 031029, Los Angeles 0170932]

ARIZONA AND CALIFORNIA

Establishing Cibola National Wildlife Refuge

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Subject to valid existing rights and the provisions of existing withdrawals, the public lands within the following described area are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws, but not from leasing under the mineral leasing laws, and the said public lands, together with lands in the said area acquired or to be acquired by the United States for reclamation or wildlife refuge purposes, are hereby reserved for use of the Bureau of Sport Fisheries and Wildlife, United States Fish and Wildlife Service, as the Cibola National Wildlife Refuge:

All lands, and land under waters, surveyed and unsurveyed, accretion or reliction, within the hereinafter described boundaries; said lands lying in Arizona (Gila and Salt River Meridian), being parts of townships 1 and 2 South, Range 23 West, parts of Townships 1 and 2 South, Range 24 West; and in California (San Bernardino Meridian) being parts of Townships 10 and 11 South, Range 21 East, and parts of Townships 10 and 11 South, Range 22 East:

Beginning at the corner common to sec. 6, T. 1 S., R. 23 W., and sec. 1, T. 1 S., R. 24 W., in the south boundary of sec. 31, T. 1 N., R. 23 W., Gila and Salt River Meridian, State of Arizona;

Thence with the north boundary of said sec. 6, T. 1 S., R. 23 W.,
Easterly to the one-quarter corner in the north boundary of sec. 6;

Thence in T. 1 S., R. 23 W.,
Southerly, with the center lines of secs. 6, 7, 18, 19, and 30 to the one-quarter corner common to secs. 30 and 31 of said township;

Thence between secs. 30 and 31,
Easterly to the corner common to secs. 29, 30, 31, and 32;

Thence between secs. 31 and 32,
Southerly to the one-quarter corner common to said secs. 31 and 32;

Thence in sec. 32,
Easterly to the center west one-sixteenth corner; southerly to the west one-sixteenth corner common to sec. 32, T. 1 S., R. 23 W., and sec. 5, T. 2 S., R. 23 W.;

Thence in sec. 5, T. 2 S., R. 23 W.,
Southerly to the west one-sixteenth corner common to secs. 5 and 8;

Thence in sec. 8,
Southerly to the center west one-sixteenth corner; westerly to the one-quarter corner common to secs. 7 and 8;

Thence between secs. 7 and 8, between secs. 17 and 18, between secs. 19 and 20, and between secs. 29 and 30, southerly to the one-quarter corner common to secs. 29 and 30;

Thence in sec. 30,
Westerly to the center east one-sixteenth corner; southerly to the east one-sixteenth corner common to secs. 30 and 31;

Thence in sec. 31,
Southerly to the east one-sixteenth corner in the south boundary of sec. 31;

Thence with the south boundary of sec. 31,
Westerly to the center of the Colorado River;

Thence with the center line of the river northerly and
Westerly upstream to the projected line common to sec. 6 and sec. 7, T. 11 S., R. 22 E., San Bernadino Meridian, California;

Thence between secs. 6 and 7,
Westerly to the southwest corner of sec. 6, in the line common to T. 11 S., R. 21 E., and T. 11 S., R. 22 E.;

Thence with the west boundary of sec. 6,
Northerly to the northwest corner of sec. 6, T. 11 S., R. 22 E., the southwest corner of sec. 31, T. 10 S., R. 22 E.;

Thence with the line common to T. 10 S., R. 21 E., and T. 10 S., R. 22 E.;
Northerly to the meander corner in the east boundary of sec. 36, T. 10 S., R. 21 E.;

Thence in T. 10 S., R. 21 E., with the original meander line of said sec. 36,
Northwesterly to the meander corner common to secs. 25 and 36;

Thence with the original meander line of sec. 25,
Northwesterly to the northeast corner of sec. 26;

Thence between secs. 23 and 26,
Westerly to the east one-sixteenth corner common to secs. 23 and 26;

Thence in sec. 23,
Northerly to the center east one-sixteenth corner; westerly to the center one-quarter corner; northerly to the one-quarter corner common to secs. 14 and 23;

Thence between secs. 14 and 23,
Westerly to the west one-sixteenth corner common to secs. 14 and 23;

Thence in sec. 14,
Northerly to the west one-sixteenth corner common to secs. 11 and 14;

Thence between secs. 11 and 14,
Easterly to the one-quarter corner common to secs. 11 and 14;

Thence in sec. 11,
Northerly to the center north one-sixteenth corner; easterly to the northeast one-sixteenth corner; northerly to the east one-sixteenth corner common to secs. 2 and 11;

Thence between secs. 2 and 11,
Easterly to the corner common to secs. 1, 2, 11 and 12;

Thence between secs. 1 and 2,
Northerly to the south one-sixteenth corner common to secs. 1 and 2;

Thence in sec. 1,
Easterly to the southwest one-sixteenth corner; northerly to the center west one-sixteenth corner; easterly to the center line of the Colorado River;

Thence, with the center line of the main channel Colorado River upstream,
Northerly, easterly and northerly, to the intersection with the north boundary of T. 1 S., R. 24 W., Gila and Salt River Meridian, Arizona;

Thence, with the north boundary of secs. 2 and 1, T. 1 S., R. 24 W.,
Easterly to the place of beginning.

The area described, including both public and nonpublic lands, contains approximately 16,627 acres.

2. As to those lands herein described which have been reserved or acquired, or are to be acquired, for reclamation purposes, their reservation for the Cibola National Wildlife Refuge is subject to their use for reclamation purposes.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

AUGUST 21, 1964.

[F.R. Doc. 64-8742; Filed, Aug. 27, 1964; 8:47 a.m.]

[Public Land Order 3443]

[New Mexico 0384556]

NEW MEXICO

Withdrawal for Forest Service Administrative Site

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 FR 4831), it is ordered as follows:

Subject to valid existing rights, the following-described public lands in New Mexico are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws but not from leasing under the mineral leasing laws, and reserved for the use of the Forest Service, Department of Agriculture, as an administrative site:

NEW MEXICO PRINCIPAL MERIDIAN

GOVERNADOR ADMINISTRATIVE SITE

T. 29 N., R. 5 W.,
Sec. 29, S½SW¼.

Containing 80 acres.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

AUGUST 21, 1964.

[F.R. Doc. 64-8743; Filed, Aug. 27, 1964; 8:47 a.m.]

[Public Land Order 3444]

[Colorado 0104173]

COLORADO

Withdrawal of Lands in Public Recreation Area

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

Subject to valid existing rights, the following-described public lands are hereby withdrawn from prospecting, location, entry and purchase under the United States mining laws, but not from leasing under the mineral leasing laws, for the preservation and protection of valuable public recreational values:

SIXTH PRINCIPAL MERIDIAN

DILLON RESERVOIR RECREATION AREA

T. 5 S., R. 77 W.,
Sec. 17, S½SW¼SW¼;
Sec. 19, lots 1, 2, 4, 5, 6, 7, 8, and E½E½;
Sec. 30, lots 1, 2, 3, 4, E½E½, and N½SE¼-SW¼;
Sec. 31, lots 1, 2, 3, 4, and E½E½.
T. 5 S., R. 78 W.,
Sec. 13, lot 1, N½SE¼, SW¼SE¼, NE¼-NW¼, and NE¼;
Sec. 24, lot 1, NW¼NE¼, S½NE¼, N½-SE¼, and SE½SE¼.

The areas described aggregate 1,226.35 acres.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

AUGUST 21, 1964.

[F.R. Doc. 64-8744; Filed, Aug. 27, 1964; 8:47 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 63-1115]

MISCELLANEOUS AMENDMENTS

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 4th day of December, 1963;

The Commission having under consideration a study of its staff organization and procedures made by private management consultants, under contract with the Bureau of the Budget; and

It appearing, that the actions ordered herein will contribute to the efficiency and effectiveness of Commission administration, particularly in connection with the collection of fees; and

It further appearing, that the amendments herein adopted are issued pursuant to authority contained in sections 4(i), 5(b) and 303(r) of the Communications Act of 1934, as amended; and

It further appearing, that the amendments adopted herein pertain to Commission procedures and hence that the notice and effective date requirements of section 4 of the Administrative Procedure Act are inapplicable:

It is ordered, That the responsibility for the receipt of hand-carried mail containing fees is hereby transferred from the Office of the Secretary to the Office of the Executive Director; and

It is further ordered, Effective August 28, 1964, that parts 0, 1, 21, 23, 66 and 81 are amended as set forth below.

(Secs. 4, 5, 303, 48 Stat. 1066, as amended, 1068, as amended, 1082, as amended; 47 U.S.C. 154, 155, 303)

Released: August 25, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

PART 0—COMMISSION ORGANIZATION

1. Section 0.401(a) is amended to read as follows:

§ 0.401 Location of Commission offices.

(a) The main offices of the Commission are located in the New Post Office Building, 13th Street and Pennsylvania Avenue NW., Washington, D.C., and in the 1101 Building, 11th Street and Pennsylvania Avenue NW., Washington, D.C.

(1) Documents submitted by mail to those offices should be addressed to:

Federal Communications Commission, Washington, D.C., 20554

(2) Hand-carried mail containing fees should be delivered to:

Mail and Files Division, Office of Executive Director, New Post Office Building, 13th Street and Pennsylvania Avenue NW., Washington, D.C.

(3) Other hand carried documents should be delivered to:

Office of the Secretary, New Post Office Building, 13th Street and Pennsylvania Avenue NW., Washington, D.C.

* * * * *

2. Section 0.441 is amended to read as follows:

§ 0.441 Place of filing of applications for radio authorizations.

Class of station	Method of filing	Number of copies
(a) Alaskan fixed public and Alaskan public coastal.	Via engineer-in-charge, Radio District No. 14, Seattle, Wash., 98104.	3.
(b) Amateur	See §§ 0.443 and 0.445.	As specified in form.
(c) Interim ship station licenses.	See § 0.447	Do.
(d) Citizens	To Federal Communications Commission, Gettysburg, Pa., 17325.	Do.
(e) All others	Directly to the main Washington office of the Commission. See § 0.401.	Do.

3. Section 0.443(a) is amended to read as follows:

§ 0.443 Applications for amateur station and operator license and/or commercial operator license.

(a) Application for a new amateur operator license, or for a combination of new amateur operator and station license, which will require examination supervised by Commission personnel, shall be filed in the appropriate engineering field office listed in § 0.121. All other applications for amateur radio licenses shall be submitted to the Federal Communications Commission, Gettysburg, Pennsylvania, 17325. Only one copy of the application is required.

* * * * *

PART 1—RULES OF PRACTICE AND PROCEDURE

4. Section 1.512 is amended to read as follows:

§ 1.512 Where to file; number of copies.

All applications for authorizations required by § 1.511 shall be filed at the Commission's main office in Washington, D.C. The number of copies required for each application is set forth in the FCC Form which is to be used in filing such application.

5. Section 1.564(a) is amended to read as follows:

§ 1.564 Acceptance of applications.

(a) Applications which are tendered for filing in Washington, D.C., are dated upon receipt and then forwarded to the Broadcast Bureau, where an administrative examination is made to ascertain whether the applications are complete. Applications found to be complete or substantially complete are accepted for filing and are given a file number. In case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications which are not substantially complete will be returned to the applicant.

* * * * *

6. Section 1.742 is amended to read as follows:

§ 1.742 Place of filing, fees, and number of copies.

All applications shall be tendered for filing at the Commission's main office in Washington, D.C. The applications will be dated by the Mail and Files Division upon receipt and then forwarded to the Common Carrier Bureau. The number of copies required for each application and the nonrefundable fees (see Subpart G) which must accompany each application in order to qualify it for acceptance for filing and consideration are set forth in the rules in this chapter relating to various types of applications. However, if any application is not of the types covered by this chapter, an original and two copies of each such application shall be submitted, accompanied by a nonrefundable fee of $10.

7. Section 1.912(e) is amended to read as follows:

§ 1.912 Where applications are to be filed.

* * * * *

(e) All other applications shall be filed with the Commission's offices in Washington as follows:

(1) Applications submitted by mail shall be addressed to:

Federal Communications Commission, Washington, D.C., 20554.

(2) Hand-carried applications accompanied by fees shall be delivered to:

Mail and Files Division, Office of Executive Director, New Post Office Building, 13th Street and Pennsylvania Avenue NW., Washington, D.C.

(3) Hand-carried applications not accompanied by fees shall be delivered to:

Office of the Secretary, New Post Office Building, 13th Street and Pennsylvania Avenue NW., Washington, D.C.

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

8. That portion of § 21.12(b) preceding the fee schedule is amended to read as follows:

§ 21.12 Place of filing applications, fees, and number of copies.

* * * * *

(b) Every application for a radio station authorization, except applications for stations located in Alaska, and all correspondence relating thereto, shall be submitted to the Commission's office at Washington, D.C., 20554. Each application shall be accompanied by the nonrefundable fee specified in the following table:

* * * * *

9. Section 21.305 is amended to read as follows:

§ 21.305 Reports required concerning amendments to charters, bylaws, and partnership agreements.

Any amendments to charters, articles of incorporation or association, or partnership agreements shall promptly be filed at the Commission's main office in Washington, D.C. Such filing shall be directed to the attention of the Chief, Common Carrier Bureau.

PART 23—INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES

10. That portion of section 23.13 preceding the fee schedule is amended to read as follows:

§ 23.13 Place of filing applications, fees, and number of copies.

Every application for an authorization in the international fixed public radio services shall be submitted to the Commission's office at Washington, D.C., 20554. Each application, including exhibits and attachments thereto, shall be filed in duplicate, and shall be accompanied by a nonrefundable fee in accordance with the following schedule:

* * * * *

PART 66—APPLICATIONS RELATING TO CONSOLIDATION, ACQUISITION, OR CONTROL OF TELEPHONE COMPANIES

11. Section 66.14(a) is amended to read as follows:

§ 66.14 General provisions.

(a) *Place of filing applications; copies required; fees.* The original and five copies of the application shall be submitted to the Commission's office at Washington, D.C., 20554. Each application shall be accompanied by a nonrefundable fee of $50.

* * * * *

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES

12. Section 81.24 is amended to read as follows:

§ 81.24 Application precedent to authorization.

Except as otherwise provided in §§ 81.26 and 81.41, no authorization will be granted for use or operation of any radio station on land in any service governed by this part, nor for any change in station control, facilities, services, equipment or antenna, unless formal written application therefor in proper form first is filed with the Commission. Standard forms are prescribed herein for use in connection with the majority of applications submitted for Commission consideration. These forms may be obtained without cost from the Commission at Washington, D.C., 20554, or from any of its engineering field offices. Except as otherwise permitted by this part, a separate application shall be filed in respect to each station and service subject to this part. Each application for radio station authorization, and all correspondence relating thereto, shall be submitted in duplicate (unless otherwise specified in a particular case or with respect to a particular form) to the Commission's main office in Washington, D.C. Except as otherwise provided in §§ 81.32 and 81.41, an application should be filed at least 60 days prior to the

earliest date on which it is desired that the requested authorization be granted by the Commission in order that action thereon may be taken by that date. The application shall be specific and complete with regard to the information required in the application form, or otherwise specifically requested by the Commission.

[F.R. Doc. 64-8777; Filed, Aug. 27, 1964; 8:50 a.m.]

Title 50—WILDLIFE AND FISHERIES

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

SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM

PART 32—HUNTING

Willamette National Wildlife Refuge, Oregon

Pursuant to the authority vested in the Secretary of the Interior by the Migratory Bird Conservation Act of February 18, 1929, as amended (45 Stat. 1222; 16 U.S.C. 715) and the Migratory Bird Hunting Stamp Act of 1934, as amended (48 Stat. 451, 16 U.S.C. 718d) 50 CFR 32.21 and 32.31 are amended by the addition of Willamette National Wildlife Refuge, Oregon, to the list of wildlife refuges open to the hunting of big game and upland game.

It has been determined that the regulated hunting of big game and upland game may be permitted on the Willamette National Wildlife Refuge without detriment to the objectives for which the area was established.

Notice and public procedure on this amendment are deemed contrary to the public interest because of the proximity of the hunting season in the State of Oregon. Since the amendment benefits the public by relieving existing hunting restrictions on the Willamette National Wildlife Refuge, it shall become effective upon publication in the FEDERAL REGISTER.

1. Section 32.21 is amended by the addition of the following area as one where hunting of upland game is authorized:

§ 32.21 List of open areas; upland game.

* * * * *

OREGON

Willamette National Wildlife Refuge.

2. Section 32.31 is amended by the addition of the following area as one where hunting of big game is authorized:

§ 32.31 List of open areas; big game.

* * * * *

OREGON

Willamette National Wildlife Refuge.

* * * * *

ROBERT M. PAUL,
Deputy Assistant Secretary of the Interior.

AUGUST 25, 1964.

[F.R. Doc. 64-8779; Filed, Aug. 27, 1964; 8:45 a.m.]

PART 32—HUNTING

Malheur National Wildlife Refuge, Oregon

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.12 Special regulations; migratory game birds for individual wildlife refuge areas.

OREGON

MALHEUR NATIONAL WILDLIFE REFUGE

Hunting of migratory game birds on the Malheur National Wildlife Refuge, Oregon, is suspended for the 1964 season. A prolonged drouth has resulted in a shortage of water on the public hunting area.

J. T. BARNABY,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

AUGUST 17, 1964.

[F.R. Doc. 64-8751; Filed, Aug. 27, 1964; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF LABOR

Office of the Secretary

[29 CFR Parts 1, 5]

FEDERALLY FINANCED AND ASSISTED CONSTRUCTION

Proposed Amendments Relating to Davis-Bacon Act Fringe Benefits Requirements

Notice is hereby given that, pursuant to R.S. 161 (5 U.S.C. 22), section 2 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C. 276c), and Reorganization Plan No. 14 of 1950 (3 CFR 1949–53, p. 1007), the Secretary of Labor proposes to amend Parts 1 and 5 of Title 29, Code of Federal Regulations (29 F.R. 95–104), in the manner indicated below. The changes are made in order to implement the amendments to the Davis-Bacon Act contained in the Act of July 2, 1964 (Pub. Law 88–349, 78 Stat. 238–239) which among other things, include certain fringe benefits within the terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages", as used in the Act. Additional minor changes are made, and explained below.

Interested persons may submit written data, views, and arguments concerning the proposed amendments within fifteen days of their publication in the FEDERAL REGISTER. Such submissions should be addressed to the Solicitor of Labor, United States Department of Labor, Washington 25, D.C.

1. Section 1.2 would be amended by adding thereto a new paragraph (e) which would read as follows:

§ 1.2 Definitions.

* * * * *

(e) The term "wages" (and its singular form) has the meaning prescribed in section 1(b) of the Davis-Bacon Act. It includes "other bona fide fringe benefits" than those expressly enumerated in the Act. This permits, among other things, the inclusion of "bona fide fringe benefits" in prevailing wage determinations under the Act for a particular area when the payment of such fringe benefits constitutes a prevailing practice. In finding whether or not it is the prevailing area practice to pay such fringe benefits, the Solicitor shall be guided by the tests of prevalence similar to those prescribed in paragraph (a) of this section.

2. Section 5.2 would be amended by adding thereto a new paragraph, designated paragraph (k), which would read as follows:

§ 5.2 Definitions.

* * * * *

(k) The term "wages" (and its singular form) has the meaning prescribed in section 1(b) of the Davis-Bacon Act.

3. Subparagraph (1) of paragraph (a) and paragraph (b) of § 5.3 would be amended to clarify the use of the Department of Labor's forms for wage determination requests and the situations under which general wage determinations may be issued. As amended, § 5.3 would read as follows:

§ 5.3 Procedure for requesting wage determinations.

(a) (1) The Federal Agency shall initially request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting to the Solicitor of Labor, United States Department of Labor, Washington 25, D.C., a completed Department of Labor Form DB–11. State Highway Departments under the Federal-Aid Highway Act of 1956 shall similarly request a wage determination by using Department of Labor Form DB–11(a). These forms are available from the Office of the Solicitor, United States Department of Labor. The agency shall check only those classifications on the applicable form which will be needed in the performance of the work (inserting a note such as "entire schedule" or "all applicable classifications" is not sufficient). Additional classifications needed which are not on the form may be typed in the blank spaces or on a separate list and attached to the form. The agency shall not list classifications which can be fitted into classifications on the form, or classifications which are not generally recognized in the area or in the construction industry.

* * * * *

(b) Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction, the Secretary of Labor, upon the request of a Federal agency or in his discretion, may issue such a general wage determination when, after consideration of the facts and circumstances involved, he finds that the applicable statutory standards and those of Part 1 of this subtitle will be met.

* * * * *

4. A new section would be added to Part 5, which would be designated as § 5.3a, and which would read as follows:

§ 5.3a Wage determinations containing fringe benefits.

The 1964 amendments to the Davis-Bacon Act (Pub. Law 88–349) provided that, for a period of 270 days following their effective date, fringe benefits will be included in wage determinations made in accordance with the Davis-Bacon Act only in those cases and reasonable classes of cases as the Secretary, acting as rapidly as practicable, provides for their inclusion. This section carries out the legislative directive. When found to be locally prevailing, fringe benefits will be included in general wage determinations made under § 5.3(b) as of September 30, 1964, the effective date of the 1964 amendments. Locally prevailing fringe benefits will be included in specific determinations as soon thereafter as the facts and circumstances permit. Much depends upon the compilation of reliable and substantial evidence relating to the payment of fringe benefits. In this regard, see § 1.3 of this subtitle.

5. Paragraph (b) of § 5.4 would be amended in order to clarify the use of modifications of wage determinations and would read as follows:

§ 5.4 Use and effectiveness of wage determinations.

* * * * *

(b) All actions modifying an original wage determination prior to the award of the contract or contracts for which the determination was sought shall be applicable thereto, but modifications received by the Federal agency (in the case of the Federal-Aid Highway Act of 1956, the State Highway Department of each State) later than 10 days before the opening of bids shall not be effective except when the Federal agency (in the case of the Federal-Aid Highway Act of 1956, the State Highway Department of each State) finds that there is a reasonable time in which to notify bidders of the modification. Similarly, in the case of contracts entered into pursuant to the National Housing Act, changes or modifications in the original determination shall be effective if made prior to the beginning of construction, but shall not apply after the mortgage is initially endorsed by the Federal agency. A modification in no case will continue in effect beyond the effective period of the wage determination to which it relates.

* * * * *

6. The following amendments would be made in paragraph (a) of § 5.5: subparagraph (1) would be changed by amending subdivision (i) and the addition of new subdivisions, designated subdivisions (iii) and (iv); subdivisions (i) and (ii) of subparagraph (3) would be amended; and subparagraph (4) would be amended to clarify existing requirements. With these amendments, paragraph (a) of § 5.5 would read as follows:

§ 5.5 Contract provisions and related matters.

(a) * * *

(1) *Minimum wages.* (i) All mechanics and laborers employed or working upon the site of the work, or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amounts due at time of payment computed at wage rates not less than those contained in the

wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv). Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

* * * * *

(iii) The contracting officer shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.

(iv) The contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, or any bona fide fringe benefits not expressly listed in section 1(b) of the Davis-Bacon Act or otherwise not listed in the wage determination decision of the Secretary of Labor which is included in this contract, only when the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. Whenever practicable, the contractor should request the Secretary of Labor to make such findings before the making of the contract. In the case of unfunded plans and programs, the Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

* * * * *

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work, or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project. Such records will contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(ii) The contractor will submit weekly a copy of all payrolls to the (write in name of appropriate Federal agency) if the agency is a party to the contract, but if the agency is not such a party the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance" which is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR, Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 29 CFR 5.5(a)(1)(iv) shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the (write the name of agency) and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

(4) *Apprentices.* Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the contracting officer written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, for the area of construction prior to using any apprentices on the contract work.

* * * * *

7. Paragraph (b) of § 5.5 would be amended to reflect certain provisions of the Higher Education Facilities Act of 1963, and would read as follows:

(b) In the construction of a dwelling or dwellings insured under 12 U.S.C. 1715v, 1715w or section 403(a) of the Higher Education Facilities Act of 1963, compliance with the requirements of paragraph (a) of this section may be waived by the Agency Head in cases or classes of cases where laborers or mechanics, not otherwise employed at any time on the project, voluntarily donate their services without full compensation for the purpose of lowering the cost of construction and the Agency Head determines that any amounts saved thereby are fully credited to the nonprofit corporation, association, or other organization undertaking the construction.

8. Paragraph (e) of § 5.5 would be amended in order to provide expressly that the records required thereunder would be available for inspection.

* * * * *

(e) In any contract subject only to the Contract Work Hours Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require to be inserted a clause requiring the maintenance of records containing the information specified in § 516.2(a) of this Title. Records containing such information shall be preserved for a period of three years from the completion of the contract. Further, the Agency Head shall cause or require to be inserted in any such contract a clause providing that the records to be maintained under this paragraph shall be available for inspection in the manner that inspection of records is available under the terms of paragraph (a)(3)(ii) of this section.

9. Paragraph (a) of § 5.10 would be amended as follows:

§ 5.10 Restitution, criminal action.

(a) The Agency Head may, in appropriate cases where violations of the labor standards clauses required by the regulations contained in this part and the applicable statutes listed in § 5.1 resulting in underpayment of wages to employees are found to be nonwillful, order that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of fringe benefit prescribed in the applicable wage determination.

* * * * *

10. A new subpart, designated Subpart B, would be added to Part 5, and would read as follows:

Subpart B—Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act

§ 5.20 Scope and significance of this subpart.

The 1964 amendments (Pub. Law 88-349) to the Davis-Bacon Act require, among other things, that the prevailing wage determined for Federal and federally-assisted construction include: (a) The basic hourly rate of pay; and (b) the amount contributed by the contractor or subcontractor for certain fringe benefits (or the cost to them of such benefits). The purpose of this subpart is to explain the provisions of these amendments. This subpart makes available in one place official interpretations of the fringe benefits provisions of the Davis-Bacon Act. These interpretations will guide the Department of Labor in carrying out its responsibilities under these provisions. These interpretations are intended also for the guidance of contractors, their associations, laborers and mechanics and their organizations, and local, State and Federal agencies, who may be concerned with these provisions of the law. The interpretations contained in this subpart are authoritative and may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). The omission to discuss a particular problem in this subpart or in interpretations supplementing it should not

be taken to indicate the adoption of any position by the Secretary of Labor with respect to such problem or to constitute an administrative interpretation, practice, or enforcement policy. Questions on matters not fully covered by this subpart may be referred to the Secretary for interpretation as provided in § 5.12.

§ 5.21 Effective date.

(a) The fringe benefits provisions of the Davis-Bacon Act become effective on September 30, 1964, the ninetieth day after the date of enactment. However, the new provisions do not affect any contract entered into on or before the effective date or pursuant to invitations for bids outstanding on the effective date. The new provisions state that the fringe benefits shall become effective during a period of 270 days after the effective date, only in those cases and reasonable classes of cases as the Secretary of Labor, acting as rapidly as practicable can make such rates of payments fully effective. In this regard, see § 5.3(a). Following this period, fringe benefits will be included in Davis-Bacon wage determinations, whenever they are found to be prevailing in the area of construction.

(b) The 270-day period described in paragraph (a) of this section affords a practical application of the fringe benefits provisions during almost one year after enactment. The Secretary intends to include the fringe benefits in wage determinations as rapidly as evidence becomes available that such benefits are prevailing in particular areas. On or after September 30, 1964, any contractor or subcontractor performing work on a contract including a Davis-Bacon wage determination must pay the required fringe benefits, or their cash equivalent, when such benefits are contained in the wage determination included in the particular contract.

(c) In order that payments for fringe benefits may be included in wage determinations, it is urged that contractors and their associations, laborers and mechanics and their organizations, and Federal, State and local agencies submit to the Office of the Solicitor, Department of Labor, Washington, D.C., information concerning the rates of contributions, or costs, for fringe benefits in the various areas of the country. The information required should include: (1) A description of the types of fringe benefits provided for particular classes of laborers or mechanics, (2) the rate of contribution, or cost, for each type of such benefits, (3) copies of signed collective bargaining agreements or other employment agreements upon which the fringe benefits are based, together with appropriate references to pages or sections in the agreements where provisions for such benefits are contained, and (4) statements describing the projects in the area on which these fringe benefits were paid. These statements should show the names and addresses of contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, the number of workers employed in each classification on each project, and the respective rates of contribution, or costs, for each type of fringe benefits. (In connection with this, see § 1.3 of this subtitle.)

§ 5.22 Effect of the Davis-Bacon fringe benefits provisions.

The Davis-Bacon Act and the prevailing wage provisions of the related statutes listed in § 1.1 of this subtitle confer upon the Secretary of Labor the authority to predetermine, as minimum wages, those wage rates found to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the area in which the work is to be performed. See paragraphs (a) and (b) of § 1.2 of this subtitle. The fringe benefits amendments enlarge the scope of this authority by including certain bona fide fringe benefits within the meaning of the terms "wages", "scale of wages", "wage rates", "minimum wages" and "prevailing wages", as used in the Davis-Bacon Act.

§ 5.23 The statutory provisions.

The fringe benefits provisions of the 1964 amendments to the Davis-Bacon Act are, in part, as follows:

(b) As used in this Act the term "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" shall include—

(1) The basic hourly rate of pay; and

(2) The amount of—

(A) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,

for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits * * *.

§ 5.24 The basic hourly rate of pay.

"The basic hourly rate of pay" is that part of a laborer's or mechanic's wages which the Secretary of Labor would have found and included in wage determinations prior to the 1964 amendments. The Secretary of Labor is required to continue to make a separate finding of this portion of the wage. In general, this portion of the wage is the cash payment made directly to the laborer or mechanic. It does not include fringe benefits.

§ 5.25 Rate of contribution or cost for fringe benefits.

(a) Under the amendments, the Secretary is obligated to make a separate finding of the rate of contribution or cost of fringe benefits. Only the amount of contributions or costs for fringe benefits which meet the requirements of the act will be considered by the Secretary. These requirements are discussed in this subpart.

(b) The rate of contribution or cost is ordinarily an hourly rate, and will be reflected in the wage determination as such. In some cases, however, the contribution or cost for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the Secretary may in his discretion express in the wage determination the rate of contribution or cost used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the Act. See § 5.5(a)1 (i) and (iii).

§ 5.26 "* * * contribution irrevocably made * * * to a trustee or to a third person".

Under the fringe benefits provisions (Section 1(b)(1) of the act) the amount of contributions for fringe benefits must be made to a trustee or to a third person irrevocably. The "third person" must be one who is not affiliated with the contractor or subcontractor. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid in or any way divert the funds to his own use or benefit. Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the contractor or subcontractor of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the contractor or subcontractor. In such a case the return by the insurance company to the contractor or subcontractor of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the contractor or subcontractor, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan. (See Report of the Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

§ 5.27 "* * * fund, plan, or program".

The contributions for fringe benefits must be made pursuant to a fund, plan or program (sec. 1(b)(2)(A) of the act). The phrase "fund, plan, or program" is merely intended to recognize the various types of arrangements commonly used to provide fringe benefits through employer contributions. The phrase is identical with language contained in

section 3(1) of the Welfare and Pension Plans Disclosure Act. In interpreting this phrase, the Secretary will be guided by the experience of the Department in administering the latter statute. (See Report of Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

§ 5.28 Unfunded plans.

(a) The costs to a contractor or subcontractor which may be reasonably anticipated in providing benefits of the types described in the act pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits within the meaning of the act (see 1(b)(2)(B) of the act). The legislative history suggests that these provisions were intended to permit the consideration of fringe benefits meeting, among others, these requirements and which are provided from the general assets of a contractor or subcontractor. (Report of the House Committee on Education and Labor, H. Rep. No. 308, 88th Cong., 1st Sess., p. 4.)

(b) No type of fringe benefit is eligible for consideration as a so-called unfunded plan unless:

(1) It could be reasonably anticipated to provide benefits described in the act;

(2) It represents a commitment that can be legally enforced;

(3) It is carried out under a financially responsible plan or program; and

(4) The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected. (See S. Rep. No. 963, p. 6.)

(c) It is in this manner that the act provides for the consideration of unfunded plans or programs in finding prevailing wages and in ascertaining compliance with the act. At the same time, however, there is protection against the use of this provision as a means of avoiding the act's requirements. The words "reasonably anticipated" are intended to require that any unfunded plan or program be able to withstand a test which can perhaps be best described as one of actuarial soundness. Moreover, as in the case of other fringe benefits payable under the act, an unfunded plan or program must be "bona fide" and not a mere simulation or sham for avoiding compliance with the act. (See S. Rep. No. 963, p. 6.) The legislative history suggests that in order to insure against the possibility that these provisions might be used to avoid compliance with the act, the committee contemplates that the Secretary of Labor in carrying out his responsibilities under Reorganization Plan No. 14 of 1950, may direct a contractor or subcontractor to set aside in an account assets which, under sound actuarial principles, will be sufficient to meet the future obligation under the plan. The preservation of this account for the purpose intended would, of course, also be essential. (S. Rep. No. 963, p. 6.) This is implemented by the contractual provisions required by § 5.5(a)(1)(iv).

§ 5.29 Specific fringe benefits.

(a) The act lists all types of fringe benefits which the Congress considered to be common in the construction industry as a whole. These include the following: medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits.

(b) The legislative history indicates that it was not the intent of the Congress to impose specific standards relating to administration of fringe benefits. It was assumed that the majority of fringe benefits arrangements of this nature will be those which are administered in accordance with requirements of section 302(c)(5) of the National Labor Relations Act, as amended (S. Rep. No. 963, p. 5).

(c) The term "other bona fide fringe benefits" is the so-called "open end" provision. This was included so that new fringe benefits may be recognized by the Secretary as they become prevailing. It was pointed out that a particular fringe benefit need not be recognized beyond a particular area in order for the Secretary to find that it is prevailing in that area (S. Rep. No. 963, p. 6).

(d) The legislative reports indicate that, to insure against considering and giving credit to any and all fringe benefits, some of which might be illusory or not genuine, the qualification was included that such fringe benefits must be "bona fide" (H. Rep. No. 308, p. 4; S. Rep. No. 963, p. 6). No difficulty is anticipated in determining whether a particular fringe benefit is "bona fide" in the ordinary case where the benefits are those common in the construction industry and which are established under a usual fund, plan, or program. This would be typically the case of those fringe benefits listed in paragraph (a) of this section which are funded under a trust or insurance program. Contractors may take credit for contributions made under such conventional plans without requesting the approval of the Secretary of Labor under § 5.5(a)(1)(iv).

(e) Where the plan is not of the conventional type described in the preceding paragraph, it will be necessary for the Secretary to examine the facts and circumstances to determine whether they are "bona fide" in accordance with requirements of the act. This is particularly true with respect to unfunded plans. Contractors or subcontractors seeking credit under the act for costs incurred for such plans must request specific permission from the Secretary under § 5.5(a)(1)(iv).

(f) The act excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State, or local law. No credit may be taken under the act for the payments made for such benefits. For example, payment for workmen's compensation insurance under either a compulsory or elective State statute are not considered payments for fringe benefits under the Act. While each situation must be separately considered on its own merits, payment for workmen's compensation or to industry promotion funds are not normally payments for fringe benefits under the Act. The omission in the Act of any express reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide fringe benefits under the Act.

§ 5.30 Types of wage determinations.

(a) When fringe benefits are prevailing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon wage determination. Illustrations, contained in paragraph (c) of this section, demonstrate some of the different types of wage determinations which may be made in such cases.

(b) Wage determinations of the Secretary of Labor under the act do not include fringe benefits for various classes of laborers and mechanics whenever such benefits do not prevail in the area of proposed construction. When this occurs the wage determination will contain only the basic hourly rates of pay, that is only the cash wages which are prevailing for the various classes of laborers and mechanics. An illustration of this situation is contained in paragraph (c) of this section.

(c) Illustrations:

Classes	Basic hourly rates	Fringe benefits payments				
		Health and welfare	Pensions	Vacations	Apprenticeship program	Others
Laborers	$3.25					
Carpenters	4.00	$0.15				
Painters	3.90	.15	$0.10	$0.20		
Electricians	4.85	.10	.15			
Plumbers	4.95	.15	.20		$0.05	
Ironworkers	4.60			.10		

(It should be noted this format is not necessarily in the exact form in which determinations will issue; it is for illustration only.)

§ 5.31 Meeting wage determination obligations.

(a) A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge his minimum wage obligations for the payment of straight time wages and fringe benefits by paying in cash, making payments or incurring costs for "bona fide" fringe benefits of the types discussed, or by a combination thereof.

(b) A contractor or subcontractor may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination applicable to his laborers or mechanics in the following ways:

(1) By paying not less than the basic hourly rate to the laborers or mechanics and by making the contributions for the fringe benefits in the wage determinations, as specified therein. For example, in the illustration contained in paragraph (c) of § 5.30, the obligations for "painters" will be met by the payment of a straight time hourly rate of not less than $3.90 and by contributing not less than at the rate of 15 cents an hour for health and welfare benefits, 10 cents an hour for pensions, and 20 cents an hour for vacations; or

(2) By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for "bona fide" fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination. For example, the obligations for "painters" in the illustration in paragraph (c) of § 5.30 will be met by the payment of a straight time hourly rate of not less than $3.90 and by contributions of not less than a total of 45 cents an hour for "bona fide" fringe benefits; or

(3) By paying in cash directly to laborers or mechanics for the basic hourly rate and by making an additional cash payment in lieu of the required benefits. For example, where an employer does not make payments or incur costs for fringe benefits, he would meet his obligations for "painters" in the illustration in paragraph (c) of § 5.30, by paying directly to the painters a straight time hourly rate of not less than $4.35 ($3.90 basic hourly rate plus 45 cents for fringe benefits); or

(4) As stated in paragraph (a) of this section, the contractor or subcontractor may discharge his minimum wage obligations for the payment of straight time wages and fringe benefits by a combination of the methods illustrated in subparagraphs (1) to (3) of this paragraph. Thus, his obligations for "painters" (and any of the other classes of laborers or mechanics in the illustration, including those for whom no fringe benefits were found to be prevailing) may be met by an hourly rate, partly in cash and partly in payments or costs for fringe benefits which total not less than $4.35 ($3.90 basic hourly rate plus 45 cents for fringe benefits). The payments in such case may be $4.10 in cash and 25 cents in payments or costs in fringe benefits. Or, they may be $3.75 in cash and 60 cents in payments or costs for fringe benefits.

§ 5.32 Overtime payments.

(a) The act excludes amounts paid by a contractor or subcontractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours Standards Act, and the Walsh-Healey Public Contracts Act whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act or its related prevailing wage statutes. It is clear from the legislative history that in no event can the rate upon which overtime is calculated under the aforementioned Federal statutes be less than the amount determined by the Secretary of Labor as the basic hourly rate (i.e. cash rate) under section 1(b)(1) of the Davis-Bacon Act. (See S. Rep. No. 963, p. 7.) Contributions by employees are not excluded from the rate upon which overtime is computed under these statutes; that is, an employee's overtime rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The contractor's contributions or costs for fringe benefits may be excluded in computing the overtime rate so long as the exclusions do not reduce the overtime rate below the basic hourly rate contained in the wage determination.

(b) The legislative report notes that the phrase "contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program" was added to the bill in Committee. This language in essence conforms to the overtime provisions of section 7(d)(4) of the Fair Labor Standards Act, as amended. The intent of the committee was to prevent any avoidance of overtime requirements under existing law. See H. Rep. No. 308, p. 5.

(c)(1) The act permits a contractor or subcontractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the overtime rate under the Federal overtime laws mentioned in paragraph (a). For example, the W construction contractor pays his laborers or mechanics $3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of $3.00 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on the rate of $3.00 an hour. However, in some cases a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in subparagraphs (2) and (3) of this paragraph.

(2) The X construction contractor has for some time been paying $3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of $3 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be $3.25, the rate actually paid as a basic cash wage for the employee of X rather, than the $3 rate determined as prevailing by the Secretary of Labor.

(3) Under the same prevailing wage determination, discussed in subparagraph 2 of this paragraph, the Y construction contractor who has been paying $3 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to $2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as $1 an hour. In this example the regular or basic hourly rate would continue to be $3 an hour. See S. Rep. No. 963, p. 7.

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

W. WILLARD WIRTZ,
Secretary of Labor.

[F.R. Doc. 64-8714; Filed, Aug. 27, 1964; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1037, 1041]

[Docket Nos. AO-72-A26, AO-197-A10]

MILK IN TOLEDO, OHIO, AND NORTH CENTRAL OHIO MARKETING AREAS (TO BE NEWLY DESIGNATED AS NORTHWESTERN OHIO MARKETING AREA)

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 Toledo, Ohio, and North Central Ohio marketing areas. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D.C., by the 15th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

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 Stony Ridge, Ohio, on February 10-15, 1964, pursuant to notice thereof which was issued January 7, 1964 (29 F.R. 289) and supplementary notice thereof which was issued on January 17, 1964 (29 F.R. 569).

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

1. Extension of the marketing area and merger of Orders No. 37 and No. 41.

2. Appropriate terms and provisions of a consolidated order with respect to:

(a) The distribution of returns to producers on a marketwide or handler pool basis;

(b) Milk to be priced and pooled;

(c) Classification and allocation of milk;

(d) The determination and level of class prices and the application of location differentials;

(e) Method of payment of producers; and

(f) Administrative and miscellaneous provisions.

3. Discontinuance of the "eligible-ineligible quota plan" in the North Central Ohio Order No. 37.

4. Whether an emergency exists with respect to issue No. 3 which warrants the omission of a recommended decision and the opportunity for interested parties to file exceptions thereto on such issue only and the immediate issuance of a final decision.

Separate consideration was given in an earlier decision (29 F.R. 3671) to the issues (Nos. 3 and 4 above) of discontinuance of the "eligible-ineligible milk" quota plan in the North Central Ohio order. This was done to expedite an order amendment by April 1, 1964 when payments to producers under the North Central Ohio order otherwise would have been determined seasonally under the quota plan. No further consideration of such issue is necessary.

Certain provisions incorporated in the consolidated order proposed herein are based upon the findings and conclusions with respect to the evidence of another hearing, namely the regional hearing (referred to hereinafter as the Washington hearing) to consider amendments to 24 orders, including the Toledo and North Central Ohio Federal milk orders, which was held in Arlington, Virginia during January 1963. The Washington hearing, together with regional hearings held also during the same month in Denver, Colorado and St. Louis, Missouri, for 52 other Federal order markets, was called to reappraise certain provisions of the subject Federal orders in light of the "Lehigh decision" (decision of the Supreme Court of the United States, issued on June 4, 1962 in the case of Lehigh Valley Cooperative Farmers, Inc., et al., v. United States et al.) which invalidated certain application of "compensatory payment" provisions of the New York-New Jersey Federal milk order.

The June 19, 1964, decision (29 F.R. 9002) on the Washington hearing set forth revised provisions relating primarily to interplant transfers, assignments to classes, handler obligations as to nonpool milk handled, uniform price computations and related administrative provisions. Official notice is taken of such decision. The provisions incorporated in market pool orders on the basis of that hearing are adopted in the consolidated order for Toledo and North Central Ohio.

The proponent producer association representing approximately 85 percent of the producers in the combined marketing area testified at the February 1964 hearing that any consolidated order issued on such hearing should contain appropriate provisions for interplant transfers, assignments to classes of unregulated milk and milk priced under other orders, determinations of handler obligations as to nonpool milk, uniform price computations and related administrative provisions which are consistent with the findings and conclusions as contained in decision on the Washington regional hearing. Counsel for a large handler regulated under the Toledo order likewise acknowledged that provisions similar to those developed in the decision based upon the Washington regional hearing would be applicable to "the separate Toledo and North Central Ohio orders and are obviously equally applicable to a consolidated order, and to a consolidated order with the area expansion as proposed in this hearing." Other counsel representing a substantial number of proprietary handlers at the hearing concurred in such statement.

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. and 2(a). Consolidation of Orders 37 and 41, designation of marketing area, and adoption of marketwide pooling. The Toledo and North Central Ohio marketing orders should be consolidated. The present marketing areas should be combined and expanded to include all territory geographically located within the Ohio Counties of Fulton, Henry, Putnam, Allen, Van Wert (city of Delphos only), Lucas, Wood, Sandusky (Woodville and Madison townships only), Hancock, Seneca, Crawford, Marion, Morrow, and Richland and those portions of Lenawee and Monroe Counties, Michigan, now under the Toledo order. It should be redesignated as the "Northwestern Ohio marketing area." Distribution of returns to producers should be made through a marketwide pooling plan.

The handling of milk in the two orders is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk or its products. Part of the area already regulated under the Toledo order is in the State of Michigan. A large portion of farm produced milk for present major regulated Toledo and North Central Ohio handlers is from Michigan and Indiana. Sales areas of handlers regulated under the two orders extend also into these two states. Substantial quantities of milk and cream in excess of local fluid requirements also are used locally for manufacturing purposes or are shipped to manufacturing plants at other locations in the milkshed of the two orders. These various outlets manufacture dairy products which are moved over a wide area in the stream of interstate commerce. These conditions apply equally, if not to a greater extent, to the proposed consolidated and expanded order.

Marketing area. The reasons for establishment of a single marketing area under a consolidation of orders and for the adoption of marketwide pooling as the appropriate means of distributing among all producers the proceeds from the sale of milk are so interrelated that these issues warrant joint discussion.

The Toledo marketing area now includes all of Fulton and Lucas Counties and parts of Wood and Sandusky Counties in Ohio. It also covers several townships of Monroe and Lenawee Counties in Michigan. Allen and Richland Counties and the cities of Tiffin, Findlay, and Marion, Ohio, make up the present marketing area for North Central Ohio.

Proponent of order consolidation is a cooperative association which represents a large majority of the producers in each market. Merger of the two orders was proposed by this association, and supported by certain handlers from both markets, on the major ground that the markets have become linked so closely from a marketing and distribution standpoint that a single order now is appropriate for the entire area. It was contended that the sales areas of Toledo and North Central Ohio handlers have outgrown the presently defined marketing areas and that intense intermarket competition for fluid milk sales has developed. Further, that enlargement of the marketing area in the manner described, under a merged order, would encompass more nearly the current sales territories of handlers in both markets and is needed to insure uniform pricing on milk distributed throughout such areas in the interests of both handlers and producers.

The territory to be included in the marketing area under a merged order should be determined primarily by conditions of competition in the distribution of milk. The expansion should be limited to those localities which constitute primary distribution areas for the handlers now covered by the separate orders. Population movements and characteristics, the extent of distribution by Toledo and North Central Ohio handlers in relation to that of unregulated distributors and handlers under other Federal orders, and reasonable correspondence in quality and sanitation requirements assist in reasonably defining the aggregate area which should be included.

The Northwestern Ohio marketing area should include all the territory now in both the Toledo and North Central Ohio marketing areas. In addition, it should be expanded to cover the Ohio counties of Henry, Putnam, Crawford, Van Wert (city of Delphos only) and Morrow, and the parts of Wood, Hancock, Seneca and Marion Counties which are not now a part of either the Toledo or North Central Ohio marketing area. As the routes from plants located in the separate markets have been extended beyond the boundaries of the original cities covered by the two orders, they have become so interwoven that it is no longer possible to distinguish separate market sales areas.

Routes originating in each of the presently defined marketing areas extend even into the other. Fulton County, in the Toledo marketing area, is supplied by a North Central Ohio regulated handler to the extent of about 10 percent of the county's packaged milk needs. Likewise, about 30 percent of the milk sales in Wood County, part of which also is in the Toledo marketing area, are made by North Central Ohio regulated handlers. Certain Toledo handlers, in turn, have significant sales in Seneca and Hancock Counties, in which are located Tiffin and Findlay, principal cities in the North

Central Ohio marketing area. Their sales in Seneca and Hancock Counties make up about 30 percent and 10 percent, respectively, of the total fluid milk distribution in these counties.

The sales connection between the markets is further strengthened by intermarket competition in counties outside the respective marketing areas as presently defined. Henry County is a common sales area for handlers from the Toledo and North Central Ohio markets. Here about 50 percent of the milk is sold by Toledo handlers and 20 percent by North Central Ohio handlers. Sales routes reaching out from the several cities in the present marketing areas overlap extensively throughout Henry, Putnam, Crawford, Hancock, Wood, Seneca, and Marion Counties also. Toledo and North Central Ohio handlers together sell 60 percent or more of the fluid milk in each of such counties. In three of these counties they account for more than 75 percent of the Class I business. As a result, much of such territory has become a primary area of competition between handlers of the two markets. In Morrow County there are no sales by Toledo regulated handlers but about 65 percent of the milk is distributed by North Central Ohio handlers.

Most of the milk for these counties not distributed by either Toledo or North Central Ohio handlers is sold by regulated handlers from other Federal order markets. Sales by unregulated handlers make up only a very small percentage of the total in such eight-county territory. Only in Crawford County is the percentage of unregulated milk sales as much as 20 percent of the county total. One unregulated handler at Bucyrus accounts for these sales. It is likely that this handler would become regulated with inclusion of his home county in the marketing area. Other unregulated handlers from Williams, Defiance, Wyandot, Logan, and Ashland Counties distribute milk on the fringes of the eight-county area. It is probable that these handlers, with plants at West Unity, Defiance, Upper Sandusky, Bellefontaine, and Ashland, Ohio, respectively, would become "partially regulated handlers" as a result of such an expansion of the marketing area.

Toledo and North Central Ohio regulated handlers, therefore, are clearly the dominant sellers in all such counties. Extension of the marketing area to cover these eight counties in their entirety is necessary to assure such handlers that as to their primary areas of distribution currently unregulated competitors will not be afforded significant price advantage in the purchase of milk for sale there. Orderly marketing will be promoted by inclusion of these counties since all competing handlers distributing milk in such areas will be placed on a uniform minimum price basis in milk procurement, and the producers regularly supplying milk for such counties will have opportunity to share proportionately in the proceeds from Class I sales.

The marketing area also should cover the entire city of Delphos which is located on the border of Allen and Van Wert Counties. Under present circumstances it is difficult to determine whether sales made within the city of Delphos are actually in Allen County or Van Wert County. Thus, if that portion of the city lying within Van Wert County were omitted, it would be nearly impossible to compute accurately a handler's sales in the marketing area for purpose of calculating pool plant qualifications.

In the remaining counties considered for regulation, distribution by Toledo and North Central Ohio regulated handlers tends to become less in relation to total county sales. On the other hand, milk distributed from other nearby regulated and unregulated markets tends to become of greater significance so that a clear-cut connection between the particular county and the present marketing areas for Toledo and North Central Ohio cannot be reasonably determined. In some of such counties in Ohio, such as Knox, Logan, Wayne, Ottawa, Sandusky (unregulated part), Erie, Huron, Mercer, Van Wert (except the city of Delphos), Defiance, Paulding, Auglaize, and Holmes, and the portions of Lorain and Medina Counties not regulated under a Federal order, located on the periphery of the aggregate area proposed for regulation, the distribution from other markets exceeds distribution by Toledo and North Central Ohio regulated handlers. Such areas may not be considered an integral part of the primary distribution area for the latter since distributors from other regulated and unregulated markets are the dominant sellers.

In Williams, Wyandot, Hardin, and Ashland Counties, Ohio, where Toledo and North Central Ohio handlers do distribute majority proportions of the total milk sold, there was, nevertheless, insufficient showing of market disorder to warrant their regulation at this time. Prevailing prices paid for milk for fluid use by the relatively small, local unregulated distributors, or by handlers in nearby regulated markets also doing business there, have been closely related to Class I prices in the Toledo and North Central Ohio markets. Neither regulated handlers nor producers demonstrated that orderly marketing for handlers and producers in the consolidated market requires the inclusion of such counties.

Concerning the Michigan counties proposed for regulation, Branch County is not a major distribution area for Toledo or North Central Ohio handlers. While substantial proportions of the sales in Hillsdale, Lenawee, and Monroe Counties are made from Toledo plants, there was no showing of marketing disorder or adverse effect of locally distributed milk upon regulated milk entering competition in these areas which requires the inclusion of the portions of such counties not already regulated. There is no reason to conclude from the evidence that regulated handlers and their producers do not have reasonable opportunities to compete in these areas even though a uniform plan of producer prices does not necessarily prevail throughout the four counties.

In view of the foregoing, it is concluded that Knox, Logan, Mercer, Erie, Huron, Ottawa, Sandusky (unregulated part), Van Wert (except the city of Delphos), Auglaize, Ashland, Holmes, Williams, Paulding, Defiance, Hardin, Wayne, and Wyandot and those portions of Lorain and Medina in Ohio not now under regulation should not be included in the marketing area at this time. It is similarly concluded that the counties of Branch and Hillsdale and the unregulated portions of Lenawee and Monroe in Michigan should not be included in the marketing area under a consolidated order.

Certain handlers opposed merger of the marketing areas contending that there is insufficient relationship between the markets to justify a merger. In this connection one handler pointed out that from a producer milk supply standpoint the North Central Ohio market is more closely linked to the Northeastern Ohio market than to the Toledo market.

It is true that North Central Ohio handlers draw large amounts of producer milk from the same counties as Northeastern Ohio handlers. However, the close relationship between the North Central Ohio market and the Northeastern Ohio market from a milk procurement standpoint is not by itself sufficient reason for denying producers the order consolidation. Handler distribution is the overriding factor which must be considered in determining whether a merger of marketing areas under a single order is appropriate. In this case a strong relationship was shown to exist from a distribution standpoint. Intermarket competition for sales is strong in the present marketing areas and in the unregulated territory between the markets. The merger is recommended primarily because of the strong sales link and the existence of certain problems resulting from this close distributional relationship which require correction. Only by regulating handlers on the basis of distribution can the price provisions and other order requirements be made to bear equitably upon handlers.

As a corollary matter, in accomplishing the order merger efficiently and equitably, the assets in the administrative funds of both orders should be consolidated. All currently regulated handlers who contributed to the administrative funds of the separate orders will continue to be regulated under the merged order. Since no handlers would fall from regulation and the liabilities of each of the present funds would be paid from the consolidated fund, it is equitable to employ accumulated monies to defray such liabilities and to carry over any minor balance to be used for administrative costs of the merged order.

Virtually all producers who contributed to the market service funds of the present orders also will continue to supply the expanded market. This makes consolidation of the market service funds appropriate since contributing producers would continue to receive similar market services for accumulated monies remaining in the market service funds.

Market pooling. The consolidated order should provide a marketwide pooling plan for distributing returns to producers. Market pooling would remove the price depressing effects on certain

producers of carrying a disproportionate share of the reserve milk in the market. Market pooling also would eliminate the disruptive effect of marked changes in blend prices to particular producers caused by sudden, and usually unexpected, shifts of Class I sales among handlers. The more stable blended prices which would result would make possible more efficient operations by producers.

Certain existing conditions which support merger of the two orders also call for adoption of market pooling. Toledo and North Central Ohio handlers are in such close competition that large store accounts shift back and forth among plants of both markets. Increasing proportions of milk in the two markets are being sold through supermarkets. Intermarket competition for large store accounts is keen. Because of the substantial volumes involved, the gain or loss of a supermarket account can substantially alter the Class I use of a handler, and thus raise or lower his individual blended price significantly in relation to blended prices of other handlers. Under the present individual-handler pooling provisions, the producers at a single plant absorb the entire gain or loss of such an account, and an equal loss or gain in sales, as the case may be, is reflected in the blended price to producers at the other plant, even though market sales of Class I milk in the aggregate may not be changed. It is very difficult for producers to plan their operations efficiently when prices can vary so markedly. Although market pools under separate orders would minimize such price effects to a significant degree, the combining of these markets with a single market pool is even better suited to deal with transfers of large sales accounts between competing handlers and thus contribute to orderly marketing by providing more stable blended prices for all producers on the basis of their proportionate sharing of the total market sales.

Other difficulties concerning variation in producer prices at plants within the separate markets have been encountered under individual-handler pooling. One such situation involves a handler with bottling plants under both orders. At this handler's Toledo bottling plant a considerable amount of Class II milk is utilized for the manufacture of ice cream and cottage cheese. Reserve milk for the handler's Mansfield plant operation, under the North Central Ohio order, is carried at such Toledo plant also. Under individual-handler pools the substantial proportion of Class II milk carried at Toledo tends to depress blended prices at that plant relative to those at the Mansfield plant. In February 1963, for example, producers shipping to the Toledo plant received $3.88 for their milk, or 46 cents less than the $4.34 blended price at Mansfield. In September 1963, when the price of $4.18 at the Toledo plant was the market's lowest, the $4.37 blended price at the Mansfield plant was nearly the highest of any plant in the North Central Ohio market. For the entire year 1963, the handler's Toledo producers averaged 20 cents per hundredweight less than the producers shipping to Mansfield. (Official notice is taken of the market administrator's 1963 price announcements for the Toledo and North Central Ohio markets.)

Producers shipping to the Toledo plant received these depressed prices, in part, because the burden of carrying reserve milk for the Mansfield plant has been shifted to them. Assigning the reserve milk to the Toledo plant undoubtedly permits economies in the handler's operations. He, of course, should be permitted to continue to operate in this manner. At the same time, however, producers carrying the reserve milk should not be penalized by the lower prices. This inequity caused by unequal distribution of reserve supplies would be fully corrected only by merger of the orders under a market pool. Any combination of order amendments short of this such as merger of the orders under handler pools or separate market pool orders would still require certain producers to carry more than their proportionate share of reserve milk.

In another recent instance a North Central Ohio handler closed down his Tiffin, Ohio pool plant operation in order to bottle all milk for his North Central Ohio routes at another regulated plant located at Lima, Ohio. As a gradual shut-down of the Tiffin plant began, the handler served some of the Tiffin plant's routes with milk bottled at Lima, causing the company's Class I sales in relation to available supplies to become unevenly distributed between its plants during a time of transition. As the milk brought in from Lima replaced the Tiffin milk, Class I sales available to the Tiffin plant's producers decreased. This caused blended prices for the plant to decline sharply resulting in wide disparity with blended prices at other nearby plants.

Thus, under individual-handler pooling prices to certain producers decreased sharply with such shift in Class I utilization to another plant. This action by the handler caused hardship for his particular producers at Tiffin although no basic change in the market's supply and demand conditions had occurred. While the handler may have gained efficiencies from combining operations in this manner and should have full opportunity to do so, such an impact on blended prices impedes the opportunities of the farmers affected to operate efficiently.

Similar hardship for another group of producers occurred also in 1963 because of a strike at a Toledo plant. When the strike began during mid-April 1963 the plant suspended bottling and its producer milk was diverted to manufacturing plants. As a result, the plant's blended price for the month dropped 58 cents from $4.28 in March 1963 to $3.70 for April.

The impact on the producers involved caused by a temporary closing of a plant such as occurred here would be minimized under a market pool. Under market pooling, the producers whose milk was diverted to manufacturing plants while the plant was shut down would have received market blended prices during April and thus would have continued to have a full share in the market proceeds for Class I milk. This would be appropriate since a significant part of the Class I sales of this plant were retained within the market and the producers so affected were, and continued to be, regular suppliers of the market.

Similar effects on producer prices at individual plants may result from the market practice of "custom" bottling by one plant or another, such as packaging in certain types of containers.

Occurrences such as those described above are not unusual. Under individual-handler pooling the problems may be quite serious for the particular producers involved. The price declines suffered require difficult adjustments by such producers. A market pool would make it unnecessary for individual groups of producers to bear the full burden of lower prices caused, for whatever reason, by shifts of Class I sales among plants in relation to available plant supplies. Under today's conditions of intermarket competition and increasing mobility of milk a market pool order thus would be considerably more effective in maintaining orderly marketing for all producers.

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

A witness representing producers supplying a handler of "All Jersey Milk" and a handler distributing "Golden Guernsey" milk testified in opposition to market pooling. These witnesses stated that if market pooling were adopted some form of handler pooling should be retained for plants selling predominantly "special milk". Under their proposal, plants with "special milk" sales equal to 70 percent of total Class I sales could pay their own producers of "special milk" through a handler pool. This proposal should not be adopted.

Proponents would include under separate pools "special milk" with certain identifying characteristics. Special milk they suggested, might be defined as: (a) Milk from a single breed, (b) milk for which production conditions are regulated more stringently than for regular milk, (c) milk of higher fat, solids-not-fat or protein content than regular milk, (d) milk with brand differentiation, "Golden Guernsey", "All-Jersey", "Certified", etc. and (e) milk produced by farmers belonging to a recognized sales and merchandising organization. In addition, "special milk" would include only that milk separately produced, handled and processed in such a way as to preserve its physical identification at all times.

Four types of milk were specified which would immediately qualify for handler pools. These were: Certified milk, "immune" milk, Golden Guernsey milk and All-Jersey milk. Other types also could qualify on meeting the specified standards for "special milk".

The proposal should not be adopted because the identifying characteristics suggested by proponents would not feasibly distinguish "special milk" from other milk in the market for pricing and pooling purposes.

"Special milk" is defined so broadly that many handlers, by modifying their operations slightly, could qualify for handler pooling. Neither could separate

processing and handling be used to identify "special milk". Milk handlers sometimes set up special quality criteria of their own choosing, and conceivably they could arrange separate handling for any milk meeting these criteria. Thus, such milk also would qualify as "special milk" for handler pooling.

Handler pooling for "special milk" could have an unstabilizing influence in the market since this type of pooling has not effectively maintained orderly marketing in the area. A significant number of handlers conceivably could qualify as distributors of "special milk" and, thus, a sizable proportion of the market's milk could remain under handler pools. This would be undesirable in view of the requirement of market pooling for a large majority of the milk supply. In effect, certain producers and milk would be treated preferentially. The "special milk" proposal, therefore, should not be adopted.

2(b). *Milk to be priced and pooled.* In general terms, milk produced in compliance with the Grade A inspection requirements of a duly constituted health authority which is received regularly at plants primarily engaged in processing milk for distribution on retail or wholesale routes in the marketing area, or at plants which are regular and substantial suppliers of milk to such processing plants, should be made subject to pricing and pooling.

The following principal definitions included in the attached order serve to identify the specific types of milk and milk products to be subject to full regulation, and those persons and facilities involved with the handling of such milk and milk products. Definitions relating to handling and facilities are: "distributing plant", "route disposition", "supply plant", "pool plant", and "nonpool plant". Definitions of persons include: "producer", "handler", and "producer-handler". Definitions relating to milk and milk products are: "producer milk", "fluid milk products", "other source milk", and "butter price". The application of certain of these definitions is discussed in detail. Others are deemed to be self-explanatory.

Definitions relating to handling and facilities. The establishment of a marketwide pool to replace individual handler pools and the addition of new areas of regulation require substantial changes in plant performance standards which determine whether a distributing plant or supply plant regularly serves the fluid demands of the market and thus warrants the pooling of milk of producers received thereat in order that such milk may share in the available Class I sales of the market. The definition of "pool plant" should contain appropriate terms which will delineate between distributing and supply plants meeting the pool plant performance standards and those plants which may have only nominal association with the market and should not, therefore, be eligible to share month-to-month in the market's Class I sales.

In light of the foregoing, it is concluded that a distributing plant, other than one operated by a producer-handler, should be qualified as a pool plant (under § 1041.13(a)) in any month in which it meets both of the following conditions: (1) The total route disposition (in any market) from such plant amounts to 50 percent or more of Grade A milk received directly from dairy farmers and supply plants which qualify as pool plants under § 1041.13(b), and (2) the quantity of Class I milk disposed of therefrom on routes inside the marketing area is not less than 15 percent of its total Class I milk on routes.

The proponent cooperative association would base the computation of such 50 percent Class I requirement upon receipts from dairy farmers and receipts from a cooperative association in its capacity of a handler on bulk tank milk. It is not clear from the record whether proponent intended to include receipts from pool supply plants in such performance computation. A proprietary handler, on the other hand, proposed a different basis for computing delivery performance standards. With respect to the 50 percent qualification factor the proponent handler proposed that the total quantity of Class I milk (bulk or packaged, regardless of where and how sold) disposed of from a plant be not less than 50 percent of the plant's total receipts of Grade A milk, irrespective of source. This proposal to base the percentage requirement on total Grade A receipts, including receipts from other plants which are specifically intended for manufacturing use, could work hardship, however, in the case of any regulated plant which operates in a dual capacity (bottling and manufacturing) and is relied upon by other regulated distributing plants and nonpool plants as a manufacturing outlet for their reserve supplies. Under the handler's proposal, the operator of any such plant which provides an actual or potential outlet for the market's reserves might well be forced to limit purchases of surplus milk in order to maintain pool plant status. This could result in less efficient use of available facilities within the market.

It is appropriate to base the above 50 percent Class I milk requirement upon the quantity of Grade A milk received at the plant from dairy farmers and pool supply plants. Such receipts represent the normal and regular sources of milk received by plants in the market for Class I use. If receipts from supply plants were excluded in the determination of a distributing plant's association with the market the possibility that such a plant might be, or become, dependent upon supply plant sources for most or all its supply of Grade A milk would not be taken into consideration. Any plant from which less than 50 percent of receipts from dairy farmers and pool supply plants is distributed as Class I milk should not be considered, of course, to be primarily in the fluid milk business.

The proponent handler and the association held substantially different views as to the appropriate standard to be used to measure a plant's association with this fluid milk market. Producers proposed, as the second criterion for pool plant status, that a distributing plant be required to have Class I route disposition in the marketing area amounting to at least 10 percent of its Grade A milk receipts from dairy farmers and from any cooperative association in its capacity as a handler on its bulk tank member milk. The proprietary handler proposed, on the other hand, that an in-area requirement of 10 percent route sales be predicated upon the Class I sales of such plant rather than upon the plant's Grade A milk receipts.

The principal purpose of the requirement of in-area distribution for pooling eligibility is to assure that the distributing plant is associated with the market in a significant and regular manner since the producers at pool plants are eligible to share in the monthly Class I proceeds of the market. It is concluded that, in consideration of the marketing area defined, route disposition in the marketing area of 15 percent or more of the plant's total Class I route sales will provide reasonable measure of a plant's association with the market for this purpose.

A distributing plant having more than 85 percent of its Class I route disposition outside of the marketing area is not considered substantially associated with this local fluid market and should not be subject to full regulation. The impact of full regulation on a particular unregulated distributor in this circumstance could place him at competitive disadvantage in supplying the unregulated area where his principal route sales are made and appears not to be necessary to achieve the ends of the regulation in this market.

The performance standards for pooling would not restrict any milk plant operator from disposing of any fluid milk product in the marketing area. Virtually any plant having more than minor or accidental association with the fluid milk market could be eligible for pooling. The requirements for pool plant status provided permit the operator of any plant only marginally associated with the fluid milk market to adjust his operations in such a manner as to provide him a choice of full regulation or partial regulation, whichever might better serve his interest.

A supply plant should be pooled in any month in which at least 50 percent of its receipts of Grade A milk from dairy farmers at such plant during the month is shipped as fluid milk products to pool distributing plants. This basis of determining pool plant status of a supply-type plant conforms to that proposed by the proponent cooperative association and will provide reasonable assurance under present conditions of the market that only a supply plant which is clearly associated with the market will be subject to pooling and full regulation under the consolidated order. A supply plant from which a lesser proportion of milk is received at pool distributing plants should not be considered as primarily associated with the market and therefore should not be fully regulated.

A supply plant which meets the 50 percent shipping standard during each of the months of September through December should be designated as a pool plant for the succeeding months of January through August (unless a written

request for nonpool status is submitted to the market administrator) even though in such months such minimum shipping percentage is not met.

The North Central Ohio order presently contains similar provisions for the automatic pooling of a supply plant. Such provisions recognize the seasonal nature of milk production in the market. Distributing plant operators in the present markets generally do not rely upon supply plant supplies during the flush production months since in most cases, in this area, direct shipments from farms relatively close to the market are sufficient to fulfill their fluid needs in these months. While there is no supply plant regulated by either order at this time, there appears to be no reason why the order should be constructed so as to require the operator of any such plant which may become a pool plant under the merged order to make shipments of milk to pool distributing plants in the market during the flush production months in order to maintain pool plant status. Such shipments might well be made at needless expense. A supply plant which meets the regular shipping requirements for pooling in each of the short production months of September through December has demonstrated its association with the market.

The proponent association proposed the adoption of a provision similar to that proposed herein except that automatic pooling of a supply plant would apply for the months of February through August based upon the performance of such plant during the preceding period of September through January. The periods involved in this proposal represent a departure from those specified in the present North Central Ohio order and should not be adopted. Proponent gave no reasons for extending the performance period to include also the month of January. Also, statistical evidence does not indicate a seasonal shift of production in the two markets which warrants consideration of such change at this time. It is, therefore, unnecessary at this time to provide more stringent requirements for supply plant pooling throughout the year.

There may be instances when a particular distributing or supply plant will meet the pooling requirements of more than one Federal order. Generally speaking, when this occurs the plant is regulated only under the order for the marketing area in which the greater volume of Class I sales are made from the plant. A similar standard is appropriate under this order. It is possible, however, that a plant may have virtually the same volume of distribution in each of the two regulated markets, and with very minor changes in the proportions distributed in the two markets, the plant could be shifted from one regulation to the other on a month-to-month basis. Such a situation would not be in the interest of orderly marketing.

It is concluded, therefore, that the general basis provided in the current orders for regulatory treatment in such situations be adopted for the consolidated order. A pool distributing plant or supply plant which meets the pooling requirements under another order thus would continue to be pooled under the consolidated order if during the current month (1) it meets the pooling requirements of such order, and (2) a greater volume of its fluid milk products is disposed of in the marketing area in the current month and for each of the three months immediately preceding. An exception would occur when, irrespective of such provision, the other order requires the plant to be pooled thereunder or the Secretary, for good reason, determines that the plant should be so pooled. In the latter circumstance, the handler should be required only to file receipts and use reports with respect to the plant and permit verification thereof by the market administrator, but otherwise the plant should be exempt from regulation under the consolidated order. Corollary provision also is included to exempt from pooling under the consolidated order a distributing plant or supply plant from which a greater portion of its fluid milk products is disposed of to wholesale or retail outlets in this marketing area and to pool plants if it retains pooling status for the month under another order.

While producers proposed terms somewhat different from those in the current orders, their proposal nevertheless was intended to accomplish a generally similar purpose. Their provision would not apply, however, to supply plants, in contrast to the provisions in the current orders. No reason was presented, however, as to why the present basis, herein adopted, should not be continued.

Some plants may have facilities for handling both Grade A and ungraded milk. It should be provided, therefore, that any portion of a plant which is physically separate from that part of a pool plant where Grade A milk is received should not be considered as included under the definition of pool plant when such portion of the plant is not approved by any health authority for receiving, processing or packaging of any fluid milk product for Grade A disposition. Where such conditions can be assured, there is no reason to impose regulation on the operation of separate facilities used primarily for ungraded milk operations. If, however, the graded and ungraded operations are not maintained separately, effective order administration would require consideration of the ungraded milk handling facilities in the plant as part of the pool plant and the ungraded milk received in the plant as receipts of "other source milk".

The "nonpool plant" definition as presently defined in the two orders is adopted herein with no substantive change. The term applies to any milk manufacturing, processing or distributing plant which is not a pool plant during the month.

This definition, however, is expanded for clarification of the various categories of nonpool plants and conforms to the provisions included in the regulation as the result of the joint public hearing held in Washington, D.C. in January 1963 for the Toledo, North Central Ohio and 23 other Federal order markets. The "nonpool plant" definition includes such categories as "other order plant", "producer-handler plant", "partially regulated distributing plant", and "unregulated supply plant". The inclusion of these additional terms will facilitate reference to specified types of nonpool plants elsewhere in the order.

The order also should contain a definition of "route disposition". "Route disposition" is defined as any delivery of a fluid milk product classified as Class I to retail or wholesale outlets other than a pool plant or nonpool plant. Disposition by a vendor from a plant store or other distribution point, including a vending machine, is considered as route disposition from the plant where the milk was processed and packaged. In addition, as to fluid milk products moved from a milk plant to a warehouse, reload station or storage facility, the distribution from any such point also would be considered as route disposition from the bottling plant from which the milk was moved to such establishment.

Definitions of persons. The term "handler" should be defined to include any person who operates a distributing plant or a supply plant and any cooperative association with respect to producer milk diverted by it in accordance with terms set forth in the "producer milk" definition discussed elsewhere in these findings. A "producer-handler" and any person operating a nonpool plant categorized as a "partially regulated distributing plant" or an "other order plant" should be designated as a "handler" also.

The definition is used to designate those persons who are required to report the sources and the utilization of their Grade A milk supply, the handling of which (except in the case of a producer-handler) is to be regulated either partially or fully, and who are responsible for paying for milk in accordance with the terms of the order.

The definition proposed herewith adopts the terms of the "handler" definition of the present orders but is expanded to designate persons operating certain categories of nonpool plants in order to conform to the previously referred to decision based upon the Washington, D.C., hearing.

Producers proposed a modification to the "handler" definition of the present orders which would include a cooperative association with respect to bulk tank milk of its members caused to be delivered by the association to handlers' pool plants. This proposal is not adopted. The reasons for denial are discussed elsewhere in these findings in connection with the discussion of payments to producers through cooperatives.

A producer-handler should be defined under the consolidated order as any person who operates a dairy farm and a distributing plant and who receives only milk from his own-farm production or fluid milk products which are priced as Class I under a Federal order. This definition conforms in principle to the definitions of producer-handler under the present Toledo and North Central Ohio orders. Producer-handlers are essentially exempt from regulation under the two orders.

In this market a producer-handler, as distinguished from a pool handler who would be fully regulated, distributes to retail or wholesale outlets milk which is mostly from his own-farm production. A pool handler, on the other hand, markets milk received from producers or from other pool plants. The producer-handler maintains control of his milk from its source at the farm until its ultimate disposition. He is, therefore, generally in a position to adjust his farm production closely to the needs of his fluid milk business and, in turn, assumes himself the burden of maintaining the reserve supply of milk associated with his fluid milk operations. When an individual operates a dairy farm and a fluid milk business in such manner, it has not been necessary to require him to account for milk produced on his own farm at a particular minimum price.

The competition of a producer-handler with regulated handlers in this market makes it appropriate that exemption from pooling and pricing be contingent upon his meeting certain requirements. Such requirements are necessary to assure that his sale of milk will not have a disruptive effect on the orderly marketing of milk in the regulated market.

The definition, therefore, should clearly set forth the limits on the sources from which a person may receive milk and still retain producer-handler status. Producer-handlers in this market sometimes need suplemental milk supplies to meet daily and seasonal changes in the demand for fluid milk. The terms adopted provide that the milk supply of a producer-handler must be limited to his own-farm production or to receipts of fluid milk products priced as Class I milk under some Federal order. This is similar to the respective provisions of the present two orders which provide that a producer-handler may not receive milk from other dairy farmers but may purchase from any plant source.

The definition should indicate clearly that such a person may not receive fluid milk products from nonpool plants if he is to qualify for exempt status as a producer-handler. Milk transferred from pool plants to a producer-handler is classified under the order as Class I. It follows that any supplemental milk purchased by a producer-handler will have been pooled and will not represent a lower-priced source of supply as might be the case if he were permitted to make his purchase from unregulated nonpool plants and still retain his exempt status.

It is intended that the exemption from pricing and pooling of such operations be limited to those who are primarily dependent on milk of their own production and assume the risk involved in the plant operation. The North Central Ohio order provides, as criteria of producer-handler status, that the maintenance, care and management of the dairy animals and other resources necessary to produce milk and the processing and packaging of the milk handled shall be the personal enterprises of the producer-handler and shall be conducted at his personal risk. This provision should be included in the consolidated order.

To permit verification of a producer-handler's continuing status and to facilitate accounting with respect to the receipts from pool handlers the order also provides that each producer-handler shall make reports in such manner as the market administrator shall require.

The terms "producer" and "producer milk" should be modified from the definition presently included in the two orders to incorporate necessary changes brought about primarily by the proposed consolidation of the two orders, expansion of the marketing area to be regulated, and the adoption of marketwide pooling.

A "producer" should be defined as any person, except a producer-handler, who produces, in compliance with the Grade A inspection requirements of a duly constituted health authority, milk which is received at a pool plant or diverted under specified conditions as discussed below. This definition is not intended to include, however, any person with respect to milk which is fully subject to the class pricing and producer payment provisions of another Federal order.

Definitions relating to milk and milk products. "Producer milk" is defined to identify milk received from producers eligible for pooling as distinguished from milk from other dairy farmers and includes milk of eligible producers diverted to nonpool plants within prescribed limitations. Specific conditions for the diversion of milk to nonpool plants are set forth in order that continuing identification of the producer's milk with the market may be determined during temporary periods of delivery to such plants. Diversion provisions assist in the orderly disposition of unwanted week-end and seasonal excesses caused by differences in production and Class I sales patterns. Milk diverted by a handler or cooperative to a nonpool plant would be deemed to have been received at the pool plant from which diverted.

The respective positions taken by the proponent cooperative association and handlers concerning appropriate diversion provisions were widely divergent. Producers proposed to eliminate the "number-of-days" basis for limiting diversions of milk as now provided for in the two orders, and in its stead would substitute the maximum limit on diversions as a "percentage" of receipts. They also proposed that a cooperative association be given the option of exclusive diversion with respect to member milk. Handlers, in contrast, did not support the percentage basis of computing the limit on diversions. They also o b j e c t e d strongly to provisions which would afford a cooperative the option to divert at any time during a month, with the effect of denying the handler the privilege of making diversions of member milk subsequently during the month. Handlers contended that such an option given the cooperative would upset their day-to-day planning for needed milk supplies. One handler opposed any diversion privileges for a cooperative.

Under the specific terms proposed by producers, diversions to nonpool plants, within the percentage limits, would be allowed with respect to the milk of any producer who previously had made delivery to a pool plant on at least 5 days of the month. The cooperative could divert from pool plants to nonpool plants for its account such milk of member producers up to 50 percent thereof in each of the months of March, April, May and June, and 25 percent in any other month. A proprietary handler would be permitted to divert to a nonpool plant for his account, in any month, the milk of any producer member or nonmember, within a similar percentage limit computed on his total receipts, except that this privilege would not extend to member milk whenever the cooperative association already had diverted any member milk from any pool plant during the month.

Producers alleged as the main reasons for the percentage-type diversion limit the need for somewhat more stringent conditions for diversion under market pooling than under individual-handler pools and the greater control over supplies which would accrue to the cooperative.

It is concluded that a modified percentage basis of diversion to nonpool plants should be incorporated in the consolidated order to be applicable during the period of July through February. The present provisions of the two orders which permit diversions to nonpool plants on an unlimited basis March through June also should be included, with slight modification, in the order.

The order should provide that milk of a producer which is received at a pool plant for at least four days during the month, may be diverted to a nonpool plant(s) by a cooperative association or a pool plant handler during the other days of the month but within specified limits in any of the months of July through February.

In the case of milk of member-producers diverted to a nonpool plant(s) for the account of a cooperative association the maximum amount allowed as diverted milk should not exceed 35 percent of the association's member-producer milk received at all pool plants (exclusive of any member milk diverted to a nonpool plant(s) for the account of a handler operating a pool plant) during any month of the period July through February. The maximum amount allowed a handler of a pool plant as diverted milk to a nonpool plant(s) during the same period should not exceed 35 percent of the total milk received from producers during the month at the pool plant of such handler, exclusive of any such milk receipts diverted for the account of a cooperative association.

The 35 percent limit on diversions should accommodate adequately the need to divert milk to nonpool plants during the months of July through February. Except for one handler on the Toledo market who testified that his diversions may amount to as much as 20 percent of his receipts, there was no statistical evidence submitted on the extent of diversions by handlers. The 35 percent figure involves approximately the same amount of milk, in total, as the present allowance in the North Central Ohio market of one-third of the days of production of each producer individually. It should

provide handlers sufficient latitude for diversion to accommodate the economic movement of weekly and seasonal reserve supplies even under a condition of a 5-day bottling week.

Should milk be diverted to a nonpool plant(s) in excess of the respective percentage limits, eligibility for pricing and pooling under the order would be forfeited on a quantity of milk equal to such excess. In such instances the diverting handler should specify the dairy farmers whose milk is ineligible as producer milk. If the handler fails to designate the dairy farmers whose milk is ineligible, making it infeasible for the market administrator to determine which milk was over-diverted, all milk diverted to nonpool plants by such handler should be made ineligible as producer milk.

Diversion of milk to nonpool plants fully subject to the pricing and pooling provisions of another Federal milk order should be permitted on a similar basis. This provision was supported by producers and also by a handler under the Toledo order who diverts milk to a regulated plant in the Southern Michigan market.

For this purpose we see no reason to consider plants regulated under another Federal order issued pursuant to the Act differently from unregulated nonpool plants to which milk may be diverted. Thus, the same limitations would apply on diversions to plants regulated under another order. However, to coordinate regulations with orders for nearby markets, milk so diverted (within the limits provided) should not remain producer milk under the consolidated order in the event the other order compels the pooling of such milk. Such provisions relating to diversion of milk between orders will assist to facilitate the handling of milk. The basis of diversion applied will complement provisions in other nearby orders which have similar purpose.

A correlative proposal by the cooperative association would permit a pool plant handler under the consolidated order to receive milk by appropriate diversion from a plant which is fully subject to the pricing and pooling provisions of another Federal order without such milk necessarily becoming producer milk under this order. This provision likewise should be adopted as a means of providing coordination of orders.

One aspect of the producer proposal, was, of course, the option of exclusive diversion privileges provided an association with respect to member milk. This should not be adopted at this time. The proponent cooperative has an interest in two manufacturing plants which are outlets for reserve supplies of the milk in the two markets. These plants stand ready to accept the market's unwanted reserves, and reserve supplies are diverted at times to these plants by the association and by proprietary handlers in the two markets. Since diversions frequently are made by handlers and the record fails to reveal substantial reason for denying them this privilege which they now have, the opportunity for diversion should continue to apply to both cooperative associations and proprietary handlers. However, when a proprietary handler contemplates the diversion for his account of the milk of a producer who is a member of a cooperative association to a nonpool plant for Class II use, he should be required to give 12 hours' advance notice to the association of his intent to divert. This is appropriate in order that the association may be provided reasonable time for record-keeping as a precaution against inadvertent over-diversions of its member milk.

It is expected that these provisions will provide handlers more flexibility and economy in their hauling arrangements and will enable prompt milk supply response to the varying needs of the processing plants, and at the same time require a substantial association of the individual producer with the market. Added flexibility is accomplished mainly by having the percentages apply to the total deliveries instead of to deliveries of the individual producer. The four-day delivery requirement on the producer will assure also that the producer's milk is currently acceptable, in terms of quality, for sale in the fluid market.

Provision should be made also to permit diversions between pool plants on an unlimited basis as currently provided for in the North Central Ohio order. Milk so diverted would be considered to have been received by the diverting handler at the location of the plant to which it is diverted. This will facilitate the handling of milk within the market and assist handlers in making maximum use of the consolidated market's processing facilities.

2(c) *Classification and allocation of milk.* The present definitions of "Class I milk" and "fluid milk products" should be included in the consolidated order with a slight modification.

Class I milk should be defined as all skim milk (including skim milk used to produce concentrated and reconstituted skim milk) and butterfat disposed of as any fluid milk product which is not accounted for as Class II. For this purpose, "fluid milk products" should be defined as milk, skim milk, buttermilk, flavored milk, milk drinks (plain or flavored), eggnog, fortified milk (including dietary milk products), concentrated milk, sweet or sour cream, and any mixture in fluid form of milk, skim milk or cream, including cultured sour mixtures disposed of as other than sour cream (often referred to as "dip specialty" products), which are labeled Grade A. Frozen or storage cream, frozen dessert mixes, ice cream and milk shake mixes, pancake mix, aerated cream products, evaporated and plain or sweetened condensed milk or skim milk, sterilized milk products packaged in hermetically sealed containers and cultured sour mixtures not labeled Grade A would be Class II milk.

The definition would differ from that included in the present two orders principally with respect to the classification of cultured sour mixtures not labeled Grade A, and milk and cream products sterilized and packaged in hermetically sealed containers, both of which categories currently are classified as Class I milk under the orders. Eggnog (except eggnog packaged in hermetically sealed containers) should continue to be classified as a Class I milk product.

The proponent cooperative association proposed that the present designation of eggnog as Class I milk be continued. A handler proposed that eggnog be considered as Class I milk only if disposed of under a Grade A label. Similar distinction based on a Grade A label was requested by some handlers in the case of cultured sour cream mixes.

Fluid milk products which are required by any applicable health authority in the marketing area to be processed from Grade A milk should continue, in most cases, to be designated as Class I. Some handler testimony contended that duly constituted health authorities do not require eggnog and certain cultured sour mixtures (dip specialty products) to be made from Grade A milk in all parts of the marketing area. It is not clear from the evidence, however, that these products, are, or may be, made from ungraded milk in principal segments of the marketing area as defined in the consolidated order unless distributed as a sterilized product in an hermetically sealed container.

Eggnog not so handled is akin in form and use to other fluid milk products. It is a highly seasonal product and is distributed by regulated handlers in the consolidated marketing area in the same manner and through the same facilities as fluid milk or cream. The health requirements for the processing of eggnog not sterilized and packaged in hermetically sealed containers are similar to those applicable to whole milk for fluid consumption. Eggnog distributed in the marketing areas of both orders from nonregulated sources in competition with regulated handlers, is packaged in hermetically sealed containers. To the extent that regulated handlers in the market may produce and distribute a product, including eggnog, sterilized and similarly packaged, provision is made in the consolidated order that such products will be classified as Class II. In view of these considerations, it is appropriate that eggnog (except eggnog packaged in hermetically sealed containers) continue to be classified and priced as Class I milk under the consolidated order the same as it is presently classified under the separate orders.

Cultured sour cream in fluid form must be derived from Grade A milk. It is a Class I product under the present orders and would be continued in such class. Dip specialty products are made from a cultured mixture of cream, milk or skim milk to which is added cheese or nondairy food items such as bacon, horseradish, onion and other flavorings and seasoning ingredients. Dip specialty products, unlike sour cream and other fluid milk products because of such additives, also are usually of a semiliquid or nonliquid consistency. The additives limit its use to those food categories commonly thought of as sauces, relishes or appetizers. The products are distributed by regulated handlers in the market sometimes in competition with similar products not derived from Grade A milk.

As has been indicated previously, it is not clear from the record what the grading and labeling requirements are as to

such dip specialty products which are disposed of by regulated handlers in all parts of the marketing area. It is appropriate, therefore to provide that dip specialty products consisting of cultured sour mixtures of cream and milk or skim milk to which cheese or any food substance other than a milk product has been added should be included in Class II under the consolidated order when such products are not disposed of under a Grade A label. However, in the case such products are disposed of by regulated handlers under Grade A label, classification should be in Class I since sale under such label would require that they be derived from producer milk or milk of equivalent quality.

A handler requested that any milk or cream product which is sterlized and packaged in hermetically sealed containers also be excluded from the fluid milk product definition, to be classified as Class II milk rather than Class I milk. This handler purchases sterlized whipping cream packaged in hermetically sealed glass jars for resale in the marketing area. This pre-packaged sterlized product has a long shelf life and is distributed by nondairy business concerns in the same manner as other manufactured dairy products, such as evaporated or condensed milk in hermetically sealed containers, which are classified currently as Class II milk. It is concluded that such sterlized milk products, as well as eggnog, packaged in hermetically sealed containers should be classified as Class II milk.

In the consolidated order ice cream mixes, milk shake mixes, and frozen cream are specifically designated as products excepted from the fluid milk product definition in order to define more particularly the items which are not covered therein. This represents no change in the classification of these products.

Class II milk should include those milk products which are specifically exempt from the fluid milk product definition, i.e., cultured sour mixes not labeled Grade A, frozen cream, frozen dessert mixes, ice cream and milk shake mixes, aerated cream products, evaporated and plain or sweetened condensed milk or skim milk and sterilized milk products packaged in hermetically sealed containers. Fluid milk products disposed of for livestock feed or dumped should be included in this class under specified conditions. Further, Class II milk should include skim milk and butterfat utilized in other nonfluid products, and disposition in bulk to certain commercial food establishments, in month-end inventories, and in shrinkage with certain limits.

The matter of providing Class II classification on cultured sour cream mixes has been discussed previously in these findings. As to other Class II milk products, no change from their present classification is made.

Both orders presently provide for a maximum allowance of 2.0 percent shrinkage to Class II milk computed pro rata on the basis of receipts of producer milk and other source milk (bulk other source milk in the case of the North Central Ohio order).

It is concluded that the 2.0 percent maximum in Class II milk provided for in the present orders should be continued under the proposed consolidated order. The present terms should be revised, however, to provide for a division of such shrinkage allowance between plants when interplant transfers are involved.

Producers would allow 0.5 percent to be associated with the receiving of milk from farms at a plant, and the remaining 1.5 percent to be associated with the processing, packaging, and distribution of the milk. A handler, testifying on behalf of his pool plant located in Marion, Ohio, and on behalf of another pool plant located in Mansfield, Ohio, requested that the full 2.0 percent shrinkage allowance on other source receipts be continued. The proponent handler cited the function of the two plants in providing outlets during the flush production months of the year for surplus milk from plants which are not now regulated. The handler stated also that the two plants receive substantial quantities of bulk cream for ice cream production.

Normally, a greater shrinkage is experienced in the processing operation than in the single function of receiving. The proposal for division of shrinkage between plants recognizes the separate receiving and processing functions, giving only a minor portion of the shrinkage allowance to the plant where the milk is received and without processing is shipped to other plants, and assigning the larger portion of the allowance to the plant where the milk is actually processed.

Such provision, as proposed by producers, should be adopted. However, an exception should be made when the handler receives and separates the milk in the first plant and transfers the resulting cream to other plants. In such case the handler should be permitted the additional 1.5 percent allowance inasmuch as the principal processing function as well as the receiving function would have been performed by such handler with respect to the milk represented by the bulk cream transfers.

It is concluded also that no limit should be established on shrinkage assigned to Class II with respect to unpriced milk first allocated to Class II milk. It is appropriate, however, when unpriced milk is allocated pro rata to Class I and Class II milk, that the Class II shrinkage allowance on such milk received at pool plants be computed in the same manner as allowable Class II shrinkage on producer milk.

In computing the pro rata share of the total plant shrinkage on other source milk to be assigned as Class II milk, a handler's receipts of skim milk and butterfat from another pool plant should be combined with producer milk and certain milk received in bulk from other order plants and from unregulated supply plants. Under the present orders the receipts of milk at a handler's pool plant from another pool plant are excluded in prorating shrinkage between producer milk and other source milk in order to avoid a double accounting on milk derived from producers for this purpose. The type of shrinkage provision adopted herein, which provides a division of shrinkage on an individual plant basis, makes it appropriate to include receipts from other pool plants when so prorating shrinkage.

The matter of classifying nonfat milk solids used in fortified fluid milk products was considered in the decision on the Washington hearing issued by the Assistant Secretary June 19, 1964 (29 F.R. 9002) with respect to the two markets here involved, among others. In such decision, it was found that products fortified by the addition of milk solids should be Class I only to the extent of the weight of an equal volume of an unmodified product of the same nature and butterfat content. It is concluded that the evidence introduced at the hearing upon which such decision was based and the further evidence adduced at this hearing supports a similar application under the consolidated order.

Skim milk and butterfat contained in fluid milk products disposed of for livestock feed should be classified as Class II milk. Both orders presently provide for Class II classification of skim milk and butterfat in milk and milk products (including products defined as fluid milk products) disposed of in this manner. Fluid milk products such as chocolate milk and homogenized milk, when returned from routes, generally have no further use except for livestock feed or to be dumped. Classification in Class II as livestock feed should be contingent, however, upon specific records showing the amounts of skim milk and butterfat so disposed of which are made available for the market administrator for his verification.

The North Central Ohio order permits Class II classification of skim milk dumped if certain reporting requirements are met. The Toledo order, on the other hand, classifies dumpage as Class I milk. The cooperative association's initial proposal would permit Class II classification of only the skim milk portion of fluid milk products disposed of as livestock feed or dumped. They modified their position on this matter, however, to conform to that of handlers who requested that any butterfat in fluid milk products disposed of in either way also be considered as Class II milk.

In the case of route returns of certain fluid milk products such as homogenized milk and milk products or chocolate milk, it is difficult and impractical to salvage the butterfat for further use unless the plant can dispose of the milk as livestock feed. Most of the regulated plants have no facilities for the further processing of route returns into manufactured products. The Class II classification as dumped milk therefore should apply in the manner proposed by handlers and supported by producers. However, as a condition thereof, the market administrator should be afforded the opportunity to verify such dumping and an appropriate provision to this effect is included in the order.

Transfer provisions. The transfer provisions of the present North Central Ohio order, recently revised on the basis of the Washington hearing and modified slightly in consideration of marketwide

pooling, are generally appropriate for the consolidated order.

The proponent association proposed the inclusion of provisions for the consolidated order, similar to those now provided for in the Toledo order, which would include also a surplus disposal area whereby bulk fluid milk moved to a nonpool plant beyond the limits of such area automatically would be classified as Class I milk without verification of ultimate use. While the Toledo order provides for such a surplus disposal area there is no such limitation in the North Central Ohio order. There was no showing of a need for such provisions and the proposal is therefore denied.

Allocation provisions. A statement concerning allocation provisions is set forth under the "preliminary statement" of this decision. The allocation provisions revised on the basis of the Washington hearing are generally appropriate for the consolidated order. With modification to accommodate market pooling, these provisions should be adopted.

2(d) *Class prices and location differentials—Class I prices.* For the purpose of establishing Class I prices the marketing area should be zoned. For the first 18 months of the order's operation, the Class I price differentials (over the basic formula price for the preceding month) at plants in the vicinity of Mansfield should be $1.36 for August through March and $1.13 April through July, with lower differentials at other locations. The supply-demand "adjustor" of the Class I price formula should be related to that determined under the Northeastern Ohio order.

Producers proposed that for the first 18 months under a consolidated order the Class I price should be the basic formula price for the preceding month plus $1.25 for April through July and $1.55 for August through March, with adjustments thereto to apply at plants located nearest to certain points or boundaries within the marketing area, as follows:

Point:	*Amount*
The boundaries of Lucas County Mansfield and Sandusky City Hall	$.00
Tiffin City Hall	—.03
Marion and Findlay City Hall	—.04
Lima City Hall	—.08

For plants more than 80 miles from any of the above points, Class I prices would be reduced by 15 cents per hundredweight at 80–90 miles plus an additional 1.5 cents for each 10 miles beyond 90.

Handler testimony on Class I pricing was directed mainly to the matter of obtaining an appropriate relationship of pricing with nearby markets, particularly the Fort Wayne market. One handler proposed that no price differences should apply at plants within the marketing area.

Level of prices. Monthly utilization of producer milk in Class I generally has ranged from 70 to 85 percent in each of the present markets. At this utilization level sufficient milk has been available to satisfy bottling needs and to provide an adequate reserve. Milk supplies have been neither excessive nor short for any prolonged period in either market. Adoption of the present average level of Class I price should tend to promote, under the consolidated order, a reasonable balance between producer milk supplies and Class I sales and thus conform to the pricing requirements of the statute. While in the interest of improving intermarket price alignment (further discussed below) prices at plants in the present North Central Ohio market would be increased slightly and those at Toledo lowered somewhat, from present levels, the aggregate returns for Class I milk for the consolidated market would be maintained virtually at the average level which presently prevails for the two separate markets.

Intermarket price alignment. The consolidated marketing area is located in a milk supply area which is a common source of supply for both the Northeastern Ohio market and the markets in the proposed area. In this procurement area, Northeastern Ohio (Cleveland) is the dominant market. Because of competition with the latter market, particularly in procurement, as heretofore discussed, appropriate pricing at the various locations in the proposed area must continue to take into account the alternative value of milk for such market at all locations. On the other hand, competition for fluid milk sales between handlers under the Toledo and North Central Ohio orders and Fort Wayne handlers is such that a reasonably close alignment of Class I prices between the consolidated market and the Fort Wayne market also must be maintained.

Two measures are taken to accomplish intermarket price alignment at the general level of price referred to above. Price zones would be used in determining the prices at various locations in the marketing area. Thus, prices would be highest at those plants in the vicinity of Mansfield, Ohio, nearest to the Northeastern Ohio market on the east, and graduated downward in a westerly direction from Mansfield, being lowest on the western edge of the marketing area at Lima, Ohio. Also, seasonal variation in the Class I price would be reduced as compared with seasonal changes under the present two orders.

Under the price schedule adopted, no price adjustment would apply at plants located within 15 miles of Mansfield. Prices at plants 15 to 25 miles located generally west from Mansfield would be reduced two cents. Beyond that point in similar direction, the adjustment would be one cent for each additional 10 miles (25–35 miles, 35–45 miles, etc.). The following figures are the approximate zone adjustments that would apply at some of the principal communities in the marketing area in relation to the Mansfield level: Lima, $—.09, Findlay, $—.07 cents, and Marion, $—.04 cents. A zone price would apply also at plants located within 40 miles of Toledo or within Ottawa, Sandusky, and Seneca Counties. Within this area the price would be the Mansfield price minus 4 cents. No price adjustment would apply for any plant located within Erie and Huron Counties or nearer to the Public Square in Cleveland than the distance from the Mansfield City Hall to the Cleveland Public Square.

In this connection, it may be noted that historically, a somewhat higher Class I price has prevailed at Toledo than at Lima in recognition of the need to attract milk supplies to Toledo from the heavier production areas in western Ohio. At Lima plants a somewhat lesser price has attracted the milk needed. Therefore, as indicated above, a slightly higher price for Toledo in relation to Lima is continued in order to assure adequate supplies to handlers in this area. The Toledo price should prevail at all plants within 40 miles of the Toledo City Hall, and at any plants within adjacent Ottawa, Sandusky, and Seneca Counties which might become regulated plants.

Further, the Northeastern Ohio order provides gradually lower prices for zone distances west of Mansfield; it also provides for higher prices as Cleveland is approached from the Mansfield direction. Many of the plants in this general area are already regulated under such order. A provision should be included in the merged order, therefore, to provide that the Mansfield price will apply at any plant located nearer to the Public Square in Cleveland than the distance from the Mansfield City Hall to such Cleveland basing point, and at any plant located within Erie County or Huron County which might at some future time become regulated under the order. Any price in this area below the Mansfield level would cause misalignment with the Northeastern Ohio market and price advantage would accrue to handlers regulated by the merged order since any significantly lower price would give them price advantage over handlers regulated under the Northeastern Ohio order. The Class I price for plants in the area approaching Cleveland thus is established at the Mansfield level.

The second measure employed to achieve improved price alignment is a reduction in seasonal variation in the Class I price differential. Whereas at present the Toledo stated Class I price differential decreases seasonally by 40 cents February through July and there is a decrease of 45 cents in the corresponding differential under the North Central Ohio order for April through July, the seasonal decrease in stated differential provided in the merged order should be only 23 cents. At the Mansfield location, for example, the effective differential adopted would be $1.36 per hundredweight for August through March and $1.13 per hundredweight April through July, with effective differentials at Lima and Toledo 9 cents and 4 cents less, respectively, in each seasonal period. The higher seasonal differential should apply in the market during August through March, in order to insure that seasonal changes in price will take place at the same time and for the same period in the Northeastern Ohio and Northwestern Ohio markets. (August through March are the months when the higher seasonal differential is effective under the Northeastern order Class I price formula).

At present the lower seasonal differential in the Toledo order applies during February through July. This has caused wide differences between Class I prices for the Toledo and Northeastern Ohio

markets during the months of February and March. In February and March 1963, for example, the different seasonal patterns in Class I prices was a primary factor causing the Toledo prices to be 50 cents and 30 cents lower, respectively, than the Northeastern Ohio price in such months.

With the adoption of the revised seasonal basis for Class I price changes under the consolidated order, prices at Toledo area plants will be better aligned with Northeastern Ohio Class I prices. For example, the Toledo average Class I price for 1963 computed according to the new formula would have been $4.35 as compared to a $4.26 Northeastern Ohio Class I price applicable at the Toledo location (approximately 115 miles distant from Cleveland). The actual Toledo Class I price averaged $4.41 during 1963. Class I prices at other points, including Lima on the western edge of the marketing area and Mansfield on the eastern edge likewise would be better aligned with the Northeastern Ohio Class I price.

An improved price relationship with Fort Wayne also will result even though identical seasonal movements in prices for the two markets cannot be assured because the Fort Wayne market currently has a constant $1.20 Class I differential for each month of the year. Toledo area prices, for example, under the new formula will be better coordinated with Fort Wayne prices during the fall months. It is during these months that some wide differences have developed recently under the present orders. For example, the Toledo prices for August through December averaged 24 cents higher. Under the new formula the difference for Toledo area plants would have averaged only 13 cents in such period. If the adopted Class I price formula had been effective in 1963, it would have produced at $4.35 average Class I price at Toledo, a level 5 cents higher than the average Fort Wayne price. With this formula (which establishes a new seasonal pattern), the maximum difference between the Toledo and Fort Wayne Class I prices during any month of 1963 would have been 18 cents.

Differences between the Fort Wayne and North Central Ohio prices for April through July (months of greatest price difference) would be narrowed significantly. If, for example, the new formula had been effective during April through July 1963, the Fort Wayne price would have averaged only 16 cents higher than the North Central Ohio order price at Lima, Ohio. Under the present orders the Fort Wayne price was 39 cents higher than the Lima price for the four-month period. The average Class I price that would have resulted for 1963 at Lima is $4.30, equalling the average price at Fort Wayne.

Location differentials. In addition to zone pricing, as discussed, provision should be made for location adjustments at plants outside the pricing zones from which milk may be distributed within the marketing area or which may become suppliers of regulated distributing plants.

The present North Central Ohio and Toledo orders provide location adjustments applicable to Class I and blended prices based upon the location of the plant where the producer's milk is received. The North Central Ohio order applies the same adjustment for location as that determined under the Northeastern Ohio order. The zone rate, computed from the Public Square in Cleveland is 13 cents per hundredweight for the 40.1–60 mile zone and 20 cents for the 60.1 to 70 mile zone, plus one cent additional for each additional 10 miles or fraction in excess of 70 miles. Location adjustments under the present Toledo order apply for plants more than 40 miles from the Toledo City Hall at the rates of 15 cents for distances 60–75 miles, 17 cents for distances 75–90 miles, and 2 cents additional for each 15 miles or fraction thereof over 90 miles.

As previously stated, the producers' proposal would establish location adjustments for plants located more than 80 miles from specified points in the marketing area at the rate of 15 cents for distances of 80–90 miles and an additional 1.5 cents for each added 10 miles beyond 90.

Provision for appropriate location adjustments will permit Class I pricing f.o.b. market on milk brought into any portion of the marketing area from a plant at some distance away for Class I purposes equivalent to Class I milk derived from producer milk delivered from farms to a plant located in such portion of the marketing area.

For all plant locations outside the marketing area other than in Michigan any applicable location adjustment would be computed from Mansfield. Except with respect to the counties of Erie, Huron, Seneca, Sandusky, and Ottawa and certain other locations where no adjustment would be applicable, as heretofore discussed, the rate of adjustment would be 1.5 cents per 10-mile zone beyond 15 miles from Mansfield.

For plants located in Michigan the Toledo City Hall would be used as the basing point for calculating location adjustments on Class I and blend prices. This will provide a convenient and familiar measuring point with respect to Michigan locations as heretofore determined primarily under the Toledo order. However, in computing the Class I and blend prices for Michigan plant locations from Toledo, 10-mile zones should be used to provide a comparable pattern of pricing with other plants for which location prices are computed on distance from Mansfield. Thus, for distances beyond 40 miles from Toledo in Michigan the location adjustment would be 1.5 cents per hundredweight per 10-miles or fraction thereof.

Other proposals re Class I price. Handler proposals to promote even production by including in the order a "Louisville Plan" in lieu of seasonally varying Class I differentials should not be adopted. Handlers contended that Class I prices would be better aligned if a constant Class I differential which generally is used in conjunction with a "Louisville Plan" were employed. Adoption of Class I differentials with less seasonal variation will permit continued use of the familiar seasonal pricing plan used under the present orders, but yet permit a reasonable alignment of prices with those of the Northeastern Ohio order where seasonal variation in Class I prices still prevails.

A handler requested that a lower Class I price (equal to the order blend price) apply to out-of-marketing area Class I sales if all the territory proposed by such handler is not included in the consolidated marketing area. The handler indicated that unregulated handlers otherwise might enjoy a price advantage over regulated handlers who compete for Class I sales outside the designated marketing area. The record evidence does not show, however, that unregulated handlers would be so advantaged as to warrant the proposed lower price to regulated handlers. This proposed modification to the pricing provisions is therefore denied.

Supply-demand adjustor. Supply-demand adjustments should be related to any future price changes resulting from the supply-demand adjustor of the nearby Northeastern Ohio order. Thus, the Class I price would be modified by any amount by which the supply-demand adjustment under the Northeastern Ohio order may be less than minus 25 cents (maximum reduction). For example, if the Northeastern Ohio adjustor produced a minus 19 cents instead of minus 25 cents, 6 cents would be added to the consolidated order Class I price as otherwise computed.

A separate supply-demand adjustor should not be developed at this time for the combined order because of lack of information on future supply and utilization patterns in the expanded marketing area. Utilization levels and seasonal supply patterns could be significantly altered in the new market in view of the revisions of marketing area and pooling plan. It is not known at this time whether there will be important changes in plant numbers under the order and what new plants may become involved under the regulation. For an 18-month period, however, the Northeastern Ohio supply-demand mechanism should promote reasonable price alignment between this and nearby markets. After several months of experience, conditions should have stabilized sufficiently to permit development of an effective supply-demand adjustor based upon local supply and demand conditions for use after the initial 18-month period.

Basic formula price. The Minnesota-Wisconsin manufacturing milk price which now serves as the basic formula price in the Toledo and North Central Ohio orders should be used for this purpose in the consolidated order. This price constitutes a reasonable measure of manufacturing milk values. Since this price series is used as the basic formula price in all nearby milk orders, its use in the order also will facilitate the desirable objective of intermarket alignment of Class I prices.

The Class I price should be computed by adding the fluid differential for the month to the basic formula price for the preceding month. Computing the price

in this way will permit announcement of the Class I price early in the month for which it applies. This will give handlers current information on their bottling milk costs and thus provide them a precise basis for deciding price schedules for the month. Class I price formulas of all nearby orders employ the basic formula price for the preceding month in computing the Class I price. Adopting the same procedure in the consolidated order will further promote Class I price alignment.

Class II price. The Class II price should be the Minnesota-Wisconsin manufacturing milk price. This price should be tied closely to the value of milk used in butter and nonfat dry milk solids. A ceiling, therefore, should be placed on the Minnesota-Wisconsin price for Class II pricing purposes to limit its movement to 10 cents over a butter-nonfat dry milk solids formula price.

The Minnesota-Wisconsin price (with a tie to butter-nonfat dry milk solids prices) presently is the Class II price for the North Central Ohio order. A producer proposal to use such a formula for this purpose in the consolidated order should be adopted. Use of this price will establish a Class II price level at which handlers reasonably can accept whatever quantities in excess of Class I needs may be delivered to them from time to time. At the same time, such price will not be so low that handlers will be encouraged to buy producer milk solely for the purpose of converting it into Class II products.

The Minnesota-Wisconsin price is an appropriate Class II price because it provides the accurate measure of manufacturing milk values required of the price series used to price under the order milk which must be manufactured. This price average reflects prices paid farmers for about half the manufacturing grade milk produced in the country and is determined by competitive conditions which are affected by demand in all the major uses of manufactured dairy products.

The Minnesota-Wisconsin price has been incorporated as the surplus class price in many orders throughout the Midwest. With the tie to butter-nonfat dry milk solids prices, this price is employed as the Class II price (ice cream, cottage cheese and other manufactured products) in the nearby Fort Wayne and Columbus orders. With a tie to butter-nonfat dry milk solids prices, it also is the Class III price under the Northeastern Ohio order. In Class III under that order are ice cream and most other manufactured products except cottage cheese.

There is considerable overlap of sales and procurement areas of this and the nearby orders. Class II milk will be competitively priced if handlers pay substantially the same price as handlers from the other orders for milk used in manufactured products. Also, producers will receive approximately the same price as neighboring producers under other orders for milk used in Class II. This will promote orderly marketing by eliminating a source of interorder price variations.

Typically, Toledo and North Central Ohio handlers process fluid milk, cottage cheese and ice cream. At times, however, a significant percentage of the milk in excess of such needs is transferred to local manufacturing plants which make butter and nonfat dry milk solids since pool plants do not have facilities for surplus disposition. Because local butter plants are significant outlets for milk not needed for cottage cheese and ice cream, it is essential that the Class II price not differ significantly from the market values of butter and nonfat dry milk solids. If such a situation developed it could cause manufacturers to refuse Class II milk and thus cause serious surplus disposal problems for handlers and cooperative associations. To lessen this possibility, an alternative Class II price should become effective whenever the Minnesota-Wisconsin price exceeds by more than 10 cents the value of milk for manufacture into butter and nonfat dry milk solids.

A formula price producing the same price level as the butter and nonfat dry milk solids alternative Class II price effective for the North Central Ohio order should be used as the alternative price. Manufacturing allowance factors included in this price formula are in general use throughout the area. Formula prices using the same manufacturing allowance factors and the same basic butter and nonfat dry milk solids prices also are used in the Class II or Class III price provisions of several nearby orders (Fort Wayne, Columbus, and Cleveland) to limit the Minnesota-Wisconsin price to 10 cents over the formula value of butter and powder. Use of the same formula price in the order for this purpose will keep in line the surplus class prices of the orders.

Separate proposals to incorporate the Midwest condensery series or the U.S. manufacturing milk price as the Class II price should not be adopted. The Midwest condensery series provides a less accurate measure of manufacturing milk values than the Minnesota-Wisconsin price. This is, in part, because of the relatively small number of plants now available to report prices for this series. Originally the Midwest condensery price was based on reports of 18 plants. The number reporting has now dwindled to seven. Three of these plants are operated by a single firm and two others by another firm. There is evidence also that the posted prices for certain plants in the series have not reflected the total cost of milk to such plants. As a result the Midwest condensery price is a less satisfactory indicator of manufacturing milk values for general use. For that reason, it should not be adopted as the Class II price formula for the consolidated orders.

One handler suggested that the U.S. manufacturing milk price be used as the Class II price provided it would not result in a price higher than the alternative butter-nonfat dry milk solids formula price as submitted by producers. The U.S. manufacturing milk price during 1962 and 1963 averaged about six cents lower than the Minnesota-Wisconsin price.

There is no evidence to indicate that a Class II price at this lower level would be necessary for disposal of surplus milk in this market. Handlers generally have accepted milk at the Minnesota-Wisconsin price. Also, at times premiums over the Class II price have been paid on manufacturing milk in this region. Under these circumstances it would not be appropriate to adopt the lower prices of the U.S. manufacturing series as the Class II price.

Butterfat differentials. Class I and Class II butterfat differentials, respectively, should be computed by multiplying the Chicago butter price by 0.127 and 0.115. The producer butterfat differential should continue at the weighted average (weighted by the proportion of butterfat from producer milk in each class) of the Class I and Class II butterfat differentials.

At 0.127 times the Chicago butter price, the Class I differential equals the weighted average of the Class I differentials for the Toledo order (0.125×Chicago butter price) and the North Central Ohio order (0.130×Chicago butter price). Thus, with this differential Class I butterfat will be priced at the same general level that now exists in the two markets. Establishing the Class I differential at the weighted average of such differentials under the separate orders will provide an equitable compromise between the two levels of differentials. At the same time Class I butterfat will be priced competitively with Class I butterfat from alternate sources under nearby orders. For example, under the Fort Wayne, Northeastern Ohio and Dayton-Springfield orders, respectively, the factors used to compute the Class I differential factor are 0.125, 0.130 and 0.127. Thus, the factor 0.127 for this order is in line with the average of such factors used under nearby orders.

The Class II butterfat differential in the present North Central Ohio order, computed at 0.115 times the Chicago butter price, should be retained as the Class II differential for the consolidated orders. This differential provides a representative measure of butterfat values for manufacturing purposes in the area. At 0.115 times the Chicago butter price it is identical with the manufacturing class butterfat differentials in the nearby Cleveland, Fort Wayne and Columbus orders. Its incorporation into the order will thus price Class II butterfat competitively with butterfat from alternative sources of supply. This will help insure disposal of surplus Class II butterfat. Too high a price would be undesirable since it could make difficult the disposal of surplus butterfat to area manufacturers. Manufacturers would be reluctant to accept Class II fat at a higher price if it were available at lower prices from plants under other nearby orders or from unregulated sources.

The producer butterfat differential should continue at the weighted average of the Class I and Class II butterfat differentials. The differential will thus reflect the proportion of butterfat from producer milk used in each class.

In the discussion of the class prices and butterfat differentials reference has been made to order provisions and order prices in nearby markets. Official notice is

taken of the provisions of the Columbus, Fort Wayne, Northeastern Ohio, Indianapolis and Dayton-Springfield orders. Official notice also is taken of the monthly statistical summary of the market administrators for these orders for 1961 through 1963. In connection with the discussion of the Class II price and the basic formula price, official notice is taken of the Under Secretary's decision of February 21, 1962 (27 F.R. 1802) to incorporate the Minnesota-Wisconsin price series as the basic formula price in 36 Midwest orders.

2(e) *Method of Payment of Producers.* Provisions should be included in the order to enable a cooperative association, on its request, to collect from handlers payments due individual member producers, at the uniform price, on milk received by the handlers from such member producers.

The present Toledo order fixes the 15th day after the end of the month as the date by which each handler must pay each producer for milk received. The comparable provision under the North Central Ohio order fixes the 18th day after the end of the month as the final payment date. Each order also requires handlers to make partial payment to producers on or before the last day of the month for milk received during the first 15 days of the month. The North Central Ohio order provides further that payments by handlers shall be made to each producer or, under certain conditions, to a cooperative association.

Proponent producers submitted three proposed methods of paying producers for milk. One of the proposals made by producers would require that a handler, at the request of a qualified cooperative association, remit to such association the proceeds of all milk received from its members at the market uniform, or "blend", price. A handler would settle directly with his nonmember producers and with any of his producers who are members of an association which did not elect to collect payments on behalf of members.

In support of provisions which would enable a cooperative association to collect from handlers payments due individual member producers at the uniform "blend" price (and also in support of another proposal for payments to be made to the association at class utilization values), the proponent association stated that such provisions would improve its ability to move milk so as to most efficiently balance supply with the fluid milk needs of individual handlers and thus enable producers to have the highest possible usage of their milk in Class I at all times. This would be accomplished by (a) reducing the number of instances in which one handler disposes of milk outside the market as surplus while other handlers at the same time request extra milk above their regular supplies for bottling purposes, (b) making more effective use of two manufacturing plants in which the association has an interest, with respect to providing outlets for the market reserve milk supplies, and (c) moving milk supplies to handlers to meet peak bottling needs and relieving handlers of excess supplies of milk as necessary. In this connection, proponent cited recent instances in the market where large grocery chain stores have shifted their purchases from one handler supplier to another, and other instances where plants have closed or temporarily ceased operations because of labor stoppage. These situations, proponent contends, call for rapid day-to-day shifts between handlers of milk supplies if producers are to maintain the best possible outlets for their mill.

They also stated that such provisions would permit the association to reblend the proceeds of all its sales in all markets as well as the proceeds of sales under the consolidated order. The association, in support of its need to reblend the proceeds of its member milk sales cited certain costs and obligations incurred as a result of disposing of surplus milk. They further contended that: (a) The Agricultural Marketing Agreement Act of 1937 specifically provides that a cooperative association be allowed to reblend proceeds of all their sales in all markets, (b) the vast majority of cooperative members in Ohio are paid through their respective associations, as are the haulers who haul their milk, and (c) it is not feasible or practical for the association to operate a reblending program or to offset extra hauling costs on surplus milk by means of regular association dues.

Provisions for payment by handlers to a cooperative association at the blend price value with respect to member milk would (1) enable the recipient cooperative association to blend the net proceeds of all its sales in all markets, and to conduct its marketing activities in such a manner as will tend to promote efficient methods of marketing of milk by producers, and (2) facilitate the channeling of milk by producers into available fluid milk outlets and the disposition of excess seasonal supplies in such a way as to augment the pooling and pricing provisions of the order.

A basic factor related to the marketing functions which cooperatives in present-day fluid milk markets perform is that, even under a milk order, handlers are not required to accept milk although it may be fully qualified and approved for fluid use. The responsibility for finding a market and of marketing milk so as to bring the highest possible return for the producer remains largely with the producer or with the cooperative which represents him. Under present-day marketing methods, the great majority of producers regularly associated with fluid markets look to their cooperative associations to assist them in attaining the best possible market outlets and returns for milk. The milk industry in fluid markets is dynamic, and in recent years has undergone significant and rapid technological changes both in farm-to-plant marketing (such as bulk tank handling) and in methods and patterns of milk distributions by handlers. Only occasionally is the individual producer, acting alone, in adequate position to carry out the necessary marketing functions to protect his market outlets and thus maximize his returns.

Technological changes in the industry, the constant striving toward greater efficiency in handling and marketing, and the increasing mobility of milk from the time it leaves the farm has resulted in greater need for cooperatives to move milk, on nearly a daily basis, to various plant outlets to achieve the highest use value of the milk. Increasing amounts of business done through chain stores and under large-scale contracts makes for peak load bottling at certain times as compared to other times. As contract business shifts from one handler to another, there is need to redirect milk supplies to follow the contract to the new handler. Both work stoppages and the trend toward efficiency in plant handling and distribution result in plant closings from time to time and necessitate the shift of milk supplies to other plants. Such conditions not only prevail generally but they prevail also in the Toledo and North Central Ohio markets. In the presence of a cooperative willing and able to assume the burden of marketing milk not needed or accepted by handlers, repetitive weekly and seasonal surplus burdens, and sporadic emergency situations which may be created by strike, fire or unforeseen contingencies, are minimized in their adverse effects on producer prices and handling efficiencies. Movement of the maximum quantities of producer milk into the highest-priced utilization at all times of the year not only aids in achieving the highest possible proceeds for the member producer but also, under a marketwide pooling system, benefits the nonmember producers as well.

The handling of milk by the cooperative under such circumstances is not, however, without cost to the member producers. The cooperative's ability to meet emergency situations or to effect efficient handling of the total available supply is hindered, perhaps even crippled, when it is unable to distribute the attending costs over its entire membership. There is no adequate reason, of course, why, under cooperative action, the particular group of producers whose milk must be handled as unwanted surplus or under unusual circumstances should bear the full burden of the extra marketing cost incurred in the disposition of such milk outside the fluid market. It is well established in cooperative marketing that producers band together to bargain and, where necessary, to market their product physically at joint risk and expense, in the expectation that by joint action they will derive improved returns. The statute recognizes the need of cooperatives frequently to spread available proceeds and necessary marketing costs over the entire membership in carrying out association functions.[1]

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[1] Section 608c(5)(F) in the Agricultural Marketing Agreement Act of 1937, as amended, states that "Nothing contained in this subsection is intended or shall be construed to prevent a cooperative marketing association . . . engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all of its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers . . .".

The Northwestern Cooperative Sales Association, the proponent of the provision for payments to cooperatives, is organized under the cooperative laws of the State of Ohio. Producer membership is effected by the execution of a membership agreement between each member and the association. This agreement is a form of contract commonly used by cooperative milk marketing associations by means of which the producer makes the cooperative his sole and exclusive agent to handle and market milk produced by him with authority to designate the place and manner of its delivery. The agreement further provides for a commission (dues) from the producer to the cooperative from the proceeds from sales of milk.

Under the existing membership agreement, the cooperative association is given explicit authority to designate the persons to whom and the places to which member milk is to be delivered. The association, by its continuous representation of those producers in matters affecting their interests in these established market outlets, such as the checking of weights and tests, representation in making adjustments or negotiation with handlers of any of the terms and conditions of delivery and sale of member's milk, and bargaining for reasonable hauling rates, exercises its authority in the sale of member milk. The association utilizes the power to designate the recipient of its members' milk when, for various reasons, the milk of member producers is shifted physically from one handler to another to place a higher percentage of milk in Class I, or from a handler customarily receiving such milk to a nonhandler, as in the customary marketing activity of disposing of the unwanted weekend and seasonal surpluses at handler plants. The association arranges terms for the hauling of member milk.

Such association is a qualified association under §§ 1037.15 and 1041.5 of the North Central Ohio and Toledo milk orders, respectively, and at present is the only cooperative association operating under the orders. The association has approximately 1,700 member producers in the two markets. The association thus represents 95 percent (Toledo) and 85 percent (North Central Ohio), respectively, of the producers supplying these markets. While the association also has a substantial number of members supplying regulated handlers in other markets regulated under Federal orders, the Toledo and North Central Ohio markets are the principal markets for member milk.

This cooperative currently collects from certain Toledo handlers the payments for milk accruing to some 150 member producers. It also collects similarly with respect to the milk of 650 members who are producers under the Northeastern (Cleveland) Ohio Federal order.[2] As previously stated, plant facilities are available to the association to which milk may be moved at the times needed to remove excess weekend and seasonal supplies. This is of particular importance to the producers since, as previously indicated, handlers in the Toledo and North Central Ohio markets are under no obligation to accept milk offered by producers and producers are not obligated to sell milk to handlers. There is no fixed term for the delivery and acceptance of milk and neither handlers nor producers supplying them have any recourse for the failure to deliver or accept milk.

Past needs of the association in this market to incur marketing costs as an association (not as individual producers), and thus to reblend net proceeds for member milk, were illustrated on the record. In May 1963, a Lima, Ohio, bottling plant under the North Central Ohio order closed. When the plant shut down, the association's members shipping to this handler immediately lost their fluid market. The association then had to find a new outlet for the milk of each of these producers. This it did, and during the time it took to reassign the producers to other fluid milk plants they were paid through the association. Because during the transition period some of their milk had to be shipped to manufacturing plants and a lesser return than their previously received blended price was realized from the sale, the association added to the proceeds an additional $18,000 from its own treasury in order to provide these member producers a reasonable price in relation to blended prices received by the remainder of the market's producers. The producers who lost their market temporarily thereby were able to continue operations without undue financial loss caused by the closing of their outlet. Stability of the market for these producers, and with respect to the market's supply in the aggregate, therefore was aided by the cooperative's action.

In this case the $18,000 treasury outlay would have been unnecessary had the association been provided the opportunity to collect and reblend. However, since the cooperative has been able to collect member returns for milk from only a small number of handlers, it has been unable to conduct an adequate or equitable reblending operation.

The lack of opportunity to reblend member proceeds also can have crippling effects on the capacity of the cooperative to move milk into the best uses or outlets. Thus, it can be inhibited in action which, as a natural and generally accepted cooperative marketing function, would aid both the members and other producers on the market.

To move milk into the best utilization may involve not only the capacity to spread the risk of handling but also the opportunity to exercise at least some control of the physical handling. As in most other markets, it is the producer in the Toledo and North Central Ohio markets who pays the cost of having his milk hauled from farm to plant. The association acts for the member in negotiating reasonable charges for such hauling. Yet the real control over the movement of producer milk currently resides with the handlers because they make the payment to the haulers as well as, in most instances, make payments for milk directly to the individual producer. While the association agreement with the member provides authority to the association to direct the milk, handlers, as a practical matter, are in position to persuade the hauler as to the destination of milk since payment for the hauling, albeit that it is made with producer money, is transmitted to the hauler by the handler.

In April 1963, the cooperative encountered difficulty when it tried to shift producer milk to plants short of milk for bottling. In such month two Toledo bottling plants were forced to shut down by a strike. Other area plants attempted to bottle sufficient milk to supply the regular customers of the struck plants. To do this they called upon the association to furnish expeditiously extra supplies of milk. The association tried to comply with this request by means of shifting certain producers from other handlers not needing their full supplies for bottling. However, handlers regularly receiving such milk, who customarily have paid their producers individually, resisted the transfer of producers to the other plants. At the same time, however, producer milk at one of the struck plants was being diverted to lower-valued (Class II) manufacturing uses.

During the strike an unregulated handler from Defiance, Ohio, acquired some of the Class I sales of the struck plants. His Class I utilization rose significantly during the strike, increasing Class I utilization at his supply plant source (also located at Defiance) from 53 percent of Grade A receipts in March 1963 to 71 percent in April 1963. After the strike ended Class I use at the latter plant decreased sharply. Because the association was not in position to move milk readily to take advantage of the need for milk at the plants bottling for customers of the struck plants, an opportunity to maintain Class I outlets, previously enjoyed on a regular basis, was lost to association members.

The opportunity to collect proceeds for the sale of member producer milk is necessary also in connection with the association's surplus disposal operations. As previously referred to, the cooperative now owns a part interest in milk manufacturing plants located at Goshen, Indiana and Orville, Ohio. Part ownership in these plants was acquired at the urging of Toledo handlers for the purpose of servicing handlers with their precise needs and of assuring the availability of dependable outlets for milk not so needed. These plants stand ready to accept for manufacture any Class II milk whenever handlers do not wish to dispose of surpluses on their own. Such plants regularly purchase surplus milk from handlers and have provided a ready outlet for any hard-to-sell surplus. These purchases often involve nonmember milk as well as member milk since under bulk tank handling, which is the prevailing method of farm-to-plant delivery, it is not feasible to separate member and nonmember milk commingled in the same tank. Such facilities thus are a stabilizing element in the marketing process and

[2] Official notice is taken that the Northeastern Ohio Federal order provides (§ 1036.80) that a handler shall remit to a qualified cooperative authorized to make such collections the monies due member producers at the blended price for milk on request made by the cooperative.

a means by which all producers in the market may achieve the best possible return.

This is not to say, however, that handlers always use these association plants for surplus disposal. Nearby manufacturing plants at times pay "premiums" over the order Class II price, i.e., prices higher than the handler must pay to producers under the order for surplus milk. Handlers frequently divert the milk of association members to these other outlets, gaining the difference between the manufacturing plant's pay price and the order Class II price required to be paid producers. Whenever surplus milk has become difficult to move, however, under conditions of abundant manufacturing grade milk supplies available in the region, handlers have turned to the association to dispose of their surpluses, and at such times the milk normally is moved to the manufacturing plants at Goshen and Orville. Because of this customary practice of handlers, the association has not shared in the extra value when surplus milk for manufacturing has brought a premium price in the region, but has been asked to accept surplus supplies from handlers when no premium market was available.

The association and its producers should not be placed in the position of standing ready to dispose of surpluses for handlers when the price to be realized is lowest, and be denied the opportunity to share in any premium value for manufacturing milk when prices are more favorable. The opportunity to collect payments for member milk, bringing with it the opportunity to have greater influence on the physical movement of such milk (paid for by the member producers), would aid the cooperative and its members to obtain the best possible markets for manufacturing disposals of milk.

Handler witnesses testified in opposition to the association payment proposal on the basis that it would result in a lowering of the quality of milk marketed by producers. This would happen, they contended, because handlers would lose direct contact with producers. Handlers stated that they work through the milk haulers to maintain the quality of the milk supply. The haulers relate any farm quality problems to the handlers for further investigation.

We are unable to find any convincing demonstration in this record that the quality of milk production for the Northwestern Ohio market would be adversely affected by the adoption of the proposed amendment. No complaints were made concerning the quality of the milk delivered by those producers who now are paid through the association. There is no obvious reason, on the other hand, why milk haulers could not continue to advise handlers of any farm quality problems for appropriate action. Likewise, there is no indication in the record that the cooperative association would not cooperate fully with handlers or the health authorities in maintaining proper standards of production and care of the milk supply. It obviously would be to the cooperative's best interest to do so since the members' major market would be jeopardized if their milk quality were to decline. These factors should operate to keep milk quality at a satisfactory level.

Handlers also expressed concern that the proposed provision, in combination with another proposal (not adopted) providing the cooperative exclusive right over the diversion of milk, would provide the proponent cooperative association virtual control over the delivery of milk to handlers with consequences inimical to their interests. Particular attention was drawn to the potential control which they asserted would come into the hands of an association as an incident to taking over the function of paying haulers, both as to the persons for whom and the conditions under which milk could be hauled. Those who so testified should be well informed since, in the past, it has been the handlers, and not the producers, who have made payment to the hauler on behalf of the producer with the producer's money, and were the ones to whom haulers have looked for such payment.

There was no adequate explanation or reason advanced, however, why a producer should not be allowed to pay his own hauling bills, or why the producer should not be permitted to use his own association as his agent to do it for him. While the benefits in terms of marketing effectiveness are substantial, all that the payment provision does, in effect, is to require the handlers to honor an assignment by the producers to the cooperative of the monies due because of the handlers' purchase of milk. Common law and equity recognize assignments of this nature. On the other hand, it would not be reasonable to conclude that under normal marketing conditions the exercise of the authority to collect payment would alter the long-established relation of the vast majority of member-producers to their major outlets with fluid milk handlers.

The numerous Federal statutes designed to permit and to foster the growth of cooperative activity among farmers, including the Capper-Volstead Act of 1922, as amended, to which specific reference is made in the statute pursuant to which this milk order is issued, place no limit on the number of, or the percentage of, producers supplying a particular market who may act together in a cooperative to market their own milk. Concerning the marketing areas now regulated by Federal milk orders, it is known to the Secretary, and it is common knowledge throughout the industry, that in some of the areas a preponderant majority of all milk producers are affiliated with an act through a single cooperative association. In other markets there are numerous cooperative associations some of which operate as bargaining associations and others which carry, to varying degrees, their marketing functions into manufacturing or into wholesale and retail channels of distribution. At the same time, in all areas, as many milk producers as wish to are free to remain unaffiliated with any existing association, or may organize an association of their own. The types of marketing functions at issue here are commonly practiced by most, if not all, such cooperative associations.

Furthermore, the Department is not unmindful of the admonition contained in existing Federal law that in the exercise of the authority to issue milk orders, the Secretary shall accord such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative association set forth in existing acts of Congress, and as will tend to promote efficient methods of marketing and distribution. Orderly marketing and efficient marketing of producer milk go hand in hand. There should be no impediment to the right of farmers, acting through their cooperative, to market their milk in the manner they feel is to their best interest merely because other persons doing business with them feel they could do it better. The kind of payment provisions provided for herein is included in many Federal orders, as an authorized provision of the statute, to assist cooperatives in carrying out well-recognized cooperative marketing practices in behalf of member producers. We conclude that the method of payment adopted here is a valid exercise of administrative discretion in carrying out the statutory objective.

At the hearing a handler offered a proposal which would modify the association proposal by requiring the association to promise to reimburse a handler for any loss incurred by him because of any improper claim for payment on the part of the association. Another significant modification would require the association to submit to each handler a certified list of producer members who are to be paid through the association. A duplicate list would be sent to the market administrator who would settle any disputes arising over whether certain producers are members of the association.

These modifications are reasonable and should be adopted. With these modifications there should be no question at the outset about which producers are to be paid through the association. Handlers also will receive timely notice of any changes in producers who are members. Inclusion of the provision which would require the cooperative to reimburse the handler for any loss incurred because of an improper claim will insure handlers that they will incur no extra cost as a result of the change in the payment system. Any unintentional overpayment due to errors in billings or other causes will be recoverable on the basis of order terms.

In another proposal, producers asked that any qualified cooperative be accorded the privilege of collecting from proprietary handlers the class utilization value of all member milk for which the cooperative is the first "handler". This would be accomplished by modification of the "handler" definition of the present orders so as to permit such a cooperative association the option of becoming the first handler with respect to member milk moved in bulk tank directly from farm to a proprietary handler's pool plant. The cooperative, in turn, would make any necessary pool settle-

ment with respect to such milk. The provisions of the present orders which require a handler to make an advance, or partial, payment on milk received during the first fifteen days of the month would be retained. Each handler also would be required to furnish each producer or cooperative association from whom he has received milk a statement in support of his payments to show the total pounds of milk received, average butterfat content, rates of payment and deductions taken.

The establishment of such terms would not alter, of course, the ultimate price member producers would be eligible to receive under the minimum pricing provisions of the order. The payment provisions proposed herein for adoption permit a cooperative association to collect from proprietary handlers the proceeds from the sale of member milk valued at the market's uniform, or blended, price. Such price is the full price returnable to such producers under the minimum price provisions.

To provide a cooperative handler status on bulk milk caused to be delivered to proprietary plants for the principal purpose of collecting at class prices for the milk could create, in the circumstances found, certain problems which would have mitigating results on the effectiveness of the regulation.

Under the terms for marketwide pooling adopted herein the handler is responsible for remitting to the market administrator monies representing the amount by which his use value of milk exceeds the marketwide average, or "blend", price value of milk at his plant. Such excess of milk value becomes available for payment to producers other than his own as the result of the market equalization of producer returns through the producer-settlement fund. With respect to any member milk received at his plant, he would make payment to the association at the blended price value when requested to do so.

Under this plan proposed by producers, however, each handler purchasing producer milk marketed through a cooperative association would be required (if the cooperative so elected) to pay the cooperative for such milk at the class prices on the basis of its utilization at the handler's plant. The proposed plan thus would make the cooperative the handler and fix the responsibility primarily on the cooperative to make the monthly reports with respect to all marketings of member milk and to settle therefor with the producer-settlement fund. However, the cooperative's ability to make pool payment would remain dependent upon the proprietary handler, who received and utilized the milk, to fulfill his payment obligations to the cooperative and to provide the necessary information with respect to its utilization or disposition by him.

Inasmuch as the terms proposed would permit a cooperative association to elect handler status at any time during the month (if certain notice requirements are met), there could be misunderstanding between such parties as to which has first handler status on particular loads of milk delivered to a pool plant, or on milk lost by accident. A proprietary handler also might not agree on the terms of payment for particular loads of milk purchased from the cooperative. Thus, both the operator of a proprietary pool plant and a cooperative could claim to be the first handler with respect to the milk of particular member producers. This could result in the proprietary handler being accountable to the pool on a portion of his total receipts of milk of a particular producer and the cooperative, by its election as a handler on certain shipments to the proprietary handler, accountable for the remainder. Delays in payments to the producer-settlement fund could result from any disagreement or misunderstanding which might arise between a cooperative and a proprietary handler concerning the purchase and sale transaction. Under these circumstances the market administrator's ability to collect payments due the producer-settlement fund could be impaired.

It is necessary to consider that monies owed to the producer-settlement fund on milk so purchased through a cooperative association would not necessarily be monies accruing to producer members of such cooperatives, but rather could represent in part monies belonging to other producers, many of which would not be affiliated with the association. Since a division of responsibility concerning such payments would be created, action by the market administrator to insure full payment for milk could be rendered greatly more difficult. Any underpayment resulting from handler-cooperative disagreement or otherwise, therefore, at least could delay, or under certain circumstances possibly have more serious effect upon producer payments, and therefore tend to make less effective the essential provisions relating to pricing and the equalization of returns to all producers, member or nonmember.

It is difficult to see from this record how the orderly and efficient marketing of milk for the entire market would be aided to a greater extent by such provision than is possible under the provision adopted which would permit a cooperative to collect all monies due its own members. On the other hand, administrative and enforcement problems could arise under the proposal to permit collection by the cooperative class prices as the conduit for paying the producer-settlement fund. In view of the foregoing, the proposal for handler status to cooperatives on bulk tank milk deliveries to pool plants is denied.

Another proposal of the association would require each handler to pay directly to the market administrator the full utilization value of all producer milk received by him during the month. The market administrator, in turn, would distribute such monies to producers, either directly or to cooperative associations authorized to collect for members. This proposal would remove from handlers the responsibility of making payments directly to individual producers, both member and nonmember, and would make the market administrator the conduit for such payments. Proponent's testimony concerning the desirability for direct payments by proprietary handlers to cooperative associations for member milk generally applies also to this proposal for vesting in the market administrator the responsibility for collecting the full class value of milk and settling with producers and associations. Proponent further testified in support of the latter proposal, however, that such provision would: (1) simplify the handler's accounting to the pool, (2) tend to dispel any misunderstanding or confusion which otherwise might attend payments by handlers into, and their withdrawal of monies from, the "equalization fund", and (3) provide for prompt collection of monies due producers and permit the market administrator to take prompt action in collection of any payments in default.

It is not clear how that this method of payment would result in more prompt payment for milk, as producers contend. Regardless of the payment system used, handlers need a reasonable time each month to file their reports to the market administrator and the market administrator, in turn, must have time to compute the market pool price. The dates for producer payments adopted are the earliest feasible in view of the necessary functions of reporting and price computation.

It is not apparent that the proposed method of payment would reduce the risk of loss to producers from a handler's failure to meet his obligations to the marketwide pool. Except in the case of one plant which closed in 1958, no other instances were cited when any handler in either market failed to make full and prompt payment to producers for milk. Also, such method of payment proposed by producers could not assure that a handler would not go out of business or that he would always remit his full obligation to the pool in the manner required. When it is appropriate to employ enforcement procedures authorized by the Act to collect proceeds due producers, this may be done under the method of payment adopted herein. In view of these considerations and the absence of testimony to demonstrate any significant advantage to the market at this time in making the market administrator's office the repository for the full classified value of milk of all handlers and the agent for remitting such value to individual producers and cooperatives at the uniform price, the proposal is denied.

2(f) *Administrative and Miscellaneous Provisions.* The proposal to permit handlers to elect two complete accounting periods within a month should be adopted. This will permit supplemental supplies of other source milk to be assigned to Class I under certain circumstances when producer milk becomes short for a portion of the month.

At present handlers in the consolidated market are adequately supplied with producer milk. Situations could develop, however, which would cause temporary shortages of milk necessitating purchase of supplemental supplies. A recurrence of drought conditions as in the fall of 1963, for instance, could bring about such a shortage. Similarly, acquisition of a large supermarket account might cause a handler to become short of milk until

extra supplies of producer milk could be arranged.

When a temporary milk shortage occurs, producer milk supplies at a plant may be adequate for Class I bottling requirements at the beginning of the month but inadequate by the end of the month. Under such circumstances, producer milk, put to surplus use in the early part of the month, would be allocated to Class I under the monthly accounting period even though it were not available for Class I use when supplies became short. Proponent objects to assigning such producer milk to Class I and advocates use of two accounting periods to reduce the impact of such allocation.

The added flexibility which handlers would have under the proposal would be of benefit in assuring an adequate supply of milk for the market at all times. At the same time it could benefit producers by removing a factor which might deter handlers from taking on additional producer supplies as they became available during the month. For these reasons, the proposal for two accounting periods within a month should be adopted.

The division of a month into two accounting periods would require verification of receipts, sales, inventories and shrinkage for each accounting period as well as the allocation of utilization between the various sources of milk. Administrative costs involved in verifying handlers' reports and dealing with the additional administrative problems would be increased. These increased costs would be directly associated with the operations of the handler who elected to use the shorter accounting period. Thus, there would be an inequitable sharing of administrative cost among handlers unless the additional expense involved were borne by the handler responsible. It is difficult to estimate precisely how much additional expense would be incurred. It is probable, however, that the administrative cost of verifying a handler's operations for an accounting period would be nearly identical regardless of the length of the accounting period. A handler electing to use two accounting periods within a month therefore should pay for administrative expense at double the rate paid by handlers using only one accounting period. A reduction in assessment should be made if experience indicates that actual costs are less than twice the regular rate.

To permit efficient administration, it should be provided that no accounting period be less than 5 days long. This is necessary if the market administrator is to properly verify receipts and utilization of milk. An accounting period at least this long is necessary if representative tests of butterfat content are to be obtained for milk and dairy products.

Handlers should notify the market administrator at least 48 hours before the time when they wish to begin their second accounting period within the month. This will enable the market administrator to verify inventories and take other steps necessary to insure proper accounting for the milk.

A handler proposed that the order specify that the market administrator should require only such reports and conduct only such auditing investigations as would be "reasonably necessary for the proper functioning of this part". He proposed also that the market administrator release to the public only such statistics and information as is "reasonably necessary for the proper functioning of this part and as do not reveal confidential information."

The provisions of the consolidated order relative to handler reports and investigations by the market administrator are designed for the single purpose of enabling the market administrator to administer the terms and provisions of the order. The powers of the market administrator are prescribed and limited by the statute and the order provisions follow the prescription of the statute. We do not see how the added language proposed in this connection could further limit such powers, but if the intent were to do so, proponent has presented no specific evidence of problems or abuses that would be corrected by inclusion of the proposed additional language. In view of the foregoing, the proposal is denied.

One handler objected to a proposed provision which would enable a cooperative association to obtain from the market administrator the class use percentages of member milk received by individual handlers based on the assumption that member milk is prorated to the classes on the same basis as all producer milk utilized by the handler. It was contended that this is confidential information which should not be released.

At present under handler pooling the handler's utilization can be accurately estimated for all practical purposes from the uniform price announced for him and other available information. Thus, the provision for release of such utilization percentages to cooperative associations on member milk would provide little information which has not been generally available in the past.

A cooperative association having authority to market milk for member producers should have available to it information on the use of such milk by individual handlers in order that member milk may be directed to those handlers needing Class I milk. This will promote orderly marketing by enabling the efficient allocation among handlers of available milk supplies, permit the market to be serviced with smaller reserve supplies and assist producers in maximizing their returns. A provision therefore should be included to instruct the market administrator to provide this information when it is requested by such an association.

The maximum rate of assessment for marketing services of 6 cents per hundredweight as presently provided in the two orders should be continued in the consolidated order. This maximum rate is reasonable in comparison with markets of comparable size (expected volume of milk and producer numbers) and should provide the funds necessary to conduct the program under the consolidated order.

If later experience indicates that the marketing services can be performed at a lesser rate, provision is made whereby the Secretary may adjust the rate downward without the necessity of a hearing.

The rate of administrative expense for the consolidated order should be a maximum of three cents per hundredweight of specified milk receipts. This rate is identical with the maximum rate specified in the present North Central Ohio order and is one cent higher than the Toledo order. The rate appears to be reasonable in view of the expansion of the marketing area which will require additional travel expense by the market administrator to verify receipts and utilization at plants of handlers to be regulated. The establishment of the three-cent rate in the consolidated order as a maximum permits the actual amount of the charge for the administrative assessment to be adjusted to a lesser rate whenever the situation warrants, without the requirement of a hearing. The basis upon which such administrative assessment would be charged conforms with the findings and conclusions of the decision based upon the Washington, D.C., regional hearing.

A number of other provisions administrative in nature of the present Toledo and North Central Ohio orders are appropriate for inclusion in the consolidated order. Such provisions are adopted without substantive change in the new order. These provisions are largely self explanatory and require no further discussion.

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.

At the start of the hearing a motion was made on behalf of certain handlers calling for a recess of the hearing until appropriate notice could be given on an additional proposal with respect to enlargement of the marketing area.

The Deputy Administrator, Regulatory Programs, earlier had denied a hearing on the proposal handlers sought to have considered. The proposal in question would merge part of the present Fort Wayne, Indiana, regulated marketing area (Order No. 47) with the Toledo and North Central Ohio marketing areas and other unregulated territory. The reason for the denial was that there was inadequate showing of a relationship between the Fort Wayne marketing area and the Toledo and North Central Ohio markets in milk distribution which would justify a hearing on this particular proposal. The Deputy Administrator's letter of denial cited information demonstrating this existing minimal relationship. Handlers contended that their proposal should not have been denied

without hearing and that they had not been permitted an opportunity to challenge such data.

The Hearing Examiner denied the motion for recess of the hearing until such time as a public notice on the proposal could be issued by the Deputy Administrator. He pointed out that authority for issuing notices of hearing rests with the Agricultural Marketing Service. Elaborating, he said that it would be an assumption of authority not his if he were to grant the motion to hear a proposal which previously had been denied a hearing by the agency. Following the denial by the Hearing Examiner, handlers asked that their request for recess of the hearing and issuance of supplemental notice be submitted to the Secretary of Agriculture and his Judicial Officer for a formal ruling to be made a part of the record. This request also was denied by the Hearing Examiner.

Handlers made no request to submit an offer of proof on the proposal from which it might be ascertained whether their information would be sufficient to warrant a hearing on the proposal. From the information before us we find no impediment to the establishment of a new, and enlarged, marketing area, to replace the present separate Toledo and North Central Ohio marketing areas, without also including the subject counties currently regulated under the terms of the Fort Wayne order. The rulings of the Hearing Examiner are affirmed.

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.

(d) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 3 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(1) Receipts of producer milk (including such handler's own farm production);

(2) Other source milk at a pool plant which is allocated to Class I milk pursuant to § 1041.46(a)(3) and the corresponding steps of § 1041.46(b); and

(3) Other source milk disposed of on a route(s) in the marketing area during the month from a partially regulated distributing plant in excess of the Class I milk received during the month at such plant from pool plants and other order plants.

Recommended marketing agreement and order amending the orders. The following order amending and consolidating the orders, as amended, regulating the handling of milk in the Toledo, Ohio, and North Central Ohio marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended.

DEFINITIONS

DEFINITIONS

§ 1041.1 Act.

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

§ 1041.2 Secretary.

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

§ 1041.3 Department.

"Department" means the United States Department of Agriculture.

§ 1041.4 Person.

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

§ 1041.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

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

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

(c) To have all of its activities under the control of its members.

§ 1041.6 Northwestern Ohio marketing area.

The "Northwestern Ohio marketing area" hereinafter called the "marketing area", means all the territory geographically within the places listed below, all waterfront facilities connected therewith, and all territory wholly or partly therein occupied by government (municipal, State or Federal) reservations, installations, institutions or other similar establishments:

OHIO COUNTIES

Allen.
Fulton.
Henry.
Putnam.
Hancock.
Wood.
Lucas.
Seneca.
Marion.
Morrow.
Crawford.
Richland.
Van Wert (city of Delphos only).
Sandusky (Woodville and Madison townships only).

MICHIGAN COUNTIES

Monroe (except Ash, Berlin, Exeter, London, Milan and Dundee townships).
Lenawee (Riga, Ogden, Palmyra, Blissfield and Deerfield townships only).

§ 1041.7 Producer.

"Producer" means any person, except a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is (a) received at a pool plant, or (b) diverted from a pool plant to a nonpool plant or to another pool plant pursuant to § 1041.15. "Producer" shall not include any such person with respect to milk which is fully subject to the class pricing and producer payment provisions of another order issued pursuant to the Act.

§ 1041.8 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) A cooperative association with respect to milk diverted for the account of such association pursuant to § 1041.15;

(c) Any person who operates a partially regulated distributing plant;

(d) A producer-handler; and

(e) Any person who operates an other order plant described in § 1041.61.

§ 1041.9 Producer-handler.

"Producer-handler" means a person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives only milk of his own production and fluid milk products which are priced as Class I milk under an order issued pursuant to the Act; and

(c) Provides proof satisfactory to the market administrator that the care and management of all dairy animals and other resources used in his own farm production and the operation of the processing and packaging facilities for fluid milk products are conducted as his personal enterprise and at his own risk.

§ 1041.10 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 enroute from dairy farmers' farms, at which premises facilities for washing and sanitizing cans or tank trucks are not maintained and used).

§ 1041.11 Distributing plant.

"Distributing plant" means a plant where fluid milk products are processed and packaged and from which there is route disposition in the marketing area during the month.

§ 1041.12 Supply plant.

"Supply plant" means a plant from which milk, skim milk or cream is shipped during the month to a plant qualified as a pool plant under § 1041.13 (a).

§ 1041.13 Pool plant.

"Pool plant" means any plant specified in paragraph (a) or (b) of this section, except the plant of a producer-handler or a plant exempt pursuant to § 1041.61: *Provided*, That if a portion of a plant is physically separate from the facilities where Grade A milk is received and is not approved by any health authority for receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(a) A distributing plant with route disposition during the month of not less than 50 percent of the total Grade A milk received at such plant from dairy farmers (excluding any such milk received by diversion from a plant at which such milk is fully subject to pricing and pooling under the terms and provisions of another order issued pursuant to the Act) and pool supply plants, and with at least 15 percent of such route disposition made within the marketing area during the month.

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is represented in shipments of fluid milk products to a plant described under paragraph (a) of this section. If a plant meets the above requirement in this paragraph in each of the months of September through December, such plant shall qualify under this paragraph until the end of the following August, unless the plant operator requests nonpool status for such plant; in the latter event nonpool plant status shall be effective the first month following the filing of a request in writing to the market administrator and shall continue until the plant requalifies under this section on the basis of actual shipments.

§ 1041.14 Nonpool plant.

"Nonpool plant" means any milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in the marketing area during the month of Grade A fluid milk products in consumer-type packages or dispenser units.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which Grade A fluid milk products are shipped to a pool plant.

§ 1041.15 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk of any producer, not also a producer as defined in another order issued pursuant to the Act, which is:

(a) Received during the month at one or more pool plants directly from the producer or caused to be delivered from the producer's farm to a pool plant(s) by a cooperative association.

(b) Diverted by a handler from a pool plant to another pool plant for any number of days of the month. Milk so diverted shall be deemed to have been received by the diverting handler at the location of the plant to which it is diverted.

(c) Physically received at a pool plant for at least four days during the month and is diverted to a nonpool plant(s) for the account of a handler operating a pool plant or a cooperative association, subject to the following conditions:

(1) Milk so diverted during any month July through February shall not exceed 35 percent of the applicable receipts specified in subdivision (i) or (ii) of this subparagraph.

(i) With respect to milk diverted for the account of a cooperative association, the total milk of association member producers received at all pool plants during the month exclusive of any member milk diverted to a nonpool plant(s) for the account of a handler operating a pool plant; and

(ii) With respect to milk diverted to a nonpool plant for the account of a handler operating a pool plant, the total receipts from producers at the pool plant of such handler during the month exclusive of any such milk receipts diverted for the account of a cooperative association.

(2) If milk is diverted to a nonpool plant(s) in excess of the amounts speci-

fied in subparagraph (1) of this paragraph, eligibility as producer milk under this section shall be forfeited on a quantity of milk equal to such excess amount. In such instances the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk. If a handler fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler.

(3) A handler operating a pool plant shall provide a cooperative association at least 12 hours' advance notification of his intention to divert milk of member producers to a nonpool plant(s).

(4) Milk so diverted for the account of a handler operating a pool plant shall be deemed to have been received at the pool plant from which diverted and if diverted for the account of a cooperative association, shall be deemed to have been received by the cooperative association at the location of the pool plant from which diverted.

§ 1041.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, flavored or cultured milk or skim milk, buttermilk, concentrated milk, eggnog, sweet or sour cream, and any mixture of fluid cream and milk or skim milk. Cultured sour mixtures disposed of as other than sour cream shall be considered as fluid milk products only if disposed of under a Grade A label. The term includes these products in fluid, frozen (except cream), fortified or reconstituted form, but does not include sterilized products in hermetically sealed containers, and such products as milkshake mix, ice cream mix and other frozen dessert mixes, aerated cream products, frozen cream, cultured sour mixtures (disposed of as other than sour cream and not disposed of under a Grade A label), pancake mixes and evaporated or sweetened condensed milk or skim milk in either plain or sweetened form.

§ 1041.17 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts during the month of fluid milk products except: (1) fluid milk products received from pool plants either by transfer or diversion, (2) producer milk, or (3) inventory of fluid milk products on hand at the beginning of the month;

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

(c) Any disappearance of nonfluid products not otherwise accounted for.

§ 1041.18 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.

§ 1041.19 Butter price.

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

§ 1041.20 Accounting period.

"Accounting period" means a month unless the handler submits a request in writing to the market administrator for two accounting periods during the month, in which case the accounting period shall equal a portion of a month. No accounting period shall be of less than five days duration and the request for two accounting periods within a month must be made at least 48 hours before the end of the first accounting period in the month.

MARKET ADMINISTRATOR

§ 1041.25 Designation.

The agency for the administration of this part shall be a market administrator who shall be 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.

§ 1041.26 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

§ 1041.27 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) He shall execute and deliver to the Secretary, within 30 days following the date on which he enters upon his duties, 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 satisfactory surety thereon, covering each employee who handles funds entrusted to the market adminstrator.

(d) He shall pay out of the funds provided by § 1041.86 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 incurred under § 1041.85.

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

(f) He shall submit his books and records to examination by the Secretary and furnish such information and reports as may be 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), at his discretion and unless otherwise directed by the Secretary, the name of any handler the value of whose fluid milk products is not included in the computation of the uniform price because of failure to make reports pursuant to §§ 1041.30 and 1041.32, or payments pursuant to §§ 1041.80, 1041.82, 1041.84, 1041.85 and 1041.86.

(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 skim milk or butterfat depends.

(i) He shall prepare and make available for the benefit of producers, handlers and consumers, statistics and information concerning the operation of this part which do not reveal confidential information;

(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 6th day of each month, the Class I price computed pursuant to § 1041.51(a) and the Class I butterfat differential computed pursuant to § 1041.52(a), both for the current month; and the Class II price computed pursuant to § 1041.51(b) and the Class II butterfat differential computed pursuant to § 1041.52(b), both for the preceding month; and

(2) By the 12th day after the end of each month, the uniform price computed pursuant to § 1041.71 and the butterfat differential computed pursuant to § 1041.72.

(k) He shall report to each cooperative association, on or before the 12th day after the end of each month, upon request by such association, the percentage of the milk of its members which was utilized in each class by each handler receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class in the same ratio as all producer milk received by the handler during the month;

(l) He shall notify on or before the 12th day after the end of each month each handler who reported pursuant to § 1041.30 of:

(1) The amount and value of such handler's milk in each class computed pursuant to § 1041.46 and § 1041.70;

(2) The uniform price computed pursuant to § 1041.71; and

(3) The amounts to be paid by such handler pursuant to §§ 1041.82, 1041.85

and 1041.86 and the amount, if any, due such handler pursuant to § 1041.83.

(m) Whenever required for purpose of allocating receipts from other order plants pursuant to § 1041.46(a)(8) and the corresponding step of § 1041.46(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(n) He shall report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1041.46 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report; and

(o) Furnish to each handler operating a pool plant who has shipped fluid milk products to an other order plant, the classification to which the skim milk and butterfat in such fluid milk products were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

REPORTS, RECORDS AND FACILITIES

§ 1041.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler for each of his pool plants and a cooperative association with respect to milk for which it is the handler, shall report to the market administrator for each accounting period, in the detail and on forms prescribed by the market adminisrtator, the quantities of skim milk and butterfat contained in:

(a) Receipts of own farm production and as producer milk from other dairy farmers;

(b) Fluid milk products received by transfer or diversion from other pool plants;

(c) Other source milk;

(d) Producer milk diverted pursuant to § 1041.15. Prior to diverting producer milk pursuant to § 1041.15, each handler shall notify the market administrator of his intention to divert such milk; the date or dates of such diversion, and the plant to which such milk is to be diverted;

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

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the disposition of Class I milk inside the marketing area; and

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

§ 1041.31 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe; and

(b) On or before the 7th day after the end of each month, each handler who operates a partially regulated distributing plant shall report the information required of handlers operating pool plants pursuant to § 1041.30, except that receipts in Grade A milk shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the respective amounts of route disposition of skim milk and butterfat in the marketing area as Class I milk.

§ 1041.32 Payroll reports.

(a) Each handler pursuant to § 1041.8 (a) or (b) shall submit to the market administrator, within 10 days after his request made not earlier than the 20th day after the end of the month, his producer payroll for that month, which shall show for each producer:

(1) The daily and total pounds of milk received from such producer with the average butterfat test thereof; and

(2) The net amount of such handler's payments to such producer with the prices, deductions and charges involved.

(b) Each handler operating a partially regulated distributing plant shall report to the market administrator on or before the 20th day after the end of the month the same information as is required of handlers operating pool plants pursuant to paragraph (a) of this section if he wishes his obligation under § 1041.62 to be computed according to § 1041.62(a). In such report payments to dairy farmers delivering Grade A milk shall be reported in lieu of payments to producers.

§ 1041.33 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.

§ 1041.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain. 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 § 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection herewith.

CLASSIFICATION AND ASSIGNMENT OF MILK AND MILK PRODUCTS

§ 1041.40 Skim milk and butterfat to be classified.

All skim milk and butterfat required to be reported pursuant to §§ 1041.30 and 1041.31 shall be classified by the market administrator as Class I milk or Class II milk under §§ 1041.41 through 1041.46. 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 the actual weight of any such products shall be included in classifying the total product weight.

§ 1041.41 Class I milk.

Class I milk shall be all skim milk (including that used to produce concentrated milk) and butterfat:

(a) Disposed of in the form of fluid milk products (except as provided in § 1041.42); and

(b) Not accounted for as Class II milk.

§ 1041.42 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) Used to produce any product other than a fluid milk product;

(b) Disposed of for livestock feed, or dumped if the market administrator has been notified in advance and afforded the opportunity to verify such dumping;

(c) Disposed of in bulk to and used at a commercial food establishment devoted exclusively to the manufacture of bakery products, candy or processed nondairy foods;

(d) Contained in that portion of fortified fluid milk products not classified as Class I milk pursuant to § 1041.41;

(e) Contained in inventory of fluid milk products on hand at the end of the month;

(f) Disposed of as shrinkage assigned pursuant to § 1041.43(b)(1) but not to exceed the following:

(1) Two percent of skim milk or butterfat, respectively, physically received directly from producers' farms and by diversion from other pool plants; plus

(2) One and one-half percent of that received by transfer from other pool plants in bulk (except bulk cream); plus

(3) One and one-half percent of that received by transfer from other order plants in bulk, exclusive of the quantity for which Class II utilization was requested by the operator of such plant and the handler; plus

(4) One and one-half percent of that received by transfer from unregulated supply plants in bulk, exclusive of the quantity for which Class II utilization was requested by the handler; less

(5) One and one-half percent, of that transferred in bulk to other plants (except bulk cream); and

(g) Disposed of as shrinkage assigned pursuant to § 1041.43(b)(2).

§ 1041.43 Assignment of shrinkage.

The market administrator shall assign shrinkage to a handler's receipts as follows:

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

(b) Prorate the resulting amount at each plant between: (1) The net quantity of skim milk and butterfat specified in § 1041.42(f); and (2) skim milk and butterfat in other source milk received in bulk fluid form, exclusive of that specified in § 1041.42(f).

§ 1041.44 Transfers.

Skim milk or butterfat disposed of from a pool plant in the form of fluid milk products shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred or diverted to another pool plant, subject in either event to the following conditions;

(1) The skim milk or butterfat as assigned to either class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1041.46(a)(8) and the corresponding step of § 1041.46(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1041.46(a)(3), the skim milk and butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1041.46(a)(7) or (8) and the corresponding steps of § 1041.46(b), the skim milk and butterfat so transferred or diverted up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant.

(b) As Class I milk, if transferred from a pool plant to a producer-handler;

(c) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(1) The transferrring or diverting handler claims classification pursuant to the assignment set forth in subparagraph (3) of this paragraph in his report submitted to the market administrator pursuant to § 1041.30 for the month within which such transaction occurred;

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

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any Class I utilization disposed of on routes in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of Grade A milk for such nonpool plant;

(ii) Any Class I utilization disposed of on routes in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of Grade A milk for such nonpool plant.

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this paragraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular sources of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred shall be classified as Class II milk; and

(d) As follows, if transferred or diverted to an other order plant in excess of receipts from such plant in the same category as described in subparagraphs (1), (2) or (3) of this paragraph:

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If moved in bulk form, classification shall be in the classes to which allocated as a fluid milk product under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, movements in bulk form shall be classified as Class II to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, milk allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and milk allocated to other classes shall be classified as Class II; and

(6) If the form in which any fluid milk product is moved to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of §§ 1041.41 and 1041.42.

§ 1041.45 Computation of skim milk and butterfat in each class.

For each accounting period the market administrator shall correct for mathematical and other obvious errors the reports submitted by each handler and shall compute the total pounds of skim milk and butterfat, respectively, in each class for such handler.

§ 1041.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1041.45, the market administrator shall determine the classification of producer milk for each handler as follows:

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

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1041.42(f);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products for which Grade A certification is not estab-

lished, or which are from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II:

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants which are in excess of the pounds of skim milk determined as follows:

(*a*) Multiply the pounds of skim milk remaining in Class I (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(*b*) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants; and

(*c*) (*1*) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(*2*) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

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

(6) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (4) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraph (4) (iii) of this paragraph pursuant to the following procedure:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk.

(*a*) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1041.27(m); or

(*b*) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from pool plants of other handlers according to the classification assigned pursuant to § 1041.44(a); and

(10) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

MINIMUM PRICES

§ 1041.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota as reported by the Department for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the butter price for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1041.51 Class prices.

Subject to the provisions of § 1041.52, the minimum class prices per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I milk prices.* In the first 18 months beginning with the month in which this section becomes effective, the monthly Class I milk price shall be the basic formula price for the preceding month, plus the sum of the amounts specified under subparagraphs (1) and (2) of this paragraph:

(1) The amount set forth below for the applicable month, subject to any adjustment for location pursuant to § 1041.53:

August through March	$1.36
April through July	$1.13

(2) Any amount by which the effective supply-demand adjustment for the month computed pursuant to part 1036 of this chapter (Northeastern Ohio order) differs from a minus 25 cents.

(b) *Class II milk price.* The Class II milk price each month, for all locations, shall be the basic formula price, but in no event shall the Class II price exceed a level computed by the market administrator pursuant to the following formula plus 10 cents:

(1) Add together the plus amounts pursuant to subdivisions (i) and (ii) of this subparagraph:

(i) From the butter price subtract three cents, add 20 percent of the resulting amount and then multiply by 3.5; and

(ii) From the simple average of the weighted averages of the carlot prices per pound of spray process nonfat dry milk solids for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, multiply by 8.5 and then multiply by 0.965.

§ 1041.52 Butterfat differentials to handlers.

When the use class of milk for the handler reflects more or less than 3.5

percent butterfat, the class price for the month computed pursuant to § 1041.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

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

(b) *Class II price.* Multiply the butter price for the month by 0.115.

§ 1041.53 Location adjustments to handlers.

For milk received from producers at a plant and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (e) of this section and for other source milk for which a location adjustment is applicable, the price computed to § 1041.51(a) shall be reduced on the basis of the applicable amount or rate for the location of such plant pursuant to paragraph (a) or paragraphs (b), (c) and (d) of this section, respectively. For the purpose of this section and § 1041.73, the distances to be computed shall be on the basis of the shortest hard-surfaced highway distances as determined by the market administrator:

(a)

For plant located within:	*Amount of adjustment (cents)*
15-mile radius of the City Hall, Mansfield, Ohio	0
40-mile radius of the City Hall, Toledo, Ohio, or within Ottawa, Sandusky or Seneca Counties, Ohio	4
City of Marion, Ohio	4
City of Findlay, Ohio	7
City of Lima, Ohio	9

(b) For any plant located in Michigan the price shall be that applicable at Toledo reduced for the distance of the plant from the City Hall in Toledo at the rate of 1.5 cents for each 10 miles or fraction thereof, except that no adjustment shall apply for distances of 40 miles or less.

(c) For any plant located in Erie or Huron Counties or located nearer to the Public Square in Cleveland, Ohio, than the distance such Cleveland location point is from the City Hall at Mansfield, Ohio, the price applicable at Mansfield shall apply.

(d) For any plant at a location not otherwise specified in the preceding paragraphs, the price shall be that applicable at Mansfield, Ohio, reduced for the distance of the plant from the Mansfield City Hall at the rate of 1.5 cents for each 10 miles or fraction thereof, except that no adjustment shall apply for distances of 15 miles or less.

(e) For purposes of calculating each such adjustment under this section, transfers between pool plants shall be assigned to Class I disposition at the transferee plant in excess of the sum of receipts at such plant from producers, and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

§ 1041.54 Use of equivalent prices.

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

APPLICATION OF PROVISIONS

§ 1041.60 Producer-handler.

Sections 1041.40 through 1041.54 and §§ 1041.61 through 1041.86 shall not apply to a producer-handler.

§ 1041.61 Plants subject to other Federal orders.

The provisions of this part except §§ 1041.30, 1041.31, 1041.32, and 1041.33 shall not apply to a distributing plant or a supply plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant qualified as a pool plant pursuant to § 1041.13 and a greater volume of fluid milk products is disposed of from such plant to retail or wholesale outlets and to other pool plants in the Northwestern Ohio marketing area than in the marketing area regulated pursuant to such other order during the current month and each of the three months immediately preceding, unless the Secretary determines that the applicable order should more appropriately be determined on some other basis. The operator of a distributing plant or a supply plant which is exempt from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may request and permit his verification of such reports.

§ 1041.62 Obligations of a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1041.31(b) and 1041.32(b) the information necessary to compute the amount specified in paragraph (a), he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1041.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1041.70(e) and a credit in the amount specified in § 1041.82(b)(2) with respect to receipts from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph.

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1041.31(b) and 1041.32(b) similar reports with respect to the operation of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1041.13(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification to such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of (i) the gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph, and (ii) any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(4) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class II price).

DETERMINATION OF PRICES TO PRODUCERS

§ 1041.70 Computation of the net pool obligation of each pool handler.

The net pool obligation of each pool handler during each month shall be the total of the sums of money computed by the market administrator for each accounting period within the month as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1041.46(c), by the applicable class prices;

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1041.46(a)(10) and the corresponding step of § 1041.46(b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1041.46(a)(5) and the corresponding step of § 1041.46(b);

(d) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class II price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1041.46(a)(3) and the corresponding step of § 1041.46(b);

(e) Add an amount equal to the value at the Class I price, adjusted for location (in the manner provided pursuant to § 1041.53) of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat subtracted from Class I pursuant to § 1041.46(a)(7) and the corresponding step of § 1041.46(b).

§ 1041.71 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers at pool plants for which no location adjustment applies as follows:

(a) Combine into one total the values computed pursuant to § 1041.70 for all handlers who filed the reports prescribed for the month and who made the required payments pursuant to § 1041.82 for the preceding month;

(b) Add an amount equal to the total value of the location differentials computed pursuant to § 1041.73;

(c) Subtract, if the average butterfat content of the milk specified in paragraph (a) of this section is more than 3.5 percent or add, if such butterfat content is less than 3.5 percent, an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 1041.72 and multiplying the result by the total hundredweight of such milk;

(d) Add one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which values are computed pursuant to § 1041.70(e);

(f) Subtract not less than four cents nor more than five cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1041.72 Butterfat differential to producers.

The uniform price for producer milk shall be increased or decreased for each one-tenth of one percent that the butterfat content of such milk is above or below 3.5 percent, respectively, at the rate determined by multiplying the pounds of butterfat in producer milk allocated to Class I and Class II milk pursuant to § 1041.46 by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat and rounding the resultant figure to the nearest one-tenth cent.

§ 1041.73 Location differentials to producers and on nonpool milk.

(a) For the purposes of § 1041.80, the uniform price at a plant may be reduced on the basis of the applicable amount or rate for the location of such plant pursuant to § 1041.53;

(b) For the purpose of computations pursuant to §§ 1041.82 and 1041.83, the uniform price shall be adjusted on the basis of the applicable amount or rate pursuant to § 1041.53, applicable at the location of the nonpool plant from which the milk was received.

Payments

§ 1041.80 Time and method of payment.

(a) Each handler shall pay each producer for whom payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, at not less than the Class II price for the preceding month for the producer milk received during the first 15 days of the month;

(2) On or before the 17th day after the end of each month, at not less than the uniform price adjusted pursuant to §§ 1041.72, 1041.73 and 1041.85, less any payment made pursuant to subparagraph (1) of this paragraph, for producer milk received during such month. If by such date the handler has not received full payment from the market administrator pursuant to § 1041.83 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator; and

(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.

(b) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, each handler shall pay to the cooperative association, in lieu of payments pursuant to paragraph (a) of this section, an amount not less than the gross sum due, at the uniform price, for all milk received from certified members, less amounts owing by each member producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer.

(1) The foregoing payment, and the submission of information pursuant to paragraph (c) of this section, shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association.

(2) Partial and final payments shall be made to the cooperative association one day prior to the respective due dates otherwise applicable pursuant to paragraph (a) (1) and (2) of this section.

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

(c) In making payments for producer milk pursuant to this section, each handler simultaneously shall furnish each producer, or cooperative association in the case of member producers for whom payment is made pursuant to paragraph (b) of this section, a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the individual producer involved;

(2) The daily and total pounds and the average butterfat content of producer milk;

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

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

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

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

§ 1041.81 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the producer-settlement fund into which he shall deposit all payments except those payments made under §§ 1041.85 and 1041.86 and out of which he shall make all payments pursuant to §§ 1041.82, 1041.83 and 1041.84: *Provided*, That the market administrator shall offset the payment due a handler against payments due from such handler.

§ 1041.82 Payments to the producer-settlement fund.

On or before the 14th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the total amounts speci-

fied in paragraph (a) of this section exceed the amounts specified in paragraph (b) of this section:

(a) The total of the net pool obligation computed pursuant to § 1041.70 for such handler; and

(b) The sum of:

(1) The value of such handler's producer milk at the applicable uniform prices specified in § 1041.80; and

(2) The value at the uniform price(s) applicable at the location of the plant(s), from which received (not to be less than the value at the Class II price) with respect to other source milk for which a value is computed pursuant to § 1041.70 (e).

§ 1041.83 Payments out of the producer-settlement fund.

On or before the 15th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1041.82(b) exceeds the amount computed pursuant to § 1041.82 (a).

§ 1041.84 Adjustment of errors in payments.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provision under which such error occurred.

§ 1041.85 Marketing service deductions.

(a) In making the payments required by § 1041.80 (a) (2) and (b) to producers, other than payments to himself and to any producer who is a member of a cooperative association which the market administrator determines is performing the services specified in paragraph (b) of this section, each handler shall deduct six 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 14th 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 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.

(c) Each handler, in making the payments required by § 1041.80(a)(2) for producer milk received from members of a cooperative association which the market administrator determines is performing the services specified in paragraph (b) of this section, shall deduct from such payments, in lieu of the deduction 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 16th 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.

§ 1041.86 Expense of administration.

On or before the 14th day after the end of each month, each handler shall make payment to the market administrator as his pro rata share of the expense of administration of this part. The payment shall be at the rate of three cents per hundredweight or such lesser amount as the Secretary may prescribe. The payment shall apply to all of the handler's receipts during the month of skim milk and butterfat contained in (a) producer milk (including a handler's own farm production); and (b) other source milk at a pool plant which is allocated to Class I milk pursuant to § 1041.46(a)(3), and § 1041.46-(a)(7) and the corresponding steps of § 1041.46(b). The payment shall apply also to the quantity of route disposition in the marketing area during the month of other source milk from a partially regulated distributing plant that exceeds Class I milk received during the month at such plant from pool plants and other order plants. For each handler using two accounting periods in a month, the rate of payment shall be twice the rate for handlers using monthly accounting periods, or such lesser rate as the Secretary may determine is appropriate in terms of the particular costs of administering the additional accounting period.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1041.87 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.

§ 1041.88 Suspension or termination.

The Secretary may suspend or terminate this part or 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.

§ 1041.89 Continuing obligation.

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.

§ 1041.90 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, 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 pursuant to 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.

MISCELLANEOUS PROVISIONS

§ 1041.91 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 such obligation, unless within such 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:

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which

the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

§ 1041.92 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.

§ 1041.93 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.

Signed at Washington, D.C. on August 24, 1964.

CLARENCE H. GIRARD,
Deputy Administrator.

[F.R. Doc. 64-8754; Filed, Aug. 27, 1964; 8:48 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 71 [NEW]]

[Airspace Docket No. 64-EA-36]

FEDERAL AIRWAY

Proposed Alteration

The Federal Aviation Agency has under consideration an amendment to Part 71 [New] of the Federal Aviation Regulations which would alter VOR Federal airway No. 14 between Gardner, Mass., and Boston, Mass.

Victor 14 is designated in part from Gardner to the intersection of Gardner 132° and Boston 223° True radials. The Agency proposes to realign this segment of Victor 14 from Gardner via the intersection of Gardner 132° and Boston 256° True radials to Boston. The altered airway segment as proposed herein would provide a numbered airway for preferred routes between Boston and western terminals via Westboro Intersection and Gardner. The segment between Boston and Westboro Intersection would coincide with a segment of VOR Federal airway No. 3.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica, N.Y., 11430. 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 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 Ave. SW., Washington, D.C. 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 August 21, 1964.

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

[F.R. Doc. 64-8727; Filed, Aug. 27, 1964; 8:45 a.m.]

[14 CFR Part 71 [NEW]]

[Airspace Docket No. 63-SW-66]

CONTROL ZONE, TRANSITION AREA AND CONTROL AREA EXTENSION

Proposed Alteration, Designation and Revocation

The Federal Aviation Agency is considering amendments to Part 71 [New] of the Federal Aviation Regulations, which would alter the controlled airspace in the Dalhart, Tex., terminal area.

The following controlled airspace is presently designated in the Dalhart, Tex., terminal area:

1. The Dalhart, Tex., control zone is designated as that airspace within a 3-mile radius of Dalhart Municipal Airport (latitude 36°01'10'' N., longitude 102°-33'10'' W.) and within 2 miles either side of the Dalhart VORTAC 182° and 002° radials, extending from the 3-mile radius zone to 10 miles N. of the VORTAC.

2. The Dalhart, Tex., control area extension is described as that airspace within 10 miles SW and 7 miles NE of the Dalhart, VORTAC 324° and 144° radials extending from 20 miles NW to 9 miles SE of the VORTAC, within 10 miles W. and 7 miles E. of the Dalhart VORTAC 002° and 182° radials extending from 20 miles N. to 9 miles S. of the VORTAC.

The Federal Aviation Agency, having completed a comprehensive review of the terminal airspace structure requirements in the Dalhart, Tex., terminal area, including studies attendant to the implementation of the provisions of CAR Amendments 60-21/60-29, proposes the following airspace actions:

1. Redesignate the Dalhart control zone as that airspace within a 5-mile radius of Dalhart Municipal Airport (latitude 36°01'10'' N., longitude 102°-33'10'' W.).

2. Revoke the Dalhart control area extension.

3. Designate the Dalhart transition area as that airspace extending upward from 700 feet above the surface within a 9-mile radius of Dalhart Municipal Airport (latitude 36°01'10'' N., longitude 102°33'10'' W.), and within 2 miles each side of the Dalhart VORTAC 002° radial extending from the 9-mile radius area to 12 miles N. of the VORTAC; that airspace extending upward from 1200 feet above the surface within a 12-mile radius of the Dalhart VORTAC, within 10 miles SW and 7 miles NE of the Dalhart VORTAC 324° and 144° radials extending from 20 miles NW to 9 miles SE of the VORTAC, within 10 miles W. and 7 miles E. of the Dalhart VORTAC 002° and 182° radials extending from 20 miles N. and 9 miles S. of the VORTAC, and within 5 miles each side of the Dalhart VORTAC 182° radial extending from the 12-mile radius area to 23 miles S. of the VORTAC.

The floors of the airways that would traverse the transition area proposed herein would automatically coincide with the floor of the transition area.

The proposed alteration of the Dalhart control zone would provide protection for aircraft executing prescribed instrument approach and departure procedures.

The 700 and 1,200-foot portions of the proposed transition area would provide protection for aircraft executing prescribed instrument holding, arrival and departure procedures within the Dalhart terminal area.

Certain minor revisions to prescribed instrument procedures would be effected in conjunction with the actions proposed herein, but operational complexity would not be increased nor would aircraft performance characteristics or established landing minimums be adversely affected.

Specific details of the changes to procedures and minimum instrument flight rules altitudes that would be required may be examined by contacting the Chief, Air Traffic Division, Southwest Region, Federal Aviation Agency, Fort Worth, Texas.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Southwest Region, Federal Aviation Agency, P.O. Box 1689, Fort Worth, Tex., 76101. 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 amendments. 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 Division. 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 Office of the Regional Counsel, Southwest Region, Federal Aviation Agency, Fort Worth, Tex. An informal Docket will

also be available for examination at the Office of the Chief, Air Traffic Division.

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348).

Issued in Fort Worth, Tex., on August 21, 1964.

ARCHIE W. LEAGUE,
Director, Southwest Region.

[F.R. Doc. 64-8726; Filed, Aug. 27, 1964; 8:45 a.m.]

[14 CFR Part 71 [NEW]]

[Airspace Docket No. 64-SO-18]

FEDERAL AIRWAY SEGMENT, CONTROL AREA EXTENSION AND TRANSITION AREA

Proposed Designation, Alteration and Revocation

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. 18 is designated in part from Augusta, Ga., via the intersection of Augusta 157° and the Allendale, S.C., 262° True radials; Allendale, S.C.; to Charleston, S.C. The Federal Aviation Agency is considering the realignment of this segment of Victor 18 from Augusta via the intersection of Augusta 097° and Charleston 300° True radials, to Charleston, and to retain the present alignment of Victor 18 between Augusta and Charleston as a south alternate airway to Victor 18. This action would reduce the airway mileage between Augusta and Charleston by approximately 12 miles. The proposed south alternate would provide an alternate route between these two terminals when severe weather conditions exist along the main airway and would provide a by-pass around North AF, S.C., when special maneuvers are in progress.

The Columbia control area extension and the Savannah, Ga., transition area are bounded in part by Victor 18. If the action proposed herein is taken, it will be necessary to substitute Victor 18 south alternate for Victor 18 in the descriptions of these areas.

VOR Federal airway No. 56 south alternate is designated in part from Augusta via the intersection of Augusta 085° and Columbia, S.C., 193° True radials, to Columbia. The Federal Aviation Agency is considering the revocation of this segment of Victor 56 south alternate. This airway segment is no longer required for air traffic control, and the latest FAA IFR peak day airway traffic survey showed no aircraft movements on this airway segment. Therefore, it can no longer be justified as an assignment of airspace.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Southern Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, P.O. Box 20636, Atlanta, Ga., 30320. 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 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 August 21, 1964.

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

[F.R. Doc. 64-8728; Filed, Aug. 27, 1964; 8:45 a.m.]

[14 CFR Part 75 [NEW]]

[Airspace Docket No. 64-WA-34]

JET ROUTE

Proposed Designation

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

The FAA has under consideration the designation of a new jet route from the Los Angeles, Calif., VOR via the intersection of the Los Angeles VOR 319° and the Avenal, Calif., VOR 145° radials; Avenal VOR; Sacramento, Calif., VORTAC; Red Bluff, Calif., VORTAC; Medford, Oreg., VORTAC; Portland, Oreg., VORTAC; to the Seattle, Wash., VORTAC.

Such a routing would bypass the San Francisco/Oakland metropolitan area and decrease the distance between Los Angeles and Seattle by 21 miles. In addition, it is anticipated that more favorable meteorological conditions will exist over this proposed route than over the present J-5 routing.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace Regulations and Procedures Division, Federal Aviation Agency, Washington, D.C., 20553. 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, Airspace Regulations and Procedures Division. 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.

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 August 21, 1964.

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

[F.R. Doc. 64-8729; Filed, Aug. 27, 1964; 8:45 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Oregon 015560]

OREGON

Proposed Withdrawal and Reservation of Land

AUGUST 21, 1964.

The Forest Service, United States Department of Agriculture, has filed an application, Serial Number Oregon 015560, for the withdrawal of the lands described below, from location and entry under the mining laws, subject to valid existing rights.

The applicant desires the land withdrawn from mining to preserve for public enjoyment the recreation value of the rugged, untamed beauty of the lower Rogue River area.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 710 NE., Holladay, Portland, Oregon, 97232.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

He will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the Forest Service.

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.

If circumstances warrant it, a public hearing will he held at a convenient time and place, which will be announced.

The lands involved in the application are:

OREGON

WILLAMETTE MERIDIAN

Siskiyou National Forest

Lower Rogue River Recreational Area

T. 35 S., R. 12 W.,
In secs. 10, 15, 17, 20, 29, 30, 31.
T. 35 S., R. 13 W.,
In secs. 31, 32, 33, 34, 35, 36.
T. 36 S., R. 13 W.,
In secs. 1, 2, 3, 12.

The total aggregate area is approximately 5,195 acres.

D. B. LEIGHTNER,
Acting Manager, Land Office.

[F.R. Doc. 64-8745; Filed, Aug. 27, 1964; 8:47 a.m.]

[Small Tract Classification No. 131]

ALASKA

Small Tract Classification

Correction

In F.R. Doc. 64-8017, appearing at page 11470 of the issue for Saturday, August 8, 1964, the Section 2 entry under T. 3 N., R. 12 W., in the land description, should read as follows:

Sec. 2, E½SW¼;

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

HODAG CHEMICAL CORP.

Notice of Filing of Petition Regarding Food Additive Methyl Glucoside-Coconut Oil Ester

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition (FAP 5A1532) has been filed by Hodag Chemical Corporation, 7247 North Central Park Avenue, Skokie, Ill., proposing the issuance of an amendment to § 121.-1151 to provide for the safe use of methyl glucoside-coconut oil ester as an aid in the crystallization of dextrose.

Dated: August 21, 1964.

MALCOLM R. STEPHENS,
Assistant Commissioner for Regulations.

[F.R. Doc. 64-8774; Filed, Aug. 27, 1964; 8:50 a.m.]

WESSON DIVISION, HUNT FOODS AND INDUSTRIES, INC.

Notice of Filing of Petition Regarding Food Additives

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition (FAP 678) has been filed by Wesson Division, Hunt Foods and Industries, Inc., P.O. Box 360, New Orleans 9, La., proposing the issuance of a regulation to provide for the safe use of polyglycerol esters of stearic, oleic, and coconut acids as a cloud inhibitor in vegetable and salad oils.

Dated: August 21, 1964.

MALCOLM R. STEPHENS,
Assistant Commissioner for Regulations.

[F.R. Doc. 64-8775; Filed, Aug. 27, 1964; 8:50 a.m.]

Welfare Administration

STATE ASSISTANCE EXPENDITURES

Promulgation of Federal Percentage

Promulgation of Federal percentage under title XI of the Social Security Act for purposes of State assistance expenditures under title I, IV, X, XIV, or XVI.

Pursuant to section 1101(a)(8) of the Social Security Act, as amended (42 U.S.C. 1301(a)(8)),

And it having been found that the three most recent calendar years for which satisfactory data are available from the Department of Commerce as to the per capita income of each State and of the United States are the years 1961, 1962, and 1963,

The Federal percentage, as indicated below, for purposes of Federal financial participation in State assistance expenditures under title I, IV, X, XIV, or XVI of said Act, for each of the fifty States and the District of Columbia, as determined pursuant thereto and on the basis of said income data, are hereby promulgated for each of the eight quarters in the period beginning July 1, 1965 and ending with the close of June 30, 1967:

State	*Federal percentage*
Alabama	65.00
Alaska	50.00
Arizona	60.10
Arkansas	65.00
California	50.00
Colorado	50.00
Connecticut	50.00
Delaware	50.00
District of Columbia	50.00
Florida	62.41
Georgia	65.00
Hawaii	50.00
Idaho	65.00
Illinois	50.00
Indiana	50.13
Iowa	56.90
Kansas	56.47
Kentucky	65.00
Louisiana	65.00
Maine	65.00
Maryland	50.00
Massachusetts	50.00
Michigan	50.00
Minnesota	55.15
Mississippi	65.00
Missouri	50.00
Montana	59.76
Nebraska	54.39
Nevada	50.00
New Hampshire	55.11
New Jersey	50.00

State	Federal percentage
New Mexico	65.00
New York	50.00
North Carolina	65.00
North Dakota	65.00
Ohio	50.00
Oklahoma	65.00
Oregon	50.00
Pennsylvania	50.00
Rhode Island	50.30
South Carolina	65.00
South Dakota	65.00
Tennessee	65.00
Texas	63.43
Utah	62.19
Vermont	62.70
Virgina	65.00
Washington	50.00
West Virginia	65.00
Wisconsin	52.55
Wyoming	50.00

[SEAL] ELLEN WINSTON,
Comissioner of Welfare.

Approved: August 21, 1964.

ANTHONY J. CELEBREZZE,
Secretary.

[F.R. Doc. 64-8776; Filed: Aug. 27, 1964; 8:50 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

IDENTIFICATION OF CARCASSES OF CERTAIN HUMANELY SLAUGHTERED LIVESTOCK

Changes in Lists of Establishments

Pursuant to section 4 of the Act of August 27, 1958 (7 U.S.C. 1904), and the statement of policy thereunder in 9 CFR 181.1, the lists (29 F.R. 9509 and 11133) of establishments which are operated under Federal inspection pursuant to the Meat Inspection Act (21 U.S.C. 71 et seq.) and which use humane methods of slaughter and incidental handling of livestock are hereby amended as follows:

The reference to Heil Packing Co., establishment 357, and the reference to swine with respect to such establishment are deleted.

The following table lists species at additional establishments and additional species at previously listed establishments that have been reported as being slaughtered and handled humanely.

Name of establishment	Establishment No.	Cattle	Calves	Sheep	Goats	Swine	Horses
Oakwood Farms Packing Corp.	85	X					
Midland Empire Packing Co., Inc.	339	X					
United Packing Co., Inc.	635	X					
Sioux Beef Co.	857-0	X					
New Establishments Reporting: 4.							
Walti Schilling & Co., Inc.	235		X		X		
William H. Peters, Inc.	813		X	X		X	
Species Added: 5.							

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

C. H PALS,
Director, Meat Inspection Division, Agricultural Research Service.

[F.R. Doc. 64-8708; Filed, Aug. 27, 1964; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 5713 et al.]

PIEDMONT CASE; NORFOLK-NORTH PROPOSALS

Notice of Postponement of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-entitled proceeding now assigned to be held September 9, 1964, is postponed to September 29, 1964, at 10 a.m., e.d.s.t., in room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C.

Dated at Washington, D.C., August 24, 1964.

[SEAL] HERBERT K. BRYAN,
Hearing Examiner.

[F.R. Doc. 64-8762; Filed, Aug. 27, 1964; 8:49 a.m.]

[Docket No. 5395 etc.; Order E-20912]

REOPENED SOUTHERN ROCKY MOUNTAIN AREA SERVICE CASE; TUCSON-ALBUQUERQUE SERVICE

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled proceeding is assigned to be held on September 2, 1964, at 10:00 a.m., d.s.t., in Room 911, Universal Building, Connecticut and Florida Avenues, NW., Washington, D.C., before the undersigned examiner.

Dated at Washington, D.C., August 24, 1964.

[SEAL] JAMES S. KEITH,
Hearing Examiner.

[F.R. Doc. 64-8763; Filed, Aug. 27, 1964; 8:49 a.m.]

[Docket Nos. 15447, 15453; Order E-21208]

SOUTHERN AIR TRANSPORT, INC., AND AEROVIAS SUD AMERICANA, INC.

Order Denying Exemption, Granting Temporary Exemption and Deferring Action on Other Requests

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 19th day of August 1964.

Application of Southern Air Transport, Inc. for an exemption pursuant to section 416(b) of the Act from the provisions of section 401, Docket No. 15447; application of Aerovias Sud Americana, Inc. for an exemption from section 401 of the Federal Aviation Act, so as to provide all-cargo service between Miami and St. Thomas, and between San Juan and Caracas, Docket No. 15453.

By application filed August 7, 1964, in Docket 15447 Southern Air Transport, Inc. (Southern), seeks a one year exemption for the operation of twenty individually waybilled one-way property charters per month between Miami, Florida and St. Thomas, Virgin Islands. Southern is the holder of an Interim Certificate for Supplemental Air Service issued pursuant to Public Law 87-528 by Board Order E-18839 and amended by Orders E-19438 and E-20150. As of May 24, 1964, Southern's revenue quota for individual service air transportation contained in its interim certificate was used up. See Order E-20860. By Orders E-20860 and E-20979, special operating authorizations were issued to Southern pursuant to section 417 of the Federal Aviation Act of 1958, as amended (Act), for the operation of individual service cargo flights between Miami and St. Thomas. The last of such special operating authorizations terminates August 24, 1964.

Answers in opposition to Southern's application have been filed by Pan American World Airways, Inc. (Pan American), Airlift International, Inc. (Airlift), and Aerovias Sud Americana, Inc. (ASA), filed August 17, 1964.

Section 417 of the Act provides that special operating authorization may be issued to supplemental air carriers for a total period not exceeding 90 days. Since the special operating authorizations issued to Southern by Orders E-20860 and E-20979 aggregate 90 days, the Board concludes that there is no statutory foundation upon which it may now authorize Southern to continue to perform individual service cargo flights between Miami and St. Thomas. The Board cannot conclude that it is in the public interest to grant an exemption under section 416(b) of the Act to permit the operation of additional flights after its statutory power to grant like authority under section 417 has been exhausted. See Order E-19883, August 6, 1963. Southern's application will be denied.

In Docket 15453, Aerovias Sud Americana, Inc. (ASA), seeks exemption from section 401 of the Federal Aviation Act of 1958, as amended (Act), to carry property and mail, on a nonsubsidy basis, between Miami, Florida and St. Thomas, U.S. Virgin Islands, San Juan, Puerto Rico and Caracas, Venezuela.[1] ASA is a certificated all-cargo carrier whose route includes Miami and Caracas,[2] but not St. Thomas or San Juan.

In support of its request for Miami-St. Thomas authority, ASA refers to the expiration of the special operating authorization granted to Southern and proposes to fill the gap occasioned by Southern's inability to provide single-plane service between Miami and St. Thomas. ASA would schedule initially, one DC-4 trip a week in each direction

[1] Application filed August 12, 1964. No local traffic rights for property in the San Juan-Miami or San Juan-St. Thomas markets are sought.

[2] ASA does not provide service at Caracas.

between Miami and St. Thomas, with the same aircraft operating between San Juan and Caracas during the week. ASA alleges that such service would provide single-plane service for perishable foods and medicinal supplies, and avoid risks of spoilage and damage incident to en route delays and shifting cargo in connecting plane service, and the expense of additional packaging needed in connecting service. ASA states that there has been no substantial improvement in the situation since the Board found that the absence of single-plane service by a certificated route carrier [3] resulted in a temporarily inadequate capacity to meet the public need for air cargo service between Miami and St. Thomas.[4] Finally, ASA states that the limited time remaining before the expiration of Southern's authority and the restricted scope of ASA's current and proposed operations warrant the use of the Board's exemption power.[5]

As noted in Order E–20979, June 24, 1964, inquiries have been made of the certificated carriers serving Miami and San Juan concerning the need for improvement in all-cargo service between Miami and St. Thomas. Since the issuance of Order E–20979, Pan American has added a DC–6A all-cargo Miami-San Juan service, has installed refrigerated storage at San Juan, and has filed for September 16th effectiveness a tariff comparable to Southern's existing rates. These changes are not sufficient to derogate from our earlier findings in Orders E–20860 and E–20979 that the cargo service between Miami and St. Thomas is inadequate. These findings were based upon the lack of single-plane service, which is still not available. The only certificated route carrier which has applied for an exemption to provide service and which can offer service without a break therein is ASA.

Consequently, we have decided to grant ASA exemption authority for a 60-day period to provide single-plane service between Miami and St. Thomas. To avoid interruption of service, we shall act before the expiration of the time to file answers in response to ASA's application. We have limited the term of the exemption to 60 days in order to have an opportunity to review whatever answers may be filed in response to ASA's application and such other proposals as may be made to provide service in the Miami-St. Thomas market.[6]

We have decided not to act at this time on that portion of ASA's application seeking San Juan-Caracas authority. No reasons have been advanced which would warrant acting upon this matter before the time to file answers has expired.

[3] Pan American's service at St. Thomas is suspended because of airport limitations, Order E–10004, February 15, 1956.

[4] Orders E–20860, May 25, 1964 and E–20979, June 24, 1964.

[5] Since we are not, at this time, acting upon the application insofar as it requests San Juan-Caracas authority, we shall not discuss the allegations relating thereto.

[6] We have been orally advised of Pan American's, Caribair's and Airlift's objections to grant of ASA's application.

The Board finds that enforcement of section 401 of the Act, insofar as it would otherwise prevent ASA from engaging in the service authorized herein, would be an undue burden on ASA by reason of the limited extent of and unusual circumstances affecting, its operations and would not be in the public interest. We conclude that ASA's overall operations are limited within the meaning of section 416(b) of the Act.

Accordingly, it is ordered:

1. That the application in Docket 15447 be and it hereby is denied;

2. That in Docket 15453, ASA be and it hereby is exempted from section 401 of the Act insofar as such section would otherwise prevent ASA from providing scheduled air transportation of property and mail, on a nonsubsidy basis, between Miami, Florida, and St. Thomas, U.S. Virgin Islands;

3. That the exemption granted herein shall be effective on the date of issuance of this order and shall terminate 60 days thereafter; and

4. That, except to the extent herein granted, action on the application in Docket 15453 be and it hereby is deferred.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 64–8764; Filed, Aug. 27, 1964; 8:49 a.m.]

CIVIL SERVICE COMMISSION

OCEANOGRAPHERS

Minimum Educational Requirements

In accordance with section 5 of the Veterans' Preference Act of 1944, as amended, the Civil Service Commission has decided that minimum educational requirements are necessary for positions in the Oceanographer Series, GS–1360–0. These requirements, the duties of the positions, and the reasons for the Commission's decision that these requirements are necessary are set forth below.

OCEANOGRAPHER SERIES, GS–1360–0

(ALL GRADES)

Minimum educational requirements. For Oceanographer positions, all grades, applicants must have successfully completed requirements in A, B, or C below:

A. A full four-year course of study in an accredited college or university leading to a bachelor's degree with major study in oceanography, physics, chemistry, mathematics, geophysics, meteorology, or earth science. The completed study must have included at least 24 semester hours in any combination of oceanography, physics, chemistry, and mathematics if it has included courses in differential and integral calculus.

B. At least 24 semester hours of oceanography, physics, chemistry, and mathematics if it has included courses in differential and integral calculus, in an accredited college or university, combined with pertinent work experience in the field of oceanography totaling four years of education and experience. This combination of education and experience must have provided the applicant with the equivalent of four years of education comparable in type, scope and thoroughness to that required under paragraph A above. The work experience must have been of such a nature as to demonstrate that the applicant can perform the professional work of oceanography.

C. The successful completion of a full four-year curriculum of study in an accredited college or university leading to a bachelor's degree with major study in geology, engineering, or a biological science may be accepted in lieu of the above educational requirement, provided that (a) the candidate demonstrates a good knowledge of oceanography, (b) the candidate has at least one year of professional experience or training in oceanography or a closely allied field; and (c) the total education and experience clearly demonstrate possession of those knowledges and abilities required for performance of the work of the position to be filled. The completed study must have included at least 24 semester hours in any combination of oceanography, physics, chemistry, and mathematics if it has included courses in differential and integral calculus.

The foregoing requirements of "a good knowledge of oceanography" typically involve one of the following:

(1) Undergraduate or graduate courses in oceanography; or

(2) Graduate-level courses in mathematical, biological or physical sciences, supplemented by experience or independent study in oceanography; or

(3) Research or survey experience, e.g., as a biologist, geologist, or engineer, which involved intensive investigation of problems in oceanography.

For positions engaged in basic and/or applied research, applicants must have successfully completed a full four-year course of study, in an accredited college or university, leading to a bachelor's or higher degree in an appropriate field of science as described in paragraph A or C.

Duties. Oceanographers plan and conduct scientific surveys, and examine selected ocean data at sea or on land; they collect, analyze, evaluate, coordinate and interpret information derived both scientifically and empirically from the ocean and its surroundings. Some oceanographers plan, organize, conduct and administer basic and applied research in laboratories at sea and on land. In general, these scientists are concerned with research on and studies of tides, sea ice, currents, waves and other ocean events in terms of their temperatures, densities, circulation, motion, sound propagation, transparency, and similar characteristics. They are also concerned with the interaction and relationships between the ocean bottom, sea and atmosphere, including animal or plant life in the ocean, as these affect the particular ocean phenomena under study.

Reasons for the requirements. The duties of these positions cannot be performed successfully without formalized training either in oceanography or in

a combination of the basic physical sciences which provide fundamental scientific knowledges applicable or adaptable to exploring, examining, and understanding ocean phenomena. Oceanographer at the minimum must have a thorough knowledge of basic scientific methods and procedures which may be adapted to oceanographic work. Appointees must have the ability to apply their professional and scientific knowledge to their work in order to solve specific problems, interpret and apply the results of research (both in oceanography and in the applicable basic sciences), or do oceanographic research. These knowledges can be acquired only through the successful completion of a directed course of study in an accredited college or university which has scientific libraries, well equipped laboratories, and thoroughly trained instructors who can evaluate the progress of the professional and scientific training competently.

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

[F.R. Doc. 64-8768; Filed, Aug. 27, 1964; 8:50 a.m.]

FEDERAL AVIATION AGENCY

[OE Docket No. 64-WE-3]

CAMELLIA CITY TELECASTERS

Determination of Hazard to Air Navigation

The Federal Aviation Agency has circularized the following proposal for aeronautical comment and has conducted a study (WE-OE-3220) to determine its effect upon the safe and efficient utilization of navigable airspace.

Camellia City Telecasters proposes to construct a televison antenna structure at latitude 38°38'29.5" north, longitude 121°05'24.5" west, near Folsom, California. The overall height of the structure would be 1,199 feet above mean sea level (399 feet above ground).

The structure would not be located in proximity to an existing airport but would be approximately 1.7 miles northwest of the proposed El Dorado Hills Airport which has been given airspace approval.

The proposed antenna structure would exceed the standards for determining hazards to air navigation as defined in Section 77.25(b)(2) of the Federal Aviation Regulations as applied to this airport by its entire height. The terrain at the site also exceeds this criteria.

The aeronautical study disclosed that it has been recommended that traffic patterns for the El Dorado Hills Airport be conducted to the west because of hills to the east. The proposed structure would extend 651 feet above the airport elevation and would be within a normal traffic pattern when expanded to accommodate traffic. Aircraft maneuvering within the traffic pattern area may be required to alter course in order to obtain adequate vertical or horizontal obstruction clearance from the structure.

The structure would be located approximately 10.3 nautical miles northeast of the approach end of Runway 22L at Mather Air Force Base approximately 9,000 feet southeast of the instrument landing system runway localizer course and the Mather AFB VOR.

The study disclosed that there are two standard instrument departure procedures for northeast takeoffs at Mather AFB which would be affected by the proposed structure. Both procedures, "Pardee No. 1" and "Quincy No. 3," proceed straight-out to the Mather AFB VOR, at this point Pardee No. 1 turns east over the structure site and Quincy No. 3 turns to the north.

The prevailing wind dictates that most departures be made to the southwest; accordingly, departures to the northeast occur infrequently. It was revealed that under normal conditions Air Force KC-135 tanker-type aircraft departing on the northeast procedures would attain an altitude approximately 300 feet higher than the structure as they pass the site. However, under conditions such as maximum aircraft loading, engine malfunction or extremely hot weather, this clearance would be reduced. It is not possible to alter the procedures to accommodate the structure due to the necessity for the aircraft to maneuver at dangerously low altitudes to avoid it.

On this basis, the proposed antenna structure would constitute a hazard to these aircraft as they conduct these departure procedures.

The study disclosed that the proposed structure would be 1,500 feet south of U.S. Highway 50 which extends between Sacramento and Lake Tahoe. This is a route extensively used as a visual reference by general aviation pilots flying in accordance with visual flight rules between the San Francisco Bay area, including Sacramento, and the Lake Tahoe Airport which serves the Lake Tahoe resort area. This highway is the most prominent visual landmark used for VFR orientation between these points. Marginal weather conditions caused by the western slopes of the Sierra Nevada mountain range occur often in this area. During such conditions and when visibility is restricted, pilots operate along this route at relatively low altitudes. Since this route follows generally through open, unpopulated country, low altitudes can be used in the area of the structure without violating Federal Aviation Regulations. In view of these circumstances, the structure would constitute a hazard to VFR aircraft using this highway as a VFR route.

Based on the aeronautical study, it is the finding of the Agency that the proposed structure would have a substantial adverse effect upon aeronautical operations as previously described and would be detrimental to the safety of aircraft in flight.

Therefore, pursuant to the authority delegated to me by the Administrator (§ 77.37 [New]), it is found that the proposed structure would have a substantial adverse effect upon the safe and efficient utilization of navigable airspace; and it is hereby determined that the proposed structure would be a hazard to air navigation.

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.

Issued in Washington, D.C., on August 20, 1964.

RALPH H. FLETCHER,
Acting Chief, Obstruction Evaluation Branch.

[F.R. Doc. 64-8730; Filed, Aug. 27, 1964; 8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 14611; FCC 64M-802]

PROGRESS BROADCASTING CORP. (WHOM)

Order Scheduling Prehearing Conference

In re application of Progress Broadcasting Corporation (WHOM) New York, New York, Docket No. 14611, File No. BP-13915; for construction permit.

Pursuant to verbal request of counsel for the applicant: *It is ordered*, This 24th day of August 1964, that there will be a further prehearing conference in the above-entitled proceeding on September 3, 1964, 9:00 a.m., in the Commission's Offices, Washington, D.C.

Released: August 25, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-8778; Filed, Aug. 27, 1964; 8:50 a.m.]

FEDERAL MARITIME COMMISSION

[Docket No. 1198]

FRANK P. CATTANO

Application for Independent Ocean Freight Forwarder License

On January 11, 1962, pursuant to section 44 of the Shipping Act, 1916 (Public Law 87-254, 46 U.S.C. 841(b)), Frank P. Cattano, 875 South Seventh Street, Lindenhurst, Long Island, New York, filed application for a license as an independent ocean freight forwarder. After consideration of the application, the Commission notified Frank P. Cattano by letter of June 22, 1964, that it intended to deny the application for a license because it appeared that applicant did not intend within the foreseeable future to engage in carrying on the business of forwarding. The Commission's records, including the application, indicate that since 1955 Mr. Cattano has not held himself out to operate as an independent ocean freight forwarder, is not now operating as an independent

ocean freight forwarder, and does not intend to do so in the foreseeable future and hence, did not appear to qualify as eligible for licensing. The applicant has requested the opportunity to show at a hearing that denial of the application would not be warranted.

Therefore it is ordered, Pursuant to sections 22 and 44 of the Shipping Act, 1916 (46 U.S.C. 821, 841(b)), that a proceeding is hereby instituted to determine whether the applicant qualifies for a license within the meaning of First Section (46 U.S.C. 801) of the Shipping Act, 1916.

It is further ordered, That Frank P. Cattano be made respondent in this proceeding and the matter assigned for hearing before an Examiner of the Commission's Office of Hearing Examiners at a date and place to be announced by the Chief Examiner.

It is further ordered, That notice of this order be published in the FEDERAL REGISTER and that a copy thereof and notice of hearing be served upon respondent, Frank P. Cattano.

It is further ordered, That any persons, other than respondent, who desire to become a party to this proceeding and to participate therein, shall file a petition to intervene with the Secretary, Federal Maritime Commission, Washington, D.C., 20573, with copy to respondent, on or before September 14, 1964, and;

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 the Commission.

[SEAL] THOMAS LISI, *Secretary.*

[F.R. Doc. 64-8746; Filed, Aug. 27, 1964; 8:47 a.m.]

[Docket No. 1199]

WEST COAST FREIGHT TARIFF BUREAU, INC.

Application for Freight Forwarding License

On January 8, 1962, pursuant to section 44 of the Shipping Act, 1916 (Public Law 87-254, 46 U.S.C. 841(b)), West Coast Freight Tariff Bureau, Inc., 702 North Wilson Way, Stockton, California, filed application for a license as an independent ocean freight forwarder. After consideration of the application, the Managing Director notified West Coast Freight Tariff Bureau, Inc., by letter of June 17, 1964, that the Commission intends to deny the application for a license because the applicant does not have the necessary experience properly to carry on the business of forwarding. The applicant has now requested the opportunity to show at a hearing that denial of the application would not be warranted.

Therefore it is ordered, Pursuant to sections 22 and 44 of the Shipping Act, 1916 (46 U.S.C. 821(b)), that a proceeding is hereby instituted to determine whether the applicant qualifies for a license within the meaning of section 44(b) (46 U.S.C. 841(b)) of the Shipping Act, 1916.

It is further ordered, That West Coast Freight Tariff Bureau, Inc. be made respondent in this proceeding and the matter assigned for hearing before an Examiner of the Commission's Office of Hearing Examiners at a date and place to be announced by the Chief Examiner.

It is further ordered, That notice of this order be published in the FEDERAL REGISTER and that a copy thereof and notice of hearing be served upon respondent, West Coast Freight Tariff Bureau, Inc.

It is further ordered, That any persons, other than respondent, who desire to become a party to this proceeding and to participate therein, shall file a petition to intervene with the Secretary, Federal Maritime Commission, Washington, D.C., 20573, with copy to respondent, on or before September 14, 1964 and;

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 the Commission.

[SEAL] THOMAS LISI, *Secretary.*

[F.R. Doc. 64-8747; Filed, Aug. 27, 1964; 8:47 a.m.]

[Fact Finding Investigation No. 6]

STEAMSHIP CONFERENCE

Notice of Hearing Relating to Effects on Foreign Commerce of United States

AUGUST 24, 1964.

On September 22, 1964, hearings will commence in New York City for the purpose of receiving shipper testimony in connection with Federal Maritime Commission Fact Finding Investigation No. 6 involving the effects of steamship conference organization, procedure, rules, regulations, and practices upon the foreign commerce of the United States.

Similar hearings will be held in New Orleans, Chicago, Washington, D.C. and on the West Coast of the United States on dates to be announced in the future.

Shippers interested in presenting testimony at these hearings may contact either the Federal Maritime Commission District Managers listed below or the Bureau of Hearing Counsel, Federal Maritime Commission, 1321 H Street NW., Washington, D.C.

Ralph M. Hylton, District Manager, Federal Maritime Commission, 45 Broadway, New York, N.Y., 10006;

Ralph P. Dickson, District Manager, Federal Maritime Commission, Federal Office Building South, 600 South Street—Room 1009, New Orleans, La., 70130;

Harvey P. Schneiber, District Manager, Federal Maritime Commission, 450 Golden Gate Avenue, Box 36067, San Francisco, Calif., 94102.

Pursuant to Commission Rules, 46 CFR 502.291 et seq., these hearings will be nonpublic.

RALPH P. DICKSON, *Investigative Officer.*

[F.R. Doc. 64-8748; Filed, Aug. 27, 1964; 8:47 a.m.]

FEDERAL NEW ZEALAND LINES ET AL.

Filing of Agreements for Approval; Correction

Corrected notice of agreement filed for approval by Kirlin, Campbell & Keating, 120 Broadway, New York 5, New York:

Notice of filing of Agreement No. 8535-3 between Federal New Zealand Lines, Shaw Savill & Albion Co., Ltd., Port and Associated Lines and Blue Star Line Ltd. for approval under section 15 of the Shipping Act, 1916, first appeared in the FEDERAL REGISTER of August 14, 1964. A second notice of said filing was published August 19, 1964.

Notice is hereby given that the period for the filing of comments, including any request for hearing, shall be restricted to that specified in the FEDERAL REGISTER of August 14, 1964, i.e. twenty (20) days from said August 14.

Dated: August 24, 1964.

THOMAS LISI, *Secretary.*

[F.R. Doc. 64-8749; Filed, Aug. 27, 1964; 8:47 a.m.]

[Independent Ocean Freight Forwarder License No. 95]

FLETE INTERNACIONAL CORP.

Revocation of License

Whereas, subject licensee has failed to reply to lawful inquiries of the Commission:

It is ordered, That independent ocean freight forwarder license No. 95 is hereby revoked, effective this date.

It is further ordered, That subject licensee return license No. 95 to the Commission for revocation.

It is further ordered, That this revocation is without prejudice to the reapplication for a license by Flete Internacional Corporation.

By order of the Commission.

[SEAL] THOMAS LISI, *Secretary.*

[F.R. Doc. 64-8750; Filed, Aug. 27, 1964; 8:47 a.m.]

FEDERAL POWER COMMISSION

[Project No. 2478]

ALPENA POWER CO.

Notice of Application for License

AUGUST 24, 1964.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Alpena Power Co. (correspondence to: Mr. Orville Murch, Alpena Power Co.,

307 South Third Ave., Alpena, Mich.) for license for constructed Project No. 2478, known as the Norway Point Dam, located on Thunder Bay River, in the Township of Maple Ridge, Alpena County, Mich.

The project consists of: (1) A concrete, multiple arch, top spill dam about 320' long; (2) a spillway section (at left end of dam) about 129' long, with three bear-trap gates (each about 26' wide x 27' high); (3) a reservoir extending upstream about 3 miles (area about 1,000 acres, total capacity about 5,000 acre-feet); (4) a fishway; (5) a powerhouse, adjacent to the left bank, containing two turbines driving a 2,800 kw generator and a 1,200 kw generator (total of 4,000 kw); (6) and appurtenant facilities.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is September 28, 1964. The application is on file with the Commission for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 64-8733; Filed, Aug. 27, 1964; 8:46 a.m.]

[Project No. 2480]

GREEN MOUNTAIN POWER CORP.

Notice of Application for License

AUGUST 24, 1964.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Green Mountain Power Corp. (correspondence to: G. M. McKibben, President, Green Mountain Power Corp., 1 Maine Street, Burlington, Vt.) for a license for constructed Project No. 2480, known as the Middlesex Project, located on the Winooski River between the towns of Middlesex and Moretown, in Washington County, Vt.

The project consists of: (1) A concrete gravity overflow dam about 283 feet long containing two sluices 9 feet square and surmounted with flashboards 2.5 feet high; (2) a dam and intake structure 215 feet in overall length with trash rack and headgates; (3) a brick powerhouse with a concrete substructure containing two 1,600 kw vertical generators driven by 2,400 hp Francis Turbines—design head 50 feet; (4) two steel penstocks 9 feet in diameter and about 97 feet long; (5) a substation containing switch gear and three 1,333 kva transformers, 2.3/34.5 kv; and (6) appurtenant electrical and mechanical facilities.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is September 28, 1964. The application is on file with the Commission for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 64-8735; Filed, Aug. 27, 1964; 8:46 a.m.]

[Docket Nos. RI65-152, etc.]

SINCLAIR OIL & GAS CO. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

AUGUST 24, 1964.

The Respondents named herein have filed proposed increased rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before October 7, 1964.

By the Commission.

GORDON M. GRANT,
Acting Secretary.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI65-152	Sinclair Oil & Gas Co. (Operator), et al., Tulsa, Okla., 74102.	219	2	Wunderlich Development Co. (Vernon North Pool, et al., Sumner and Cowley Counties, Kans.).	$52	7-27-64	[2] 9-1-64	2-1-65	5.65	[3] [4] 6.65	
RI65-153	W. C. Payne, 2510 First National Bldg., Oklahoma City, Okla., 73102.	3	6	Northern Natural Gas Co. (Southeast Dower Field, Beaver County, Okla.) (Panhandle Area).	400	7-30-64	[2] 8-30-64	1-30-65	[5] 16.5	[3] [4] [5] 17.5	RI61-48
RI65-154	Champlin Oil & Refining Co., Post Office Box 9365, Fort Worth, Tex., 76107.	28	3	Cities Service Gas Co. (Yellowstone Field, Woods County, Okla.) (Oklahoma "Other" Area).	10,923	7-31-64	[2] 10-19-64	3-19-65	[6] 13.0	[3] [4] 14.0	
RI65-155	Bright & Schiff (Operator), et al., 107 Mercantile Continental Bldg., Dallas, Tex.	5	1	South Texas Natural Gas Gathering Co. (Whitted Field, Hidalgo County, Tex.) (R.R. District No. 4).	1,460	7-30-64	[2] 9-1-64	2-1-65	[7] 13.5	[3] [4] 14.5	

[2] The stated effective date is the effective date requested by Respondent.
[3] Periodic rate increase.
[4] Pressure base is 14.65 psia.
[5] Includes 1.0 cent per Mcf for relinquishing processing rights.
[6] Subject to a downward Btu adjustment.
[7] Initial rate.

APPENDIX "A"

Sinclair Oil & Gas Co. (Operator), et al. (Sinclair), proposes a rate increase from 5.65¢ to 6.65¢ per Mcf at 14.65 psia for casinghead gas sold to Wunderlich Development Co. (Wunderlich) (the gatherer and plant operator) for resale to Cities Service Gas Co. On July 13, 1964, Wunderlich filed a proposed rate increase from 11.0¢ to 12.0¢ per Mcf which was suspended by the Commission's order issued August 7, 1964, in Docket No. RI65-124, for five months from August 13, 1964. Although Sinclair's proposed rate increase is below the applicable 11.0¢ per Mcf area ceiling price as set forth in the Commission's Statement of General Policy No. 61-1, as amended, it is suspended because it relates to the plant operator's proposed rate increase which is suspended in Docket No. RI65-124.

With the exception of the increased rate filed by Sinclair, the other producers' in-

[1] Does not consolidate for hearing or dispose of the several matters herein.

creased rates and charges listed herein exceed the applicable area price levels for increased rates as set forth in the Commission's Statement of General Policy No. 61–1, as amended (18 CFR Ch. I, Part 2, § 2.56).

[F.R. Doc. 64–8736; Filed, Aug. 27, 1964; 8:46 a.m.]

[Docket No. CP65–2]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Application

AUGUST 24, 1964

Take notice that on July 1, 1964, Transcontinental Gas Pipe Line Corp. (Applicant), Post Office Box 1396, Houston, Tex., 77001, filed in Docket No. CP65–2 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing additional firm pipeline service, storage service, and the transportation of additional volumes of natural gas, on an interruptible basis, to Owens-Corning Fiberglas Corp. (Owens-Corning), all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Applicant proposes the following service:

Customer	Rate schedule	Mcf per day at 14.7 psia
Manufacturers Light and Heat Co., The (Muncy).	CD–3	1,100
Public Service Co. of North Carolina, Inc.	CD–2	3,000
Manufacturers Light and Heat Co., The (New Village).	G–3	100
Elberton, Ga., city of	G–1	200
Social Circle, Ga., city of	G–1	181
Butler, Ala., city of	OG–1	125
Hartwell, Ga., city of	OG–1	250
Total proposed additional firm pipeline service.		4,956
Greenwood, S.C., city of	GSS	800
Owens-Corning Fiberglas Corp. (interruptible industrial).		1,250

The application indicates that the proposed additional firm pipeline and storage service is necessary to meet the requirements of Applicant's customers commencing with the 1964–65 winter season. Owens-Corning will utilize the proposed additional gas for its expanded production of fibrous glas products at its Anderson, South Carolina, plant.

No new facilities will be required to make the proposed deliveries since Applicant states that it has the necessary excess capacity as a result of its system expansion authorized in Docket No. CP64–96.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that preliminary staff analysis has indicated that there are no problems which would warrant a recommendation that the Commission designate this application for formal hearing before an examiner and that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing may be held without further notice before the Commission on this application provided no protest or petition to intervene is filed within the time required herein. Where a protest or petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before September 14, 1964.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 84–8737; Filed, Aug. 27, 1964; 8:46 a.m.]

[Docket Nos. CP63–290, CP63–291]

TRANSWESTERN PIPELINE CO., AND NORTHERN NATURAL GAS CO.

Notice of Applications

AUGUST 24, 1964.

Take notice that on June 24, 1964 and July 6, 1964, Northern Natural Gas Company (Northern), and Transwestern Pipeline Company (Transwestern), (Applicants) filed in Docket Nos. CP63–290 and CP63–291 respectively, applications to amend the order issued October 10, 1963, in the aforementioned dockets and extend for one year their "best efforts" gas exchange authorized by said order, all as more fully set forth in the application on file with the Commission and open to public inspection.

The applications state that the exchange of gas is in accordance with an agreement between Northern and Transwestern dated April 12, 1963, wherein Transwestern agreed to deliver to Northern an average daily volume of 30,000 Mcf of natural gas for an initial period of one year with the "best efforts" agreement to increase the average daily volumes to 40,000 Mcf per day. Northern has the option to take like volumes for an additional year immediately following final delivery of the initial volumes. Northern has exercised its option to continue taking volumes for the second year commencing August 1, 1964. However, Northern and Transwestern have signed an amendment dated May 1, 1964, to the original exchange agreement of April 12, 1963, which reduces the minimum annual volume of gas equivalent to an average daily volume of 10,000 Mcf with a daily minimum of 5,000 Mcf during the second year. Northern will continue to use its best efforts to increase the volumes of gas exchanged to an average volume for the year of 40,000 Mcf per day. Both parties will file appropriate rate revisions.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that preliminary staff analysis has indicated that there are no problems which would warrant a recommendation that the Commission designate this application for formal hearing before an examiner and that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing may be held without further notice before the Commission on this application provided no protest or petition to intervene is filed within the time required herein. Where a protest or petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before September 17, 1964.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 64–8738; Filed, Aug. 27, 1964; 8:46 a.m.]

[Docket No. RP65–1]

UNITED GAS PIPE LINE CO.

Order Providing for Hearing, for Prehearing Conference, and Suspending Proposed Tariff Sheets

AUGUST 24, 1964.

On July 15, 1964, United Gas Pipe Line Company (United), tendered for filing certain tariff sheets [1] to become effective September 1, 1964. The tariff sheets propose changes in the jurisdictional rates resulting in an estimated net increase of $2,390,230 over and above the increase proposed by United in Docket No. RP63–1.

In support of the proposed increase, and pursuant to § 154.63 of the regulations under the Natural Gas Act, United has submitted its studies, cost data and prepared testimony. Review of the filing indicates that the rates proposed reflect certain questionable items in United's presentation, including inter alia, rate of return, working capital allowance, federal income tax allowance, shifts in purchase gas and sales patterns, depreciation reserve, and adjustments to operating expenses.

The increased rates and charges contained in United's FPC Gas Tariff, as proposed to be amended herein, have not been shown to be justified and may be unjust, unreasonable, unduly discrimi-

[1] Second Revised Sheet No. 9–A, Fifth Revised Sheet No. 99, Seventh Revised Sheet Nos. 34, 35, 44 and 45, Eighth Revised Sheet Nos. 8 and 14, Ninth Revised Sheet Nos. 4, 6, 10, 12, 21, 23, 25, 27, 28, 30 and 32, and Tenth Revised Sheet No. 100 to United's FPC Gas Tariff, First Revised Volume No. 1.

natory, or preferential, or otherwise unlawful.

In view of the fact that United has filed this major rate increase while its petition for rehearing of Commission decision in Docket No. RP63–1 is still pending, and since our preliminary analysis of the application indicates that a number of the contentions upon which United's claim for increased rates are closely related to matters which have been fully litigated in RP63–1, we believe that expeditious handling of the present application justifies deviation from the normal procedures set forth in § 2.59 of our rules. Specifically, we believe that this proceeding can be expedited by directing the examiner to hold an immediate prehearing conference rather than awaiting filing of direct evidence by the staff and interveners' and rebuttal evidence by United. It is hoped and expected that through such a conference, the examiner will be able to expedite the proceeding and give full and complete effect to the policies and intent expressed in § 2.59 and particularly subsections (f) and (j) thereof. Cf. Panhandle Eastern Pipe Line Company v. F.P.C., 232 F. 2d 467, 473 (C.A. 3, 1956) Cert. den. 352 U.S. 891. If he deems it will aid in bringing this proceeding to a prompt solution, he is authorized to provide for early cross-examination of the applicant's direct case prior to the submission of the written evidence of the staff or interveners.

Staff Counsel filed a motion in Docket Nos. RP63–1 and RP65–1 entitled "Staff Counsels' Motion to Reject Proposed Rate Increase Filing" on August 6, 1964. Answers to this motion were filed on August 14 and 17, 1964, by United and other parties to these proceedings. This motion and the answers thereto raise important questions of law which deserve our full consideration which cannot be completed within the time within which, if the rate filing was properly filed under section 4(d) of the Act, we would be required to suspend the filing or allow the increase to go into effect.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in United's FPC Gas Tariff, as proposed to be amended herein, and that the proposed tariff sheets listed above be suspended, and the use thereof be deferred as herein provided.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the disposition of this proceeding be expedited in accordance with the procedures set out below.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing shall be held on a date to be fixed by notice from the Presiding Examiner concerning the lawfulness of the rates, charges, classifications, and services contained in United's FPC Gas Tariff as proposed to be amended herein.

(B) Pending such hearing and decision thereon, United's proposed tariff sheets listed above are hereby suspended and the use thereof is deferred until February 1, 1965, and until such further time as they may be made effective in the manner prescribed by the Natural Gas Act.

(C) Presiding Examiner Max L. Kane, or any other officer designated by the Chief Examiner for that purpose (see Delegation of Authority, 18 CFR 3.5(d)), shall prescribe other relevant procedural matters not herein provided, shall preside at the prehearing conferences and at the hearing in this matter, and shall control this proceeding in accordance with the policy expressed by the Commission in § 2.59 of its rules of practice and procedure, especially paragraph (j) thereof.

(D) Pursuant to § 1.18 of the Commission's rules of practice and procedure, a prehearing conference before the Presiding Examiner shall commence at 10:00 a.m., e.s.t., on September 9, 1964, in a hearing room of the Federal Power Commission, 441 G Street, NW., Washington, D.C., 20426, for the purpose of reaching such agreements as will expedite the determination to be made herein, including, but not limited to, stipulation of facts, narrowing and defining the issues, and establishment of dates for the service of testimony and for the cross-examination of all testimony.

(E) This order is without prejudice to such action as the Commission may deem necessary and proper with respect to the motion of Staff Counsel filed August 6, 1964, and the answers thereto filed August 17, 1964.

By the Commission.

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

[F.R. Doc. 64–8739; Filed, Aug. 27, 1964; 8:46 a.m.]

GENERAL SERVICES ADMINISTRATION

Utilization and Disposal Service

[Wildlife Order 73]

SUSQUEHANNA SUB-DEPOT OF LETTERKENNY ORDNANCE DEPOT, LYCOMING COUNTY, PENNSYLVANIA

Transfer of Property

Pursuant to section 2 of Public Law 537, Eighteth Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By deed from the United States of America, dated August 3, 1964, the property known as a 3017.79 acre portion, more or less, of the Susquehanna Sub-Depot of Letterkenny Ordnance Depot, located in Lycoming County, Pennsylvania, and more particularly described in the deed, has been transferred from the United States to the Commonwealth of Pennsylvania.

2. The above-described property was transferred for wildlife conservation purposes in accordance with the provisions of section 1 of said Public Law 537 (16 U.S.C. 667b).

Dated: August 20, 1964.

WALTER C. MORELAND,
Assistant Commissioner for Real Property, Utilization and Disposal Service.

[F.R. Doc. 64–8759; Filed, Aug. 27, 1964; 8:48 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70–4228]

COLUMBIA GAS SYSTEM, INC.

Notice of Proposed Issue and Sale of $40,000,000 Principal Amount of Debentures at Competitive Bidding

AUGUST 24, 1964.

Notice is hereby given that the Columbia Gas System, Inc. ("Columbia"), 120 East 41st Street, New York 17, New York, a registered holding company, has filed a declaration with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6 and 7 of the Act and Rule 50 promulgated thereunder, as applicable to the proposed transaction. All interested persons are referred to the declaration, on file in the office of the Commission, for a statement of the transaction therein proposed which is summarized below:

Columbia proposes to issue and sell, pursuant to the competitive bidding requirements of Rule 50 under the Act, $40,000,000 principal amount of ____ percent Debentures, Series D due October 1989. The debentures are to be issued pursuant to the terms of an Indenture, dated June 1, 1961, between Columbia and Morgan Guaranty Trust Company of New York, as Trustee, as previously supplemented, and as to be further supplemented by a Sixth Supplemental Indenture to be dated October 1, 1964. The price, exclusive of accrued interest, to be paid Columbia for the debentures (which shall be not less than 98½ percent nor more than 101½ percent of the principal amount thereof) and the rate of interest thereon (which shall be a multiple of ⅛ percent) are to be determined by competitive bidding. The net proceeds from the sale of the debentures, together with cash on hand and to be generated internally during the remainder of 1964, will be used to finance, in part, the system's 1964 construction program, estimated at $144,000,000.

No State commission and no Federal commission, other than this Commission, has jurisdiction in respect of the proposed transaction. The fees and expenses to be incurred in connection with the proposed issue and sale of debentures will be supplied by amendment.

Notice is further given that any interested person may, not later than Septem-

ber 21, 1964, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed contemporaneously with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 64-8732; Filed, Aug. 27, 1964; 8:46 a.m.]

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Area Code 202 Phone 963-3261

Published daily, Tuesday through Saturday (no publication on Sundays, Mondays, or on the day after an official Federal holiday), by the Office of the Federal Register, National Archives and Records Service, General Services Administration (mail address National Archives Building, Washington, D.C. 20408), pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

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