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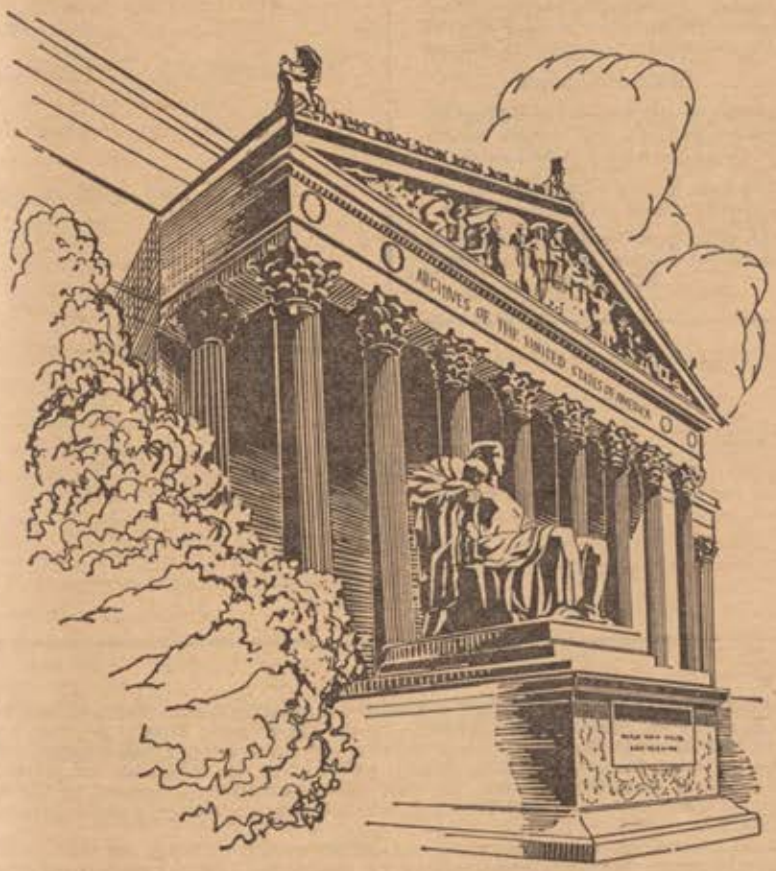

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List of CFR Parts Affected

(Codification Guide)

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

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1965, and specifies how they are affected.

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Department of Labor

Section 213.3215(a) is amended to permit appointment of Manpower Development Specialists in the field and central offices at GS–12 through GS–15, to eliminate the time limitation on appointment under the authority, and to limit the use of the authority to the period ending December 31, 1965. Effective upon publication in the FEDERAL REGISTER, paragraph (a) of § 213.3215 is amended as set out below.

§ 213.3215 Department of Labor.

(a) Not to exceed 20 positions of Manpower Development Specialist at grades GS–12 through GS–15 for employment in the Neighborhod Youth Corps. This authority may not be used after December 31, 1965.

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

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

[F.R. Doc. 65–1774; Filed, Feb. 18, 1965; 8:49 a.m.]

Title 7—AGRICULTURE

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

[Valencia Orange Reg. 105]

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

Limitation of Handling

§ 908.405 Valencia Orange Regulation 105.

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

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the past week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 11, 1965.

(b) *Order.* (1) During the period beginning at 12:01 a.m., P.s.t., February 21, 1965, and ending at 12:01 a.m., P.s.t., January 31, 1966, no handler shall handle any Valencia oranges grown in District 3 which are of a size smaller than 2.09 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from stem to the blossom end of the fruit: *Provided*, That not to exceed 5 percent, by count, of the oranges in any type of container may measure smaller than 2.09 inches in diameter.

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

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

Dated: February 16, 1965.

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

[F.R. Doc. 65–1783; Filed, Feb. 18, 1965; 8:49 a.m.]

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

[Milk Order No. 104]

PART 1104—MILK IN RED RIVER VALLEY MARKETING AREA

Order Amending Order

§ 1104.0 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 Red River Valley marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

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

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

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

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such amount not to exceed 5 cents per hundredweight as the Secretary may prescribe, with respect to (a) producer milk, including such handler's own production, (b) other source milk allocated to Class I pursuant to § 1104.46(a) (3) and (7) and the corresponding steps of § 1104.46(b), and (c) Class I milk disposed of from a partially regulated distributing plant on routes (other than to pool plants) in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than March 1, 1965. 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 December 30, 1964, and the decision of the Assistant Secretary containing all amendment provisions of this order, was issued February 2, 1965. 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 March 1, 1965, 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. (Section 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 Red River Valley 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:

1. Section 1104.4 is revised to read as follows:

§ 1104.4 Red River Valley marketing area.

"Red River Valley marketing area", hereinafter called "the marketing area", means all territory within the following counties, including all municipal corporations; Federal reservations, facilities, and installations; and State institutions located therein:

OKLAHOMA COUNTIES

Bryan.	Johnston.
Caddo.	Kiowa.
Carter.	Love.
Choctaw.	Marshall.
Comanche.	Murray.
Cotton.	Pushmataha.
Grady.	Stephens.
Jackson.	Tillman.
Jefferson.	

TEXAS COUNTIES

Archer.	Montague.
Baylor.	Wichita.
Clay.	Wilbarger.
Hardeman.	

2. Section 1104.6 is revised to read as follows:

§ 1104.6 Producer.

"Producer" means any person, other than a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk in compliance with the requirements specified in paragraph (a) or (b) of this section and whose milk is received directly from the farm at a pool plant, or is diverted as producer milk pursuant to § 1104.63. The term "producer" shall not include a person whose milk is diverted to a pool plant by a cooperative association if such person retains his status as a producer under another order issued pursuant to the Act and his milk is classified and priced under such other order.

(a) The milk is produced on a dairy farm subject to regular inspection by a duly constituted State or municipal health authority and under a dairy farm rating or permit issued by such authority for the production of milk to be disposed of for fluid consumption.

(b) The milk is acceptable to an agency of the Federal government for fluid consumption in its reservation, facility, or installation.

3. Section 1104.13 is revised to read as follows:

§ 1104.13 Producer-handler.

"Producer-handler" means any person who produces milk and who operates a plant from which there is distributed as Class I milk on routes in the marketing area only milk of such person's own production or milk which has been received from a pool plant regulated under either this part or Part 1106 regulating the handling of milk in the Oklahoma Metropolitan marketing area.

4. In § 1104.41, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1104.41 Classes of utilization.

* * * * *

(a) * * *

(1) * * *

(i) Fluid milk products classified as Class II pursuant to paragraph (b) (2), (4), (5), and (8) of this section; and

* * * * *

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

(1) Used to produce any product other than a fluid milk product;

(2) Disposed of to commercial food manufacturing establishments which do not dispose of fluid milk products for fluid consumption;

(3) Contained in inventories of fluid milk products on hand at the end of the month;

(4) Disposed of for livestock feed if records satisfactory to the market administrator for verification of such disposition are maintained;

(5) In skim milk dumped after prior notification of, and opportunity for verification by, the market administrator;

(6) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1104.42(b) (1), but not to exceed the following:

(i) Two percent of milk received directly from producers (not including diverted milk); plus

(ii) Two percent of receipts of fluid milk products in bulk from an other order plant, exclusive of the quantity for which Class II utilization was requested by the operator of such plant and the handler; plus

(iii) Two percent of receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which Class II utilization was requested by the handler;

(7) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1104.42(b) (2); and

(8) In fortified fluid milk products to the extent of the weight of skim milk which is not classified pursuant to paragraph (a) (1) (ii) of this section.

§ 1104.42 [Amended]

5. In § 1104.42(b), the reference "§ 1104.41(b) (5)" wherever it appears is changed to "§ 1104.41(b) (6)".

6. Section 1104.43(b) is revised to read as follows:

§ 1104.43 Responsibility of handlers and reclassification of milk.

* * * * *

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

§ 1104.46 [Amended]

7. In § 1104.46(a) (1), the reference "§ 1104.41(b) (5)" is changed to "§ 1104.41(b) (6)".

§ 1104.50 [Amended]

8. In § 1104.50(a), the number "15" is changed to "22".

9. In § 1104.52, paragraph (a) is revised to read as follows:

§ 1104.52 Location adjustments to handlers.

(a) For milk received from producers at a pool plant located outside the State

of Texas and more than 40 miles from Wichita Falls, Tex., and classified as Class I milk or assigned a Class I location adjustment credit pursuant to paragraph (b) of this section, and for other source milk to which a location adjustment is applicable, the price computed pursuant to § 1104.50(a) shall be reduced at the rate set forth in the following schedule. The distance shall be based on the shortest highway distance, as determined by the market administrator, that the plant is from the City Hall in Wichita Falls, Tex.

Distance (miles)	Rate per hundredweight (cents)
40.1–70	12
70.1–100	15
For each additional 10 miles or fraction thereof in excess of 100 miles an additional	1.5

* * * * *

10. Section 1104.61 is revised to read as follows:

§ 1104.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except that the operator shall, with respect to total receipts of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(a) A distributing plant meeting the requirements of § 1104.9 which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk was disposed of during the month on routes in such other Federal order marketing area than was so disposed of in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order.

(b) A distributing plant meeting the requirements of § 1104.9 which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk was disposed of during the month on routes in this marketing area than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

(c) A supply plant meeting the requirements of § 1104.9 which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of January through August if such plant retains automatic pooling status under this part.

§ 1104.63 [Amended]

11. In § 1104.63(a), the reference "§ 1104.41(b)(5)" is changed to "§ 1104.41(b)(6)".

12. Section 1104.66 is revised to read as follows:

§ 1104.66 Base rules.

(a) A base shall apply to deliveries of milk by the producer for whose account that milk was delivered during the base-forming period.

(b) Subject to subparagraphs (1) and (2) of this paragraph, an entire base may be transferred from a person holding such base to any other person. The transfer shall be effective as of the first day of any month, but not before March 1, following the receipt by the market administrator of an application for such transfer. The application shall be on a form approved by the market administrator and shall be signed by the baseholder or his heirs and by the person to whom such base is to be transferred.

(1) If a base is held jointly, the entire base shall be transferable only upon receipt of such application signed by all joint holders or their heirs.

(2) If a base is transferred to a producer already holding a base which was either earned by such producer or transferred to him, a new base shall be computed in the manner described in § 1104.65 except that for the purpose of this computation the producer milk delivered on the respective days during the base-forming period by each of the persons in whose name such bases were earned shall be considered to have been delivered on the same respective days by the producer for whom the new base is being computed.

13. Section 1104.74 is revised to read as follows:

§ 1104.74 Location differentials to producers and on nonpool milk.

In making payments to producers pursuant to § 1104.80 for milk received at a pool plant located outside the State of Texas and more than 40 miles from Wichita Falls, Texas, each handler may deduct for each hundredweight of milk received during the months of July through February and for each hundredweight of base milk received during the months of March through June an amount for plant location as set forth in § 1104.52(a). For the purpose of computations pursuant to §§ 1104.82 and 1104.83, the weighted average price shall be adjusted at the rate set forth in § 1104.52(a) which is applicable at the location of the nonpool plant from which the milk was received.

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

Effective date. March 1, 1965.

Signed at Washington, D.C., on February 16, 1965.

GEORGE L. MEHREN,
Assistant Secretary.

[F.R. Doc. 65–1784; Filed, Feb. 18, 1965; 8:49 a.m.]

Chapter XI—Consumer and Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture

CHANGE IN CHAPTER HEADING

EDITORIAL NOTE: Pursuant to order of the Secretary of Agriculture (F.R. Doc. 65–1714, 30 F.R. 2160), the heading of Chapter XI of Title 7 is revised to read as set forth above.

Chapter XVI—Consumer and Marketing Service (Food Stamp Program), Department of Agriculture

CHANGE IN CHAPTER HEADING

EDITORIAL NOTE: Pursuant to order of the Secretary of Agriculture (F.R. Doc. 65–1714, 30 F.R. 2160), the heading of Chapter XVI of Title 7 is revised to read as set forth above.

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

CHAPTER HEADING

Correction

In the issue of the FEDERAL REGISTER for Wednesday, February 17, 1965, the editorial note appearing at page 2135 was in error. The chapter heading of Chapter I of Title 9 remains as set forth above.

Chapter II—Consumer and Marketing Service, Department of Agriculture

CHANGE IN CHAPTER HEADING

EDITORIAL NOTE: Pursuant to order of the Secretary of Agriculture (F.R. Doc. 65–1714, 30 F.R. 2160), the heading of Chapter II of Title 9 is revised to read as set forth above.

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration

[Rev. 5]

PART 121—SMALL BUSINESS SIZE STANDARDS

The Small Business Size Standards (Revision 4) (29 F.R. 86), as amended (29 F.R. 2988, 3222, 6945, 7312, 8108, 11525, 11707, 12585, 13571, 15945), is hereby rescinded in its entirety and the following compilation of Small Business Size Standards (Revision 4) and Amendments 1 through 10 thereto are substituted in lieu thereof:

AUTHORITY: The provisions of this Part 121 issued under Public Law 85–536, sec. 5(b)6, 72 Stat. 385; § 121.3–13 issued under Public Law 87–846, sec. 213(a), 72 Stat. 384.

§ 121.3 Statutory provisions.

(a) *Small Business Act, as amended.*

SEC. 3. For the purposes of this Act, a small business concern shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. In addition to the foregoing criteria the Administrator, in making a detailed definition, may use these criteria, among others: Number of employees and dollar volume of business. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this Act, the maximum number of employees which a small business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors.

* * * * *

SEC. 8(b). It shall also be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary—

(6) To determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated "small business concerns" for the purpose of effectuating the provisions of this Act. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a "small business concern" in accordance with the criteria expressed in this Act. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a "small business concern." Offices of the Government having procurement or lending powers, or engaging in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated "small business concerns," as authorized and directed under this paragraph.

(b) *Small Business Investment Act of 1958, as amended.*

SEC. 103. As used in this Act—

* * * * *

(5) The term "small business concern" shall have the same meaning as in the "Small Business Act" * * *

(c) *War Claims Act of 1948, as amended.*

SEC. 213(a). The Secretary of the Treasury shall pay out of the War Claims Fund on account of awards certified by the Commission pursuant to this title as follows and in the following order of priority:

(1) Payment in full of awards made pursuant to section 202(d) (1) and (2) and thereafter of any award made pursuant to section 202(a) to any claimant certified to the Commission by the Small Business Administration as having been, on the date of loss, damage, or destruction, a small business concern within the meaning now set forth in the Small Business Act, as amended * * *

§ 121.3–1 Purpose and method of establishing size standards.

(a) *Purpose.* This part defines "small business concerns" and establishes standards, criteria and procedures to determine which concerns are "small business concerns" within the meaning of the Small Business Act, as amended (hereinafter referred to as the "Act"); the Small Business Investment Act of 1958, as amended (hereinafter referred to as the "Investment Act"); and the War Claims Act of 1948, as amended (hereinafter referred to as the "War Claims Act").

(b) *Method of establishing size standards—(1) Use of Standard Industrial Classification Manual.* The Standard Industrial Classification Manual, as amended, prepared and published by the Bureau of the Budget, Executive Office of the President, shall be used by SBA in defining industries.

(i) *Exception.* Whenever SBA determines that within an industry, as defined in the SIC Manual, there is a group of establishments manufacturing a class of products which has been given a five-digit code by the Bureau of the Census and such group of establishments would be recognized as a separate industry except for the fact that it fails to meet the Bureau of the Budget's size of industry criterion for SIC Manual recognition and SBA further determines that the financial assistance size standard for such class of products should be 500 employees rather than 250 employees, SBA shall thereupon adopt a separate size standard for such class of products and shall list it in Schedule A of this Part 121.

(2) *Factors in formulating size standards.* The following factors shall be considered in formulating industry size standards:

(i) Concentration of output;

(ii) Coverage ratio;

(iii) Primary product specialization ratio;

(iv) Absolute number of concerns;

(v) Size of industry (dollar volume);

(vi) Employment size of industry leaders; and

(vii) The SBA program for which the size standard is established.

In formulating industry size standards for the purpose of Government procurement, the additional factor of Government procurement history shall be used. The use of this additional factor may cause the size standards for the purpose of Government procurement and the size standards for the purpose of financial assistance to differ for the same industry.

(3) *Product classification.* For size standards purposes, a product shall be classified into only one industry, even though, for other purposes, it could be classified into more than one industry. In determining the SIC industry into which particular products shall be classified for size standard purposes, consideration shall be given to all appropriate factors, including:

(i) Alphabetic indices published by the Bureau of the Budget, Bureau of the Census and the Business and Defense Services Administration.

(ii) Description of the product under consideration.

(iii) Previous Government procurements for the same or similar products, and

(iv) Published information concerning the nature of companies which manufacture such product.

(2) *Product classification decision.* The SBA Regional Director or his delegates of the SBA Region in which the applicant's principal office is located shall determine the appropriate SIC classification except that for procurement purposes the determination shall be made by the official specified in § 121.3–8. Such determination shall be subject to appeal in the manner provided in § 121.3–6.

§ 121.3–2 Definition of terms used in this Part.

(a) "Affiliates:" Concerns are affiliates of each other when either directly or indirectly (1) one concern (other than an investment company licensed under the Small Business Investment Act of 1958 or registered under the Investment Company Act of 1940, as amended), controls or has the power to control the other, or (2) a third party or parties (other than an investment company licensed under the Small Business Investment Act of 1958 or registered under the Investment Company Act of 1940, as amended), controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships.

(b) "Annual sales or annual receipts" means the annual sales or annual receipts, less returns and allowances, of a concern and its affiliates during its most recently completed fiscal year.

(c) "Appeal" means a written communication addressed to the Size Appeals Board requesting it to review a determination relating to a size matter made by a Regional Director or his delegatee, or by a Contracting Officer.

(d) "Area of Substantial Unemployment" for the purpose of small business size determinations means a geographical area within the United States which:

(1) Is classified by the Department of Labor either as an "Area of Substantial Unemployment" or an "Area of Substantial and Persistent Unemployment," and such classification has been listed in that Department's publication "Area Labor Market Trends" continuously from September 15, 1961, until a size determination is made; or

(2) Is individually certified by the Department of Labor as an "Area of Substantial Unemployment" and has been eligible for such certification continuously since September 15, 1961.

If an area has been removed from the publication "Area Labor Market Trends" or if an area becomes ineligible for certification at any time, such area is excluded from the above definition and cannot be reinstated for the purpose of size determinations unless it is designated as a Redevelopment Area by the Department of Commerce. (See § 121.3–2(s).)

(e) "Crude-oil capacity" means the maximum daily average crude throughput of a refinery in complete operation, with allowance for necessary shut-down time for routine maintenance, repairs, etc. It approximates the maximum daily average crude runs to stills that can be maintained for an extended period.

(f) "Certificate of Competency" means a certificate issued by SBA pursuant to the authority contained in section 8(b)(7) of the Act stating that the holder of the certificate is competent as to capacity and credit, to perform a specific Government procurement or sales contract.

(g) "Concern" except for § 121.3–13, means any business entity organized for profit with a place of business located in the United States, including, but not limited to, an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making size determinations, any business entity, whether organized for profit or not, and any foreign business entity shall be included. For the purpose of § 121.3–13 a concern need not have a place of business located in the United States.

(h) "Contracting Officer" means the person executing a particular contract on behalf of the Government, and any other employees who is properly designated contracting officer; the term includes the authorized representative of a contracting officer acting within the limits of his authority.

(i) "Convalescent or nursing home" means those facilities for the accommodation of convalescents or other persons who are not acutely ill or not in need of hospital care but who may require nursing care and related medical services, which facility is privately owned and operated for the purpose of obtaining profits which shall inure to the benefit of its owners, stockholders, or members.

(j) "Department store" means a concern employing twenty-five (25) or more persons engaged in the retail sale of some items in each of the following merchandise lines: (1) Furniture, home furnishings, appliances, radio and television sets; (2) a general line of apparel for the family; and (3) household linens and dry goods, provided, however, that sales within any one of the preceding merchandise lines do not exceed eighty percent (80%) of the concern's total sales and the aggregate of such merchandise lines accounts for at least fifty percent (50%) of the concern's total sales.

(k) "Gross leasable area" means the total floor area designed for tenant occupancy and exclusive use, including basements, mezzanines, and upper floors, if any, expressed in square feet measured from the center line of a joint partition and from outside wall faces.

(l) "Hospital" means a health facility duly licensed as a hospital providing inpatient medical or surgical care of the sick or injured, including obstetrics, which facility is privately owned and operated for the purpose of obtaining profits which shall inure to the benefits of its owners, stockholders, or members.

(m) "Industry" means a grouping of establishments primarily engaged in similar lines of activity as listed and described in the Standard Industrial Classification Manual, as amended (SIC Manual), prepared and published by the Bureau of the Budget, Executive Office of the President.

(n) "Medical and dental laboratory" means those facilities which provide services to doctors, dentists, hospitals, and similar health facilities, which facilities are privately owned and operated for the purpose of obtaining profits which shall inure to the benefit of its owners, stockholders, or members.

(o) "Nonmanufacturer" means any concern which in connection with a specific Government procurement contract, other than a construction or service contract, does not manufacture or produce the products required to be furnished by such procurement. Nonmanufacturer includes a concern which can manufacture or produce the products referred to in the specific procurement but does not do so in connection with that procurement.

(p) A concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(q) "Number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters. If a concern has not been in existence for four full calendar quarters, "number of employees" means the average employment of such concern and its affiliates during the period such concern has been in existence based on the number of persons employed during the pay period ending nearest the last day of each month.

(r) "Protest" means a statement in writing from any bidder or offerer having a valid interest in whether or not another bidder or offerer on the same Government procurement or Government disposal contract is a small business within the meaning of this Part 121. Such statement shall contain the basis for the protest, together with specific detailed evidence supporting the protestant's claim that such bidder or offerer is not a small business. A protest received after the time limits set forth in § 121.3–5(a) shall not be considered not acted upon.

(s) "Redevelopment Area" for the purpose of small business size determinations means a geographical area within the United States which has been designated as a "Redevelopment Area" in accordance with the Area Redevelopment Act (Pub. Law 87–27, sec. 5, 75 Stat. 48).

(t) "Shopping center" means a group of commercial establishments planned, developed, owned, and managed as a unit with off-street parking provided on the property.

(u) "Size determination" means a ruling by SBA that a concern is or is not, or was or was not a small business within the meaning of this part.

(v) "United States" as used in this regulation includes the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

§ 121.3–3 Office of Economic Analysis.

The Office of Economic Analysis shall:

(a) Develop and recommend small business size standards to the Administrator of SBA for promulgation;

(b) Conduct industry hearings pertaining to size matters;

(c) In concert with the Office of General Counsel, issue interpretations of the Size Standards Regulation;

(d) Consider and take appropriate action on written petitions objecting to or requesting amendments or rescission of a published size standard;

(e) Establish procedures for the implementation of all size programs; and

(f) Perform such other related functions as may be appropriate to administer the SBA size program.

§ 121.3–4 Application for size determination.

Size determinations shall be made by the Regional Director, or his delegatee, of the Region in which the applicant's principal office is located. The Regional Director, or his delegatee, promptly shall notify, in writing, the applicant and other interested persons of his decision. Such determination shall be final unless appealed in the manner provided in § 121.3–6. Applications for size determinations shall be submitted on SBA Form 355, Application for Small Business Size Determination, in duplicate, to any SBA Field Office. The SBA Field Office receiving the application shall forward the application to the Regional Office serving the area in which the applicant's principal office is located. SBA Form 355 shall be completed and supporting materials shall be attached thereto. Applications for size determinations made by either a small busi-

ness investment company or an applicant for assistance from such an investment company shall be submitted on SBA Form 480, together with SBA Form 355. Detailed instructions for completing SBA Form 355 and SBA Form 480 are attached thereto. Copies of such forms may be obtained from any SBA Field Office or from the Small Business Administration, Washington, D.C., 20416.

§ 121.3–5 Protest of small business status.

(a) *How to protest.* Any bidder or offerer on a Government procurement or disposal may challenge the small business status of any other bidder or offerer on the same procurement or disposal. Such challenge shall be made by delivering a protest to the Contracting Officer responsible for the particular procurement or disposal prior to the close of business on the fifth day, exclusive of Saturdays, Sundays, and legal holidays, after bid or proposal opening: *Provided, however,* That a protest received after such time shall be deemed to be timely and shall be considered if, in the case of mailed protests, such protest is sent by registered or certified mail and the postmark thereon indicates that the protest would have been delivered within this time limit but for delays beyond the control of the protestant or, in the case of telegraphed protests, the telegram date and time line indicates that the protest would have been delivered within this time limit but for delays beyond the control of the protestant. Any Contracting Officer who receives such timely protest shall promptly forward such protest to the SBA Regional Office serving the area in which the principal office of the protested concern is located. A Contracting Officer may question the small business status of any bidder or offerer by filing a protest with the SBA Regional Office serving the area in which the principal office of the protested concern is located. Failure to make a timely protest shall not prejudice the right to challenge the small business status of the same or any other concern in the future.

(b) *Notification of protest.* Upon receipt of such protest, the SBA Regional Director or his delegatee shall immediately notify the Contracting Officer and the protestant of the date such protest has been received and that the size of the concern being protested is being considered by SBA. The Regional Director or his delegate shall also advise the protested bidder or offerer of the receipt of the protest and shall forward to the protested bidder or offerer a copy of the protest and a blank SBA Form 355, Application for Small Business Size Determination, by Certified Mail, Return Receipt Requested. The bidder or offerer shall be advised, in writing, that: (1) It must, within three (3) days after receipt of the copy of the protest and SBA Form 355, file the completed form as directed by SBA, (2) it must attach thereto a statement in answer to the allegations of the letter of protest, together with evidence to support such position, and (3) if it does not submit the completed SBA Form 355, SBA will rule that the protested concern is other than a small business.

(c) *Notification of determination.* After receipt of a protest and responses thereto, SBA shall determine the small business status of the protested bidder or offerer and notify the Contracting Officer, the protestant, and the protested bidder or offerer of its decision within 10 working days, if possible.

§ 121.3–6 Appeals.

(a) *Appeals organization.* (1) The Size Appeals Board is the representative of the Administrator for reviewing size appeals.

(2) The Size Appeals Board shall consist of at least three members designated by the Administrator, one of whom shall be designated as Chairman. Alternate members shall also be designated by the Administrator. The Size Appeals Board is authorized to conduct such proceedings as it determines appropriate to enable it to consider appeals and recommend to the Administrator decisions thereon.

(b) *Method of appeal*—(1) *Who may appeal.* An appeal may be taken by any concern or other interested party which has:

(i) Protested the small business status of another concern pursuant to § 121.3–5 and whose protest has been denied by a Regional Director.

(ii) Been adversely affected by a decision of a Regional Director pursuant to § 121.3–4 and § 121.3–5; or

(iii) Been adversely affected by a decision of a Contracting Officer regarding product classification pursuant to § 121.3–8.

(2) *Where to appeal.* Written Notices of Appeal shall be addressed to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C., 20416

(3) *Time for appeal.* (i) An appeal from a size determination or product classification by a Regional Director, or his delegatee, may be taken at any time, except that, because of the urgency of pending procurements, appeals concerning the small business status of a bidder or offerer in a pending procurement may be taken within 5 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a decision by a Regional Director, or his delegatee. Unless written notice of such appeal is received by the Size Appeals Board before the close of business on this fifth day, the appellant will be deemed to have waived its rights of appeal insofar as the pending procurement is concerned.

(ii) An appeal from a product classification determination by a Contracting Officer may be taken (*a*) not less than 10 days, exclusive of Saturdays, Sundays, and legal holidays, before bid opening day or deadline for submitting proposals or quotations, in cases wherein the bid opening date or last date to submit proposals or quotations is more than 30 days after the issuance of the Invitation for Bids or Request for Proposals or Quotations, or (*b*) not less than 5 days, exclusive of Saturdays, Sundays, and legal holidays, before the bid opening day or deadline for submitting proposals or quotations, in cases wherein the bid opening date or last date to submit proposals or quotations is 30 or less days after the issuance of the Invitation for Bids or Request for Proposals or Quotations, and

(iii) The timeliness of an appeal under subdivisions (i) and (ii) of this subparagraph shall be determined by the time of receipt of the appeal by the Size Appeals Board; provided, however, that an appeal received after such time limits have expired shall be deemed to be timely and shall be considered if, in the case of mailed appeals, such appeal is sent by registered or certified mail and the postmark thereon indicates that the appeal would have been received within the requisite time limit but for delays beyond the control of the appellant, or, in the case of telegraphed appeals, the telegram date and time line indicates that the appeal would have been received within the requisite time limit but for delays beyond the control of the appellant.

(4) *Notice of appeal.* No particular form is prescribed for the Notice of Appeal. However, to avoid time consuming delays and necessity for further correspondence, the following information should be included:

(i) Name and address of concern on which the size determination was made;

(ii) The character of the determination from which appeal is taken and its date;

(iii) If applicable, the IFB or contract number and date, and the name and address of the contracting officer;

(iv) A concise and direct statement of the reasons why the decision of a Regional Director is alleged to be erroneous;

(v) Documentary evidence in support of such allegations; and

(*vi*) Action sought by the appellant.

(c) *Notice to interested parties.* The Size Appeals Board shall promptly acknowledge receipt of the Notice of Appeal and shall send a copy of such Notice of Appeal to the appropriate Regional Director, the Contracting Officer if a pending procurement is involved, and other interested parties.

(d) *Statement of interested parties.* After receipt of a copy of appellant's Notice of Appeal, interested parties may file in duplicate with the Board, a statement as to why the appeal should or should not be denied. Such statement shall be accompanied by appropriate evidence. Copies of such statements and appropirate evidence will be furnished to the appellant. Such statements and supporting evidence shall be mailed or delivered to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C., 20416, within five (5) days of the receipt of the copy of Notice of Appeal unless an extension is for cause granted by the Chairman of the Size Appeals Board.

(e) *Consideration by the Size Appeals Board.* The Size Appeals Board shall consider the appeal on the written submissions of the appellant, or may, in its discretion, permit oral presentations by interested parties. The Board shall promptly recommend in writing to the Administrator a proposed decision which shall state the reasons for the recommendation.

(f) *Decision of the Administrator.* The Administrator's decision shall be predicated upon the entire record after giving such weight to the recommendation of the Size Appeals Board as he shall deem appropriate provided, however, that should he not concur with the recommendation of the Size Appeals Board, he shall state in writing the basis for his findings and conclusions.

(g) *Notification of final decision.* The Chairman shall promptly notify, in writing, the appellant and the other interested parties of the Administrator's decision, together with the reasons therefor.

§ 121.3–7 Differentials.

(a) *Alaska.* If an applicant for a size determination is a concern located in Alaska, then, whenever "annual sales or annual receipts" are used in any size definition contained in this part, said dollar limitation is increased by twenty-five percent (25%) of the amount set forth therein.

(b) *Substantial unemployment and redevelopment areas*—(1) *Business loans under the Small Business Act.* Notwithstanding any other provisions of this part, the applicable size standards for the purpose of financial assistance under section 7(a) of the Act are increased by twenty-five percent (25%) whenever the concern maintains or operates a plant, facility, or other business establishment within an Area of Substantial Unemployment or Redevelopment Area and agrees to use the financial assistance within such area or, if it does not maintain or operate a plant, facility, or other business establishment within an Area of Substantial Unemployment or Redevelopment Area, agrees to utilize the financial assistance for the establishment and/or operation of a plant, facility, or other business establishment within such area.

(2) *Small business investment companies and development companies.* Notwithstanding any other provision of this part, the size standard for a small business concern receiving assistance from a small business investment company or receiving assistance from a development company in connection with a section 501 or section 502 loan are increased by twenty-five percent (25%) whenever such concern maintains or operates a plant, facility, or other business establishment within an Area of Substantial Unemployment or Redevelopment Area and agrees to use such assistance within such area or, if it does not maintain or operate a plant, facility, or other business establishment within an Area of Substantial Unemployment or Redevelopment Area, agrees to utilize such assistance in connection with the establishment and/or operation of a plant, facility, or other business establishment in such area.

(3) *Government procurement assistance, sales of Government property and Government subcontracting.* This paragraph is not applicable to size determinations for the purpose of Government procurement assistance, sales of Government property, or Government subcontracting.

§ 121.3–8 Definition of small business for Government procurement.

A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts and can further qualify under the criteria set forth in this section. When computing the size status of a bidder or offerer, the number of employees, annual sales or receipts, or other applicable standards of the bidder or offerer and all of its affiliates shall be included. In the submission of a bid or proposal on a Government procurement, a concern which meets the criteria provided in this section may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular procurement involved. If a procurement calls for more than one item the bidder must meet the size standard for each item for which it submits a bid. The determination of the appropriate classification of a product shall be made by the contracting officer and his determination shall be final unless appealed in the manner provided in § 121.3–6.

(a) *Construction.* Any concern bidding on a contract for construction, alteration, or repair (including painting and decorating) of buildings, bridges, roads, or other real property is classified:

(1) As small if its average annual receipts for its preceding 3 fiscal years do not exceed $7½ million.

(2) As small if it is bidding on a contract for dredging and its average annual receipts for its preceding 3 fiscal years do not exceed $5 million.

(b) *Manufacturing.* Any concern bidding on a contract for a product it manufactured is classified:

(1) As small if it is bidding on a contract for food canning and preserving and its number of employees does not exceed 500 persons, exclusive of agricultural labor as defined in section (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

(2) As small if it is bidding on a contract for petroleum, other than lubricants and miscellaneous petroleum products, and its number of employees does not exceed 1,000 persons and it does not have more than 30,000 barrels-per-day crude-oil capacity from owned or leased facilities.

(3) As small if it is bidding on a contract for a product classified within an industry set forth in Schedule B of this part and its number of employees does not exceed the size standard established for that industry.

(4) As small if it is bidding on a contract for a product classified within an industry not set forth in Schedule B of this part and its number of employees does not exceed 500 persons.

(c) *Nonmanufacturing.* [Reserved]

NOTE: On April 5, 1963, there was published in the FEDERAL REGISTER (28 F.R. 3358) a proposed new definition of a small business nonmanufacturer. Interested persons were requested to file written comments. Until such time as a new definition of a small business nonmanufacturer is adopted, the definition as contained in § 121.3–8(b) (27 F.R. 9757, published October 3, 1962) shall be applicable. Section 121.3–8(b): *Provided*, That "Any concern which submits a bid or offer in its own name, other than a construction or service contract, but which proposes to furnish a product not manufactured by said bidder or offerer, is deemed to be a small business concern when:

(1) It is a small business concern within the meaning of subsection (a) of this section [its number of employees does not exceed 500 persons], and

(2) In the case of Government procurement reserved for or involving the preferential treatment of small businesses, such nonmanufacturer shall furnish in the performance of the contract the products of a small business manufacturer or producer which products are manufactured or produced in the United States: *Provided, however*, If the goods to be furnished are wool, worsted, knitwear, duck, webbing, and thread (spinning and finishing), nonmanufacturers (dealers and converters) shall furnish such products which have been manufactured or produced by a small weaver (small knitter for knitwear) and, if finishing is required, by a small finisher."

(d) *Research, development, and testing.* Any concern bidding on a contract for research, development, and/or testing is classified:

(1) As small if it is bidding on a contract for research and/or development which requires delivery of a manufactured product and (i) it qualifies as a small business manufacturer within the meaning of § 121.3–8(b) for the industry into which the product is classified, or (ii) it qualifies as a small business nonmanufacturer within the meaning of § 121.3–8(c).

(2) As small if it is bidding on a contract for research and/or development which does not require delivery of a manufactured product or on a contract for testing and its number of employees does not exceed 500 persons.

(e) *Services.* Any concern bidding on a contract for services, not elsewhere defined in this section, is classified as small if its average annual sales or receipts for its preceding 3 fiscal years do not exceed $1 million.

(1) Any concern bidding on a contract for engineering services or naval architectural services is classified as small if its average annual sales or receipts for its preceding 3 fiscal years do not exceed $5 million.

(2) Any concern bidding on a contract for motion picture production or motion picture services is classified as small if its average annual sales or receipts for its preceding 3 fiscal years do not exceed $5 million.

(f) *Transportation.* Any concern bidding on a contract for passenger or freight transportation, not elsewhere defined in this section, is classified:

(1) As small if its number of employees does not exceed 500 persons.

(2) As small if it is bidding on a contract for air transportation and its number of employees does not exceed 1,000 persons.

(3) As small if it is bidding on a contract for trucking (local and long distance), warehousing, packing and crat-

ing, and/or freight forwarding, and its annual receipts do not exceed $3 million.

NOTE: Under present SBA policy, no concern will be denied small business status for the purpose of Government procurement solely because of its contractual relationship with a large interstate van line: *Provided*, That its annual receipts have not exceeded $3 million during the concern's most recently completed fiscal year: *And provided further*, No more than 50 percent of such annual receipts are directly attributable to the applicant's relationship with an interstate van line. When applying for a small business size determination, the applicant, at the time of filing its application, shall submit therewith documentary evidence showing the percentage of its annual receipts attributable to its relationship with an interstate van line.

§ 121.3–9 Definition of small business for sales of Government property.

In the submission of a bid or proposal for the purchase of Government-owned property, a concern which meets the criteria provided in this section may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular sale involved.

(a) *Sales of Government-owned property other than timber.* A small business concern for the purpose of the sale of Government-owned property, other than timber, is a concern, including its affiliates, which is independently owned and operated, is not dominant in its field of operation, and can further qualify under the following criteria:

(1) *Manufacturers.* Any concern which is primarily engaged in manufacturing is small if its number of employees does not exceed 500 persons.

(2) *Other than manufacturers.* Any concern which is primarily not a manufacturer (except as specified in subparagraph (3) of this paragraph) is small if its annual sales or annual receipts for its preceding 3 fiscal years do not exceed $5 million.

(3) *Stockpile purchasers.* Any concern primarily engaged in the purchase of materials which are not domestic products is small if its average annual sales or annual receipts for its preceding 3 fiscal years do not exceed $25 million.

(b) *Sales of Government-owned timber.* (1) In connection with the sale of Government-owned timber a small business is a concern that:

(i) Is primarily engaged in the logging or forest products industry;

(ii) Is independently owned and operated;

(iii) Is not dominant in its field of operation; and

(iv) Together with its affiliates, its number of employees does not exceed 500 persons.

(2) In the case of Government sales of timber reserved for or involving preferential treatment of small businesses, when the Government timber being purchased is to be resold, a concern is a small business when:

(i) It is a small business within the meaning of subparagraph (1) of this paragraph, and

(ii) It agrees that it will not sell more than thirty percent (30%) of such timber to a concern which does not qualify under subparagraph (1) of this paragraph as a small business, unless an exemption is granted on sales of mixed stumpage of hardwood and softwood species.

(3) In the case of Government sales reserved for or involving preferential treatment of small businesses, when the Government timber purchased is not to be resold in the form of saw logs to be manufactured into lumber and timbers, a concern is a small business when:

(i) It meets the criteria contained in subparagraph (1) of this paragraph, and

(ii) It agrees that in manufacturing lumber or timbers from such saw logs cut from the Government timber, it will do so only with its own facilities or those of concerns that qualify under subparagraph (1) of this paragraph as a small business.

§ 121.3–10 Definition of small business for SBA business loans.

A small business concern for the purpose of receiving an SBA loan is a concern, including its affiliates, which is independently owned and operated, is not dominant in its field of operation, and can further qualify under the criteria set forth below. A concern which is a small business under § 121.3–8 which has applied for or received a Certificate of Competency is a small business eligible for an SBA loan to finance the contract covered by the Certificate of Competency. If no standard for an industry, field of operation, or activity has been set forth in this section, a concern seeking a size determination shall submit SBA Form 355 to the Office of Economic Analysis, Washington, D.C., 20416. If an applicant for an SBA business loan is engaged in the production of a number of products or the providing of a variety of services or other activities which are classified into different industries, the appropriate standard to be used is that which has been established for the industry in which it is primarily engaged. An applicant's primary industry is that which produced the greatest percentage of gross sales or receipts for the past fiscal year. When computing the size status of an applicant, its affiliates' number of employees, annual sales or receipts, or other applicable standards shall be included.

(a) *Construction.* Any construction concern is small if its average annual receipts do not exceed $5 million for the preceding three fiscal years.

(b) *Manufacturing.* Any manufacturing concern is classified:

(1) As small if its number of employees does not exceed 250 persons;

(2) As large if its number of employees exceeds 1,000 persons;

(3) Either as small or large depending on its industry and in accordance with the employment size standards set forth in Schedule "A" of this part, if its number of employees exceeds 250 persons, but not more than 1,000 persons;

(4) As small if it is engaged in the food canning and preserving industry and its number of employees does not exceed 500 persons exclusive of agricultural labor as defined in subsection (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

(c) *Retail.* Any retailing concern is classified:

(1) As small if its annual sales do not exceed $1 million;

(2) As small if it is engaged in making retail sales of groceries and fresh meats and its annual sales do not exceed $2 million;

(3) As small if it is engaged in making retail sales of new or used motor vehicles and its annual sales do not exceed $3 million;

(4) As small if it is engaged in the operation of a department store and its annual sales do not exceed $2 million;

(5) As small if it is primarily engaged in making retail sales of aircraft and its annual sales do not exceed $3 million.

(d) *Services.* Any service concern is classified:

(1) As small if its annual receipts do not exceed $1 million;

(2) As small if it is engaged in the hotel and motel industry and its annual receipts do not exceed $2 million;

(3) As small if it is engaged in the power laundry industry and its annual receipts do not exceed $2 million;

(4) As small if it is engaged in the trailer courts and parks industry and its annual receipts do not exceed $100,000: *Provided*, That a minimum of fifty percent (50%) of the annual receipts is derived from the rental of space to tourist trailers for periods not in excess of thirty (30) days;

(5) As small if it is engaged in owning and operating a hospital and its capacity does not exceed 100 beds (excluding cribs and bassinets);

(6) As small if it is engaged in owning and operating a convalescent or nursing home and its annual receipts do not exceed $1 million;

(7) As small if it is engaged in owning and operating a medical or dental laboratory and (i) it is operated in connection with an eligible proprietary hospital or (ii) it is not operated in connection with an eligible proprietary hospital and its annual receipts do not exceed $1 million;

(8) As small if it is engaged in the motion picture production industry and its annual receipts do not exceed $5 million;

(9) As small if it is engaged in the picture services industry and its annual receipts do not exceed $5 million.

(e) *Shopping centers.* (1) Any concern engaged in operating shopping centers is small if (i) it does not have assets exceeding $5 million, (ii) it does not have net worth in excess of $2½ million, (iii) it does not have an average net income, after Federal income taxes, for the preceding 2 fiscal years in excess of $250,000 (average net income to be computed without benefit of any carryover loss), and (iv) it does not lease more than 25 percent of the gross leasable area to concerns which do not meet the small business definitions contained in this section.

(2) For the purpose of size determinations, shopping center operators will not

be considered affiliated with their tenants merely because of lease agreements.

(f) *Transportation and warehousing.* Any concern primarily engaged in passenger and freight transportation or warehousing is classified:

(1) As small if its annual receipts do not exceed $1 million;

(2) As small if it is primarily engaged in the air transportation industry and its number of employees does not exceed 1,000 persons;

(3) As small if it is primarily engaged in the storage of grain, it does not have more than one million bushels capacity in owned and leased facilities, and its annual receipts do not exceed $1 million;

(4) As small if it is primarily engaged in trucking, warehousing, packing and crating and/or freight forwarding and its annual receipts do not exceed $3 million.

NOTE: Under present SBA policy, no concern will be denied small business status for the purpose of SBA financial assistance solely because of its contractual relationship with a large interstate van line: *Provided*, That its annual receipts have not exceeded $3 million during the concern's most recently completed fiscal year. When applying for a small business loan, the applicant, at the time of filing its application, shall submit therewith documentary evidence showing the amount of its annual receipts attributable to its relationship with an interstate van line.

(g) *Wholesale.* Any wholesaling concern is small if its annual sales do not exceed $5 million. Any wholesaling concern also engaged in manufacturing is not a "small business concern" unless it so qualifies under both the manufacturing and wholesaling standards.

§ 121.3–11 Definition of small business for assistance by small business investment companies.

A small business concern for the purpose of receiving financial or other assistance from small business investment companies is a concern which:

(a) Together with its affiliates, is independently owned and operated, is not dominant in its field of operation, does not have assets exceeding $5 million, does not have net worth in excess of $2½ million, and does not have an average net income, after Federal income taxes, for the preceding two years in excess of $250,000 (average net income to be computed without benefit of any carry-over loss); or

(b) Qualifies as a small business concern under § 121.3–10.

§ 121.3–12 Definition of small business Government subcontractors.

(a) Any concern in connection with subcontracts of $2,500 or less which relate to Government procurements will be considered a small business concern if, including its affiliates, its number of employees does not exceed 500 persons.

(b) Any concern in connection with subcontracts exceeding $2,500 which relate to Government procurements will be considered a small business concern if it qualifies as such under § 121.3–8; *Provided, however*, Until a definition of a small business nonmanufacturer is adopted under § 121.3–8(c), a nonmanufacturer will be considered as small business for the purpose of Government subcontracting if, including its affiliates, its number of employees does not exceed 500 persons.

§ 121.3–13 Definition of small business for receiving priority payment under section 213(a) of the War Claims Act of 1948, as amended.

(a) *Small Business Claimant.* A small business claimant for the purpose of receiving priority payment from the Secretary of the Treasury under section 213(a) of the War Claims Act of 1948, as amended, is a concern which on the date of loss, damage, or destruction was a small business concern within the meaning of § 121.3–10 in effect on October 22, 1962 (27 F.R. 9757).

(b) *Request for size determination.* Requests for size determinations may be received only from the Foreign Claims Settlement Commission of the United States and determinations of the size status of a claimant shall be made by the SBA Regional Director for the region in which the claimant resides, or, in the case of claimants residing in foreign countries, by the SBA Regional Director at Richmond, Va.

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

EUGENE P. FOLEY,
Administrator.

FEBRUARY 12, 1965.

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING

(The following size standards are to be used when determining the size status of SBA business loan applicants, and as alternate standards for sections 501 and 502 loans, and SBIC assistance)

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
	Major Group 23—Apparel and Related Products	250
	Major Group 28—Chemicals and Allied Products:	
2812	Alkalies and chlorine	1000
2879	Agricultural chemicals, n.e.c.	500
2873	Agricultural pesticides	500
2831	Biological products	250
2895	Carbon, black	500
2823	Cellulose man-made fibers	1000
2899	Chemicals and chemical preparations, n.e.c.	250
2814	Cyclic (coal tar) crudes	500
2815	Dyes, dye (cyclic) intermediates, and organic pigments (lakes and toners)	750
2892	Explosives	750
2894	Fatty acids	500
2871	Fertilizers	500
2872	Fertilizers, mixing only	500
2891	Glue and gelatin	250
2861	Gum and wood chemicals	500
2813	Industrial gases	1000
2819	Industrial inorganic chemicals, n.e.c.	750
2818	Industrial organic chemicals, n.e.c.	1000
2816	Inorganic pigments	1000
2833	Medicinal chemicals and botanical products	750
2851	Paints, varnishes, lacquers, and enamels	250
2844	Perfumes, cosmetics and other toilet preparations	500
2834	Pharmaceutical preparations	750
2821	Plastics materials, synthetic resins, and nonvulcanizable elastomers	750
2893	Printing ink	250
2852	Putty, calking compounds, and allied products	250

See footnotes at end of table.

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
	Major Group 28—Continued	
2841	Soap and other detergents, except specialty cleaners	750
2842	Specialty cleaning, polishing, and sanitation preparations, except soap and detergents	500
2843	Surface active agents, finishing agents, sulfonated oils and assistants	250
2824	Synthetic organic fibers, except cellulosic	1000
2822	Synthetic rubber (vulcanizable elastomers)	1000
	Major Group 36—Electrical Machinery, Equipment and Supplies:	
3624	Carbon and graphite products	750
3672	Cathode ray picture tubes	750
3643	Current carrying wiring devices	500
3634	Electric housewares and fans	750
3641	Electric lamps	1000
3611	Electric measuring instruments and test equipment	500
3619	Electric transmission and distribution equipment, n.e.c.	500
3694	Electrical equipment for internal combustion engines	750
3629	Electrical industrial apparatus, n.e.c.	500
3699	Electrical machinery, equipment and supplies, n.e.c.	500
3679	Electronic components and accessories, n.e.c.	500
3639	Household appliances, n.e.c.	500
3631	Household cooking equipment	750
3633	Household laundry equipment	1000
3632	Household refrigerators and home and farm freezers	1000
3635	Household vacuum cleaners	750
3622	Industrial controls	750
3642	Lighting fixtures	250
3621	Motors and generators	1000
3644	Noncurrent carrying wiring devices	500
3652	Phonograph records	750
3612	Power, distribution and specialty transformers	750
3692	Primary batteries, dry and wet	1000
3651	Radio and television receiving sets, except communication types	750
3671	Radio and television receiving type electron tubes, except cathode ray	1000
3662	Radio and television transmitting—signaling, and detection equipment, and apparatus	750
3693	Radiographic X-ray, fluoroscopic X-ray, therapeutic X-ray, and other X-ray apparatus and tubes	500
3636	Sewing machines	750
3691	Storage batteries	500
3613	Switchgear and switchboard apparatus	750
3661	Telephone and telegraph apparatus	1000
3673	Transmitting, industrial, and special purpose electron tubes	750
3623	Welding apparatus	250
	Major Group 34—Fabricated Metal Products, Except Ordnance, Machinery, and Transportation Equipment:	
3449	Architectural and miscellaneous metal work	250
3452	Bolts, nuts, screws, rivets and washers	500
3479	Coating, engraving, and allied services, n.e.c.	250
3466	Collapsible tubes	250
3421	Cutlery	500
3471	Electroplating, plating, polishing, anodizing and coloring	250
3431	Enameled iron and metal sanitary ware	750
3499	Fabricated metal products, n.e.c.	250
3498	Fabricated pipe and fabricated pipe fittings	250
3443	Fabricated plate work (boiler shops)	250
3441	Fabricated structural steel	250
3423	Hand and edge tools, except machine tools and hand saws	250
3425	Hand saws and saw blades	250
3429	Hardware, n.e.c.	250
3433	Heating equipment, except electric	500
3411	Metal cans	1000

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
	Major Group 34—Continued	
3442	Metal doors, sash, frames, molding, and trim	250
3497	Metal foil and leaf	500
3491	Metal shipping barrels, drums, kegs and pails	500
3461	Metal stampings	250
3481	Miscellaneous fabricated wire products	250
3432	Plumbing fixture fittings and trim (brass goods)	500
3492	Safes and vaults	500
3451	Screw machine products	250
3444	Sheet metal work	250
3493	Steel springs	500
3494	Valves and pipe fittings, except plumbers' brass goods	500
	Major Group 20—Food and Kindred Products:	
2095	Animal and marine fats and oils, except grease and tallow	250
2063	Beet sugar	750
2052	Biscuit, crackers, and pretzels	750
2045	Blended and prepared flour	500
2086	Bottled and canned soft drinks and carbonated waters	250
2051	Bread and other bakery products, except biscuit, crackers, and pretzels	250
2071	Candy and other confectionery products	250
2061	Cane sugar, except refining only	250
2062	Cane sugar refining	750
2031	Canned and cured sea foods	250
2033	Canned fruits, vegetables, preserves, jams and jellies	500
2032	Canned specialties	1000
2043	Cereal preparations	1000
2073	Chewing gum	500
2072	Chocolate and cocoa products	500
2023	Condensed and evaporated milk	500
2091	Cottonseed oil mills	250
2021	Creamery butter	250
2085	Distilled, rectified, and blended liquors	750
2034	Dried and dehydrated fruits and vegetables	500
2087	Flavoring extracts and flavoring sirups, n.e.c.	500
2041	Flour and other grain mill products	500
2026	Fluid milk	500
2099	Food preparations, n.e.c.	250
20991	Desserts (ready-to-mix)	500
20994	Baking powder and yeast	500
2036	Fresh or frozen packaged fish	250
2037	Frozen fruits, fruit juices, vegetables, and specialties	500
2094	Grease and tallow	250
2024	Ice cream and frozen desserts	500
2098	Macaroni, spaghetti, vermicelli, and noodles	250
2083	Malt	250
2082	Malt liquors	500
2097	Manufactured ice	250
2011	Meat packing plants	500
2022	Natural cheese	250
2035	Pickled fruits and vegetables; vegetable sauces and seasonings; salad dressings	250
2015	Poultry and small game dressing and packing, wholesale	250
2042	Prepared feeds for animals and fowls	250
2044	Rice milling	250
2013	Sausages and other prepared meat products	500
2096	Shortening, table oils, margarine and other edible fats and oils, n.e.c.	750
2092	Soybean oil mills	500
2025	Special dairy products	250
2093	Vegetable oil mills, except cottonseed and soybean	1000
2046	Wet corn milling	750
2084	Wines, brandy, and brandy spirits	250
	Major Group 25—Furniture and Fixtures:	
2599	Furniture and fixtures, n.e.c.	250
2519	Household furniture, n.e.c.	250
2515	Mattresses and bedsprings	250
2514	Metal household furniture	250
2522	Metal office furniture	500
2542	Metal partitions, shelving, lockers and office and store fixtures	250
2531	Public building and related furniture	250
2591	Venetian blinds and shades	250
2511	Wood household furniture, except upholstered	250
2512	Wood household furniture, upholstered	250
2521	Wood office furniture	250
2541	Wood partitions, shelving, lockers, and office and store fixtures	250
	Major Group 31—Leather and Leather Products:	
3131	Boot and shoe cut stock and findings	250
3141	Footwear, except house slippers and rubber footwear	500
3142	House slippers	250
3121	Industrial leather belting and packing	250
3151	Leather dress, semidress, and work gloves	250
3199	Leather goods, n.e.c.	250
3111	Leather tanning and finishing	250
3161	Luggage	250
3172	Personal leather goods, except handbags and purses	250
3171	Women's handbags and purses	250
	Major Group 24—Lumber and Products, Except Furniture	250
	Major Group 35—Machinery, Except Electrical:	
3581	Automatic merchandising machines	250
3562	Ball and roller bearings	750
3564	Blowers, exhaust and ventilating fans	250
3582	Commercial laundry, dry cleaning, and pressing machines	250
3571	Computing and accounting machines, including cash registers	1000
3531	Construction machinery and equipment	750
3535	Conveyors and conveying equipment	250
3534	Elevators and moving stairways	500
3522	Farm machinery and equipment	500
3551	Food products machinery	250
3569	General industrial machinery and equipment, n.e.c.	250
3536	Hoists, industrial cranes, and monorail systems	500
3565	Industrial patterns	250
3567	Industrial process furnaces and ovens	250
3537	Industrial trucks, tractors, trailers, and stackers	250
3519	Internal combustion engines, n.e.c.	1000
3591	Machine shops, jobbing and repair	250
3545	Machine tool accessories and measuring devices	250
35452	Precision measuring tools	500
3541	Machine tools, metal cutting types	500
3542	Machine tools, metal forming types	500
3599	Machinery and parts, except electrical, n.e.c.	250
3586	Measuring and dispensing pumps	500
3566	Mechanical power transmission equipment, except ball and roller bearings	500
3548	Metalworking machinery, except machine tools	500
3532	Mining machinery and equipment, except oil field machinery and equipment	500
3579	Office machines, n.e.c.	500
3533	Oil field machinery and equipment	500
3554	Paper industries machinery	250
3555	Printing trades machinery and equipment	500
3561	Pumps, air and gas compressors, and pumping equipment	500
3585	Refrigerators; refrigeration machinery, except household; and complete air conditioning units	750
3576	Scales and balances, except laboratory	250
3589	Service industry machines, n.e.c.	250
3544	Special dies and tools, die sets, jigs and fixtures	250
3559	Special industry machinery, n.e.c.	250
3511	Steam engines; steam, gas and hydraulic turbines; and steam, gas, and hydraulic turbine generator set units	1000
3552	Textile machinery	250
3572	Typewriters	1000
3584	Vacuum cleaners, industrial	250
3553	Woodworking machinery	250
	Major Group 39—Miscellaneous Manufacturing Industries:	
3991	Brooms and brushes	250
3963	Buttons	250
3984	Candles	250
3955	Carbon paper and inked ribbons	250
3943	Children's vehicles, except bicycles	250
3961	Costume jewelry and costume novelties, except precious metal	250
3942	Dolls	250
3962	Feathers, plumes, and artificial flowers	250
3992	Furs, dressed and dyed	250
3941	Games and toys, except dolls and children's vehicles	250
3912	Jewelers' findings and materials	250
3911	Jewelry, precious metal	250
3987	Lamp shades	250
3913	Lapidary work and cutting and polishing diamonds	250
3952	Lead pencils, crayons, and artists' materials	250
3982	Linoleum, asphalted-felt base, and other hard surface floor coverings, n.e.c.	750
3999	Manufacturing industries, n.e.c.	250
3953	Marking devices	250
3983	Matches	500
3988	Morticians' goods	250
3931	Musical instruments and parts	500
3904	Needles, pins, hooks and eyes, and similar notions	250
3951	Pens, pen points, fountain pens, ball point pens, mechanical pencils and parts	500
3993	Signs and advertising displays	250
3914	Silverware and plated ware	500
3949	Sporting and athletic goods, n.e.c.	250
3995	Umbrellas, parasols, and canes	250
	Major Group 19—Ordnance and Accessories:	
1922	Ammunition loading and assembling	250
1929	Ammunition, n.e.c.	250
1921	Artillery ammunition	250
1911	Guns, howitzers, mortars, and related equipment	250
1999	Ordnance and accessories, n.e.c.	250
1941	Sighting and fire control equipment	250
1951	Small arms	1000
1961	Small arms ammunition	1000
1931	Tanks and tank components	1000
	Major Group 26—Paper and Allied Products:	
2643	Bags, except textile bags	500
2661	Building paper and building board mills	750
2649	Converted paper and paperboard products, n.e.c.	500
2653	Corrugated and solid fiber boxes	250
2645	Die cut paper and paperboard; and cardboard	250
2642	Envelopes	250
2655	Fiber cans, tubes, drums, and similar products	250
2651	Folding paperboard boxes	250
2641	Paper coating and glazing	500
2621	Paper mills, except building paper mills	750
2631	Paperboard mills	750
2646	Pressed and molded pulp goods	750
2611	Pulp mills	750
2654	Sanitary food containers	250
2652	Set-up paperboard boxes	250
2644	Wallpaper	250
	Major Group 29—Petroleum Refining and Related Industries:	
2952	Asphalt felts and coatings	750
2992	Lubricating oils and greases	500
2951	Paving mixtures and blocks	250
2911	Petroleum refining [2]	1000
2999	Products of petroleum and coal; n.e.c.	250

See footnotes at end of tables.

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
	Major Group 33—Primary Metal Industries:	
3361	Aluminum castings	250
3312	Blast furnaces (including coke ovens), steel works, and rolling mills	1000
3362	Brass, bronze, copper, copper base alloy castings	250
3316	Cold rolled sheet, strip and bars	1000
3357	Drawing and insulating of nonferrous wire	1000
3313	Electrometallurgical products	750
3321	Gray iron foundries	500
3391	Iron and steel forgings	500
3322	Malleable iron foundries	500
3369	Nonferrous castings, n.e.c.	250
3392	Nonferrous forgings	250
3399	Primary metal industries, n.e.c.	750
3334	Primary production of aluminum	1000
3331	Primary smelting and refining of copper	1000
3332	Primary smelting and refining of lead	1000
3339	Primary smelting and refining of nonferrous metals, n.e.c.	750
3333	Primary smelting and refining of zinc	750
3352	Rolling, drawing, and extruding of aluminum	750
3351	Rolling, drawing, and extruding of copper	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum	750
3341	Secondary smelting, refining, and alloying of nonferrous metals and alloys	250
3323	Steel foundries	500
3317	Steel pipe and tubes	1000
3315	Steel wire drawing and steel nails and spikes	1000
	Major Group 27—Printing and Publishing Industries	250
	Major Group 38—Professional, Scientific, and Controlling Instruments: Photographic and Optical Goods: Watches and Clocks:	
3822	Automatic temperature controls	500
3843	Dental equipment and supplies	250
3811	Engineering, laboratory, and scientific and research instruments and associated equipment	500
3821	Mechanical measuring and controlling instruments, except automatic temperature controls	500
3851	Ophthalmic goods	250
3831	Optical instruments and lenses	250
3842	Orthopedic, prosthetic, and surgical appliances and supplies	250
3861	Photographic equipment and supplies	500
3841	Surgical and medical instruments and apparatus	250
3872	Watchcases	250
3871	Watches, clocks, and parts except watchcases	500
	Major Group 30—Rubber and Miscellaneous Plastics Products:	
3069	Fabricated rubber products, n.e.c.	500
3079	Miscellaneous plastics products	250
3031	Reclaimed rubber	750
3021	Rubber footwear	1000
3011	Tires and inner tubes	1000
	Major Group 32—Stone, Clay, and Glass Products:	
3291	Abrasive products	250
3292	Asbestos products	750
3251	Brick and structural clay tile	250
3241	Cement, hydraulic	750
3253	Ceramic wall and floor tile	500
3255	Clay refractories	250
3271	Concrete brick and block	250
3272	Concrete products, except block and brick	250
3281	Cut stone and stone products	250
3263	Fine earthenware (whiteware) table and kitchen articles	500
3211	Flat glass	1000

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
	Major Group 32—Continued	
3221	Glass containers	750
3231	Glass products, made of purchased glass	250
3275	Gypsum products	1000
3274	Lime	500
3296	Mineral wool	750
3295	Minerals and earths, ground or otherwise treated	250
3297	Nonclay refractories	750
3299	Nonmetallic mineral products n.e.c.	250
3264	Porcelain electrical supplies	500
3269	Pottery products, n.e.c.	250
3229	Pressed and blown glass and glassware, n.e.c.	750
3273	Ready mixed concrete	250
3293	Steam and other packing, and pipe and boiler covering	500
3259	Structural clay products, n.e.c.	250
3261	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories	750
3262	Vitreous china table and kitchen articles	500
	Major Group 22—Textile Mill Products:	
2295	Artificial leather, oilcloth, and other impregnated and coated fabrics except rubberized	250
2211	Broad woven fabric mills, cotton	1000
2221	Broad woven fabric mills, man-made fiber and silk	500
2231	Broad woven fabric mills, wool: including dyeing and finishing	250
2279	Carpets, rugs, and mats, n.e.c.	500
2298	Cordage and twine	250
2269	Dyeing and finishing textiles, n.e.c.	250
2291	Felt goods, except woven felts and hats	250
2261	Finishers of broad woven fabrics of cotton	500
2262	Finishers of broad woven fabrics of man-made fiber and silk	500
2251	Full fashioned hosiery mills	250
2256	Knit fabric mills	250
2253	Knit outerwear mills	250
2254	Knit underwear mills	250
2259	Knitting mills, n.e.c.	250
2292	Lace goods	250
2241	Narrow fabrics and other smallwares mills: cotton, wool, silk, and man-made fiber	250
2293	Paddings and upholstery filling	250
2294	Processed waste and recovered fibers and flock	250
2252	Seamless hosiery mills	250
2299	Textile goods, n.e.c.	250
2284	Thread mills	500
2296	Tire cord and fabric	1000
2272	Tufted carpets and rugs	500
2297	Wool scouring, worsted combing and tow to top mills	250
2271	Woven carpets and rugs	750
2283	Yarn mills, wool, including carpet and rug yarn	250
2281	Yarn spinning mills, cotton, man-made fibers and silk	500
2282	Yarn throwing, twisting, and winding mills, cotton, man-made fibers and silk	250
	Major Group 21—Tobacco Manufacturers:	
2111	Cigarettes	1000
2121	Cigars	500
2131	Tobacco (chewing and smoking) and snuff	500
2141	Tobacco stemming and re-drying	500
	Major Group 37—Transportation Equipment:	
3721	Aircraft	1000
3722	Aircraft engines and engine parts	1000
3729	Aircraft parts and auxiliary equipment, n.e.c.	1000
3723	Aircraft propellers and propeller parts	1000
3732	Boat building and repairing	250
3741	Locomotives and parts	1000
3717	Motor vehicles and parts[2]	1000
3751	Motorcycles, bicycles, and parts	500

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
	Major Group 37—Continued	
3742	Railroad and street cars	750
3731	Ship building and repairing	1000
3791	Trailer coaches	250
3799	Transportation equipment, n.e.c.	250
3713	Truck and bus bodies	250
3715	Truck trailers	500

[1] The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters.

Together with its affiliates does not employ more than 1,000 persons and does not have more than 30,000 barrels-per-day capacity from owned and leased facilities.

[2] The three Standard Industrial Classification industries (3711, 3712, and 3714) have been combined because of a major problem of defining the reporting unit in terms of these industries. This difficulty arises from the fact that many large establishments have integrated operations which include the production of parts or bodies and the assembly of complete vehicles at the same location.

SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT

MANUFACTURING

Census classification code	Industry	Employment size standard (number of employees)[1]
	Major Group 19—Ordnance and Accessories:	
1925	Guided missiles and space vehicles, completely assembled	1000
1931	Tanks and tank components	1000
1951	Small arms	1000
1961	Small arms ammunition	1000
	Major Group 20—Food and Kindred Products:	
2032	Canned specialties	1000
2043	Cereal preparations	1000
2046	Wet corn milling	750
2052	Biscuit, crackers, and pretzels	750
2062	Cane sugar refining	750
2063	Beet sugar	750
2085	Distilled, rectified, and blended liquors	750
2093	Vegetable oil mills, except cottonseed and soybean	1000
2096	Shortening, table oils, margarine and other edible fats and oils, n.e.c.	750
	Major Group 21—Tobacco Manufactures:	
2111	Cigarettes	1000
	Major Group 23—Textile Mill Products:	
2211	Broad woven fabric mills, cotton	1000
2261	Finishers of broad woven fabrics of cotton	1000
2271	Woven carpets and rugs	750
2296	Tire cord and fabric	1000
	Major Group 26—Paper and Allied Products:	
2611	Pulp mills	750
2621	Paper mills, except building paper mills	750
2631	Paperboard mills	750
2646	Pressed and molded pulp goods	750
2654	Sanitary food containers	750
2661	Building paper and building board mills	750
	Major Group 28—Chemicals and Allied Products:	
2812	Alkalies and chlorine	1000
2813	Industrial gases	1000
2815	Dyes, dye (cyclic) intermediates and organic pigments (lakes and toners)	750
2816	Inorganic pigments	1000
2818	Industrial organic chemicals, n.e.c.	1000
2819	Industrial inorganic chemicals, n.e.c.	750
2821	Plastics materials, synthetic resins, and nonvulcanizable elastomers	750

See footnotes at end of table.

SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT—Continued

MANUFACTURING—continued

Census classification code	Industry	Employment size standard (number of employees) [1]
	Major Group 28—Continued	
2822	Synthetic rubber (vulcanizable elastomers)	1000
2823	Cellulose man-made fibers	1000
2824	Synthetic organic fibers, except cellulosic	1000
2833	Medicinal chemicals and botanical products	750
2834	Pharmaceutical preparations	750
2841	Soap and other detergents, except specialty cleaners	750
2892	Explosives	750
	Major Group 29—Petroleum Refining and Related Industries:	
2911	Petroleum refining [2]	1000
2952	Asphalt felts and coatings	750
	Major Group 30—Rubber and Miscellaneous Plastics Products:	
3011	Tires and inner tubes	1000
3021	Rubber footwear	1000
3031	Reclaimed rubber	750
	Major Group 32—Stone, Clay, and Glass Products:	
3211	Flat glass	1000
3221	Glass containers	750
3229	Pressed and blown glass and glassware, n.e.c.	750
3241	Cement, hydraulic	750
3261	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories	750
3275	Gypsum products	1000
3292	Asbestos products	750
3296	Mineral wool	750
3297	Nonclay refractories	750
	Major Group 33—Primary Metal Industries:	
3312	Blast furnaces (including coke ovens), steel works, and rolling mills	1000
3313	Electrometallurgical products	750
3315	Steel wire drawing and steel nails and spikes	1000
3316	Cold rolled sheet, strip and bars	1000
3317	Steel pipe and tubes	1000
3331	Primary smelting and refining of copper	1000
3332	Primary smelting and refining of lead	1000
3333	Primary smelting and refining of zinc	750
3334	Primary production of aluminum	1000
3339	Primary smelting and refining of nonferrous metals, n.e.c.	750
3351	Rolling, drawing, and extruding of copper	750
3352	Rolling, drawing, and extruding of aluminum	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum	750
3357	Drawing and insulating of nonferrous wire	1000
3399	Primary metal industries, n.e.c.	750
	Major Group 34—Fabricated Metal Products, Except Ordnance, Machinery, and Transportation Equipment:	
3411	Metal cans	1000
3431	Enameled iron and metal sanitary ware	750
	Major Group 35—Machinery, except Electrical:	
3511	Steam engines; steam, gas and hydraulic turbines; and steam, gas and hydraulic turbine generator set units	1000
3519	Internal combustion engines, n.e.c.	1000
3531	Construction machinery and equipment	750
3562	Ball and roller bearings	750
3571	Computing and accounting machines, including cash registers	1000
3572	Typewriters	1000
3585	Refrigerators; refrigeration machinery, except household; and complete air conditioning units	750

See footnotes at end of table.

SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT—Continued

MANUFACTURING—continued

Census classification code	Industry	Employment size standard (number of employees) [1]
	Major Group 36—Electrical Machinery, Equipment and Supplies:	
3612	Power, distribution, and specialty transformers	750
3613	Switchgear and switchboard apparatus	750
3621	Motors and generators	1000
3622	Industrial controls	750
3624	Carbon and graphite products	750
3631	Household cooking equipment	750
3632	Household refrigerators and home and farm freezers	1000
3633	Household laundry equipment	1000
3634	Electric housewares and fans	750
3635	Household vacuum cleaners	750
3636	Sewing machines	750
3641	Electric lamps	1000
3651	Radio and television receiving sets, except communication types	750
3652	Phonograph records	750
3661	Telephone and telegraph apparatus	1000
3662	Radio and television transmitting, signaling, and detection equipment and apparatus	750
3671	Radio and television receiving type electron tubes, except cathode ray	1000
3672	Cathode ray picture tubes	750
3673	Transmitting, industrial, and special purpose electron tubes	750
3692	Primary batteries, dry and wet	1000
3694	Electrical equipment for internal combustion engines	750
	Major Group 37—Transportation Equipment:	
3717	Motor vehicles and parts [3]	1000
3721	Aircraft [4]	1000
3722	Aircraft engines and engine parts [4]	1000
3723	Aircraft propellers and propeller parts	1000
3729	Aircraft parts and auxiliary equipment, n.e.c. [5]	1000
3731	Shipbuilding and repairing	1000
3741	Locomotives and parts	1000
3742	Railroad and street cars	750
	Major Group 39—Miscellaneous Manufacturing Industries:	
3982	Linoleum, asphalted-felt-base, and other hard surface floor coverings, n.e.c.	750

[1] The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters.

[2] Together with its affiliates does not employ more than 1,000 persons and does not have more than 30,000 barrels-per-day capacity from owned and leased facilities.

[3] The three Standard Industrial Classification industries (3711, 3712, and 3714) have been combined because of a major problem of defining the reporting unit in terms of these industries. This difficulty arises from the fact that many large establishments have integrated operations which include the production of parts or bodies and the assembly of complete vehicles at the same location.

[4] Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1, as defined in the Federal Aviation Regulations:

"'Maintenance' means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance.

"'Preventive maintenance' means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations."

[5] Guided missile engines and engine parts are classified in SIC 3722. Missile control systems are classified in SIC 3662.

[F.R. Doc. 65-1715; Filed, Feb. 18, 1965; 8:45 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Docket No. 6318; Amdt. 39-38]

PART 39—AIRWORTHINESS DIRECTIVES

Fairchild Camera & Instrument Corp. Model 5424 ( ) Series Flight Data Recorder

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring the incorporation of certain modifications on Fairchild Camera & Instrument Corp. Model 5424 ( ) flight data recorders was published in 29 F.R. 15581.

Interested persons have been afforded an opportunity to participate in the making of the amendment. Comments received expressed concern on availability of parts and stringency of the compliance time. The Agency has determined that the necessary parts will be available in sufficient time to enable operators to comply with this AD within 8 months of its effective date, and the AD has been so changed. Objection in principle has also been raised to the use of this AD to impose design changes to an item meeting the requirements of a Technical Standard Order. The Agency appreciates this viewpoint but accident investigation has been hampered by the mechanical and fire damage sustained by flight recorders during accidents. Accordingly, preparation of proposed revisions to the minimum performance standards of the TSO for flight recorders has been undertaken and this AD is necessary to correct the condition of flight recorders presently installed. Some of the airlines have erroneously assumed that Fairchild is conducting a test program to demonstrate actual survivability improvement and suggested a delay in the issuance of the AD pending completion of the test program. Some tests have been conducted; however, these tests were mainly concerned with the cockpit voice recorder. These tests have been completed and no formal test program to demonstrate actual survivability improvement with the modifications proposed by the AD is planned at this time. Accordingly, the AD is issued without further delay.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 39.13 of Part 39 (14 CFR Part 39), is hereby amended by adding the following new airworthiness directive:

FAIRCHILD CAMERA & INSTRUMENT CORP. Applies to Fairchild Camera & Instrument Corp. Model 5424 ( ) Series flight data recorders installed in aircraft as required by applicable operating rules.

Compliance required within 8 months time in service after the effective date of this AD, unless already accomplished.

To improve the crash survivability of the flight record, modify the Fairchild Camera & Instrument Corp. Model 5424 ( ) Series flight data recorder as follows:

Replace the front panel assembly with a reinforced front panel assembly and install two stainless steel sideplates in accordance with Fairchild Field Service Bulletin No. 159, dated 1 September 1964.

This amendment shall become effective March 21, 1965.

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

Issued in Washington, D.C., on February 15, 1965.

G. S. MOORE,
Director,
Flight Standards Service.

[F.R. Doc. 65-1739; Filed, Feb. 18, 1965; 8:45 a.m.]

[Airspace Docket No. 64-WE-21]

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

Designation of Control Zone

On December 12, 1964, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (29 F.R. 17046) stating that the Federal Aviation Agency proposed to designate a control zone for the Tacoma, Wash. (Tacoma Industrial Airport).

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. Due consideration was given to all relevant matter presented.

The Air Transport Association and the Soaring Society of America offered no objections to the proposal.

Mr. B. J. Oswald, Manager of Tacoma Airport, which is located approximately 2.5 miles southeast of Tacoma Industrial Airport, objected to the inclusion of the Tacoma Airport within the proposed control zone. He expressed the belief that the proposed control zone would seriously hamper flying activities by imposing operational restrictions at his airport. Mr. Oswald requested that the Tacoma Airport be excluded from the proposed Tacoma Industrial control zone.

The FAA, having completed a further study of the proposed control zone, has determined that exclusion of the Tacoma Airport from the Tacoma Industrial control zone would not derogate prescribed instrument procedures at Tacoma Industrial Airport. Therefore, the FAA has deemed it in the public interest to exclude the Tacoma Airport from the proposed Tacoma Industrial control zone.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., April 29, 1965, as hereinafter set forth.

In § 71.171 (29 F.R. 17581) the Tacoma, Wash. (Tacoma Industrial Airport) control zone is added as follows:

TACOMA, WASH. (TACOMA INDUSTRIAL AIRPORT)

Within a 5-mile radius of Tacoma Industrial Airport (latitude 47°15'55" N., longitude 122°34'40" W.), excluding the portion east of a line 2 miles east of and parallel to the 009° bearing from the Gray AAF RBN. The control zone shall be effective during the times established in advance by a Notice to Airmen and continuously published in the Airman's Information Manual.

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

Issued in Los Angeles, Calif., on February 12, 1965.

JOSEPH H. TIPPETS,
Director, Western Region.

[F.R. Doc. 65-1740; Filed, Feb. 18, 1965; 8:45 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

SUBCHAPTER C—REGULATIONS UNDER SPECIFIC ACTS OF CONGRESS

PART 300—RULES AND REGULATIONS UNDER THE WOOL PRODUCTS LABELING ACT OF 1939

Representations as to Fiber Content or Country of Origin

On December 21, 1962 a notice of proposed rule making was issued by the Commission and published in the FEDERAL REGISTER on December 22, 1962. Such notice stated that the Commission would on January 30, 1963, hold a public hearing on proposed amendments to §§ 300.1, 300.3, 300.4, 300.8, 300.9, 300.10, 300.12, 300.13, 300.16, 300.18, 300.19, 300.20, 300.21, 300.23, 300.34, 300.25, 300.27, 300.28, 300.31, 300.32, and 300.33 (Rules 1, 3, 4, 8, 9, 10, 12, 13, 16, 18, 19, 20, 21, 23, 24, 25, 27, 28, 31, 32, and 33) of the rules and regulations promulgated under the Wool Products Labeling Act of 1939. Such notice provided that interested parties could participate by submitting in writing to the Commission on or before such date, their views, arguments, or other pertinent data and by presenting their views, arguments, or other data orally at such time. Such notice further provided that written rebuttal could be submitted for a period of 15 days after the close of the public hearing. A draft of the proposed amendments was made a part of the notice.

Pursuant to such notice, interested parties were afforded an opportunity to submit their views, arguments, or other data in writing through January 30, 1963, and were afforded an opportunity to be heard orally on that date. Opportunity was afforded for submission of written rebuttal for a period of fifteen days after such date. All views, arguments, and data presented have been made a part of the record.

After due consideration of the proposed amendments, suggested revisions, deletions, and additions thereto, together with all views, arguments, or other data submitted the Commission amended §§ 300.1, 300.3, 300.4, 300.8, 300.9, 300.10, 300.12, 300.13, 300.16, 300.18, 300.19, 300.20, 300.21, 300.23, 300.24, 300.25, 300.27, 300.28, 300.31, 300.32, and 300.33 (Rules 1, 3, 4, 8, 9, 10, 12, 13, 16, 18, 19, 20, 21, 23, 24, 25, 27, 28, 31, 32, and 33) of Part 300, rules and regulations under the Wool Products Labeling Act of 1939 (54 Stat. 1128; 15 U.S.C. 68) on May 20, 1964. Such amendments were published in the FEDERAL REGISTER on May 21, 1964.

In amending Part 300 on May 21, 1964 the Commission announced that it was not at that time acting on its proposed amendment of § 300.25 (Rule 25) adding paragraph (c) (representations of foreign origin); this matter was retained for further consideration.

After due consideration of the proposed amendment to § 300.25 (Rule 25) adding paragraph (c) (representations of foreign origin) and all pertinent information and material relating thereto, including suggested revisions, deletions and additions thereto and all views, arguments, and other data submitted, the following amendment to § 300.25 (Rule 25) of the rules and regulations under the Wool Products Labeling Act of 1939 is hereby promulgated:

An amendment of § 300.25 (Rule 25) by adding a new paragraph thereto designated as paragraph (c) so as to require disclosure of the country of origin of fabric contained in wool products where representations are made on labels affixed to such products that the fabric contained therein is imported.

The amendment to § 300.25 (Rule 25) is promulgated on the basis of the Commission's determination that a substantial segment of the purchasing public associates and has long associated certain types of woolen fabrics with particular countries of origin. The Commission has reason to believe that many of the purchasing public regard fabrics imported from these particular countries as being of high quality and prefer them to fabrics produced in other foreign countries. This record demonstrates that there is a prevalent practice in the sale of a number of types of woolen wearing apparel of making a representation to the effect that the article is made from an "imported fabric." In fact the fabrics are often manufactured in countries other than the ones which members of the purchasing public ordinarily think of as the source of such fabrics and which have a reputation for high quality. Where representations are made that such fabrics are "imported" without a disclosure of the country of origin, members of the purchasing public may thus be misled to an erroneous assumption about the country of origin of the fabric. The Commission concludes that in order to eliminate the misleading tendencies of any representation that a woolen article contains an imported fabric, it is necessary for the sellers to disclose in immediate conjunction with such representation, the name of the country in which the fabric was manufactured.

Such amendment to § 300.25 (Rule 25) shall become effective ninety days after publication in the FEDERAL REGISTER.

The title of § 300.25 (Rule 25) and additional paragraph (c) shall hereafter read:

§ 300.25 Representations as to fiber content or country of origin.

* * * * *

(c) When any representation is made on a stamp, tag, label, or other means of identification on or attached to a wool product that the fabric contained therein is imported, the name of the country

where the fabric was woven, knitted, felted, bonded, or otherwise manufactured shall be set forth on the stamp, tag, label, or other means of identification so as to clearly indicate that the fabric contained in the wool product was made in such country, as for example:

FABRIC WOVEN IN ITALY

NOTE: Nothing in this rule shall relieve any person subject to the Act (1) from any duty or liability under section 4(a)(1) of the Wool Products Labeling Act of 1939 which prohibits false or deceptive labeling or (2) from compliance with section 5 of the Federal Trade Commission Act which has been held to require disclosure of the country of origin of products or fabrics from which completed products are made where the failure to make such a disclosure has the tendency and capacity to deceive or (3) from the marking requirements of the Tariff Act and the regulations of the Bureau of Customs pursuant thereto.

(Sec. 6 of the Wool Products Labeling Act of 1939 (54 Stat. 1131, 15 U.S.C. 68d))

Issued: February 18, 1965.

By direction of the Commission.

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

[F.R. Doc. 65-1766; Filed, Feb. 18, 1965; 8:48 a.m.]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Exchange Authority (Including Commodity Exchange Commission), Department of Agriculture

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

Information Required Concerning Warehouses

By virtue of the authority vested in the Secretary of Agriculture by sections 5a and 8a of the Commodity Exchange Act (7 U.S.C. 7a, 12a), § 1.43 of the regulations under said act relating to information concerning warehouses (17 CFR 1.43) is hereby amended to read as follows:

§ 1.43 Information required concerning warehouses.

Each contract market shall file with the Commodity Exchange Authority a list of all warehouses in which or out of which commodities are deliverable in satisfaction of futures contracts made on or subject to the rules of such contract market, which list shall show the name, location, and storage capacity of each such warehouse, together with the name and business address of the operator thereof. The Commodity Exchange Authority shall be kept currently advised of all changes affecting such information. Each contract market shall require the operator of each such warehouse to furnish, upon call by the Act Administrator, a schedule of storage charges, handling charges, and the annual fire insurance rate applicable to such warehouse.

(Sec. 5a(3), as added by sec. 7, 49 Stat. 1497; sec. 8a(5), as added by sec. 10, 49 Stat. 1500; 7 U.S.C. 7a(3), 12a(5). 29 F.R. 16210)

The effect of the amendment is to eliminate the periodic furnishing of certain information relating to storage charges, handling charges, and fire insurance rates applicable to the warehouses involved in delivery of commodities in satisfaction of futures contracts on the respective markets, and to substitute a provision requiring submission of this information upon call by the Act Administrator.

The amendment relieves certain restrictions presently imposed and must be made effective immediately to be of maximum benefit to persons subject to the restrictions which are relieved. 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 the amendment may be made effective less than 30 days after publication in the FEDERAL REGISTER.

The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

This amendment shall become effective upon issuance.

Done at Washington, D.C., this 16th day of February 1965.

GEORGE L. MEHREN, *Assistant Secretary.*

[F.R. Doc. 65-1757; Filed, Feb. 18, 1965; 8:47 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 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Ammonium Sulfamate

A petition (PP 376) was filed with the Food and Drug Administration by E. I. du Pont de Nemours & Co., Inc., Wilmington 98, Delaware, proposing the establishment of tolerances of 5 parts per million for residues of the herbicide ammonium sulfamate in or on apples and pears.

The Secretary of Agriculture has certified that the pesticide chemical is useful for the purposes for which tolerances are being established.

After consideration of the data submitted in the petition and other relevant material which show that the tolerances established in this order will protect the public health, and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and delegated to the Commissioner of Food and Drugs by the Secretary (21 CFR 2.90), Part 120 is amended by adding to Subpart C the following new section:

§ 120.188 Ammonium sulfamate; tolerances for residues.

A tolerance of 5 parts per million is established for residues of the herbicide ammonium sulfamate in or on apples and pears.

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, D.C., 20201, written objections thereto, preferably in quintuplicate. 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.

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

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: February 12, 1965.

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

[F.R. Doc. 65-1771; Filed, Feb. 18, 1965; 8:48 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

Subpart D—Food Additives Permitted in Food for Human Consumption

NICKEL SULFATE

Effective on the date of signature of this order, the food additive regulations (21 CFR 121.242, 121.1122; 29 F.R. 5887) are amended as follows:

1. Section 121.242 *Nickel sulfate* is amended by changing the expiration date of the experimental permit issued by the U.S. Department of Agriculture to read "February 15, 1966."

2. Section 121.1122 *Nickel sulfate* is amended by changing the expiration date of the experimental permit issued by the U.S. Department of Agriculture to read "February 15, 1966."

Notice and public procedure and delayed effective date are not necessary prerequisites to the promulgation of this order since the amendments are in the nature of editorial changes.

(Sec. 409(d), 72 Stat. 1787; 21 U.S.C. 348(d))

Dated: February 15, 1965.

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

[F.R. Doc. 65-1769; Filed, Feb. 18, 1965; 8:48 a.m.]

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

SYNTHETIC FLAVORING SUBSTANCES AND ADJUVANTS

The Commissioner of Food and Drugs has evaluated data in a petition (FAP 1458), filed by The Glidden Co., 900 Union Commerce Building, Cleveland 14, Ohio, and other relevant material and has concluded that § 121.1164 of the food additive regulations should be amended to prescribe the use of additional synthetic flavoring substances. 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), § 121.1164(b) is amended by inserting in alphabetical sequence the following substances as indicated.

§ 121.1164 Synthetic flavoring substances and adjuvants.

* * * * *

(b) * * *

1,4-Cineole.
2,5-Diethyltetrahydrofuran.
Dihydrocarvone.
2-Ethylfuran.
Ethyl 2-methylbutyrate.
3-Heptanol.
3-Hexenyl isovalerate.
3-Hexenyl 2-methylbutyrate.
Hexyl isovalerate.
Hexyl 2-methylbutyrate.
p-Menth-3-en-1-ol.
2-Methylbutyl isovalerate.
2-Methyl-1,3-cyclohexadiene.
Methyl 2-methylbutyrate.
3-Octanol.
1-Octen-3-yl acetate.
3-Octyl acetate.
1-Penten-3-ol.
Phenethyl 2-methylbutyrate.
α-Terpinene.
γ-Terpinene.
β-Terpineol.

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, D.C., 20201, written objections thereto, preferably in quintuplicate. 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.

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: February 15, 1965.

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

[F.R. Doc. 65-1772; Filed, Feb. 18, 1965; 8:48 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 203—BRIDGE REGULATIONS

PART 207—NAVIGATION REGULATIONS

Miscellaneous Amendments

1. Pursuant to provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499), § 203.95(b) governing the operation of the Connecticut State Highway Department bridge across Mystic River at Mystic, Conn., is hereby amended, effective upon publication in the FEDERAL REGISTER, since the regulations have been in effect for a trial period of six months, as follows:

§ 203.95 Mystic River at Mystic, Conn.

* * * * *

(b) *Connecticut State Highway Department bridge.* (1) The owner or agency controlling the bridge shall provide the appliances and personnel necessary for the safe, prompt and efficient operation of the draw.

(2) The draw shall normally be opened on the following schedule when the signal, hereinafter prescribed for the opening of the draw, is received from an approaching vessel or other watercraft which cannot pass under the closed draw. This schedule shall not be construed to prevent the opening of the draw immediately for governmental, police or fire protection or commercial vessels or any vessels in case conditions of wind, tide or heavy volume of river traffic are such as to cause a hazard to vessels or to the bridge.

(3) Between the hours of 8:15 a.m. and 7:17 p.m. the draw need be opened only once an hour at 15 minutes after the hour for the passage of vessels other than vessels owned or operated by the Government of the United States, vessels employed for police or fire protection and commercial vessels or any vessel under conditions described in subparagraph (2) of this paragraph.

(4) From May 1 to October 31, inclusive, between the hours of 7:15 p.m. and 8:15 a.m. and from November 1 to April 30, inclusive, between the hours of 7:15 p.m. and 8 p.m. and between the hours of 4 a.m. and 8:15 a.m. the draw shall be opened on call for the passage of vessels owned or operated by the Government of the United States, vessels employed for police and fire protection and commercial vessels. The draw shall be opened as soon as practicable and in no case later than 20 minutes after receipt of the call signal for all other vessels which cannot pass the closed draw.

(5) From November 1 to April 30, inclusive, between the hours of 8 p.m. and 4 a.m. the draw shall be opened for the passage of vessels upon notice to the drawtender given at least 1 hour in advance of the time of the requested opening.

(6) All times listed are referred to local times at Mystic.

(7) The signal for opening the draw shall be given by one long blast and two short blasts of a horn or whistle. If the draw cannot be opened immediately when the signal is given, a red flag or ball by day or a red light by night shall be conspicuously displayed on the bridge.

(8) The signal for opening the draw shall be answered by a whistle on the bridge with one long blast when the opening is commenced, or by three long blasts repeated at regular intervals until acknowledged by the vessel when the bridge cannot be opened promptly or, if opened, must be closed immediately.

(9) A copy of the regulations in this paragraph shall be conspicuously posted on both the upstream and downstream sides of the bridge in such a manner that it can be easily read at any time.

[Regs., February 4, 1965, 1507-32 (Mystic River, Conn.)—ENGCW-ON] (Sec. 5, 28 Stat. 362; 33 U.S.C. 499)

2. Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499), § 203.716(f) governing the operation of the State of California highway bridge across the American River at Sacramento, Calif., is hereby amended to permit the bridge to remain in a closed position, effective 30 days after publication in the FEDERAL REGISTER, as follows:

§ 203.716 Sacramento River and its tributaries, California.

* * * * *

(f) *American River; State of California highway bridge at Sacramento.* The draw need not be opened for the passage of vessels and the special regulations contained in § 203.710 shall not apply to this bridge.

[Regs., February 4, 1965, 1507-32 (American River, Calif.)—ENGCW-ON] (Sec. 5, 28 Stat. 362; 33 U.S.C. 499)

3. Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499), § 203.740 is hereby amended with respect to paragraph (a)(1) to revise the call signal for opening the draw of the highway bridge across Youngs Bay at Smith Point, Oreg., effective 30 days after publication in the FEDERAL REGISTER, as follows:

§ 203.740 Youngs Bay, Walluski River, Lewis and Clark River, Skipanon River, John Day River, Blind Slough, and Clatskanie River, Oreg.; bridges.

(a) * * *

(1) Highway bridge across Youngs Bay at Smith Point, two long blasts followed quickly by two short blasts.

* * * * *

[Regs., February 5, 1965, 1507-32 (Youngs Bay, Oreg.)—ENGCW-ON] (Sec. 5, 28 Stat. 362; 33 U.S.C. 499)

4. Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), § 207.615 is hereby amended in its entirety to govern the use and navigation of waters of the Pacific Ocean around San Nicolas Island, Calif., effective 30 days after publication in the FEDERAL REGISTER, as follows:

§ 207.615 Pacific Ocean around San Nicolas Island, Calif., naval restricted area.

(a) *The area.* The waters of the Pacific Ocean around San Nicolas Island, Calif., extending about 3 miles seaward from the shoreline, described as follows:

	Latitude	Longitude
Point A	33°10'10"	119°24'20"
Point C	33°10'10"	119°31'10"
Point D	33°12'00"	119°35'30"
Point E	33°14'20"	119°37'40"
Point F	33°16'40"	119°38'10"
Point G	33°19'10"	119°37'10"
Point I	33°20'10"	119°31'10"
Point K	33°17'40"	119°24'50"
Point L	33°13'50"	119°21'50"

(b) *Sections of area.* (1) ALPHA section is the northerly section of the area, and is described as follows:

	Latitude	Longitude
Point G	33°19'10"	119°37'10"
Point I	33°20'10"	119°31'10"
Point J	33°18'18"	119°26'29"
Point O	33°15'43"	119°28'40"
Thence northwesterly along shoreline to Point N		
Point N	33°16'30"	119°30'40"
Point G	33°19'10"	119°37'10"

(2) BRAVO section is the westerly section of the area, and is described as follows:

	Latitude	Longitude
Point N	33°16'30"	119°3'40"
Thence westerly, southerly and easterly along the shoreline to Point M		
Point M	33°13'10"	119°29'40"
Point B	33°10'10"	119°29'40"
Point C	33°10'10"	119°31'10"
Point D	33°12'00"	119°35'30"
Point E	33°14'20"	119°37'40"
Point F	33°16'40"	119°38'10"
Point G	33°19'10"	119°37'10"
Point N	33°16'30"	119°30'40"

(3) CHARLIE section is the easterly section of the area, and is described as follows:

	Latitude	Longitude
Point J	33°18'18"	119°26'29"
Point O	33°15'43"	119°28'40"
Thence easterly, southerly and westerly along the shoreline to Point M		
Point M	33°13'10"	119°29'40"
Point B	33°10'10"	119°29'40"
Point A	33°10'10"	119°24'20"
Point L	33°13'50"	119°21'50"
Point K	33°17'40"	119°24'50"
Point J	33°18'18"	119°26'29"

(c) *Markers.* Range markers, as delineated below, are installed at Points M, N, and O for navigational purposes to indicate the boundaries between sections ALPHA, BRAVO, and CHARLIE.

(1) At Point M two triangular markers are installed facing southward, 10 feet in length on each side, with red and white diagonal stripes, each marker mounted atop 80-foot poles spaced 100 yards apart, each pole being located on the line of longitude 119°29'40" W. and near the southerly shoreline at latitude 33°13'10" N. The southernmost marker is 20 feet below the other.

(2) At Point N two triangular markers are installed facing northwesterly, 10 feet in length on each side, with red and white diagonal stripes, each marker mounted atop 80-foot poles spaced 100 yards apart, the poles being located near the northwesterly shoreline at latitude 33°16'30" N. and longitude 119°30'40" W. The northernmost marker is 20 feet below the other.

(3) At Point O two triangular markers are installed facing northeasterly, 10 feet in length on each side, with red and white diagonal stripes, each marker mounted atop 80-foot poles spaced 100 yards apart, the poles being located near the northeasterly shoreline at latitude 33°15'43" N. and longitude 119°28'40" W. The northernmost marker is 20 feet below the other.

(d) *The regulations.* (1) No seaplanes, other than those approved for entry by the Commander, Pacific Missile Range (COMPMR) may enter any section of the area.

(2) Subject to the provisions of subparagraph (4) of this paragraph, relating to sections BRAVO and CHARLIE, no vessels other than Pacific Missile Range craft and those cleared for entry by COMPMR, or the Officer-in-Charge, San Nicolas Island shall enter any section of the area at any time except in an emergency, proceeding with extreme caution.

(3) Dredging, dragging, seining, or other fishing operations within ALPHA section of the area are prohibited at all times.

(4) Dredging, dragging, seining, or other fishing operations are allowed within the boundaries of BRAVO and CHARLIE sections at all times except when declared closed by COMPMR. Notice that sections BRAVO and/or CHARLIE are closed to fishing shall be given by publication of notices to mariners, or may be obtained by monitoring standard Coast Guard radio broadcasts or by contacting the Pacific Missile Range by telephone or radio. Boats must remain at least 300 yards from the shoreline of San Nicolas Island at all times. Nothing in this provision shall be construed as authorization for personnel to land on San Nicolas Island, except in an emergency.

(5) The regulations in this section shall be enforced by personnel attached to the Pacific Missile Range, Point Mugu, Calif., and by such agencies as may be designated by the Commandant, 11th Naval District, San Diego, Calif.

[Regs., February 4, 1965, 1507-32 (San Nicolas Island, Calif.)—ENGCW-ON] (Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

J. C. LAMBERT,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 65-1744; Filed, Feb. 18, 1965; 8:45 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

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

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular 2180]

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

Subpart 4111—Awards of Grazing Privileges

CHANGE IN CODIFICATION

The purpose of this amendment is to renumber § 4111.4 in order to permit a recodification of the entire section to allow for development of general introductory regulations and internal procedures at a later date.

This rule relates to agency procedure and is not required by law to be published as proposed rule making. This Department, nevertheless, customarily gives such notice and public procedure thereon. However, that practice is deemed unnecessary in this instance because the change involved is editorial in nature. Accordingly this rule shall become effective upon the date of publication in the FEDERAL REGISTER.

1. Section 4111.4-1 is renumbered to read as follows: § 4111.4-2 *Increases.*

2. Section 4111.4-2 is renumbered to read as follows: § 4111.4-3 *Reductions.*

STEWART L. UDALL,
Secretary of the Interior.

FEBRUARY 13, 1965.

[F.R. Doc. 65-1754; Filed, Feb. 18, 1965; 8:47 a.m.]

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 3538]

[Nevada 051745]

NEVADA

Partly Revoking Reclamation Withdrawals (Colorado River Storage Project)

By virtue of the authority contained in section 3 of the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), it is ordered as follows:

1. The Departmental orders of January 31, 1903, and September 8, 1903, and any other order or orders which withdrew lands for reclamation purposes in connection with the Colorado River Storage Project, under the provisions of the Act of June 17, 1902, supra, are hereby revoked so far as they affect the following-described lands:

MOUNT DIABLO MERIDIAN

T. 32 S., R. 65 E.,
Sec. 13;
Secs. 23 to 26, incl.;
Secs. 34 to 36, incl.
T. 33 S., R. 65 E.,
Secs. 1 to 3, incl.;
Secs. 10 to 13, incl.;
Secs. 24 and 25.

T. 32 S., R. 66 E.,
Secs. 19 and 20.

The areas described aggregate approximately 12,160 acres.

The lands are situated along the Colorado River, in Clark County, Nev. Topography is extremely rough and broken. Vegetation is sparse and consists of shrubs native to the southwest desert.

2. Subject to valid existing rights and to the provisions of existing withdrawals and procedures, the lands shall, at 10 a.m. on March 19, 1965, become subject to disposition under the public land laws, including location under the U.S. mining laws. All valid applications received at or prior to 10 a.m. on March 19, 1965, shall be considered as simultaneously filed at that time. Those filed thereafter shall be considered in the order of filing.

Sections 1, 13, 24 and 25, T. 33 S., R. 65 E., and E½ of section 20, T. 32 S., R. 66 E., were segregated from all forms of entry under the public land laws of the United States pursuant to section 2 of the Act of April 22, 1960 (74 Stat. 74) by an order dated May 11, 1960 (25 F.R. 4397).

Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims, must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Reno, Nev.

JOHN A. CARVER, Jr.,
Under Secretary of the Interior.

FEBRUARY 11, 1965.

[F.R. Doc. 65-1747; Filed, Feb. 18, 1965; 8:46 a.m.]

[Public Land Order 3545]

[Oregon 015476]

OREGON

Partly Revoking Power Site Reserve No. 578

By virtue of the authority vested in the President by section 1 of the Act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141), and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. The Executive Order of February 6, 1917, creating Power Site Reserve No. 578, is hereby revoked so far as it affects the following-described lands:

WILLAMETTE MERIDIAN

T. 39 S., R. 4 E.,
Sec. 22, SW¼SW¼.
Containing 40 acres in Jackson County.

The tract is located about 18 air line miles east of Ashland, at an elevation between 3900 feet and 4360 feet. Soil is generally a silty clay loam.

2. This order shall not otherwise become effective to change the status of the lands until 10 a.m. on March 23, 1965. After that date and hour the lands shall become subject to application, petition, location and selection generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on March 23, 1965, shall be considered as simultaneously filed at that time. Those filed thereafter shall be considered in the order of filing.

3. The lands have been open to applications and offers under the mineral leasing laws and to location under the mining laws pursuant to the Act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621).

4. This revocation is made in aid of an exchange by which the offered lands will benefit a Federal land program. Under these circumstances the provisions of R.S. 2276 as amended (43 U.S.C. 852), affording to States a preference right of application upon the revocation of an order of withdrawal, do not apply.

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Portland, Oreg.

JOHN A. CARVER, Jr.,
Under Secretary of the Interior.

FEBRUARY 15, 1965.

[F.R. Doc. 65-1748; Filed, Feb. 18, 1965; 8:46 a.m.]

[Public Land Order 3546]

[Fairbanks 010571]

ALASKA

Partly Revoking Public Land Order No. 1507 of September 11, 1957

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. Public Land Order No. 1507 of September 11, 1957, withdrawing public lands in furtherance of the Act of May 4, 1956 (70 Stat. 130), is hereby revoked so far as it affects the following-described land:

FIELDING LAKE AREA

U.S. SURVEY 3299

Tract 4, lot 31.
Containing 26.39 acres.

2. Until 10 a.m. on May 17, 1965, the State of Alaska shall have a preferred right to select the land as provided by the Act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46-3b), and section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339), and the regulations in 43 CFR 2222.9 (formerly 43 CFR Part 76).

3. This order shall not otherwise become effective to change the status of the land until 10 a.m. on May 17, 1965. After that time the land shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications except preference right applications from the State received at or prior to 10 a.m. on May 17, 1965, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The land has been open to applications and offers under the mineral leasing laws. It will be open to location under the U.S. mining laws at 10 a.m. on May 17, 1965.

Inquiries concerning the land should be addressed to the Manager, Land Office, Bureau of Land Management, Fairbanks, Alaska.

JOHN A. CARVER, Jr.,
Under Secretary of the Interior.

FEBRUARY 15, 1965.

[F.R. Doc. 65-1749; Filed, Feb. 18, 1965; 8:46 a.m.]

[Public Land Order 3547]

[Washington 05491]

WASHINGTON

Withdrawal for National Forest 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:

1. Subject to valid existing rights, the following-described national forest lands are hereby withdrawn from appropriation under the U.S. mining laws (Ch. 2, Title 30, U.S.C.), but not from leasing under the mineral leasing laws, in aid of programs of the Department of Agriculture:

SNOQUALMIE NATIONAL FOREST

WILLAMETTE MERIDIAN

T. 25 N., R. 11 E.,
Sec. 4, those parts of lot 1 and N½S½SE¼ lying west of Miller River, and lot 2.

The areas described aggregate approximately 70 acres in King County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their mineral and vegetative resources other than under the mining laws.

JOHN A. CARVER, Jr.,
Under Secretary of the Interior.

FEBRUARY 15, 1965.

[F.R. Doc. 65-1750; Filed, Feb. 18, 1965; 8:46 a.m.]

[Public Land Order 3548]

[Arizona 032793]

ARIZONA

Partly Revoking Air Navigation Site Withdrawal No. 158

By virtue of the authority vested in the Secretary of the Interior by section 4 of the act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 214), it is ordered as follows:

1. The departmental order of April 9, 1941, withdrawing lands for use of the Department of Commerce for air navigation facilities, is hereby revoked so far as it affects the following described lands:

GILA AND SALT RIVER MERIDIAN

T. 3 N., R. 13 W.,
Sec. 21, S½SE¼;
Sec. 22, NE¼SW¼, S½SW¼, SW¼SE¼;
Sec. 27, NW¼NE¼, N½NW¼, SE¼NW¼;
Sec. 28, N½NE¼.
Containing 480.00 acres in Yuma County.

The lands are located about 15 miles southeast of Salome. Topography is

nearly flat. Soils are a deep alluvial, sandy loam.

2. Until 10 a.m. on August 16, 1965, the State of Arizona shall have the preferred right of application to select any of the restored land for school land indemnity purposes as provided by R.S. 2276, as amended (43 U.S.C. 852).

3. Beginning at 10 a.m. on August 16, 1965, the lands shall be open to disposition under the public land laws generally, subject to valid existing rights and to the provisions of existing withdrawals. All applications received at or prior to 10 a.m. on March 23, 1965, shall be considered as simultaneously filed at that time. Those filed thereafter shall be considered in the order of filing. The lands have been open to applications and offers under the mineral leasing laws. They will be open to location under the United States mining laws subject to provisions of the act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621), at 10 a.m. on August 16, 1965.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Phoenix, Ariz.

JOHN A. CARVER, Jr.,
Under Secretary of the Interior.

FEBRUARY 15, 1965.

[F.R. Doc. 65-1751; Filed, Feb. 18, 1965; 8:46 a.m.]

[Public Land Order 3549]

[Anchorage 061053]

ALASKA

Partial Revocation of Public Land Order No. 5 of June 26, 1942, Which Withdrew Public Lands for Use of War Department for Military Purposes

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. Public Land Order No. 5 of June 26, 1942, which withdrew public lands for use of the War Department for military purposes, as amended by Public Land Orders No. 284 of June 12, 1945 and No. 2676 of May 4, 1962, is hereby revoked so far as it affects the following-described lands:

SEWARD MERIDIAN

T. 12 N., R. 3 W.,
Sec. 10, S½;
Sec. 11, S½.
T. 13 N., R. 3 W.,
Sec. 35, NW¼NW¼.

The areas described aggregate 680 acres.

2. Until 10 a.m. on May 17, 1965, the State of Alaska shall have a preferred right to select the lands described in paragraph 1, above, as provided by the Act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46-3(b)), section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339), and the regulations in 43 CFR 2222.9 (formerly 43 CFR Part 76).

3. This order shall not otherwise become effective to change the status of the lands until 10 a.m. on May 17, 1965. At that time, they shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications except preference right applications from the State, received at or prior to 10 a.m. on May 17, 1965, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The lands have been open to applications and offers under the mineral leasing laws. They will be open to location under the United States mining laws at 10 a.m. on May 17, 1965.

5. Persons claiming preference rights based upon valid settlement, statutory preference or equitable claims, must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Anchorage, Alaska.

JOHN A. CARVER, Jr.,
Under Secretary of the Interior.

FEBRUARY 15, 1965.

[F.R. Doc. 65-1752; Filed, Feb. 18, 1965; 8:46 a.m.]

[Public Land Order 3550]

[Montana 065304]

MONTANA

Withdrawal of Ringing Rocks Recreation Site

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, the following-described public lands which are under the jurisdiction of the Secretary of the Interior are hereby withdrawn from all forms of appropriation under the public lands laws, including the mining laws, but not from leasing under the mineral leasing laws, to protect their recreation values:

PRINCIPAL MERIDIAN

T. 2 N., R. 5 W.,
Sec. 9, NW¼.

Containing 160 acres.

2. The withdrawal made by this order does not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit or governing the disposal of their mineral and vegetative resources, other than under the mining laws.

JOHN A. CARVER, Jr.,
Under Secretary of the Interior.

FEBRUARY 15, 1965.

[F.R. Doc. 65-1753; Filed, Feb. 18, 1965; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 2240]

TOWNSITES

Issuance of Certified Statements

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by section 2478 of the Revised Statutes (43 U.S.C. 1201), it is proposed to amend 43 CFR 2242 as set forth below. The purpose of this amendment is to provide procedures for the issuance of certified statements as to information contained in Bureau of Land Management records concerning trustee's deeds which conveyed title to lots included in townsites in Oklahoma. The regulation provides for a $20 nonrefundable service fee to cover the costs of issuing such certificates.

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

A new section is added to read as follows:

§ 2242.6–4 Certified statements.

(a) *Authority.* The act of May 14, 1890 (26 Stat. 109, 43 U.S.C. 1111) authorized trustees appointed by the Secretary of the Interior to enter lands as townsites, and, in the execution of their trusts, to convey title to such property. When, by the act of July 7, 1898 (30 Stat. 674, 43 U.S.C. 1111) all boards of trustees for townsites were abolished, the Commissioner of the General Land Office was vested with the authority to complete the trusts. The functions of the Commissioner of the General Land Office were transferred to the Secretary of the Interior by Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

(b) *Procedures.* (1) Upon application, and the payment of a nonrefundable service fee of $20, the authorized officer may issue a statement certifying to the information and data contained in the records of the Bureau of Land Management concerning the issuance of trustee's deeds which conveyed title to lots included in townsites in Oklahoma.

(2) No form of application is required. However, the application shall contain sufficient information to identify the tract or lot involved, and the person to whom the deed was issued.

STEWART L. UDALL,
Secretary of the Interior.

FEBRUARY 13, 1965.

[F.R. Doc. 65–1755; Filed, Feb. 18, 1965; 8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 1012]

[Docket No. AO–347]

MILK IN TAMPA BAY MARKETING AREA

Notice of Hearing on Proposed Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), 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 a public hearing to be held at the Sheraton Tampa Motor Inn, 515 East Cass Street, Tampa, Fla., beginning at 10 a.m., e.s.t., on March 15, 1965, with respect to a proposed marketing agreement and order, regulating the handling of milk in the Tampa Bay marketing area.

The public hearing is for the purpose of receiving evidence with respect to economic and marketing conditions which relate to the proposed marketing agreement and order, hereinafter set forth, and any appropriate modifications thereof; and for the purpose of determining (1) whether the handling of milk in the area proposed for regulation is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce, (2) whether there is need for a marketing agreement or order regulating the handling of milk in the area, and (3) whether provisions specified in the proposals or some other provisions appropriate to the terms of the Agricultural Marketing Agreement Act of 1937, as amended, will tend to effectuate the declared policy of the Act.

The proposals, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Independent Dairy Farmers' Association, Inc.

Proposal No. 1.

DEFINITIONS

§ 1012.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

§ 1012.2 Secretary.

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

§ 1012.3 Department.

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

§ 1012.4 Person.

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

§ 1012.5 Cooperative association.

"Cooperative association" means any cooperative association of producers which is determined by the Secretary:

(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 and to be exercising full authority in the sale of milk for its members; and

(c) To have its entire activities under the control of its members.

§ 1012.6 Tampa Bay Marketing Area.

"Tampa Bay Marketing Area", hereinafter called the "marketing area", means all territory within the boundaries of the counties, all in the State of Florida, and hereinafter listed in this section together with all piers, docks and wharves connected therewith and including all territory within such boundaries which is occupied by Government (municipal, State or Federal) installations, institutions or other establishments:

Charlotte.	Lee.
Collier.	Manatee.
De Soto.	Pasco.
Hardee.	Pinellas.
Hernando.	Polk.
Highlands.	Sarasota.
Hillsborough.	

§ 1012.7 Distributing plant.

"Distributing plant" means any milk plant engaged in receiving, processing or packaging of fluid milk or fluid milk products and from which any Class I milk (as defined pursuant to § 1012.41(a)(1)) is disposed of on routes in the marketing area.

§ 1012.8 Supply plant.

"Supply plant" means any plant from which fluid milk or any fluid milk product defined as Class I milk (pursuant to § 1012.41(a)(1)) is moved to a distributing plant.

§ 1012.9 Pool plant.

"Pool plant" means a plant described in paragraphs (a) or (b) of this section except the plant of a producer-handler and a plant which is exempt pursuant to § 1012.61:

(a) A distributing plant (1) from which, during the month, 50 percent or more of the total quantity of fluid milk and other Class I products received at the plant from dairy farmers and from other sources is disposed of as Class I milk, and (2) from which 10 percent or more of such Class I disposition is on routes in the marketing area.

(b) A supply plant from which, during the month, a quantity of milk or other Class I products equal to 50 percent or

more of the milk received at the plant from dairy farmers is moved to plants which are pool plants pursuant to paragraph (a) of this section.

§ 1012.10 Nonpool plant.

"Nonpool plant" means any milk receiving, handling, processing or manufacturing plant other than a pool plant. 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 skim milk and butterfat in the form of products designated as Class I milk pursuant to § 1012.41(a)(1) in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which skim milk and butterfat in the form of products designated as Class I pursuant to § 1012.41(a)(1) are moved to a pool plant during the month.

§ 1012.11 Route.

"Route" means any delivery of Class I products to retail or wholesale outlets (including delivery by a vendor or disposition from or through a plant store or by vending machine) other than delivery to a pool or nonpool plant.

§ 1012.12 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant or of a nonpool distributing plant or a nonpool supply plant; and

(b) A cooperative association with respect to milk of any producer which such cooperative association causes to be diverted in accordance with the provisions of § 1012.14 from a pool plant to a nonpool plant for the account of such association.

§ 1012.13 Dairy farmer.

"Dairy farmer" means any person who produces milk which is delivered in bulk to a plant.

§ 1012.14 Producer.

"Producer" means any dairy farmer, other than a producer-handler who produces milk approved for fluid disposition by a duly constituted health authority, and which milk;

(a) Is received at a pool plant; or

(b) Is diverted to a nonpool plant by a cooperative association subject to the following conditions:

(1) The milk of any member producer whose milk is received at a pool plant on not less than 5 days during any month may be diverted without limit during the remainder of the month: *Provided,* That the total quantity of milk so diverted does not exceed 20 percent of the association member milk received by all pool plants during the month: *And provided further,* That if this percentage limitation is exceeded, diversions in excess of such 20 percent shall not be considered as producer milk and the diverting cooperative association shall specify the dairy farmers whose milk is ineligible as producer milk; and

(2) Such diverted milk shall for purpose of location differentials pursuant to §§ 1012.52 and 1012.82 be considered to have been received at the location of the pool plant where last received prior to its diversion.

§ 1012.15 Producer-handler.

"Producer-handler" means a person who is both a dairy farmer and the operator of a distributing plant and who during the month receives no milk or other Class I products from any source other than the dairy farm of which he is the operator.

§ 1012.16 Producer milk.

"Producer milk" means any skim milk or butterfat contained in milk:

(a) Received directly at a pool plant from producers; or

(b) Diverted in accordance with the provision of § 1012.14(b).

§ 1012.17 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of Class I products except (1) producer milk, or (2) receipts from other pool plants; or

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

§ 1012.18 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 U.S. Department of Agriculture 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 Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1012.19 Chicago butter price.

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

MARKET ADMINISTRATOR

§ 1012.20 Designation.

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

§ 1012.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

§ 1012.22 Duties.

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

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

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

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

(d) Pay out of the funds received pursuant to § 1012.88:

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

(2) His own compensation, and

(3) All other expenses, except those incurred under § 1012.87, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

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

(f) Publicly announce at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1012.30 through 1012.32 or payments pursuant to §§ 1012.80 through 1012.88;

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

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

pends; and by such other means as are necessary;

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

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

(1) The fifth day of each month, the Class I price and butterfat differential computed pursuant to §§ 1012.50 and 51 respectively, both for the current month;

(2) The fifth day of each month, the Class II and Class III prices computed pursuant to § 1012.50 (b) and (c) respectively, and the butterfat differentials computed pursuant to § 1012.51 (b) and (c) respectively, all for the preceding month; and

(3) The eleventh day of each month, the uniform price computed pursuant to § 1012.71 and the producer butterfat differential computed pursuant to § 1012.81, both for the preceding month; and

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

(l) Whenever required for purposes of allocating receipts from other order plants pursuant to § 1012.46(a)(8) and the corresponding step of § 1012.46(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;

(m) 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 skim milk and butterfat in the form of milk products designated in § 1012.41(a) from an other order plant, the classification to which such receipts are allocated pursuant to § 1012.46 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such reports; and

(n) Furnish to each handler operating a pool plant who has shipped skim milk and butterfat in the form of milk products designated as Class I milk pursuant to § 1012.41(a) to an other order plant, the classification to which such skim milk and butterfat was 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

§ 1012.30 Reports of source and utilization.

(a) On or before the seventh day after the end of each month each handler, except a producer-handler, for each of his pool plants, and each cooperative association with respect to milk for which it is the handler pursuant to § 1012.12(b), shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) The quantities of skim milk and butterfat contained in (i) receipts of producer milk (including such handler's own production), (ii) receipts from other pool plants in the form of products designated as Class I milk pursuant to § 1012.41(a)(1), and (iii) receipts of other source milk.

(2) Inventories of products designated as Class I milk pursuant to § 1012.41(a)(1) on hand at the beginning and end of the month; and

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

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

(b) Each handler operating a nonpool distributing plant pursuant to § 1012.7 shall, unless otherwise directed by the market administrator, report for such plant at the same time and in the same manner prescribed for pool handlers in paragraph (a) of this section.

§ 1012.31 Producer payroll reports.

(a) On or before the 20th day of each month each handler, except a producer-handler, for each of his pool plants, and each cooperative association which is a handler pursuant to § 1012.12(b) shall report to the market administrator in the detail and on forms prescribed by the market administrator his producer payroll for the preceding month which shall show for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The days on which milk was received from such producer;

(4) The average butterfat content of such milk; and

(5) The net amount of the handler's payment to each producer and cooperative association together with the price paid and the amount and nature of any deductions or charges involved in such payments.

(b) Each handler who received milk from producers for which payment is to be made to a cooperative association pursuant to § 1012.80(d) shall report to such cooperative association concerning each producer-member of such cooperative association from whom he received milk as follows:

(1) At the time advance payments are made pursuant to § 1012.80 (a), (b), and (d), the total pounds of milk received during the period for which payment is being made; and

(2) On or before the 10th day of each month for the preceding month:

(i) The name, address and code number, if any;

(ii) The total pounds of milk received;

(iii) The pounds of milk received each day, together with the butterfat test of such milk;

(iv) The nature and amount of any deductions to be made from payments; and

(v) The nature and amount of any payments due pursuant to § 1012.86.

§ 1012.32 Other reports.

(a) On or before the first day other source milk, as defined pursuant to § 1012.17(a), is received at his pool plant, the handler operating such plant shall report to the market administrator his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product.

(b) Each producer-handler and each handler operating a nonpool supply plant, a nonpool distributing plant (other than a plant for which reports are made pursuant to § 1012.30(b)), or a plant exempt pursuant to § 1012.61 shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(c) Each handler dumping skim milk pursuant to § 1012.41(c)(3) shall give the market administrator during normal duty hours, not less than 3 hours advance notice of intention to make such disposition and of the quantities of skim milk involved.

(d) On or before the second day of the following month, each handler operating a pool plant that during the month has made bulk shipments of skim milk and butterfat in the form of milk, skim milk, or cream to an other order plant shall report to the market administrator the location of such other order plant, the identity of its plant operator, and the identity of product shipped.

§ 1012.33 Records and facilities.

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

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

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

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

(d) Payments to producers and cooperative association, including any deductions and the disbursement of money so deducted.

§ 1012.34 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 3 years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such 3-year

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

CLASSIFICATION OF MILK

§ 1012.40 Skim milk and butterfat to be classified.

All skim milk and butterfat received within the month at pool plants which is required to be reported pursuant to § 1012.30 shall be classified by the market administrator in accordance with the provisions of §§ 1012.41 through 1012.46. If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all the water originally associated with such solids.

§ 1012.41 Classes of utilization.

Subject to the conditions set forth in §§ 1012.42 to 1012.46 the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat.

(1) Disposed of in fluid form (other than in hermetically sealed containers) as milk (including frozen and concentrated milk), flavored milk, skim milk, reconstituted milk, and fortified milk or skim milk: *Provided*, That any product fortified with added nonfat milk solids shall be Class I in an amount equal only to the weight of an equal volume of milk or skim milk of the same butterfat content; and

(2) Not specifically accounted for as Class II or Class III milk.

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

(1) Disposed of as cream (sweet or sour), half and half, buttermilk, acidophilus milk and chocolate drink, and

(2) Contained in inventory of products designated as Class I pursuant to paragraph (a) of this section on hand at the end of the month.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce any product other than those specified in paragraphs (a) and (b) of this section;

(2) Disposed of for livestock feed;

(3) Contained in skim milk dumped after prior notification to the market administrator pursuant to § 1012.32(c);

(4) The weight of skim milk in fortified fluid milk products which is excepted from Class I milk pursuant to the proviso in paragraph (a)(1) of this section;

(5) In shrinkage up to, but not in excess of, 2 percent of the total receipts of skim milk and butterfat, respectively, in (i) producer milk, (ii) receipts of milk and skim milk in bulk from an other order plant, exclusive of the quantity for which Class II or Class III utilization was requested by the operator of such plant and the handler, and (iii) receipts of milk and skim milk in bulk from unregulated supply plants, exclusive of the quantity for which Class II or Class III utilization was requested by the handler; and

(6) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1012.42(b)(2).

§ 1012.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts as follows:

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

(b) Prorate the resulting amounts between the skim milk and butterfat contained in:

(1) Items specified in § 1012.41(c)(5); and

(2) Remaining receipts of other source milk received in the form of fluid milk or skim milk.

§ 1012.43 Responsibility of handlers and reclassification of milk.

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

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

§ 1012.44 Transfers.

Skim milk or butterfat transferred from a pool plant by the operator of the pool plant or diverted by a cooperative association in its capacity as a handler pursuant to § 1012.12(b) shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred in the form of milk products designated as Class I milk pursuant to § 1012.41(a), from a pool plant to the pool plant of another handler, subject in either event to the following conditions:

(1) The skim milk or butterfat so assigned to any class shall be limited to the amount thereof remaining in such class in the transferee plant after computation pursuant to § 1012.46(a)(8) and the corresponding step of § 1012.46(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1012.46(a)(3), and the corresponding step of § 1012.46(b), the skim milk and butterfat so transferred 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 § 1012.46(a)(7) or (8) and the corresponding steps of § 1012.46(b) the skim milk and butterfat so transferred 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 or diverted in bulk form as milk or skim milk 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 transferring 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 § 1012.30 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 milk products designated as Class I milk pursuant to § 1012.41(a) 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 milk or skim milk 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 the regular source 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 the regular source of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source 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 III milk to the extent available and the remainder as Class II milk;

(c) As Class I milk, if transferred in bulk form as cream to a nonpool plant that is neither an other order plant nor a producer-handler plant unless:

(1) The transferring handler claims classification as Class II milk;

(2) The handler gives the market administrator sufficient notice to allow him to verify the shipment;

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

(4) Not less than an equivalent amount of skim milk and butterfat was actually utilized in the nonpool plant in the use indicated in such report: *Provided*, That if it is found that an equivalent amount of skim milk and butterfat was not actually used in such plant during the month in such indicated use, the quantity transferred in excess of such actual use shall be classified as Class I milk; and

(d) As follows, if transferred to an other order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred in the form of skim milk or butterfat in milk products designated as Class I milk pursuant to § 1012.41(a) in packaged form, classification shall be in the classes to which allocated as fluid milk product under the other order;

(2) If transferred in the form of skim milk and butterfat in milk products designated as Class I milk pursuant to § 1012.41(a) in bulk form, classification shall be in the classes to which allocated 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, transfers in bulk form shall be classified as Class III to the extent of the Class III 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 (d), if the transferee order provides for more than two classes of utilization, milk allocated to a class consisting primarily of milk products designated as Class I milk pursuant to § 1012.41(a) shall be classified as Class I, and milk allocated to other classes shall be classified in a comparable classification as Class II or Class III milk; and

(6) If the form in which any milk product designated as Class I milk pursuant to § 1012.41(a) is transferred 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 § 1012.41.

§ 1012.45 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization submitted by each handler pursuant to § 1012.30(a) and shall compute the total pounds of skim milk and butterfat, respectively, in Class I milk, Class II milk and Class III milk at all of the pool plants of each such handler and for each cooperative association in its capacity as a handler pursuant to § 1012.12(b).

§ 1012.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1012.45, the market administrator shall determine the classification of producer milk for each handler for each month as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1012.41(c)(3);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in the form of milk products designated as Class I pursuant to § 1012.41(a), received in packaged form from other order plants as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 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 III, the pounds of skim milk in each of the following:

(i) Other source milk as specified in § 1012.17(b);

(ii) Receipts of milk products designated pursuant to § 1012.41(a) for which Grade A certification is not established, or which are from unidentified sources; and

(iii) Receipts of milk products designated pursuant to § 1012.41(a) from a producer-handler, as defined under this or any other Federal order;

(iv) Other source milk received from dairy farmers;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class III and/or Class II (beginning with Class III unless otherwise specified) but not in excess of such quantity or quantities:

(i) Receipts of milk and skim milk from an unregulated supply plant:

(*a*) For which the handler requests such utilization; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.10 and subtracting the sum of the pounds of skim milk in producer milk, receipts from pool plants of other handlers, and receipts in bulk from other plants; and

(ii) Receipts of milk products designated pursuant to § 1012.41(a) in bulk from an other order plant in excess of similar transfers to such plant, if Class III or Class II utilization, respectively, was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk contained in inventory of milk products in the form of products designated as Class I milk pursuant to § 1012.41(a) on hand at the beginning of the month or other accounting period: *Provided*, That if the pounds of skim milk in such inventory exceed the remaining pounds of skim milk in Class II milk the balance shall be subtracted from the pounds of skim milk remaining in Class I milk;

(6) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products designated in § 1012.41(a) from unregulated supply plants which were not subtracted pursuant to subparagraph (4)(i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of milk products designated in § 1012.41(a) in bulk from an other plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraph (4)(ii) of this paragraph:

(i) In series beginning with Class III, and thereafter from Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1012.22(1) or the percentage that Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in the form of milk products designated as Class I milk pursuant to § 1012.41(a) from pool plants of other handlers according to the classification assigned pursuant to § 1012.44(a);

(10) If the pounds of skim milk remaining in the various 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 III. 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;

(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

§ 1012.50 Class prices.

Subject to the provisions of §§ 1012.51 and 1012.52 the minimum class prices per hundredweight of milk containing 3.5 percent butterfat to be paid by each handler for producer milk received during the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price (as defined pursuant to § 1012.18) for the preceding month plus $3.20, and plus or minus a supply-demand adjustment calculated as follows:

(1) The "supply-demand percentage" for a month means the quantity of producer milk during the second and third preceding months expressed as a percent of the gross Class I disposition of all pool plants during the same months, rounded to the nearest whole percent.

(2) The "standard utilization percentage" for each month means the percentage shown in the right-hand column of the following schedule in the same line with the month in the left-hand column:

Months for which price applies	Months for which utilization is computed	Standard utilization percentage
January	October-November	107
February	November-December	107
March	December-January	107
April	January-February	107
May	February-March	110
June	March-April	114
July	April-May	116
August	May-June	116
September	June-July	114
October	July-August	110
November	August-September	107
December	September-October	107

(3) The "deviation percentage" for a month means the difference between the supply-demand percentage for the month and the corresponding standard utilization percentage, the direction of such deviation to depend on whether it is above or below the standard utilization percentage.

(4) Compute the deviation percentages for the current and 2 preceding months, and after excluding any deviation percentage which is in the opposite direction from the deviation percentage of a more recent month, compute a sum from the remaining deviation percentages which excludes any amount by which any of such deviation percentages exceeds any of such deviation percentages for a more recent month.

(5) If the current month's supply-demand percentage is less than the corresponding standard utilization percentage, increase the Class I price by the number of cents which is 1½ times the sum computed pursuant to subparagraph (4) of this paragraph (rounding any fraction of a cent to a whole cent); and if the current month's supply-demand percentage is more than the corresponding standard utilization percentage, decrease the Class I price by the number of cents which is 1½ times the sum computed pursuant to subparagraph (4) of this paragraph (rounding any fraction of a cent to a whole cent).

(b) *Class II price.* The Class II price shall be the basic formula price (as defined pursuant to § 1012.18) plus $1.

(c) *Class III price.* The Class III price shall be the basic formula price (as defined pursuant to § 1012.18) plus 15 cents.

§ 1012.51 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices calculated pursuant to § 1012.50 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate as follows:

(a) *Class I price.* 7.5 cents.

(b) *Class II price.* 7.5 cents.

(c) *Class III price.* Multiply the Chicago butter price for the current month by 0.115.

§ 1012.52 Location adjustments to handlers.

(a) For milk received from producers at a pool plant north of a straight line drawn between Flagler Beach (on the East Coast) and Cedar Key (on the West Coast) and which is disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, and for other source milk for which a Class I location adjustment is applicable, the Class I price computed pursuant to § 1012.50(a) shall be reduced by 12 cents, plus 1.5 cents for each 10 miles or fraction thereof that the distance by shortest hard-surfaced highway distance, as determined by the market administrator, from the nearest point on such line exceeds 130 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee plant, in excess of the sum of receipts at such plant from producers and the pounds assigned as Class I pursuant to § 1012.46(a) (7) or (8) and the corresponding steps of § 1012.46(b), to receipts from 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.

§ 1012.53 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

§ 1012.60 Producer-handler.

Sections 1012.40 to 1012.46, 1012.50 to 1012.52, 1012.62, 1012.70 to 1012.72, and 1012.80 to 1012.89 shall not apply to a producer-handler.

§ 1012.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be considered as a nonpool plant except that the operator of such plant shall, with respect to the total receipts and disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 1012.30) and allow verification of such reports by the market administrator.

(a) Any distributing plant qualified pursuant to § 1012.9(a) which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the Secretary determines that a greater volume of Class I milk is disposed of from such plant on routes in the Tampa Bay marketing area than in the marketing area regulated pursuant to such other order.

(b) Any supply plant qualified pursuant to § 1012.9(b) which would be subject to the classification and pricing provisions of another order issued pursuant to the Act.

§ 1012.62 Obligations of 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 §§ 1012.30(b) or 1012.32(b) the information necessary to compute the amount specified in paragraph (a) of this section, 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 § 1012.70 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 or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average 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 § 1012.70(e) and a credit in the amount specified in § 1012.84(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 § 1012.30(b) or § 1012.32(b) similar reports with respect to the operations 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 § 1012.9(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 of 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 market pool 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 Class III price.

DETERMINATION OF UNIFORM PRICE

§ 1012.70 Computation of the net pool obligation of each pool handler.

The net pool obligation of each pool handler during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1012.46(c), by the applicable class price;

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1012.46(a)(10) and the corresponding step of § 1012.46(b) by the applicable class price;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding accounting period and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1012.46(a)(5) and the corresponding step of § 1012.46(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 III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1012.46(a)(3) and the corresponding step of § 1012.46(b);

(e) Add an amount equal to the value at the Class I price adjusted for location 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 § 1012.46(a)(7) and the corresponding step of § 1012.46(b).

§ 1012.71 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk as follows:

(a) Combine into one total the values computed pursuant to § 1012.70 for all handlers who filed the reports prescribed by § 1012.30 for the month and who made the payments pursuant to §§ 1012.80 and 1012.84 for the preceding month;

(b) Subtract, if the weighted average butterfat content of producer milk included under paragraph (a) of this section is greater than 3.5 percent, or add, if such average butterfat content is less than 3.5 percent, an amount computed as follows: Multiply the amount by which the average butterfat content of such milk varies from 3.5 percent by the producer butterfat differential computed pursuant to § 1012.81 and multiply the resulting figure by the total hundredweight of such milk;

(c) Add an amount equal to the total value of the location differentials computed pursuant to § 1012.82;

(d) Add an amount equal to 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 § 1012.70(e); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1012.72 Notification of handlers.

On or before the 11th day after the end of each month, the market administrator shall mail to each handler, at his last known address, a statement showing:

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

(b) The uniform price computed pursuant to § 1012.71 and the producer butterfat differential computed pursuant to § 1012.81; and

(c) The amounts to be paid by such handler pursuant to §§ 1012.84, 1012.86, 1012.87, and 1012.88 and the amount due such handler pursuant to § 1012.85.

PAYMENTS

§ 1012.80 Time and method of payment for producer milk.

Except as provided in paragraph (d) of this section, each handler shall make payment to each producer from whom milk is received as specified in paragraphs (a), (b), and (c) of this section:

(a) On or before the 20th day of the month, to each producer who had not discontinued shipping milk to such handler before the 15th day of the month, an advance payment with respect to milk received during the first 15 days of the month at a rate per hundredweight of not less than 85 percent of the uniform price for the preceding month;

(b) On or before the 5th day of the month, to each producer who had not discontinued shipping milk to such handler before the last day of the preceding month, an advance payment with respect to milk received from the 16th through the last day of the preceding month at a rate per hundredweight of not less than 85 percent of the uniform price for the preceding month;

(c) On or before the 15th day of each month, for milk received during the preceding month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1012.71, subject to the butterfat and location differentials computed pursuant to §§ 1012.81 and 1012.82, respectively, subject to the following adjustments:

(1) Minus payments made pursuant to paragraphs (a) and (b) of this section;

(2) Less marketing service deductions made pursuant to § 1012.87;

(3) Plus or minus adjustments for errors made in previous payments to such producer; and

(4) Less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1012.85 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 after receipt of the balance due from the market administrator.

(d) (1) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, together with a written promise of such association to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, such handler on or before the second day prior to the date on which payments are due individual producers, shall pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the total due such producer-members as determined pursuant to paragraphs (a), (b), and (c) of this section.

(2) Payment pursuant to subparagraph (1) of this paragraph shall be made for milk received from any producer beginning on the first day of the month following receipt from the cooperative association of its certification that such producer is a member, and continuing 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 cooperative association.

(3) Copies of the written request of the cooperative association to receive pay-

ments on behalf of its members, together with its promise to reimburse and its certified list of members shall be submitted simultaneously both to the handler and to the market administrator and shall be subject to verification by the market administrator at his discretion, through audit of the records of the cooperative association. Exceptions, if any, to the accuracy of such certification claimed by any producer or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

§ 1012.81 Butterfat differential to producers.

The applicable uniform price to be paid producers pursuant to § 1012.80 shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 3.5 percent, respectively, by a butterfat differential equal to the average of the butterfat differentials determined pursuant to § 1012.51 (a), (b), and (c), weighted by the pounds of butterfat in producer milk in each class and the result rounded to the nearest tenth of a cent.

§ 1012.82 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant at the rates set forth in § 1012.52; and

(b) For purposes of computations pursuant to §§ 1012.84 and 1012.85, the uniform price shall be adjusted at the rates set forth in § 1012.52 applicable at the location of the nonpool plant from which the milk was received.

§ 1012.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1012.62 and 1012.84 and out of which he shall make all payments pursuant to § 1012.85: *Provided*, That any payments due any handler shall be offset by any payments due from such handler.

§ 1012.84 Payments to the producer-settlement fund.

On or before the 12th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a) of this section exceed the amounts specified in paragraph (b) of this section: *Provided*, That to this amount shall be added one-half of one percent of any amount due the market administrator pursuant to this section for each month or portion thereof that such payment is overdue: *And provided further*, That the requirement as to date of payment pursuant to this section shall be considered to have been met if the payment is made by mail postmarked not later than the required payment date:

(a) The net pool obligation computed pursuant to § 1012.70 for such handler; and

(b) The sum of:

(1) The value of such handler's producer milk at the applicable uniform prices specified in § 1012.80(c); and

(2) The value at the Class III price with respect to other source milk for which a value is computed pursuant to § 1012.70(e).

§ 1012.85 Payments out of the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1012.84(b) exceeds the amount computed pursuant to § 1012.84(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1012.86 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification disclosed errors resulting in moneys due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1012.87 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1012.80, shall deduct 4 cents per hundredweight, or such amount not exceeding 4 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association;

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members, and on or before the 15th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deductions and the quantity of milk on which the deduction was computed for each producer.

§ 1012.88 Expense of administration.

(a) As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month four cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to (1) producer milk (including such handler's own production), (2) other source milk allocated to Class I pursuant to § 1012.46(a) (3) and (7), and the corresponding steps of § 1012.46(b), and (3) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

§ 1012.89 Termination of obligations.

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

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

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

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

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representative all books and records required by this part to be made available, the market administrator may, within the 2-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representative;

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

(d) Any obligation on the part of the market administrator to pay a handler

any money which such handler claims to be due him under the terms of this part shall terminate 2 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.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1012.90 Effective time.

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

§ 1012.91 Suspension or termination.

The Secretary shall, whenever he finds that any or all provisions of this part, or any amendment thereto, obstruct or do not tend to effectuate the declared policy of the act, terminate or suspend the operation of any or all provisions of this part or any amendment thereto. This part shall terminate in any event whenever the provisions of the act authorizing it cease to be in effect.

§ 1012.92 Continuing obligations.

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

§ 1012.93 Liquidation.

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

MISCELLANEOUS PROVISIONS

§ 1012.100 Agents.

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

§ 1012.101 Separability of provisions.

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

Proposed by Foremost Dairies, Hood's Dairy, Inc., Hood's Milk, Inc., Sealtest Foods, The Borden Co. and The Southland Corp.

Proposal No. 2.

DEFINITIONS

§ 1012.1 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.

§ 1012.2 Secretary.

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

§ 1012.3 Department.

"Department" means the U.S. Department of Agriculture or such other Federal agency as is authorized to perform the price reporting functions specified in this part.

§ 1012.4 Person.

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

§ 1012.5 Cooperative association.

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

(a) To be qualified under the provisions of the act of Congress of February 19, 1922, as amended, known as the "Capper-Volstead Act";

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

§ 1012.6 Tampa Bay marketing area.

"Tampa Bay marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the counties, all in the State of Florida, and hereinafter listed in this section together with all piers, docks and wharves connected therewith and including all territory within such boundaries which is occupied by Government (municipal, state or federal) installations, institutions or other establishments:

Charlotte.	Lee.
Collier.	Manatee.
De Soto.	Pasco.
Hardee.	Pinellas.
Hernando.	Polk.
Highlands.	Sarasota.
Hillsborough.	

§ 1012.7 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 (as described in § 1012.63) in compliance with the inspection requirements of a duly constituted health authority for fluid consumption (as used in this subpart, compliance with inspection requirements shall include production of milk acceptable to agencies of the United States Government located in the marketing area for fluid consumption), which milk is:

(a) Received during the month at pool plant(s) on 8 or more days during the month;

(b) Diverted, with respect to any portion of the remaining production for the month, to a nonpool plant for the account of a handler as defined in § 1012.9(a), or for the account of a handler as defined in § 1012.9(e).

§ 1012.8 Producer-handler.

"Producer-handler" means any person who, during the month: (a) produces milk; (b) distributes Class I milk on routes in the marketing area; and (c) receives no milk except from his own dairy farm, and receives no products designated as Class I milk pursuant to § 1012.41(a) from pool plants or other sources, and does not utilize any milk or milk product, other than from his own dairy farm, in Class I and Class II uses.

§ 1012.9 Handler.

"Handler" means:

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

(b) A producer-handler;

(c) Any person in his capacity as the operator of a nonpool plant from which Class I milk is disposed of in the marketing area on routes;

(d) Any person in his capacity as the operator of a plant from which milk in the form of products designated as Class I milk pursuant to § 1012.41(a) is shipped to pool plants; and

(e) A cooperative association with respect to milk diverted to a nonpool plant pursuant to § 1012.7.

§ 1012.10 Route.

"Route" means any delivery to retail or wholesale outlets (including delivery by a vendor, or a sale from or through a plant store, or by vending machine) of any product in a form designated as Class I milk pursuant to § 1012.41(a), but does not include delivery to a milk receiving or processing plant.

§ 1012.11 Pool plant.

"Pool plant" means a plant described under paragraph (a) or (b) of this section which is not a plant operated by a dairy farmer in his capacity as a producer-handler, is not determined to be a nonpool plant pursuant to § 1012.61, and is not a facility described in paragraph (c) of this section:

(a) A plant at which the total Class I milk during the month is equal to not less than 50 percent of the receipts at the plant during the month of milk from dairy farmers who meet the inspection requirements pursuant to § 1012.7 and other receipts in the form of milk products designated as Class I milk pursuant to § 1012.41(a) and from which an amount of Class I milk equal to not less

than 10 percent of such receipts, or 1,500 pounds per day, whichever is less, is disposed of during the month in the marketing area on routes;

(b) A plant from which, during the month, a volume of milk and skim milk equal to at least the required percentage (specified herein) of the volume of milk received thereat from dairy farmers who meet the inspection requirements pursuant to § 1012.7 is shipped to plants which are pool plants pursuant to paragraph (a) of this section, such required percentages being 50 percent in each of the months of December through March, and 40 percent in other months; and

(c) Pool plant as defined in this section shall not include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

§ 1012.12 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 skim milk and butterfat in the form of products designated as Class I milk pursuant to § 1012.41(a) in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which skim milk and butterfat in the form of products designated as Class I milk pursuant to § 1012.41(a) are moved to a pool plant during the month.

§ 1012.13 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in milk received at pool plants directly from producers and milk from producers diverted by a handler to a nonpool plant for his account: *Provided*, That milk so diverted shall be deemed to be received by the diverting handler at the location (except in computing the days of receipt at pool plants pursuant to § 1012.7) of the pool plant from which diverted.

§ 1012.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in a form of products designated as Class I milk pursuant to § 1012.41(a) except (1) receipts from pool plants, (2) inventory at the beginning of the month or accounting period, or (3) producer milk; and

(b) Milk products in any form other than those designated as Class I milk pursuant to § 1012.41(a) received from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month.

§ 1012.15 Cream.

"Cream" means the product obtained by the separation of skim milk from whole milk such that the butterfat content of the remaining product exceeds 10 percent, and mixtures of such products with milk and skim milk such that the average butterfat content exceeds 10 percent.

§ 1012.16 Chicago butter price.

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

§ 1012.17 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 U.S. Department of Agriculture for the month. Such price shall be adjusted to a 4 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent.

MARKET ADMINISTRATOR

§ 1012.20 Designation.

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

§ 1012.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

§ 1012.22 Duties.

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

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

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

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

(d) Pay out of the funds received pursuant to § 1012.86:

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

(2) His own compensation; and

(3) All other expenses, except those incurred under § 1012.85, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

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

(f) Publicly disclose to handlers and producers, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 2 days after the date upon which he is required to perform such acts, has not made reports or made available records and facilities pursuant to §§ 1012.30 through 1012.32, or payments pursuant to §§ 1012.80 through 1012.86;

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

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

(i) Prepare and make available for the benefit of producers, consumers and handlers, general statistics and information which do not reveal confidential information;

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

(1) The fifth day of each month, the Class I milk price computed pursuant to § 1012.50(a) and butterfat differential computed pursuant to § 1012.51, both for the current month, and the Class II milk price, Class III milk price and Class IV milk price computed pursuant to § 1012.50 (b), (c), and (d), respectively, and butterfat differential computed pursuant to § 1012.51, all for the preceding months; and

(2) The 11th day of each month, the uniform price computed pursuant to § 1012.71 and the producer butterfat differential all for the preceding months;

(k) On or before the 12th day after the end of each month, report to each cooperative association which so requests the percentage of producer milk

delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler;

(l) Whenever required for purposes of allocating receipts from other order plants pursuant to § 1012.46(a)(8) and the corresponding step of § 1012.46(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;

(m) 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 skim milk and butterfat in the form of milk products designated in § 1012.41(a) from an other order plant, the classification to which such receipts are allocated pursuant to § 1012.46 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report; and

(n) Furnish to each handler operating a pool plant who has shipped skim milk and butterfat in the form of milk products designated as Class I milk pursuant to § 1012.41(a) to an other order plant, the classification to which such skim milk and butterfat was 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

§ 1012.30 Report of sources and utilization.

On or before the seventh day after the end of each month, each handler, except a producer-handler, shall report to the market administrator for each of the plants with respect to which he is a handler for such month, and for each accounting period in each month, in the detail and on the forms prescribed by the market administrator, as follows:

(a) The quantities of skim milk and butterfat contained in or represented by receipts of:

(1) Producer milk;

(2) Receipts from pool plants in the form of products designated as Class I pursuant to § 1012.41(a);

(3) Other source milk; and

(4) Inventories in the form of products designated as Class I milk pursuant to § 1012.41(a) on hand at the beginning and end of the month or accounting period;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section, including separate statements as to the disposition of Class I milk on routes entirely outside the marketing area;

(c) Such other information with respect to receipts and utilization appropriate to the proper administration of this part, as the market administrator may request;

(d) Each handler who submits reports on the basis of accounting periods of less than a month, as described in § 1012.46(d), shall submit a summary report of the same information for the entire month.

§ 1012.31 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) Each handler, except a producer-handler, shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) On or before the 20th day after the end of the month, for each of his pool plants his producer payroll for that month, which shall show for each producer: (i) His name and address, (ii) the total pounds of milk received from such producer, (iii) the days for which milk was received from such producer, (iv) the average butterfat content of such milk, and (v) the net amount of the handler's payment with respect to such milk to the producer or cooperative association, together with the price paid and the amount and nature of any deductions;

(2) On or before the first day other source milk as defined pursuant to § 1012.14(a) is received at his pool plants, his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product;

(3) Such other information appropriate to the proper functioning of this part, with respect to his sources and utilization of butterfat and skim milk and at such times as the market administrator shall prescribe;

(c) Each handler making payments pursuant to § 1012.62(a) shall report the information required pursuant to paragraph (b) of this section. In such reports receipts of Grade A milk from dairy farmers shall be reported in lieu of those in producer milk, and payments to dairy farmers delivering such milk shall be reported in lieu of payments to producers.

§ 1012.32 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data for each month, with respect to requirements of this part, including, but not limited to:

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

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

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

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

§ 1012.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such 3-year period, the market administrator notifies the handler in writing that the retention of such books and records or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION OF MILK

§ 1012.40 Skim milk and butterfat to be classified.

The skim milk and butterfat required to be reported for pool plants pursuant to § 1012.30(a) shall be classified by the market administrator, pursuant to the provisions of §§ 1012.41 through 1012.46.

§ 1012.41 Classes of utilization.

Subject to the conditions set forth in §§ 1012.42 through 1012.46, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Sold in the form of milk, skim milk, frozen milk (whole or concentrated), concentrated milk, reconstituted milk, chocolate milk, fortified skim milk and fortified milk;

(2) Not specifically accounted for as Class II milk, Class III milk or Class IV milk;

(3) *Provided*, That any of said products fortified with added milk solids shall be Class I in an amount equal only to the weight of an equal volume of a like unmodified product of the same butterfat content;

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

(1) Sold in the form of acidophilus milk, buttermilk, chocolate drink, half and half, light cream, heavy cream and sour cream: *Provided*, That any of said products fortified with added milk solids shall be Class II in an amount equal only to the weight of an equal volume of a like unmodified product of the same butterfat content;

(2) Contained in inventories in the form of milk products designated as Class I milk pursuant to paragraph (a) of this section on hand at the end of each month and accounting period;

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce any product other than those specified in paragraphs (a) and (b) of this section;

(2) In the products designated pursuant to paragraphs (a) (1) and (2) of

this section and in the products designated pursuant to paragraph (b)(1) of this section which have been fortified with nonfat milk solids which were exempted from Class I milk and Class II milk pursuant to paragraphs (a)(3) and (b)(1), respectively of this section;

(3) In shrinkage up to, but not in excess of, 2 percent of the total receipts of skim milk and butterfat, respectively, in (i) producer milk, (ii) receipts of skim milk in bulk from an other order plant, exclusive of the quantity for which Class II or Class III utilization was requested by the operator of such plant and the handler, and (iii) receipts of milk and skim milk in bulk from unregulated supply plants, exclusive of the quantity for which Class II or Class III utilization was requested by the handler; and

(4) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1012.42(b)(2).

(d) *Class IV milk.* Class IV milk shall be all milk, the skim milk portion of which is:

(1) Disposed of for fertilizer or livestock feed, and

(2) Dumped after notification to and opportunity for verification by the market administrator.

§ 1012.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts as follows:

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

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat contained in:

(1) Items specified in § 1012.41(c)(3); and

(2) Remaining receipts of other source milk received in the form of fluid milk or skim milk.

§ 1012.43 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat to be classified pursuant to this part shall be classified as Class I milk, unless the handler who first receives such skim milk and butterfat establishes to the satisfaction of the market administrator that such skim milk and butterfat should be classified otherwise; and

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

§ 1012.44 Transfers.

Skim milk or butterfat shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred in the form of milk products designated as Class I milk pursuant to § 1012.41(a), from a pool plant to the pool plant of another handler, subject in either event to the following conditions:

(1) The skim milk or butterfat so assigned to any class shall be limited to the amount thereof remaining in such class in the transferee plant after computation pursuant to § 1012.46(a)(8) and the corresponding step of § 1012.46(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1012.46(a)(3), and the corresponding step of § 1012.46(b), the skim milk and butterfat so transferred 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 § 1012.46(a)(7) or (8) and the corresponding steps of § 1012.46(b) the skim milk and butterfat so transferred 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 or diverted in bulk form as milk or skim milk 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 transferring 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 § 1012.30 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 milk products designated as Class I milk pursuant to § 1012.41(a) 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 milk or skim milk 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 the regular source 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 the regular source of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source 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 III milk to the extent available and the remainder as Class II milk;

(c) As Class I milk, if transferred in bulk form as cream to a nonpool plant that is neither an other order plant nor a producer-handler plant unless:

(1) The transferring handler claims classification as Class II milk;

(2) The handler gives the market administrator sufficient notice to allow him to verify the shipment;

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

(4) Not less than an equivalent amount of skim milk and butterfat was actually utilized in the nonpool plant in the use indicated in such report: *Provided*, That if it is found that an equivalent amount of skim milk and butterfat was not actually used in such plant during the month in such indicated use, the quantity transferred in excess of such actual use shall be classified as Class I milk; and

(d) As follows, if transferred to an other order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred in the form of skim milk or butterfat in milk products designated as Class I milk pursuant to § 1012.41(a) in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in the form of skim milk and butterfat in milk products designated as Class I milk pursuant to § 1012.41(a) in bulk form, classification shall be in the classes to which allocated 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, transfers in bulk form shall be classified as Class III to the extent of the Class III 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 (d), if the transferee order provides for

more than two classes of utilization, milk allocated to a class consisting primarily of milk products designated as Class I milk pursuant to § 1012.41(a) shall be classified as Class I, and milk allocated to other classes shall be classified in a comparable classification as Class II or Class III milk; and

(6) If the form in which any milk product designated as Class I milk pursuant to § 1012.41(a) is transferred 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 § 1012.41.

§ 1012.45 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and other obvious errors, the reports submitted by each handler pursuant to § 1012.30(a) and compute the total pounds of skim milk and butterfat, respectively, in Class I milk, Class II milk, Class III milk and Class IV milk at all of the pool plants of such handler: *Provided*, That the skim milk contained in any product utilized, produced or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 1012.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1012.45, the market administrator shall determine the classification of producer milk for each handler for each month or other accounting period described in paragraph (d) of this section as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1012.41(c)(3);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in the form of milk products designated as Class I pursuant to § 1012.41(a), received in packaged form from other order plants as follows:

(i) From Class III 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 III, the pounds of skim milk in each of the following:

(i) Other source milk as specified in § 1012.14(b);

(ii) Receipts of milk products designated pursuant to § 1012.41(a) for which Grade A classification is not established, or which are from unidentified sources;

(iii) Receipts of milk products designated pursuant to § 1012.41(a) from a producer-handler, as defined under this or any other Federal order;

(iv) Other source milk received from dairy farmers;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class III and/or Class II (beginning with Class III unless otherwise specified) but not in excess of such quantity or quantities:

(i) Receipts of milk and skim milk from an unregulated supply plant:

(*a*) For which the handler requests such utilization; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from pool plants of other handlers, and receipts in bulk from other order plants; and

(ii) Receipts of milk products designated pursuant to § 1012.41(a) in bulk from an other order plant in excess of similar transfers to such plant, if Class III or Class II utilization, respectively, was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk contained in inventory of milk products in the form of products designated as Class I milk pursuant to § 1012.41(a) on hand at the beginning of the month or other accounting period: *Provided*, That if the pounds of skim milk in such inventory exceed the remaining pounds of skim milk in Class II milk the balance shall be subtracted from the pounds of skim milk remaining in Class I milk;

(6) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products designated in § 1012.41(a) from unregulated supply plants which were not subtracted pursuant to subparagraph (4)(i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of milk products designated in § 1012.41(a) in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraph (4)(ii) of this paragraph:

(i) In series beginning with Class III, and thereafter from Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1012.22(l) or the percentage that Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in the form of milk products designated as Class I milk pursuant to § 1012.41(a) from pool plants of other handlers according to the classification assigned pursuant to § 1012.44(a);

(10) If the pounds of skim milk remaining in the various 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 IV. 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;

(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; and

(d) A handler may account for receipts of milk, utilization of milk and classification of milk, at his plant, for periods within a month if he notifies the market administrator in writing of his intention to use such accounting period not later than the end of every accounting period.

MINIMUM PRICES

§ 1012.50 Class prices.

Subject to the provisions of §§ 1012.51 and 1012.52, the minimum class prices per hundredweight of milk containing 4 percent butterfat to be paid by each handler for producer milk received during the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price (as defined pursuant to § 1012.17) for the preceding month plus $2.50.

(b) *Class II price.* The Class II price shall be the basic formula price (as defined pursuant to § 1012.17) plus 85 cents.

(c) *Class III price.* The Class III price shall be the basic formula price (as defined pursuant to § 1012.17).

(d) *Class IV price.* The Class IV price shall be computed as follows: Multiply the Chicago butter price by 1.15, and multiply the result by 4.

§ 1012.51 Butterfat differentials to handlers.

For milk containing more or less than 4 percent butterfat, the class prices calculated pursuant to § 1012.50 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate as follows:

(a) *Class I price.* 7.5 cents.

(b) *Class II price.* 7.5 cents.

(c) *Class III price.* Multiply the Chicago butter price for the current month by 0.115.

(d) *Class IV price.* Multiply the Chicago butter price for the current month by 0.115.

§ 1012.52 Location adjustments to handlers.

(a) For milk received from producers at a pool plant north of a line formed by the boundary lines between Levy and Dixie Counties, between Levy and Gilchrist Counties, between Levy and Alachua Counties, between Marion and Putnam Counties, between Lake and Putnam Counties, between Volusia and Putnam Counties and between Volusia and Flagler Counties, and which is disposed of as Class I milk or assigned Class I location adjustment credit pursuant to

paragraph (b) of this section, and for other source milk for which a Class I location adjustment is applicable, the Class I price computed pursuant to § 1012.50(a) shall be reduced by 12 cents, plus 1.5 cents for each 10 miles or fraction thereof that the distance by shortest hard-surfaced highway distance, as determined by the market administrator, from the nearest point on said line exceeds 130 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee plant, in excess of the sum of receipts at such plant from producers and the pounds assigned as Class I pursuant to § 1012.46(a) (7) or (8) and the corresponding steps of § 1012.46(b), to receipts from 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.

§ 1012.53 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

§ 1012.60 Producer-handler.

Sections 1012.50 through 1012.53, § 1012.61, § 1012.62, §§ 1012.70 through 1012.75, and §§ 1012.80 through 1012.86 shall not apply to a producer-handler.

§ 1012.61 Plants where other Federal orders may apply.

Upon determination by the Secretary pursuant to this section, any plant specified in paragraphs (a), (b), and (c) of this section shall be a nonpool plant, except that the operator of such plant shall, with respect to the total receipts and disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator:

(a) Any plant meeting the requirements of a pool plant pursuant to § 1012.11(b) but not pursuant to § 1012.11 (a) which, if it were not a pool plant under this part, would be fully subject to the classification and pooling provisions of another order issued pursuant to the Act;

(b) Any plant meeting the requirements of a pool plant pursuant to § 1012.11(b) but not pursuant to § 1012.11 (a) at which all receipts of skim milk and butterfat during the month would be priced and pooled under the terms of another order(s) issued pursuant to the Act if such plant were not a pool plant under this order: *Provided*, That such pricing and pooling results in all skim milk and butterfat disposed of from the plant in the form of milk and skim milk during the month being Class I milk under the terms of another order(s) issued pursuant to the Act; and

(c) Any plant which does not dispose of a greater volume of Class I milk on routes in the Tampa Bay marketing area than in the marketing area regulated pursuant to such other order.

§ 1012.62 Obligations of 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 §§ 1012.30 and 1012.31(c), the information necessary to compute the amount specified in paragraph (a) of this section, 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 § 1012.70 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 an other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average 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 § 1012.70(e) and a credit in the amount specified in § 1012.82(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 §§ 1012.30 and 1012.31(c) similar reports with respect to the operations 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 § 1012.11(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 of 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 market pool 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 Class II price.

§ 1012.63 Person producing milk.

The person who produces milk shall be considered to be the person who is responsible for the milk production enterprise on a continuing basis as to management and risk.

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

§ 1012.70 Computation of the net pool obligation of each pool handler.

The net pool obligation of each pool handler during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1012.46(c), by the applicable class prices (adjusted pursuant to § 1012.51);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1012.46(a)(10) and the corresponding step of § 1012.46(b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding accounting period and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1012.46(a)(5) and the corresponding step of § 1012.46(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 III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1012.46(a)(3) and the corresponding step of § 1012.46(b); and

(e) Add an amount equal to the value at the Class I price adjusted for location 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 § 1012.46(a)(7) and the corresponding step of § 1012.46(b).

§ 1012.71 Computation of uniform price.

For each month, the market administrator shall compute the uniform price per hundredweight of milk as follows:

(a) Combine into one total the values computed pursuant to § 1012.70 for all

handlers who filed the reports prescribed by § 1012.30 for the month and who made the payments pursuant to §§ 1012.80 and 1012.82 for the preceding month;

(b) Subtract, if the weighted average butterfat content of all producer milk included under paragraph (a) of this section is greater than 4 percent, or add, if such average butterfat content is less than 4 percent, an amount computed as follows: Multiply the amount by which the average butterfat content of such milk varies from 4 percent by the producer butterfat differential computed pursuant to § 1012.72 and multiply the resulting figure by the total hundredweight of such milk;

(c) Add an amount equal to the total value of the location differentials computed pursuant to § 1012.73;

(d) Add an amount equal to 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 a value is computed pursuant to § 1012.70(e); and

(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.

§ 1012.72 Butterfat differential to producers.

The applicable uniform price to be paid to each producer shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 4 percent, respectively, by a butterfat differential equal to the average of the butterfat differentials determined pursuant to § 1012.51 (a), (b), (c), and (d), weighted by the pounds of butterfat in producer milk in each class and the result rounded to the nearest tenth of a cent.

§ 1012.73 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant at the rates set forth in § 1012.51; and

(b) For purposes of computations pursuant to §§ 1012.82 and 1012.83, the uniform price shall be adjusted at the rates set forth in § 1012.51 applicable at the location of the nonpool plant from which the milk was received.

§ 1012.74 Notification of handlers.

On or before the 11th day after the end of each month, the market administrator shall mail to each handler, at his last known address, a statement showing:

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

(b) The uniform price for producer milk computed pursuant to § 1012.71 and the butterfat differential;

(c) The amount and value of his producer milk at the uniform price; and

(d) The amounts to be paid by such handler pursuant to §§ 1012.82, 1012.85 and 1012.86, and the amount due such handler pursuant to § 1012.83.

Payments

§ 1012.80 Time and method of payment for producer milk.

Except as provided in paragraph (d) of this section, each handler shall make payment to each producer from whom milk is received as specified in paragraphs (a), (b), and (c) of this section:

(a) On or before the 20th day of the month, to each producer who had not discontinued shipping milk to such handler before the 15th day of the month, an advance payment with respect to milk received during the first 15 days of the month at the rate per hundredweight of not less than 85 percent of the uniform price for the preceding month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph; and

(b) On or before the 5th day of the month, to each producer who had not discontinued shipping milk to such handler before the last day of the preceding month, an advance payment with respect to milk received from the 16th through the last day of the preceding month at a rate per hundredweight of not less than 85 percent of the uniform price for the preceding month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph; and

(c) On or before the 15th day of each month, for milk received during the preceding month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1012.71, subject to the butterfat and location differentials, respectively, subject to the following adjustments:

(1) Less payments made pursuant to paragraphs (a) and (b) of this section;

(2) Less marketing service deductions made pursuant to § 1012.85;

(3) Plus or minus adjustments for errors made in previous payments to such producers; and

(4) Less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1012.83 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 after receipt of the balance due from the market administrator.

(d) (1) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, together with a written promise of such association to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, such handler on or before the second day prior to the date on which payments are due individual producers, shall pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the total due such producer-members as determined pursuant to paragraphs (a), (b), and (c) of this section;

(2) Payment pursuant to subparagraph (1) of this paragraph shall be made for milk received from any producer beginning on the first day of the month following receipt from the cooperative association of its certification that such producer is a member, and continuing 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 cooperative association;

(3) Copies of the written request of the cooperative association to receive payments on behalf of its members, together with its promise to reimburse and its certified list of members shall be submitted simultaneously both to the handler and to the market administrator and shall be subject to verification by the market administrator at his discretion, through audit of the records of the cooperative association. Exceptions, if any, to the accuracy of such certification claimed by any producer or by a handler shall be made by written notice to the market administrator and shall be subject to his determination;

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

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

(2) On or before the 10th day of the following month: (i) the total pounds of milk received during the month, (ii) the pounds of milk received each day, together with the butterfat content of such milk, (iii) the amount or rate and nature of any authorized deductions to be made from payments, and (iv) the amount and nature of payments due pursuant to § 1012.84.

§ 1012.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to § 1012.82 and out of which he shall make all payments pursuant to § 1012.83: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1012.82 Payments to the producer-settlement fund.

On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a) of this section exceed the amounts specified in paragraph (b) of this section: *Provided*, That to this amount shall be added one-half of 1 percent of any

amount due the market administrator pursuant to this section for each month or portion thereof that such payment is overdue: *And provided further*, That the requirement as to date of payment pursuant to this section shall be considered to have been met if the payment is made by mail postmarked not later than the required payment date:

(a) The net pool obligation computed pursuant to § 1012.70 for such handler; and

(b) The sum of:

(1) The value of such handler's producer milk at the applicable uniform prices; and

(2) The value at the Class II price with respect to other source milk for which a value is computed pursuant to § 1012.70 (e).

§ 1012.83 Payments out of the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1012.82(b) exceeds the amount computed pursuant to § 1012.82(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payment as soon as the funds are available.

§ 1012.84 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records or accounts or other verification discloses errors resulting in moneys due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1012.85 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk pursuant to § 1012.80, shall deduct 4 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such services from a cooperative association pursuant to paragraph (b) of this section; and

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section) make such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members. On or before the 15th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deductions and the quantity of milk on which the deduction was computed for each producer.

§ 1012.86 Expense of administration.

(a) As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month four cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to (1) producer milk (including such handler's own production), (2) other source milk allocated to Class I pursuant to § 1012.46(a) (3) and (7) and the corresponding steps of § 1012.46(b), and (3) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

(b) With respect to payments pursuant to paragraph (a) of this section, if a handler uses more than one accounting period in a month, the rate of payment per hundredweight for such handler shall be the rate for monthly accounting periods multiplied by the number of accounting periods in the month, or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular costs of administering the additional accounting periods.

§ 1012.87 Termination of obligations.

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

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

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

(3) If the obligation is payable to one or more producers or to an association of producers, the names of such producers or association of producers, or if the obligation is payable to the market administrator, the acount for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the 2-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period, with respect to such obligation, shall not begin to run until the first day of the month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representative;

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 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.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1012.100 Effective time.

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

§ 1012.101 Suspension or termination.

The Secretary shall, whenever he finds that any or all provisions of this part, or any amendment thereto, obstruct or do not tend to effectuate the declared policy of the Act, terminate or suspend the operation of any or all provisions of this order or any amendment thereto.

§ 1012.102 Continuing obligations.

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

§ 1012.103 Liquidation.

Upon the suspension or termination of any or all provisions of this part, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred

promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidating and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1012.110 Agent.

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

§ 1012.111 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.

Copies of this notice may be procured from the Hearing Clerk, Room 112–A, Administration Building, U.S. Department of Agriculture, Washington, D.C., 20250, or may be there inspected.

Signed at Washington, D.C., on February 16, 1965.

CLARENCE H. GIRARD,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 65–1785; Filed, Feb. 18, 1965; 8:50 a.m.]

[7 CFR Part 1036]

[Docket No. AO–179–A24]

MILK IN NORTHEASTERN OHIO MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Northeastern Ohio marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, by the 15th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Cleveland, Ohio, on October 20–21, 1964, pursuant to notice thereof which was issued September 24, 1964 (29 F.R. 13483).

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

1. Diversion of producer milk;
2. Qualifications for attaining pool plant status;
3. Accounting for bulk tank milk under certain specified conditions;
4. Classification provisions;
5. The Class I milk price;
6. The Class II milk price;
7. Location differentials;
8. Seasonal incentive payments; and
9. Miscellaneous and conforming changes.

A decision was issued on December 15, 1964 (29 F.R. 18091), dealing only with that portion of Issue No. 5 relating to the use of market statistics of the North Central Ohio milk order (Part 1037) in the computation of the supply-demand adjustment under the Northeastern Ohio milk order. This decision is concerned with the remaining issues.

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. *Diversion of producer milk.* Diversions to a nonpool plant in August through March should be limited to those producers whose production is delivered to a pool plant on at least 6 days during the month. In order to establish status as producer milk and, hence, eligible to be diverted in the current or any subsequent month a producer's deliveries should be initially received at a pool plant. Milk diverted to a nonpool plant should continue to be priced at the location of the plant from which diverted.

Because there is now no limitation on diversions to nonpool plants, a producer is not required to deliver his milk to a pool plant at all during a month to have it included in the pool. There was general agreement at the hearing that some limit should be placed on diversions of producer milk. The various proposals ranged from requiring that 3 days' production be received at a pool plant to requiring that 15 days' production be received at a pool plant.

When producer milk is not needed in the fluid market because of seasonal or day-to-day variations in demand, it is more economical to deliver it directly to a nonpool plant for manufacture instead of receiving it at a pool plant before transferring it to such manufacturing facility. The testimony offered at this hearing showed the need for maintaining reasonable diversion provisions to accommodate the efficient handling of producer milk in the Northeastern Ohio market.

It is recognized that the diversion limitation proposed herein is a modest one. Certainly, it is a more liberal provision than is contained in most other Federal orders. But, since the order has for several years contained no limitation on diversions, a reasonable period of time undoubtedly will be needed to adjust to diversion limitations. The purpose of the proposals offered is not to exclude from the pool milk that is eligible for fluid distribution. Requiring that any such milk be received at a pool plant at least part of the time during the short production months will insure its availability for the market's Class I needs.

Unlimited diversion privileges should be continued in the flush production months of April through July. This is the time of the year in which milk supplies are seasonally high. Permitting unlimited diversions in these months will assist handlers in disposing of seasonal surpluses.

Some witnesses expressed concern that the present provisions for pricing milk at the location of the plant from which diverted enable a producer to associate his milk with a pool plant at a location at which no (or a relatively low) location differential applies and then divert his milk to a nonpool plant (at which location a high location differential would be applicable) nearer his farm at a hauling charge significantly less than for delivery to the pool plant. Various proposals were suggested which would price all or part of the diverted milk at the location of the nonpool plant where it was actually received. However, the spokesman for a producer association indicated that he did not believe that the present provisions are being abused.

The problems presented by proponents arise, at least in part, because of the present lack of any limitation on diversions and because the present location differentials do not reflect the present-day costs of moving milk to market (this latter point is discussed fully under Issue 7). It is noteworthy, however, that there are no specific instances of abuse cited.

In view of other changes proposed herein, which should tend to discourage any such abuses in the future, and since there is no evidence of disorderly marketing under present provisions, it is concluded that the point of pricing should not be changed at this time.

Proposals dealing with diversions between pool plants were concerned with who should account for a producer's milk received by more than one pool handler during the month and at which plant location should such milk be priced if received at plants in different pricing zones. Diversions to pool plants are to be distinguished from diversions to nonpool plants in that when diversions occur between pool plants, there is no question as to whether the milk should be pooled.

Diverted milk is now deemed to have been received at the pool plant from which diverted irrespective of the number of days during the month such milk is diverted. Hence, the diverting handler must pay producers for such milk at the order prices applicable at the zone location of his plant even though the milk actually may not be received at this location. It was indicated that a number of handlers receive all their milk by diversions, generally from the plant of a cooperative. The milk is priced, however, as if received at the cooperative's plant.

Location differentials are intended to appropriately reflect the locations at

which milk is received from producers. Obviously, if location differentials are to carry out their function in equating the order prices at the various plant locations in the Northeastern Ohio market, there must be provision for recognizing a specific plant location to which the milk is delivered for the purpose of applying order prices.

This may be accomplished by pricing milk diverted between pool plants at the location of the plant from which diverted if at least 6 days' milk production of the producer is received at such plant. Pricing diverted milk in the above manner will treat such milk in a manner similar to that provided for diversions to nonpool plants insofar as the application of location differentials is concerned. Regardless of the point at which the milk is priced, the accountability for such milk would rest with the diverting handler if more than one handler is involved in such diversion.

2. *Qualifications for attaining pool plant status.* The requirements for distributing plants and supply plants to obtain pool plant status should not be changed.

Proposals to increase the percentage standards for pool participation were submitted by a cooperative association and by a proprietary handler. The cooperative's spokeman stated that its proposals for increasing the pool standards were submitted at a time when it appeared that producer milk was not being made available for the fluid market even though ample supplies were included in the marketwide pool. However, it was stated further that the marketing conditions which prompted the proposals no longer exist. The handler offered no support of his proposal. In view of the lack of evidence as to the need for changing the percentage standards for pool participation, the proposals are denied.

Also considered at the hearing was a proposal to eliminate the provision which permits two or more supply plants to qualify for pool status on the basis of their combined performance. This proposal is denied. There was no evidence to show that the system pooling provision has been a deterrent to the movement of milk to market. Although the pooling provisions must provide reasonable assurance that participating plants will make their milk available for the fluid market, they should not be such as to require inefficient movements of milk between plants for the sole purpose of retaining pool status.

System pooling allows a handler considerable flexibility in supplying his fluid needs and in disposing of his reserve supplies. From an economic standpoint, it is preferable to leave the most distant milk in the country when it is not needed for fluid purposes. The system pooling provision permits a multiple supply plant handler to do this without making uneconomical shipments from the most distant plants merely to retain pool status. In addition, the provision provides assurance that a multiple plant handler will perform in a manner similar to other handlers in supplying a specified percentage of his total milk supply for the Class I market.

A suggestion was made at the hearing that the order be amended to provide a "call provision" under which the market administrator would have the authority to require supply plants to ship a specified percentage of their dairy farmer receipts to pool distributing plants. It was stated that such a provision would provide additional assurance that supply plants would meet their obligation to supply the fluid market.

The testimony concerning a call provision was in general terms and does not provide a sufficient basis on which to develop such a provision. Although it was suggested that a call provision similar to that included in the Southern Michigan order (of which official notice was taken at the hearing) might be appropriate for the Northeastern Ohio order, the record does not support such a change at this time and, accordingly, the proposal is denied.

3. *Accounting for bulk tank milk under certain specified conditions.* The cooperative association should be permitted to be a handler with respect to milk delivered from the farm to a pool plant in a tank truck owned and operated by or under contract to such association.

The proposal to make a cooperative the handler on bulk tank milk was submitted by the principal Northeastern Ohio handlers and was opposed by producers. The proposal, as submitted, would have made it mandatory for a cooperative to be a handler on its bulk tank milk delivered to other handlers. Handlers, however, testified that they would prefer that the provision be adopted on a permissive basis rather than be denied.

Currently, the operator of the plant receiving milk from producers must account for such milk and pay producers. Once milk from a producer has been commingled with milk of other producers in a tank truck, there is no further opportunity to measure, sample or reject the milk of any individual producer whose milk is included in the load. The operator of a pool plant to which the load is delivered has an opportunity only to determine the weight and butterfat test of the total load.

Where a tank truck picking up milk at the farm is operated under the supervision of a cooperative association, it is the association that determines the weight and butterfat content of each producer's milk. It is desirable, therefore, that the cooperative be the responsible handler under such circumstances, if it so elects. The milk delivered by the cooperative as a handler would continue to be classified and allocated at each plant of receipt and the operator of the plant would be obligated to pay the cooperative the uniform price applicable at the plant.

Enabling a cooperative to be a handler on its member producers' bulk tank milk will afford a more satisfactory basis of accounting for such milk and will provide added flexibility to a cooperative association in allocating its members' bulk tank milk among handlers at any time such flexibility is needed. The pool plant operator, however, would continue to be responsible to the producer-settlement fund and for the administrative assessment on such milk.

If a cooperative association elects to be the handler on its members' bulk tank milk, and accounts for such milk on the basis of farm weights and tests, it should be allowed a Class II shrinkage allowance as is granted on other interhandler transfers.

4. *Classification provisions.*

(a) A single classification (Class II) should be provided for milk now classified in Classes II and III and priced at the present Class III price.

The proposal to combine Classes II and III was made by the Northeastern Ohio Milk Market Survey Committee, representing 21 regulated handlers. Although the proposal was opposed by producers, they generally indicated that they would not object to adopting the proposal if appropriate adjustment to the Class I price resulted in no reduction in the uniform price to producers. Handlers stated that they had no objection to an increase in the Class I price sufficient to offset any reduction in the uniform price due to their proposal. (Such compensating adjustment in the Class I price is dealt with in Issue 5.)

The products now included in Class II are cottage cheese and sour cream. For milk used to produce these products the applicable order price is approximately 25 cents per hundredweight above the Class III price.

Products included in Class II, the most important of which is cottage cheese, compete with similar products from other sources (both federally regulated and unregulated) where the applicable price approximates the Northeastern Ohio Class III price.

In the nearby Federal order markets of Youngstown-Warren and Northwestern Ohio, milk used for cottage cheese is priced at the Northeastern Ohio Class III price level. The same is true in other Federal order areas from which cottage cheese may be imported into the Northeastern Ohio market.

Athough the health inspection requirements for milk used for cottage cheese and sour cream manufacture vary within the Northeastern Ohio market, such products need not meet the same inspection requirements as milk for fluid consumption. The significant fact in the present circumstance is that there are no health regulations which restrict the importation of such products from areas where they are priced at the level represented by the Northeastern Ohio Class III price. Under these conditions, Northeastern Ohio regulated handlers are at a competitive disadvantage in competing for sales of these products in their principal sales areas. To avoid the higher cost represented by the present Class II price, it is possible for handlers to purchase cottage cheese from plants in other areas. In fact, at least one handler already has turned to other sources for his cottage cheese needs.

There is no advantage to producers in obtaining a higher price for milk used in the present Class II products when handlers may avoid the additional cost by turning to other sources. In fact, an

unrealistically high price for such products could only discourage the use of producer milk in their manufacture, resulting in the loss of important outlets for reserve milk supplies.

(b) The order should continue to include fluid cream in the Class I classification. A handler's proposal would classify cream in the manufacturing class utilization.

Handlers claim that the order price (Class I) for fluid cream is higher than in surrounding markets and is responsible for the gradual decline in cream sales.

Milk used for fluid cream must be approved for fluid consumption by local health authorities. There is no apparent distinction between fluid cream and all other Class I products which must come from inspected sources. Producers are relied upon for the market's fluid cream requirements and they must incur the additional costs involved in the production of milk of acceptable quality for such product.

Handlers indicated that an alternative to classifying cream in the lowest use class would be to reduce the Class I butterfat differential. They noted that the Northeastern Ohio Class I butterfat differential is among the highest butterfat differentials under the Federal milk order program.

Because of the relatively large percentage of butterfat in fluid cream, the butterfat differential adjustment has a significant effect on the price established for fluid cream. However, no proposals in the hearing notice indicated that changes in the Class I butterfat differential would be considered. Consequently, the record lacks a showing as to how such a change would affect the pricing of other Class I products. Fluid milk products other than cream, of course, account for most of the market's total Class I utilization. Accordingly, such a change should not be considered at this time. The matter could be considered at another hearing, however, at which specific proposals to accomplish such a change are included in a notice of hearing.

(c) Sterilized cream received and disposed of in hermetically sealed containers should be excluded from the "fluid milk product" definition. By excluding sterilized cream from the fluid milk product definition, it will be classified as Class II rather than Class I.

Some handlers regulated by the Northeastern Ohio milk order distribute a product called sterilized cream for whipping. The product is packaged in hermetically sealed containers. It is received and disposed of in the same container.

The sterilized cream is manufactured in a processing plant located in California. The manufacturer's representative testified that cream derived from both Grade A milk and ungraded milk is used in the product. The manufacturer has not been required by health authorities to use cream derived from Grade A milk.

It was proposed that all sterilized fluid products be excluded from the fluid milk product definition. The effect of that change in definition would be to classify milk used in all sterilized products as Class II rather than Class I.

The evidence submitted dealt with sterilized whipping cream manufactured in the California plant. The only known source of the product is the plant at Gustine, Calif., where the cream is purchased for about 80 cents per pound fat. This fat is purchased as cream of 40 percent butterfat content and is standardized with purchased skim milk. The product incurs considerable transportation cost since it is manufactured in a plant approximately 2,400 miles from Cleveland. Based on the cost of the butterfat and the transportation charges to Cleveland, the cost of the product exceeds by a wide margin the Northeastern Ohio Class I price. This product, therefore, has no competitive advantage based on cost of raw milk as compared to producer milk disposed of as unsterilized cream. Hence, its classification as Class II will not disturb the orderly marketing of milk in the area.

(d) Butterfat in fluid milk products which are dumped should be classified in the lowest use class (Class II).

A handler proposed that the order be amended to (1) permit butterfat in fluid milk products dumped to be accounted for as so disposed of and therefore to be classified as Class II milk, and (2) include in the lowest use class also any loss of products resulting from broken containers. This would be separate and apart from the maximum two percent shrinkage allowance now assignable to the lowest use class.

In the case of route returns of certain fluid milk products, such as homogenized milk and milk products and chocolate milk, it is difficult and impractical to salvage the butterfat for further use unless the handler can dispose of it as livestock feed (which already is classified in the lowest use class).

Skim milk in products dumped presently may be classified in the lowest use class if the market administrator has been notified in advance of the contemplated dumping action and afforded the opportunity to verify it. Likewise, the dumping of butterfat in fluid milk products should be made only on advance notification to the market administrator with opportunity given for him to verify it.

The proposal to classify in the lowest use class any "waste" milk or milk product resulting from broken containers over and above the quantities thereof permissible under the present shrinkage allowance and dumping provisions should not be adopted.

Although handlers suffer losses when containers are broken, it is not reasonable to pass back to producers this cost of operating a milk plant. To grant the proposal would assess against producers a cost brought about not by lack of efficiency or responsibility on their part, but by lack of efficiency or responsibility of persons or equipment over which only the handler has control. The proposal would not encourage maximum efficiency in milk handling. The handler has bought the milk on delivery to his plant. It is his responsibility to handle it efficiently. Moreover, it would be impractical for the market administrator to verify each loss resulting from a container broken either in a plant or on a route.

5. *The Class I milk price.* The Class I price should be increased 5 cents in April through July to compensate for the classification changes provided in Issue 4. This action will increase the annual average Class I price approximately 1.6 cents per hundredweight.

The amount represented by increasing the Class I price 5 cents in the 4 flush months approximates, and offsets, the annual decrease in the value of milk used in cottage cheese and sour cream under the revised classification. The minor Class I price increase was supported by handlers as a means of maintaining producer returns at current levels. The increase is such that it will have no significant effect on handlers' annual cost of fluid milk and, hence, should not have an effect on prices paid by consumers for Class I milk items.

Limiting such increase to the flush production months will tend to improve the seasonal alignment of Class I prices between Northeastern Ohio and other nearby Federal order markets. The Northwestern Ohio order Class I price differential varies seasonally from $1.13 to $1.36, a difference of 23 cents. The Fort Wayne order Class I price differential is $1.20 in each month of the year. The present Northeastern Ohio Class I differential, however, varies from $1.35 in the flush months to $1.80 in the short months, a difference of 45 cents. As proposed herein, the differential in the flush production months would be $1.40 and the difference between the flush and short months reduced to 40 cents.

Proposals were submitted by two handlers for a Class I price differential of $1.65 in each month of the year. As a substitute for the present seasonally variable Class I price, one handler proposed a seasonal incentive payment plan which would provide for the deduction of specified amounts from the uniform price in April through July for distribution to producers during the following September through December. In proposing a seasonal incentive plan, the handler recognized the necessity of providing some means of encouraging even milk production throughout the year. This plan is discussed under Issue 8.

In support of their proposal for a uniform Class I price differential, handlers stated that the present seasonally variable Class I price causes difficulty in setting resale milk prices. Further, they contended that a uniform Class I price differential would provide better Class I price alignment between the Northeastern Ohio market and other nearby Federal order markets with which there is competition for fluid sales.

Although it was stated that adoption of a uniform Class I price differential would aid handlers in establishing resale prices, the proposal received only limited support from handlers and was opposed by producers. The record lacks a showing that the present seasonal Class I price provision is causing marketing difficulties or that it is not performing

its purpose in leveling seasonal fluctuations in milk production.

With respect to price alignment among competing markets, there is considerable record evidence to show that competition is more significant between the Northeastern Ohio market and markets which also provide for seasonally variable Class I prices, particularly with the Northwestern Ohio market. Abandoning the seasonal Class I pricing provisions could cause marketing difficulties among these markets and thereby defeat a principal purpose for which the proposal was submitted.

A proposal was made at the hearing to change the seasonality incorporated in the supply-demand adjustment. As proposed, the standard utilization percentages would be increased during the short production months and reduced during the flush production months. The proposal was made with the express purpose of obtaining a higher Class I price during certain months of the year; it was not based on any historical or anticipated change in the seasonality of the supply-sales relationship in the Northeastern Ohio market.

The market is adequately supplied in relation to its Class I needs and there is no indication that an abrupt change in the supply-sales relationship is imminent. However, should this relationship change materially, it would be reflected automatically in the Class I price through the normal operation of the supply-demand adjustor. Accordingly, the proposal to increase the Class I price (by changing the seasonality incorporated in the standard utilization percentage of the supply-demand adjustor) is denied.

Another proposal would include in the supply-demand computation all milk used for cottage cheese, sour cream and ice cream mix. In support of this proposal, it was stated that handlers depend on producers to furnish an adequate supply of milk for these uses and therefore it would be appropriate to recognize this fact in the determination of the supply-sales relationship in the supply-demand adjustor.

Even though it has been the practice of producers to supply handlers' milk for these manufacturing uses, handlers need not depend on producers for milk for these uses. As indicated elsewhere in this decision, milk from other sources is available on a reasonable price basis for such products.

It is recognized that cottage cheese, sour cream and ice cream mix represent important outlets for producer milk that is not needed in the Class I market. However, this does not justify increasing the Class I price, which was the indicated purpose of including milk for these uses in the supply-demand computation. In fact, if handlers' purchases from producers for these uses were to influence Class I prices through the mechanics of the supply-demand adjustor, handlers could turn to other sources for the finished products to avoid the resulting higher Class I prices under this order. This, of course, would serve only to reduce the outlets for producer milk.

6. *The Class II milk price.* Proposals were offered which would price milk used for cottage cheese and sour cream (present Class II products) at 30 cents per hundredweight above the Class III price. The present Class II price is based on a separate formula and, as indicated previously, averages about 25 cents per hundredweight above the Class III price. However, in view of the findings previously made to combine Classes II and III into a single classification, to be priced at the level represented by the present Class III price, these proposals are denied for the reasons previously stated.

7. *Location differentials.* Location differential adjustments at plants beyond 60 miles of the basing point (the Public Square in Cleveland) should be reduced.

The Class I, Class II and uniform prices are now reduced 13 cents for milk received at plants from 40.1 to 60 miles from Cleveland, 20 cents at plants in the 60.1 to 70 mile zone, and one cent for each 10 miles beyond 70. As proposed herein, the 40.1–60 mile zone would be retained but the 60.1–70 mile zone would be eliminated, thereby reducing the location adjustment six cents at plants beyond 60 miles of Cleveland.

Location differentials to plants should reflect the efficiencies resulting from technological changes in the marketing of milk in recent years. The rates proposed herein to both handlers and producers appropriately reflect the cost of efficiently moving milk in the Northeastern Ohio market under present economic conditions.

Technological improvements, such as better roads and larger tank trucks, have tended to reduce hauling costs. It was stated that the hauling rates on file with the State of Ohio show that milk may be hauled to Cleveland for less than the allowance under present provisions.

For example, the hauling rate on file for the pool plant at East Liberty, Ohio, is 22.5 cents per hundredweight for milk in 45,000 pound tank trucks. The order now provides a location allowance of 28 cents per hundredweight for milk received at this location. As proposed herein, the rate would be reduced to 22 cents, approximating the actual cost of shipment. The same situation prevails at other pool plant locations in the milkshed. The proponent cooperative operates a supply plant at Goshen, Indiana. A representative of this cooperative stated that milk is hauled in large tank trucks from its supply plant at Goshen into the Cleveland market for 30 cents per hundredweight, the exact rate that would result from this decision. The present location adjustment at Goshen, however, is 36 cents per hundredweight.

The proposed reduction in the location differential adjustment would tend to improve Class I price alignment with the Northwestern Ohio and Fort Wayne order markets, handlers in which markets compete with Northeastern Ohio handlers in both sales and procurement. For a Northeastern Ohio pool plant located at Toledo, Ohio, 1963 Class I prices averaged $4.26, while the comparable Northwestern Ohio order Class I price at this location was $4.35, a difference of nine cents. As proposed herein, the Northeastern Ohio Class I price would have been $4.32 or only three cents under the Northwestern Ohio Class I price. The Northeastern Ohio Class I price for a plant at Fort Wayne averaged $4.17 in 1963, while the Fort Wayne order price averaged $4.30, a difference of 13 cents. As proposed herein, the Northeastern Ohio Class I price at Fort Wayne would have been $4.23 and the difference narrowed to 7 cents.

Location differential credits are now applicable to milk used to produce cottage cheese and sour cream. As provided elsewhere in this decision, milk so used is classified and priced in the newly designated Class II classification. This price is determined by the prices paid for manufacturing grade milk f.o.b. plants in Wisconsin and Minnesota.

Allowing a location adjustment on milk used in cottage cheese and sour cream manufacture would result in returning to producers a price lower than the price for manufacturing grade milk. For example, milk utilized in cottage cheese or sour cream manufactured at a plant at which a 30-cent location differential credit was applicable would net the Northeastern Ohio order pool 30 cents below the Class II price. Such a provision, which would have the effect of pricing manufacturing grade milk in such residual uses as butter and nonfat milk solids at a higher price than milk used in cottage cheese or sour cream manufacture, is neither feasible nor economically justifiable. It is concluded, therefore, that no location differential should be provided on milk used in cottage cheese and sour cream manufacture.

8. *Seasonal incentive payments.* In conjunction with the proposal for a uniform Class I price differential, a "take out-pay back" plan was proposed under which specified amounts would be deducted from the uniform price in April through July for payment to producers in September through December. This plan received only limited support from handlers and was opposed by producers.

A seasonal incentive plan provides for the distribution among producers of the proceeds from the sale of their milk. Such a plan does not affect handlers' buying prices under the order. Hence, it would be inappropriate to institute revised distribution among producers of the returns from the sale of their milk. In view of this and of the decision to retain a seasonally variable Class I price, the proposal is denied.

9. *Miscellaneous and conforming changes.* (a) The provision for reload point should be retained.

A cooperative association proposed that the provision be deleted from the order on the basis that (1) there have not been any reload points established since the provision was adopted in 1959, and (2) the provision could enable a handler to include in the pool milk that otherwise has no association with the market.

The provision was adopted to accommodate the pricing of bulk tank milk. Its primary purpose is to establish a point of pricing of such milk and not its pool status. Therefore, the provision could not be used as a means of establishing

pool status for milk and there need be no concern in this regard. The fact that there have not been any reload points established under the order does not justify deleting it at this time. The conversion to bulk tank delivery is still underway in this market and it may well be that the provision will be needed in the future.

(b) The various amendments proposed herein require conforming changes in several sections of the order. The proposed diversion limitations require a redrafting of the "producer" and "producer milk" definitions. Numerous references to "Class III" are either deleted or changed to "Class II".

Rulings on proposed findings and conclusions and on motion. 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.

The ruling of the Presiding Officer to which specific objection was taken in one of the briefs filed under § 900.9(b) of the rules of practice has been reviewed. The objection was to the Presiding Officer's ruling to admit evidence on proposed changes in the supply-demand computation in the Class I pricing provisions. Since the proposal is denied, the motion is moot and does not require further consideration.

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

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

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

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

1. Section 1036.6 is revised to read as follows:

§ 1036.6 Handler.

"Handler" means:

(a) Any person who operates a pool plant.

(b) Any person who operates a partially regulated distributing plant.

(c) A cooperative association with respect to the milk of any producer which such cooperative association causes to be diverted for the account of such association from a pool plant to a pool plant or nonpool plant.

(d) A cooperative association with respect to milk of its producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association: *Provided*, That such cooperative association shall not be a handler pursuant to this paragraph unless the market administrator and the handler who is the operator of the pool plant where such milk is to be received are notified in writing by the cooperative association that it elects to be the handler for such milk: *And provided further*, That such milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which such milk is delivered.

(e) A producer-handler, or any person who operates an other order plant.

2. Section 1036.7 is revised to read as follows:

§ 1036.7 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 the inspection requirements of the appropriate health authority in the marketing area for consumption as fluid milk, which milk is received at a pool plant or diverted pursuant to § 1036.10 from a pool plant to a nonpool plant. "Producer" shall not include any such person with respect to milk for which such person retains his status as a producer as defined under another order issued pursuant to the Act and which milk is classified and priced under such other order.

3. Section 1036.10 is revised to read as follows:

§ 1036.10 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk which is:

(a) Received at a pool plant directly from a dairy farmer or from a handler pursuant to § 1036.6(d);

(b) Diverted from the farm of a producer to a nonpool plant in any month of April through July and in any other month in which at least 6 days' production of the producer is delivered to a pool plant, subject to the following:

(1) Milk so diverted for the account of the operator of a pool plant shall be deemed to have been received at the plant from which diverted; and

(2) Milk so diverted from the plant of another handler for the account of a cooperative association shall be priced at the location of the plant from which diverted; and

(c) Diverted from the farm of a producer to another pool plant for the account of the handler operating the pool plant from which diverted. Milk so diverted shall be deemed to have been received for the account of such handler at the location of the pool plant from which diverted if at least 6 days' production of the producer is delivered to such plant during the month.

4. Section 1036.12 is revised to read as follows:

§ 1036.12 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk and flavored milk drinks unmodified or "fortified" including "dietary milk products" and reconstituted milk or skim milk; concentrated milk not in hermetically sealed cans; and cream and mixtures of cream and milk or skim milk. "Fluid milk product" shall not include sterilized cream packaged in hermetically sealed containers which is disposed of in the same form as received, frozen or sour cream, aerated cream products, eggnog, ice cream and frozen dessert mixes or milk shake mix.

5. Section 1036.22(j)(1) is revised to read as follows:

§ 1036.22 Duties.

* * * * *

(j) * * *

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

* * * * *

6. In § 1036.30, the introductory text and paragraph (a)(1) are revised to read as follows:

§ 1036.30 Reports of receipts and utilization.

On or before the eighth day after the end of the month each handler except a handler pursuant to § 1036.6(e) and a handler exempt pursuant to § 1036.91 shall report to the market administrator for such month in detail and on forms prescribed by the market administrator:

(a) * * *

(1) Milk received from producers (or qualified dairy farmers, in case of a nonpool plant) and from handlers pursuant to § 1036.6(d).

* * * * *

7. Section 1036.31 is revised to read as follows:

§ 1036.31 Other reports.

(a) On or before the eighth day after the end of the month, each handler pursuant to § 1036.6(d) shall report to the market administrator in detail and on forms prescribed by the market administrator the quantities of skim milk and butterfat in producer milk delivered to each pool plant in the month.

(b) Each producer-handler and each handler exempt pursuant to §§ 1036.90 or 1036.91 shall make reports to the market administrator at such time and in such manner as the market administrator may request.

8. The introductory text in § 1036.32 is revised to read as follows:

§ 1036.32 Payroll reports.

On or before the 25th day after the end of each month, each handler who received milk from producers and/or handlers pursuant to § 1036.6(d) and each handler except a handler who elected at the time of reporting to make payments pursuant to § 1036.75(b) who operates a partially regulated distributing plant shall submit to the market administrator his producer payroll for the month (in the case of the handler operating the partially regulated distributing plant, his payroll for qualified dairy farmers), which shall show:

* * * * *

8(a). Section 1036.40 is revised to read as follows:

§ 1036.40 Skim milk and butterfat to be classified.

All skim milk and butterfat which is required to be reported pursuant to § 1036.30 shall be classified pursuant to §§ 1036.41 through 1036.48.

9. In § 1036.41(a)(2), the language "Class II or Class III" is revised to read "Class II"; § 1036.41(c) is revoked; and § 1036.41(b) is revised to read as follows:

* * * * *

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

(1) Used to produce a product other than a fluid milk product;

(2) Disposed of in fluid milk products in bulk to any commercial food processing establishment for use in food products prepared for consumption off the premises;

(3) Disposed of for livestock feed or dumped subject to prior notification to and inspection (at his discretion) by the market administrator;

(4) In frozen cream;

(5) In inventory of fluid milk products on hand at the end of the month;

(6) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1036.42(a)(1) but not in excess of:

(i) Two percent of producer milk (except that received from a handler pursuant to § 1036.6(d);

(ii) Plus 1.5 percent of producer milk received from a handler pursuant to § 1036.6(d): *Provided,* That if the handler receiving such milk files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage pursuant to this subdivision shall be 2 percent;

(iii) Plus 1.5 percent of milk received in bulk tank lots from pool plants of other handlers;

(iv) Plus 1.5 percent of receipts of fluid milk products in bulk from other order plants exclusive of the quantity for which Class II utilization was requested by the operators of such plants and the handlers;

(v) Plus 1.5 percent of receipts of fluid milk products in bulk from unregulated supply plants exclusive of the quantity for which Class II utilization is requested by the handler; and

(vi) Less 1.5 percent of milk disposed of in bulk tank lots to pool plants of other handlers;

(7) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1036.42(a)(2); and

(8) Contained in that portion of "fortified" fluid milk products not classified as Class I milk.

10. In § 1036.42(a), the reference "§ 1036.41(c)(6)" is revised to read "§ 1036.41(b)(6)" wherever it appears.

11. In § 1036.43(d)(3)(iv), the language "Class II or Class III milk, whichever is claimed" is revised to read "Class II milk"; in § 1036.43(e), the language "or Class III" is revoked wherever it appears; and § 1036.43(e)(5) is revised to read as follows:

§ 1036.43 Transfers.

* * * * *

(e) * * *

(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

* * * * *

12. In § 1036.45, the language "Class I milk, Class II milk, and Class III milk" is revised to read "Class I milk and Class II milk".

13. Section 1036.46 is revised to read as follows:

§ 1036.46 Allocation of butterfat classified.

The pounds of butterfat remaining after making the following computations shall be the pounds in each class allocated to producer milk:

(a) Subtract from the total pounds of butterfat in Class II the pounds of butterfat classified as Class II pursuant to § 1036.41(b)(6);

(b) Subtract from the remaining pounds of butterfat in each class the pounds of butterfat in fluid milk products received in packaged form from other order plants as follows:

(1) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(2) From Class I milk, the remainder of such receipts;

(c) Subtract in the order specified below from the pounds of butterfat remaining in each class, in series beginning with Class II, the pounds of butterfat in each of the following:

(1) Other source milk in a form other than that of a fluid milk product;

(2) Receipts of fluid milk products for which appropriate health approval is not established, or which are from unidentified sources; and

(3) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(d) Subtract, in the order specified below from the pounds of butterfat remaining in Class II but not in excess of such quantity.

(1) Receipts of fluid milk products from an unregulated supply plant:

(i) For which the handler requests Class II utilization; or

(ii) Which are in excess of the pounds of butterfat determined by multiplying the pounds of butterfat remaining in Class I milk by 1.25 and subtracting the sum of the pounds of butterfat in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants;

(2) Receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

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

(f) Add to the remaining pounds of butterfat in Class II milk the pounds subtracted pursuant to paragraph (a) of this section;

(g) Subtract from the pounds of butterfat remaining in each class, pro rata to such quantities, the pounds of butterfat in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to paragraph (d)(1) of this section;

(h) Subtract from the pounds of butterfat remaining in each class, in the following order, the pounds of butterfat in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to paragraph (d)(2) of this section:

(1) In series beginning with Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II utilization of butterfat announced for the month by the market administrator pursuant to § 1036.22(1) or the percentage that Class II utilization remaining is of the total remaining utilization of butterfat of the handler; and

(2) From Class I, the remaining pounds of such receipts;

(i) Subtract from the pounds of butterfat remaining in each class the pounds of butterfat received in fluid milk products from pool plants of other handlers according to the classification assigned pursuant to § 1036.43(a); and

(j) If the pounds of butterfat remaining in all classes exceed the pounds of butterfat in producer milk, subtract such

excess from the pounds of butterfat remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage".

14. In § 1036.51(a), "$1.35" is revised to read "$1.40".

15. Section 1036.52 is revised to read as follows:

§ 1036.52 Class II milk price.

The minimum price per hundredweight to be paid by each handler, f.o.b. his plant, for producer milk of 3.5 percent butterfat content received from producers or from a cooperative association during the month, which is classified as Class II utilization, shall be the basic formula price, as computed pursuant to § 1036.50, but in no event shall the Class II price exceed the price per hundredweight computed by adding together the plus amounts computed as follows, plus 10 cents:

(a) From the average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter for the month as reported by the Department of Agriculture for the Chicago market, subtract three cents, add 20 percent of the resulting amount and then multiply by 3.5; and

(b) From the weighted average 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 of Agriculture, deduct 5.5 cents, multiply by 8.5 and then multiply by 0.965.

16. Section 1036.53 is revoked.

§ 1036.53 [Reserved]

17. In § 1036.54, the reference "§§ 1036.51, 1036.52 and 1036.53" is revised to read "§§ 1036.51 and 1036.52", paragraph (c) is revoked and paragraph (b) is revised to read as follows:

§ 1036.54 Butterfat differentials to handlers.

* * * * *

(b) *Class II milk.* Multiply by 1.15 and divide the result by 10.

18. Section 1036.55 is revised to read as follows:

§ 1036.55 Handler location adjustment.

For milk received from producers at a pool plant or reload point which is located both 40 miles or more from the Public Square in Cleveland, Ohio, and also 27.5 miles or more from the nearer of the City Hall in Akron, the City Hall in Canton or the City Hall in Ashtabula, Ohio, and which, is moved in fluid form to another pool plant, is classified as Class I without movement in fluid form to another plant, or is otherwise classified as Class I, and for other source milk for which a location adjustment credit is applicable, the Class I price pursuant to § 1036.51 shall be reduced at the rate specified below for the location of such plant.

(a) For purposes of calculating this adjustment, transfers between pool plants shall be assigned as follows:

(1) With respect to fluid milk products moved in bulk form to a pool plant described in § 1036.8(a) in a volume not in excess of that by which an amount equal to 108 percent of Class I utilization at such transferee plant (including the volume assignable under the provisions of this subparagraph with respect to any transfers to a second such plant described in § 1036.8(a)) exceeds receipts of producer milk and that assigned as Class I to receipts from other Federal order plants and unregulated supply plants at such plant. Such volume shall be assigned in sequence as follows: (i) to receipts in the form of fluid milk from reload points considered to be a part of such plant's operations, and (ii) to other receipts of fluid milk products from pool plants, other order plants or reload points in the sequence at which the least total adjustments would apply; and

(2) With respect to fluid milk products moved in bulk to pool plants described in § 1036.8 (b), (c), or (d), in a volume not in excess of that by which 108 percent of the milk classified as Class I utilization without movement as a fluid milk product in bulk form to another pool plant plus that assignable to such plant pursuant to subparagraph (1) of this paragraph exceeds receipts of producer milk and the volume assigned as Class I receipts from other order plants and unregulated supply plants at such plant, such volume to be assignable to transferor plants in the sequence provided in subparagraph (1) of this paragraph.

(b) The rates of location adjustment credit, based on the shortest highway distance from the Public Square in Cleveland, Ohio, as determined by the market administrator, shall be 13 cents per hundredweight for 40.1–60 miles plus 1 cent per hundredweight for each 10 miles or fraction thereof in excess of 60 miles.

19. In § 1036.70, paragraph (d), the language "Class III" is revised to read "Class II" and paragraph (c) is revised to read as follows:

§ 1036.70 Computation of the net pool obligation of each pool handler.

* * * * *

(c) Add the amount obtained by multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.46(e) and the corresponding step of § 1036.47;

* * * * *

20. In § 1036.75, paragraph (a)(1)(i), the language "or Class III" is revoked and in paragraph (b)(4), the language "Class III" is revised to read "Class II".

21. In § 1036.80, paragraph (b)(1), the language "each handler shall pay to the cooperative association" is revised to read "each handler shall pay to the cooperative association for producer milk", and in paragraph (c) (1) and (2), the language "Class III" is revised to read "Class II".

22. In § 1036.82, the language "Classes I, II and III" is revised to read "Classes I and II".

23. In § 1036.84(b)(2), the language "Class III" is revised to read "Class II".

Signed at Washington, D.C., on February 16, 1965.

CLARENCE H. GIRARD,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 65-1786; Filed, Feb. 18, 1965; 8:50 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 71]

[Airspace Docket No. 65-WE-19]

CONTROL ZONE

Proposed Alteration

The Federal Aviation Agency is considering amendments to Part 71 of the Federal Aviation Regulations which would alter the Riverside, Calif. (Municipal Airport), control zone.

The Riverside, Calif. (Municipal Airport) control zone is presently designated within a 3-mile radius of Riverside Municipal Airport (latitude 33°57'05" N., longitude 117°26'30" W.); within 2 miles each side of the Riverside VOR 292° radial, extending from the 3-mile radius zone to 4.5 miles NW of the VOR, excluding the portion within a 1-mile radius of the Riverside Fla-Bob Airport (latitude 33°59'20" N., longitude 117°-24'35" W.). This control zone is effective from 0500 to 2130 hours, local time, daily.

The Federal Aviation Agency proposes to redesignate the Riverside, Calif. (Municipal Airport), control zone within a 3-mile radius of Riverside Municipal Airport (latitude 33°57'05" N., longitude 117°26'30" W.); within 2 miles each side of the Riverside VOR 292° radial, extending from the 3-mile radius zone to 4.5 miles NW of the VOR; and within 2 miles each side of the Riverside VOR 103° radial, extending from the 3-mile radius zone to 7.5 miles E of the VOR, excluding the portion within a 1-mile radius of the Riverside Fla-Bob Airport (latitude 33°59'20" N., longitude 117°24'35" W.), and the portion that coincides with the Riverside, Calif. (March AFB) control zone. This control zone would be effective from 0500 to 2130 hours, local time, daily.

The action proposed herein would provide protection to aircraft executing prescribed instrument procedures at Riverside Municipal Airport.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles, Calif., 90009. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hear-

ing 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. 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.

A public Docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Agency, 5651 West Manchester Avenue, Los Angeles, Calif., 90045.

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended; 72 Stat. 749; 49 U.S.C. 1348)

Issued in Los Angeles, Calif., on February 11, 1965.

WILLIAM R. KRIEGER,
Acting Deputy Director,
Western Region.

[F.R. Doc. 65-1742; Filed, Feb. 18, 1965; 8:45 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Office of the Secretary

PUEBLO OF SANTA CLARA RESERVATION, NEW MEXICO

Ordinance Legalizing the Introduction, Sale or Possession of Intoxicants

Pursuant to the Act of August 15, 1953 (Public Law 277, 83d Cong., 1st sess.; 67 Stat. 586), I certify that the following ordinance relating to the application of the Federal Indian liquor laws on the Santa Clara Pueblo Reservation was duly adopted by the Santa Clara Pueblo Council which has jurisdiction over the area of Indian country included in the ordinance:

The Council of the Pueblo of Santa Clara, a recognized Indian Tribe, duly organized under the Act of Congress of June 18, 1934 (48 Stat. 984), acting in accordance with the powers conferred upon the Council by Article IV of the Constitution of the Pueblo of Santa Clara, approved December 20, 1935, and in accordance with the provisions of the Act of Congress of August 15, 1953 (67 Stat. 586), does hereby enact the following Ordinance:

Whereas, Public Law 277, 83d Congress, approved August 15, 1953 (67 Stat. 586; 18 USCA 1161) provides that Sections 1154, 1156, 3113, 3488, and 3618 of Title 18, United States Code, commonly referred to as the Federal Indian Liquor Laws, shall not apply to any act or transaction within any area of Indian country provided such act or transaction is in conformity with both the laws of the State in which such act or transaction occurs and with an Ordinance duly adopted by the Tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the FEDERAL REGISTER; and,

Whereas, the Pueblo of Santa Clara desires to enact an ordinance permitting the introduction, sale or possession of intoxicating beverages on the lands of the Pueblo of Santa Clara; and,

Whereas, the enactment of this ordinance is deemed by the Council to be in the best interests of the Pueblo of Santa Clara;

Now, therefore, be it ordained by the Council of the Pueblo of Santa Clara that the introduction, sale or possession of intoxicating beverages on and within the lands of the Pueblo of Santa Clara shall be lawful so long as such introduction, sale or possession is in conformity with the laws of the State of New Mexico.

Be it further ordained that any laws, resolutions or ordinances heretofore enacted by the Council of the Pueblo of Santa Clara which are or may be inconsistent herewith, be and the same are hereby repealed.

Be it further ordained that the Ordinance of the Council of the Pueblo of Santa Clara duly enacted June 29, 1964, pertaining to the same subject as this Ordinance, and the Ordinance of the Pueblo of Santa Clara duly enacted August 17, 1964, pertaining to the same subject as this Ordinance, be and said Ordinances are hereby specifically superseded by this Ordinance.

Be it further ordained that this Ordinance shall become effective upon its certification by the Secretary of the Interior and publication in the FEDERAL REGISTER as provided in Section 1161, Title 18, United States Code.

Duly enacted by the Council of the Pueblo of Santa Clara this 14th day of December, 1964.

STEWART L. UDALL,
Secretary of the Interior.

FEBRUARY 13, 1965.

[F.R. Doc. 65-1745; Filed, Feb. 18, 1965; 8:46 a.m.]

DEPARTMENT OF THE TREASURY

Bureau of Customs

[431.1]

ELECTRIC DESK LAMPS

Notice of Proposed Tariff Classification

Certain electric desk lamps, designated as "Lampettes", which are in chief value of brass, and in which iron is the base metal which predominates by weight over each of the other base metals contained in the lamps, appear to be classifiable under the provision for illuminating articles * * * of base metal: * * * other: * * * other, in item 653.40, Tariff Schedules of the United States, with duty at the rate of 19 percent ad valorem.

Such a classification appears to be required in view of Schedule 6, Headnote 2(d) of the tariff schedules which provides: "in determining which of two or more equally specific provisions for articles 'of iron or steel', 'of copper', 'of aluminum', or 'of' other base metals applies to an article containing two or more base metals and wholly or in chief value thereof, the classification shall be made according to the base metal which predominates by weight over each of the other base metals rather than according to the base metal in chief value."

Pursuant to § 16.10a(d) of the Customs Regulations (19 CFR 16.10a(d)), notice is hereby given that there is under review in the Bureau of Customs the existing established and uniform practice of classifying these lamps under the provision for illuminating articles * * * of base metal: * * * other: * * * table, floor and other portable lamps for indoor illumination, of brass, in item 653.35 with duty at the rate of 10.5 percent ad valorem.

Consideration will be given to any relevant data, views, or arguments pertaining to the correct tariff classification of this merchandise which are submitted in writing to the Bureau of Customs, Washington 25, D.C. To assure consideration, such communications must be received in the Bureau not later than 30 days from the date of publication of this notice. No hearings will be held.

[SEAL] LESTER D. JOHNSON,
Acting Commissioner of Customs.

Approved: February 8, 1965.

JAMES A. REED,
Assistant Secretary of the Treasury.

[F.R. Doc. 65-1767; Filed, Feb. 18, 1965; 8:48 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 115-4]

PUERTO RICO WATER RESOURCES AUTHORITY

Notice of Application for Facility Operating Authorization

Please take notice that the Puerto Rico Water Resources Authority, San Juan, P.R., under Part 115 of the Atomic Energy Commission's regulations, has filed an application for an Operating Authorization to operate the Boiling Water Nuclear Superheater (BONUS) reactor located at Punta Higuera, P.R. The reactor is currently being operated under a Provisional Operating Authorization issued jointly to the Puerto Rico Water Resources Authority and Combustion Engineering, Inc., the designer and builder of the reactor. Following completion of initial operation at power levels up to the designed capacity of 50 megawatts (thermal), the Puerto Rico Water Resources Authority proposes to operate the BONUS reactor alone as part of its electric power generating system.

A copy of the application is available for public inspection in the AEC Public Document Room located at 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md., this 11th day of February 1965.

For the Atomic Energy Commission.

R. L. DOAN,
Director,
Division of Reactor Licensing.

[F.R. Doc. 65-1737; Filed, Feb. 18, 1965; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

MICHIGAN ET AL.

Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the States of Michigan, Minnesota, New Hampshire, Rhode Island, Texas, and Vermont natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

MICHIGAN

Alger.	Menominee.
Delta.	Schoolcraft.
Dickinson.	

MINNESOTA

Koochiching.

NEW HAMPSHIRE

Belknap.	Merrimack.
Cheshire.	Rockingham.
Grafton.	Strafford.
Hillsboro.	Sullivan.

RHODE ISLAND

Bristol.	Providence.
Kent.	Washington.
Newport.	

TEXAS

Lubbock.

VERMONT

Addison.	Rutland.
Bennington.	Windham.
Orange.	Windsor.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named Michigan, Minnesota, New Hampshire, Rhode Island, and Vermont counties after December 31, 1965, or in the above-named Texas county after June 30, 1965, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 16th day of February 1965.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 65-1756; Filed, Feb. 18, 1965; 8:47 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ROHM & HAAS CO.

Notice of Extension of Temporary Tolerances for Pesticide Chemicals Nickel Sulfate and Maneb

Rohm & Haas Co., 222 West Washington Square, Philadelphia Pa., 19105, was granted a temporary tolerance of 45 parts per million for residues of the fungicide nickel sulfate (calculated as Ni) and a temporary tolerance of 2 parts per million for residues of the fungicide maneb in or on the raw agricultural commodities grain and straw of oats and wheat. These temporary tolerances will expire April 6, 1965.

Because of the low incidence of rust disease in oats and wheat on which these fungicides were tested, further extension of the temporary tolerances has been requested to permit additional tests during the coming year. The Commissioner of Food and Drugs has determined that such additional extension of the temporary tolerances will not adversely affect the public health. Conditions under which these temporary tolerances are extended are as follows:

1. The total amount of the finished product containing 19 percent anhydrous nickel sulfate and 53 percent maneb to be used under the experimental permit issued by the U.S. Department of Agriculture will not exceed 25,000 pounds. Distribution will be under the Rohm & Haas Co. name.

2. The fungicides will not be marketed for general use but will be supplied to qualified persons for bona fide experimental use.

3. The Rohm & Haas Co. will immediately inform the Food and Drug Administration of any reports on findings from the experimental use that have a bearing on safety. The company will also keep records of production, distribution, and performance, and on request make these records available to any authorized officer or employee of the Food and Drug Administration.

These temporary tolerances expire February 15, 1966.

This action is taken pursuant to the authority contained in the Federal Food, Drug, and Cosmetic Act (sec. 408(j), 68 Stat. 516; 21 U.S.C. 346a(j)), delegated by the Secretary of Health, Education, and Welfare to the Commissioner of Food and Drugs (21 CFR 2.90).

Dated: February 15, 1965.

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

[F.R. Doc. 65-1770; Filed, Feb. 18, 1965; 8:48 a.m.]

GRAIN PROCESSING CORP.

Notice of Filing of Petition Regarding Food Additives Manganese Bacitracin and Procaine Penicillin

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 4C1413) has been filed by Grain Processing Corp., Post Office Box 341, Muscatine, Iowa, 52761, proposing the issuance of a regulation to provide for the safe use of manganese bacitracin with or without procaine penicillin in chicken feed, as follows:

Principal ingredient	Gm. per ton	Limitations	Indications for use
Bacitracin.....	50-100	For chicks; in starter ration; as manganese bacitracin.	Prevention of early mortality of chicks due to susceptible organisms.
Bacitracin plus penicillin.	50-100	For chicks; 50-100 gm. of combination; not less than 12.5 gm. of penicillin nor less than 25 gm. of bacitracin; as procaine penicillin plus manganese bacitracin.	Do.

Dated: February 10, 1965.

MALCOLM R. STEPHENS,
Assistant Commissioner for Regulations.

[F.R. Doc. 65-1773; Filed, Feb. 18, 1965; 8:49 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 11155 etc.; Order No. E-21792]

RATES FOR CERTAIN MILITARY MAIL IN PACIFIC SERVICE

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 15th day of February 1965, rates for certain military mail in pacific service, Dockets 11155, 11181 and 11205.

By Order E-15463, June 29, 1960, the Board established a rate for the transportation of military ordinary mail in the Pacific. The order specified that the rate was to be applied to the direct airport-to-airport mileage between points served except in the case of services between San Francisco, Portland, or Seattle and Tokyo. For such Tokyo services the standard mileage of 5,079 miles was specified. This is the same mileage as that earlier established for air mail by Order E-11060, February 25, 1957 and it was computed on the basis of a Seattle, Anchorage, Cold Bay, Tokyo routing which was then the shortest routing being flown.

The Board has recently established a new service mail rate for transpacific air mail along with standard mileages for computing the carriers' compensation (Order E-21514, November 19, 1964). The Seattle-Tokyo mileage of 4,843 miles specified in that order is based on the direct routing now being used by Northwest Airlines, Inc. That order also specifies a standard mileage of 5,943 miles for San Francisco-Tokyo service which is performed by Pan American World Airways, but that carrier has elected to invoke the equalization provisions of the rate order and accept compensation based on Northwest's shorter Seattle-Tokyo mileage.

The Postmaster General has requested that the mileage applicable to military ordinary mail be reduced to coincide with the mileage now applicable to air mail. Since the ordinary mail mileage was set to equal the air mail mileage in 1960 and the air mail mileage has since been reduced to reflect the nonstop operations now being conducted, it appears that the Postmaster General's request should be granted.

In view of the foregoing, the Board has concluded that the West Coast-Tokyo standard mileage specified in Order E-15463, June 29, 1960 should be reduced from 5,079 to 4,843 miles. Thus, it is proposed to issue an order amending ordering paragraph (1)(c) of Order E-15463, June 29, 1960, as follows:

(c) The rates established in these proceedings will be applied to the mail ton-miles carried each month by each carrier in the class of service to which these rates are applicable. The mail ton-miles shall be computed on the basis of the direct airport-to-airport mileage between points served for the carriage of mail; *Provided, however,* That for military mail transported between San Francisco, Portland, or Seattle and Tokyo the mail ton-miles shall be computed on the

basis of a standard mileage of 4,843 miles;

Pursuant to the Federal Aviation Act of 1958, and particularly sections 204 and 406 thereof,

It is ordered, That

1. All interested persons are directed to show cause why the Board should not adopt an order in the form proposed above to be effective on and after the date of the final order herein.

2. Further procedures herein shall be in accordance with 14 CFR Part 302; and, if there is any objection to issuance of an order in the form proposed above, notice of objection shall be filed within seven days, and, if notice is filed, written answer and supporting documents shall be filed within 15 days, after the date of service of this order.

3. If notice of objection or answer is not filed, as specified in 14 CFR Part 302 and this order, all persons shall be deemed to have waived further procedural steps herein before issuance of an order in the form proposed above.

4. If any answer is filed presenting issues for hearing, the issues involved thereafter shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with 14 CFR 302.307.

5. This order shall be served on Northwest Airlines, Inc., Pan American World Airways, Inc., and the Postmaster General.

6. This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 65-1782; Filed, Feb. 18, 1965; 8:49 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 15830-15832]

AMERICAN HOMES STATIONS, INC., ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of American Homes Stations, Inc., Orlando, Fla., Docket No. 15830, File No. BPH-4160, Requests: 105.1 mc, #286; 89.67 kw; 482.8 ft.; Thomas Harvey Moffit trading as Orange County Broadcasters, Orlando, Fla., Docket No. 15831, File No. BPH-4291, Requests: 105.1 mc, #286; 100 kw; 490 ft.; Orlando Radio & Television Broadcasting Corp., Orlando, Fla., Docket No. 15832, File No. BPH-4378, Requests: 105.1 mc, #286; 100 kw; 436 ft.; for construction permits.

The Commission, by the Chief of the Broadcast Bureau under delegated authority, considered the above-captioned applications on February 15th, 1965;

It appearing, that, except as indicated by the issues specified below, each of the applicants is legally, technically, financially and otherwise qualified to construct and operate as proposed; and

It further appearing, that the above-captioned applications are mutually exclusive in that the operation by the applicants as proposed would result in mutually destructive interference; and

It further appearing, that the areas for which the applicants propose to provide FM broadcast service are significantly different in size and that, for purposes of comparison, the areas and populations within the respective 1 mv/m contours together with the availability of other FM service (at least 1 mv/m) within such areas will be considered in the hearing ordered below for the purpose of determining whether a comparative preference should accrue to one of the applicants; and

It further appearing, that, in view of the foregoing, the Commission is unable to make the statutory finding that a grant of the subject applications would serve the public interest, convenience, and necessity, and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues set forth below:

It is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations within each of the proposed 1 mv/m contours and the availability of other FM service (at least 1 mv/m) to such areas and populations.

2. To determine, on a comparative basis, which of the proposals would better serve the public interest, convenience, and necessity in light of the evidence adduced pursuant to the foregoing issues and the record made with respect to the significant differences between the applicants as to:

(a) The background and experience of each having a bearing on the applicant's ability to own and operate the FM station as proposed.

(b) The proposals of each of the applicants with respect to the management and operation of the FM broadcast station as proposed.

(c) The programming services proposed in each of the above-captioned applications.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues which of the applications should be granted.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission's rules in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue:

To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the applications will be effectuated.

Released: February 16, 1965.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 65-1775; Filed, Feb. 18, 1965; 8:49 a.m.]

[Docket No. 14830; FCC 65R-59]

CONNECTICUT COAST BROADCASTING CO.

Order Amending Issues

By the Review Board: Board Member Nelson not participating.

In re application of Salvatore Bontempo and Daniel J. Fernicola, doing business as Connecticut Coast Broadcasting Co.,[1] Bridgeport, Conn., Docket No. 14830, File No. BP-15463; for construction permit.

The Review Board having under consideration: (1) The Commission's Order (FCC 64-807), released September 4, 1964, referring to the Review Board for its original action the Broadcast Bureau's verified motion, filed July 31, 1964, to reopen the record and add issues in this proceeding concerning the qualifications of Connecticut Coast Broadcasting Co. (Connecticut Coast) to be a licensee of this Commission; (2) the Bureau's verified motion, a response thereto, filed October 26, 1964, by Connecticut Coast, and the Bureau's reply to said response, filed December 15, 1964; and (3) the Review Board's Memorandum Opinion and Order of this date, granting a similar motion to reopen the record and add issues in the Wide Water Broadcasting Co., Inc. (East Syracuse, N.Y.) proceeding (Docket Nos. 14669, et al.) concerning the qualifications of Radio Voice of Central New York, Inc. (Radio Voice) to be a licensee of this Commission;

[1] By Order (FCC 64-806), released September 4, 1964, the Commission denied an application filed by Garo W. Ray for review of a Review Board Decision (36 FCC 1038, 2 RR 2d 399), released April 16, 1964, which had denied Garo W. Ray's application (Docket No. 14829, File No. BP-15462) for a new standard broadcast station at Seymour, Conn.; the Commission severed Ray's application from this consolidated proceeding.

It appearing, that the Broadcast Bureau's verified motion in this proceeding and in the Wide Water proceeding raise the same questions concerning the qualifications of Connecticut Coast and of Radio Voice, of which Daniel J. Fernicola is a common principal, to be licensees of this Commission and that the Review Board's aforementioned Memorandum Opinion and Order of this date in the Wide Water proceeding considered these same questions; and

It further appearing, that the Review Board's conclusions in regard to the Wide Water proceeding apply equally in the disposition of the Bureau's verified motion in this proceeding;

It is ordered, This 15th day of February 1965, that the verified motion to reopen record and add issues, filed July 31, 1964, by the Broadcast Bureau is granted, and this proceeding is remanded to the Hearing Examiner for further proceedings consistent with this order and the aforementioned opinion in the Wide Water proceeding, and the issuance of a Supplemental Initial Decision in accordance with such additional findings; and

It is further ordered, That, insofar as this proceeding and the Wide Water Broadcasting Co., Inc. (East Syracuse, N.Y.) proceeding (Docket Nos. 14669, et al.) involve common issues, the said proceedings are consolidated for the presentation of evidence pursuant to these common issues and for the evaluation of such evidence in the Supplemental Initial Decisions to be issued with respect to proceedings (see Commission Order FCC 64-807); and

It is further ordered, That the following issues are added to this proceeding:

(a) To determine all facts regarding financial transactions involving principals of Connecticut Coast Broadcasting Co. on the one hand and John J. Farina on the other hand.

(b) To determine whether any of the principals of Connecticut Coast Broadcasting Co. had knowledge of or participated in misrepresentations or concealments of fact with regard to the application of John J. Farina trading as Mount Holly-Burlington Broadcasting Co.

(c) To determine whether any of the principals of Connecticut Coast Broadcasting Co. misrepresented or concealed facts in applications filed with the Federal Communications Commission.

(d) To determine in light of the foregoing whether Connecticut Coast Broadcasting Co. and its principals have the requisite qualifications to be licensees of the Federal Communications Commission.

(e) To determine whether Connecticut Coast Broadcasting Co. is financially qualified to construct and operate its proposed broadcast facility at Bridgeport, Conn.

Released: February 16, 1965.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 65-1776; Filed, Feb. 18, 1965; 8:49 a.m.]

[Docket Nos. 15442, 15443; FCC 65M-186]

DUBUQUE BROADCASTING CO. AND TELEGRAPH-HERALD

Order Continuing Hearing

In re applications of Dubuque Broadcasting Co., Dubuque, Iowa, Docket No. 15442, File No. BPH-3920; Telegraph-Herald, Dubuque, Iowa, Docket No. 15443, File No. BPH-4288; for construction permits.

Having under consideration a letter request filed by Dubuque Broadcasting Co. on February 10, 1965, for continuance of hearing from February 15, 1965 to March 22, 1965; and

It appearing that on February 4, 1965, the Commission granted a request for rule making assigning a new channel to Dubuque, Iowa, so that there are now two Class C FM channels available for assignment there, thus permitting one of the applicants here to amend its application to specify the newly assigned channel; and

It further appearing that both of the other parties in this proceeding, Broadcast Bureau and Telegraph-Herald, join in this request;

It is ordered, This 12th day of February 1965, that the letter request described above is granted, and hearing in this proceeding now scheduled for February 15, 1965, is continued to March 22, 1965.

Released: February 16, 1965.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 65-1777; Filed, Feb. 18, 1965; 8:49 a.m.]

[Docket No. 15833; FCC 65-97]

ELKINS RADIO

Order Designating Application for Hearing on Stated Issues

In re application of Warren J. Currence, doing business as Elkins Radio, Elkins, W. Va., Docket No. 15833, File No. 466-CD-65; application for Citizens (Class D) radio station license.

At a session of the Federal Communications Commission, held at its offices in Washington, D.C., on the 10th day of February 1965;

The Commission having under consideration the application of Warren J. Currence, Elkins, W. Va., for Citizens (Class D) radio station license;

It appearing, that the applicant's license for Citizens radio station 4W0152 was revoked by the Commission, effective June 3, 1963, in Docket No. 14579, because of numerous violations of the Citizens Radio Service Rules and the transmission by radio of obscene, indecent or profane language, in violation of Title 18, United States Code, section 1464; and

It further appearing, that applicant was thereafter prosecuted for violation of Title 47, United States Code, section 301 (unlicensed radio station operation) and Title 18, United States Code, section 1464 (transmission of obscene, indecent or profane language) and on pleas of guilty was convicted of both violations on November 12, 1963; and

It further appearing, that, except for the matters placed in issue below the applicant is legally and technically qualified to hold the license for which the captioned application has been made; and

It further appearing, that in view of the foregoing, the Commission is unable to find that the public interest, convenience and necessity would be served by the grant of the captioned application;

Accordingly, it is ordered, Pursuant to section 309(e) of the Communications Act of 1934, as amended, that the captioned application is designated for hearing, at a time and place to be specified by subsequent order, upon the following issues:

1. To determine whether Warren J. Currence possesses the requisite character qualifications to hold a Citizens (Class D) radio station license particularly in view of the proceedings in Docket No. 14579 and his subsequent conviction for unlicensed radio station operation and transmission by radio of profane, indecent or obscene language.

2. To determine the uses the applicant proposes to make of the radio facilities for which the captioned application has been filed.

3. To determine whether, in the light of the evidence adduced under the foregoing issues, the public interest, convenience and necessity would be served by the grant of the captioned application; and

It is further ordered, That, to avail himself of the opportunity to be heard, the applicant, Warren J. Currence, will, pursuant to § 1.221(c) of the Commission's rules, within 20 days of the mailing of this Order, file in triplicate with the Commission, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified in this Order; and

It is further ordered, That in any hearing held pursuant to this Order, the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant.

Released: February 16, 1965.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 65-1778; Filed, Feb. 18, 1965; 8:49 a.m.]

[Docket Nos. 14878, 14879; FCC 65M-180]

PRATTVILLE BROADCASTING CO. AND BILLY WALKER

Order Continuing Hearing

In re applications of Ned N. Butler and Claude M. Gray, doing business as The Prattville Broadcasting Co., Prattville, Ala., Docket No. 14878, File No. BP-14571; Billy Walker, Prattville, Ala., Docket No. 14879, File No. BP-14729; for construction permits.

The Hearing Examiner having under consideration a request for postponement

of hearing filed February 11, 1965, on behalf of The Prattville Broadcasting Co., which request seeks to postpone the hearing now scheduled for February 16 to April 6, 1965; and

It appearing that the reason for the requested postponement is the fact that there is presently pending before the Commission's Review Board a petition seeking further enlargement of the issues in the above-entitled proceeding; and

It further appearing that the orderly administration of the Commission's business requires that, where possible, all matters to be resolved at an evidentiary hearing be resolved at the same time, that there are no objections to the immediate favorable consideration of this request, and good cause for granting the same having been shown;

It is ordered, This the 11th day of February 1965, that the request for postponement of hearing is granted, and the evidentiary hearing now scheduled to be held on February 16, 1965 is continued to Tuesday, April 6, 1965, at Prattville, Ala.

Released: February 15, 1965.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 65-1779; Filed, Feb. 18, 1965; 8:49 a.m.]

[Docket Nos. 15769, 15770; FCC 65M-184]

BROWN RADIO & TELEVISION CO. (WBVL) AND BARBOURVILLE-COMMUNITY BROADCASTING CO.

Order Changing Place of Hearing

In re applications of Dwight L. Brown trading as Brown Radio & Television Co. (WBVL), Barbourville, Ky., Docket No. 15769, File No. BR-3228, for renewal of license; Barbourville-Community Broadcasting Co., Barbourville, Ky., Docket No. 15770, File No. BP-16297, for construction permit.

The Chief Hearing Examiner having under consideration a petition in behalf of Barbourville-Community Broadcasting Co., filed February 4, 1965, for field hearing in the above-entitled proceeding, and a statement in support of the petition, filed February 11, 1965, by the Chief of the Commission's Broadcast Bureau;

It appearing, that Brown Radio & Television Co. is here applying for renewal of the license of Radio Station WBVL, Barbourville, Ky., on the frequency 950 kilocycles, power of 1 kilowatt, daytime hours; that petitioner herein is applying for the same facilities in Barbourville; that, by orders heretofore issued, the mutually exclusive applications of these parties were consolidated for hearing to be held in Washington, D.C., to determine, under the standard comparative issue, which of the two proposed operations should be authorized; and that petitioner now asks that the hearing be held in Barbourville, Ky.;

It appearing further, that, as suggested by the Bureau Chief, the field hearing sought by petitioner is necessary in this broadcast renewal proceeding to enable the Barbourville community to express itself fully "on the factors of WBVL's stewardship," and upon the question of whether public interest would be better served by renewing the WBVL license or by granting the franchise to the competing applicant;

It is ordered, This 15th day of February 1965, that the petition is granted and that the hearing in the above-entitled proceeding will be convened in Barbourville, Ky., in lieu of Washington, D.C., on April 20, 1965.

Released: February 15, 1965.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 65-1780; Filed, Feb. 18, 1965; 8:49 a.m.]

[Docket Nos. 15254, 15255; FCC 65M-182]

ULTRAVISION BROADCASTING CO. AND WEBR, INC.

Order Continuing Prehearing Conference

In re applications of Florian R. Burczynski, Stanley J. Jasinski and Roger K. Lund, doing business as Ultravision Broadcasting Co., Buffalo, N.Y., Docket No. 15254, File No. BPCT-3200; WEBR, Inc., Buffalo, N.Y., Docket No. 15255, File No. BPCT-3211; for construction permits for new television broadcast stations.

The Hearing Examiner having under consideration a joint motion filed February 11, 1965, on behalf of each of the above applicants requesting that the further prehearing conference now scheduled for February 12, 1965, be continued to March 19, 1965; and

It appearing that the reason for the requested continuance is the fact that a motion to modify and enlarge the issues is presently pending before the Commission which motion, if granted, will affect substantially the oral testimony and cross-examination of witnesses on financial matters, and it will serve no useful purpose to proceed until the Commission has acted on the pending motion; and

It further appearing that Commission counsel is agreeable to the immediate favorable action on the joint motion, and good cause for granting the same having been shown;

It is ordered, This the 11th day of February 1965, that the joint motion for postponement is granted, and the further prehearing conference now scheduled for February 12, 1965 is continued to March 19, 1965, beginning at 9 a.m. in the offices of the Commission, Washington, D.C.

Released: February 15, 1965.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 65-1781; Filed, Feb. 18, 1965; 8:49 a.m.]

FEDERAL RESERVE SYSTEM

UNITED CALIFORNIA BANK

Order Approving Merger of Banks

In the matter of the application of United California Bank for approval of merger with Bank of Mt. Shasta.

There has come before the Board of Governors, pursuant to the Bank Merger Act of 1960 (12 U.S.C. 1828(c)), an application by United California Bank, Los Angeles, Calif., a State member bank of the Federal Reserve System, for the Board's prior approval of the merger of that bank and Bank of Mt. Shasta, Mount Shasta, Calif., under the charter and title of United California Bank. As an incident to the merger, the only office of Bank of Mt. Shasta would become a branch of the resulting bank. Notice of the proposed merger, in form approved by the Board, has been published pursuant to said Act.

Upon consideration of all relevant material in the light of the factors set forth in said Act, including reports furnished by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Department of Justice on the competitive factors involved in the proposed merger,

It is hereby ordered, For the reasons set forth in the Board's Statement[1] of this date, that said application be and hereby is approved, provided that said merger shall not be consummated (a) within 7 calendar days after the date of this order or (b) later than three months after said date.

Dated at Washington, D.C., this 12th day of February 1965.

By order of the Board of Governors.[2]

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 65-1738; Filed, Feb. 18, 1965; 8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-3421]

CONTINENTAL VENDING MACHINE CORP.

Order Suspending Trading

FEBRUARY 15, 1965.

The common stock, 10 cents par value, of Continental Vending Machine Corp., being listed and registered on the American Stock Exchange and having unlisted trading privileges on the Philadelphia-Baltimore-Washington Stock Exchange,

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C., 20551, or to the Federal Reserve Bank of San Francisco.

[2] Voting for this action: Chairman Martin, and Governors Mills, Robertson, Mitchell, and Daane. Absent and not voting: Governors Balderston and Shepardson.

and the 6 percent convertible subordinated debentures due September 1, 1976 being listed and registered on the American Stock Exchange, pursuant to provisions of the Securities Exchange Act of 1934; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such Exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the American Stock Exchange, the Philadelphia-Baltimore-Washington Stock Exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period February 16, 1965, through February 25, 1965, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 65-1743; Filed, Feb. 18, 1965; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

[Disaster Order No. 9; Amdt. 3]

CALIFORNIA AND OREGON

Northwestern Pacific Railroad Co. et al.; Authorization To Transport Property at Reduced Rates

In the matter of relief under section 22 of the Interstate Commerce Act.

Upon further consideration of Disaster Order No. 9 entered January 21, 1965, as amended January 28 and February 11, 1965, responsive to an application filed by the Northwestern Pacific Railroad Co., and upon consideration of an application dated February 9, 1965, filed by the Southern Pacific Co. requesting entry of an order under section 22 of the Interstate Commerce Act authorizing railroads subject to the Commission's jurisdiction participating in the transportation of property to or from stations on The Arcata & Mad River Rail Road Co. and the Northwestern Pacific Railroad Co. north of Longvale, Calif., in which area damage to property and disruption of rail transportation facilities has resulted because of recent floods, to establish and maintain reduced rates to and from such stations with the object of providing relief to shippers and receivers of carload freight:

It is ordered, That Disaster Order No. 9 of January 21, 1965, be, and it is hereby, amended to provide that the authority therein granted to establish and maintain until April 21, 1965, reduced rates in the manner proposed in the application responsive to which said Disaster Order No. 9 was issued, shall also apply to establish and maintain until April 21, 1965, in like manner reduced rates with the object of providing relief to shippers and receivers of carload freight in the disaster area described in Southern Pacific Co. application dated February 9, 1965, which is all of the area north of Klamath, Calif. in Del Norte County, who, because of the disruption of rail service caused by floods, are required to and do assume the cost of transporting freight by highway to or from Grants Pass, Oreg., on the Southern Pacific Co.

It is further ordered, That the second ordering paragraph of Disaster Order No. 9, as heretofore amended, be, and it is hereby, further amended to read as follows:

It is further ordered, That the class of persons entitled to such reduced rates is hereby defined as persons receiving or shipping carload freight at stations north of Longvale, Calif. on the lines of the railroads named in the preceding ordering paragraph, who, because of the disruption of rail service caused by the floods, are required to and do assume the cost of transporting the freight by highway to or from stations (1) on the Northwestern Pacific Railroad Co., Longvale and south to and including Fulton, Calif., and (2) Anderson, Kett, and Redding, Calif., and Grants Pass, Oreg., stations on the Southern Pacific Co., and who ship and receive such traffic by rail at such stations on the Northwestern Pacific Railroad Co. and the Southern Pacific Co.

It is further ordered, That, except as hereby amended, Disaster Order No. 9, as previously modified and amended, shall remain in full force and effect.

It is further ordered, That any tariffs or tariff provisions published under the authority of this order, as amended, shall explicitly so state making reference to this amended order by number and date.

And it is further ordered, That notice to the affected railroads and the general public shall be given by depositing a copy of this order in the Office of the Secretary of the Commission and by filing a copy with the Director, Office of the Federal Register; and that copies be mailed to the Chairman of the Traffic Executive Association—Eastern Railroads, New York, N.Y., the Chairman of the Southern Freight Association, Atlanta, Ga., the Chairman of the Executive Committee, Western Railroad Traffic Association, Chicago, Ill., the Traffic Vice-President of the Association of American Railroads, Washington, D.C., and to the President of the American Short Line Railroad Association, Washington, D.C.

Dated at Washington, D.C., this 12th day of February, A.D. 1965.

By the Commission, Vice Chairman Bush.

[SEAL] BERTHA F. ARMES, *Acting Secretary.*

[F.R. Doc. 65-1760; Filed, Feb. 18, 1965; 8:47 a.m.]

FOURTH SECTION APPLICATION FOR RELIEF

FEBRUARY 15, 1965.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 39577—*Class and commodity rates from or to Denver, N.C.* Filed by O. W. South, Jr., agent (No. A4635), for interested rail carriers. Rates on property moving on class and commodity rates, in carloads and less-than-carloads, from or to Denver, N.C., on the one hand, and points in the United States and Canada, on the other.

Grounds for relief—New station and grouping.

By the Commission.

[SEAL] BERTHA F. ARMES, *Acting Secretary.*

[F.R. Doc. 65-1761; Filed, Feb. 18, 1965; 8:47 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

FEBRUARY 16, 1965.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 39578—*Soda ash to Nixon, Ga.* Filed by O. W. South, Jr., Agent (No. A4636), for interested rail carriers. Rates on soda ash, in bulk in covered hopper cars, in carloads, from Baton Rouge and North Baton Rouge, La., to Nixon, Ga.

Grounds for relief—Market competition.

Tariff—Supplement 50 to Southern Freight Association, Agent, tariff ICC S-397.

FSA No. 39579—*Liquid caustic soda to Nixon and Westover, Ga.* Filed by O. W. South, Jr., Agent (No. A4637), for interested rail carriers. Rates on liquid caustic soda, in tank-carloads, from Baton Rouge, North Baton Rouge, and Geismar, La., to Nixon and Westover, Ga.

Grounds for relief—Market competition.

Tariff—Supplement 50 to Southern Freight Association, Agent, tariff ICC S-397.

By the Commission.

[SEAL] BERTHA F. ARMES, *Acting Secretary.*

[F.R. Doc. 65-1762; Filed, Feb. 18, 1965; 8:47 a.m.]

[Notice 17]

FINANCE APPLICATIONS

FEBRUARY 16, 1965.

The following publications are governed by the Interstate Commerce Commission's General Requirements governing notice of filing of applications under sections 20a except (12) and 214 of the Interstate Commerce Act. The Commission's order of May 20, 1964, providing for such publication of notice, was published in the FEDERAL REGISTER issue of July 31, 1964 (29 F.R. 11126) and became effective October 1, 1964.

All hearings and prehearing conferences, if any, will be called at 9:30 a.m., U.S. standard time unless otherwise specified.

F.D. No. 23410—By Supplemental Application filed January 28, 1965, Missouri Pacific Railroad Co., 210 North 13th Street, St. Louis, Mo., 63103, seeks authority under section 20a of the Interstate Commerce Act to assume obligation and liability in respect of $5,250,000 aggregate principal amount of its Serial Equipment Trust Certificates, Series V and the sale thereof as the second and final installment. Applicant's attorney: Karl F. Kraus, Assistant General Counsel, 210 North 13th Street, St. Louis, Mo., 63103. Protests must be filed no later than 15 days from date of publication in the FEDERAL REGISTER.

NOTE: The original application seeking authority to issue the first installment of the two-installment issue totaling $9,600,000 was published in the FEDERAL REGISTER issue of December 19, 1964.

F.D. No. 23495—By application filed February 5, 1965, New River Railway Co., Post Office Box 1808, Washington, D.C., 20013, seeks authority under section 20a of the Interstate Commerce Act to issue 500 shares of $100 par value common capital stock. Applicant's attorneys: James A. Bistline, General Solicitor, R. Allan Wimbish, Assistant General Solicitor, and William P. Stallsmith, Jr., Commerce Counsel, Southern Railway System, Post Office Box 1808, Washington, D.C., 20013. Protests must be filed no later than 15 days from date of publication in the FEDERAL REGISTER.

F.D. No. 23497—By application filed February 4, 1965, Shippers Dispatch, Inc., 1216 West Sample Street, South Bend 24, Ind., seeks authority under section 214 of the Interstate Commerce Act to (1) assume, by way of co-endorsement, a promissory note or notes as one of the obligations of H & R Terminals of Illinois, Inc., in the amount of $1,000,000; (2) to assume, by way of co-endorsement, a promissory note or notes as one of the obligations of H&R Terminals, Inc., in the amount of $300,000; and (3) to issue a promissory note or notes in the amount of $200,000. Applicant's attorney: Ferdinand Born, 1019 Chamber of Commerce Building, Indianapolis, Ind. Protests must be filed no later than 15 days from date of publication in the FEDERAL REGISTER.

F.D. No. 23498—By application filed February 5, 1965, Eastern Motor Dispatch, Inc., 1215 West Mound Street, Columbus 23, Ohio, seeks authority under section 214 of the Interstate Commerce Act to execute and deliver a promissory note in the principal amount of $120,000 with interest at the rate of 5¼ percent per annum. Applicant's attorney: William E. Rance, Boehm & Rance, 1200 West Fifth Avenue, Columbus, Ohio, 43212. Protests must be filed no later than 15 days from date of publication in the FEDERAL REGISTER.

F.D. No. 23411—By supplemental application filed February 8, 1965, Southern Railway Co., Post Office Box 1808, Washington, D.C., 20013, seeks authority under section 20a of the Interstate Commerce Act to assume obligation and liability in respect of $5,700,000 principal amount of Southern Railway Equipment Trust No. 1 of 1965 Certificates, being the second and final installment of a proposed issue of $11,400,000 principal amount of said certificates. Applicant's attorneys: James A. Bistline, General Solicitor and R. Allan Wimbis, Assistant General Solicitor, Southern Railway Co., Post Office Box 1808, Washington, D.C., 20013. Protests must be filed no later than 15 days from date of publication in the FEDERAL REGISTER.

NOTE: The original application for authority to issue the first installment was published in the FEDERAL REGISTER issue of December 19, 1964.

F.D. No. 23502—By application filed February 8, 1965, Hadley Auto Transport, 7428 Paramount Boulevard, Pico Rivera, Calif., seeks authority under section 214 of the Interstate Commerce Act to issue 99,000 shares of stock without par value, as a stock split, to present stockholders on a basis of 99 shares for each share now held. Applicant's attorney: Phil Jacobson, Attorney, 510 West Sixth Street, Suite 723, Los Angeles, Calif., 90014. Protests must be filed no later than 15 days from date of publication in the FEDERAL REGISTER.

F.D. No. 23504—By application filed February 9, 1965, St. Louis-San Francisco Railway Co., 906 Olive Street, St. Louis, Mo., 63101, seeks authority under section 20a of the Interstate Commerce Act, to assume obligation and liability in respect of not exceeding $4,185,000 aggregate principal amount of its Serial Equipment Trust Certificates, Series N, and the sale thereof. Applicant's attorney: John C. Ashton, Jr., General Attorney, St. Louis-San Francisco Railway Co., 906 Olive Street, St. Louis, Mo., 63101. Protests must be filed no later than 15 days from date of publication in the FEDERAL REGISTER.

F.D. No. 23409—By supplemental application filed February 11, 1965, The Texas & Pacific Railway Co., Fidelity Union Tower, 1507 Pacific Avenue, Dallas, Tex., 75201, seeks authority under section 20a of the Interstate Commerce Act to issue $4,200,000 aggregate principal amount of its Serial Equipment Trust Certificates, Series Y, comprising the second and final installment of a two-installment issue not exceeding $6,900,000 principal amount. Applicant's attorney: M. M. Hennelly, Vice President-Law, The Texas & Pacific Railway Co., 210 North 13th Street, St. Louis, Mo., 63103. Protests must be filed no later than 15 days from date of publication in the FEDERAL REGISTER.

NOTE: The original application was published in the December 19, 1964, issue of the FEDERAL REGISTER.

By the Commission.

[SEAL] BERTHA F. ARMES, *Acting Secretary.*

[F.R. Doc. 65-1763; Filed, Feb. 18, 1965; 8:47 a.m.]

[Notice 1128]

MOTOR CARRIER TRANSFER PROCEEDINGS

FEBRUARY 16, 1965.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-67532. By order of February 8, 1965, the Transfer Board approved the transfer to Valley Trucking, Inc., Everett, Mass., of Certificate in No. MC-85570 (Sub-No. 2), issued December 2, 1952, to Joseph Fendone, doing business as Valley Trucking, Malden, Mass., authorizing the transportation of: new furniture, from Boston, Mass., and points within 15 miles of Boston, to points in Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut, and damaged, rejected, or returned shipments of new furniture on the return, uncrated new furniture, from Boston, Mass., and points in Massachusetts within 15 miles of Boston to points in New York and New Jersey, and, furniture frames and springs, and damaged or rejected shipments of uncrated new furniture, from points in New York and New Jersey, to Boston, Mass., and points in Massachusetts within 15 miles of Boston. Arthur A. Wentzell, Post Office Box 720, Worcester, Mass., 01601, representative for applicants.

No. MC-FC-67533. By order of February 8, 1965, the Transfer Board approved the transfer to Pierce Transit Co., Inc., Dracut, Mass., of Certificate in No. MC-30142, issued December 16, 1953, to Omer N. Blanchard, North Tewksbury, Mass., authorizing the transportation of: Passengers and their baggage, in charter operations, from Boston, Mass., and points in Massachusetts within 20 miles of Boston, to points in Rhode Island and New Hampshire, and return. Jacob Whitkin, Esq., 294 Washington Street, Boston 8, Mass., attorney for applicants.

[SEAL] BERTHA F. ARMES, *Acting Secretary.*

[F.R. Doc. 65-1764; Filed, Feb. 18, 1965; 8:47 a.m.]

[Notice 1128-A]

MOTOR CARRIER TRANSFER PROCEEDINGS

FEBRUARY 16, 1965.

Synopses of orders entered pursuant to section 212(b) of the Interstate Com-

merce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's general rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 30 days from the date of service of the order. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-67324. By order of February 12, 1965, Division 3, acting as an Appellate Division, approved the transfer to Robert Francis Murphy, doing business as C. W. I. Co., West Allis 21, Wis., of the operating rights in Permit No. MC-124587 issued August 1, 1963, to John Dentici, doing business as J. D. Transport, 3075 South 149th Street, New Berlin, Wis., authorizing the transportation of insulation, over irregular routes, from Newark, Ohio, Kansas City, Kans., and Aurora, Ill., to points in Kenosha, Racine, Walworth, Dane, Rock, Jefferson, Waukesha, Milwaukee, Ozaukee, Washington, Dodge, Columbia, Fond du Lac, and Sheboygan Counties, Wis. Robert Francis Murphy, 2159 South 116th Street, West Allis 21, Wis., representative for applicants.

[SEAL] BERTHA F. ARMES,
Acting Secretary.

[F.R. Doc. 65-1765; Filed, Feb. 18, 1965; 8:48 a.m.]

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