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# FEDERAL REGISTER

VOLUME 31 • NUMBER 157

Saturday, August 13, 1966 • Washington, D.C.

Pages 10761–10872

**Agencies in this issue—**

The President
Agriculture Department
Air Force Department
Business and Defense Services Administration
Civil Aeronautics Board
Civil Service Commission
Commerce Department
Consumer and Marketing Service
Federal Aviation Agency
Federal Maritime Commission
Federal Power Commission
Fish and Wildlife Service
General Services Administration
Interior Department
Interstate Commerce Commission
Justice Department
Land Management Bureau
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Securities and Exchange Commission
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Treasury Department
United States Information Agency
Wage and Hour Division

**Detailed list of Contents appears inside.**

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FEDERAL REGISTER

Area Code 202 Phone 963-3261

Published daily, Tuesday through Saturday (no publication on Sundays, Mondays, or on the day after an official Federal holiday), by the Office of the Federal Register, National Archives and Records Service, General Services Administration (mail address National Archives Building, Washington, D.C. 20408), pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

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# Contents


## THE PRESIDENT

EXECUTIVE ORDER

Coordination of Federal urban programs ..... 10765

## EXECUTIVE AGENCIES

### AGRICULTURE DEPARTMENT

*See also* Consumer and Marketing Service.

**Rules and Regulations**

Determination of parity prices; miscellaneous amendments ..... 10767

**Notices**

Oklahoma and Utah; designation of areas for emergency loans ..... 10855

### AIR FORCE DEPARTMENT

**Rules and Regulations**

Standards of conduct ..... 10779

### BUSINESS AND DEFENSE SERVICES ADMINISTRATION

**Rules and Regulations**

Copper and copper-base alloys:
- Domestic refined copper set-aside ..... 10789
- Set-aside percentages ..... 10788

### CIVIL AERONAUTICS BOARD

**Notices**

Air Traffic Conference of America; agreement regarding travel agents; order deferring action ..... 10854

Korean Airlines; postponement of hearing ..... 10854

### CIVIL SERVICE COMMISSION

**Rules and Regulations**

Voting Rights Program; Madison Parish, La ..... 10799

### COMMERCE DEPARTMENT

*See also* Business and Defense Services Administration; Maritime Administration.

**Notices**

Adamson, Wallace H.; statement of changes in financial interests ..... 10854

### CONSUMER AND MARKETING SERVICE

**Rules and Regulations**

Dates, domestic, produced or packed in California; outlets for substandards and culls ..... 10768

Fruit grown in California and Arizona; handling limitations:
- Lemons ..... 10767
- Oranges, Valencia ..... 10767

Hops of domestic production; salable quantity and allotment percentage for 1966–67 ..... 10768

**Proposed Rule Making**

Milk in certain marketing areas:
- Knoxville, Tenn.; suspension of certain provisions ..... 10847
- Puget Sound, Wash.; hearing ..... 10847
- St. Joseph, Mo., and Greater Kansas City; decision ..... 10800
- Wichita and Southwest Kansas; decision ..... 10825

### DEFENSE DEPARTMENT

*See* Air Force Department.

### FEDERAL AVIATION AGENCY

**Rules and Regulations**

Airworthiness directives; Hawker Siddeley de Havilland:
- Model 104 Dove Series airplane ..... 10769
- Model 114 Heron Series airplanes ..... 10769

Cold Bay, Alaska, Airport; deletion ..... 10772

Control area extension, control zone, and transition area; revocation, amendment, and designation ..... 10770

Control area extension, control zone and control area, and transition area; revocation, amendment, and designation ..... 10769

Control zones and transition areas; alterations (2 documents) ..... 10770, 10771

Restricted areas and continental control areas; designation, revocation, and alteration ..... 10772

Transition areas:
- Alterations (3 documents) ..... 10770, 10771
- Designation ..... 10772

**Proposed Rule Making**

Airworthiness directive; BAC Model 1–11 200 and 400 Series airplanes ..... 10852

Transition area; designation ..... 10852

### FEDERAL MARITIME COMMISSION

**Notices**

American Mail Lines, Ltd., American President Lines, Ltd., and Pacific Far East Line, Inc.; agreement filed for approval ..... 10856

### FEDERAL POWER COMMISSION

**Notices**

*Hearings, etc.:*
- Burlington Bank & Trust Co. et al ..... 10856
- Colorado Interstate Gas Co ..... 10863
- Florida Gas Transmission Co ..... 10863
- Gulf States Utilities Co ..... 10863
- Iowa Electric Light and Power Co ..... 10864
- Illinois Power Co ..... 10864
- Northern Indiana Public Service Co ..... 10865
- Texas Gas Pipe Line Corp ..... 10865
- Western Massachusetts Electric Co. et al ..... 10865

### FISH AND WILDLIFE SERVICE

**Rules and Regulations**

Hunting in wildlife refuge areas:
- Big game:
  - Moosehorn, Maine ..... 10799
  - Carolina Sandhills, S.C ..... 10799
- Upland game:
  - Reelfoot, Ky., et al ..... 10798
  - Wheeler, Ala ..... 10797

**Notices**

Jamison, Vernon Leo; loan application ..... 10855

### GENERAL SERVICES ADMINISTRATION

**Notices**

Creede National Fish Hatchery, Colorado; transfer of property to State of Colorado ..... 10866

### INTERIOR DEPARTMENT

*See also* Fish and Wildlife Service; Land Management Bureau.

**Rules and Regulations**

Patents; licenses ..... 10796

### INTERSTATE COMMERCE COMMISSION

**Proposed Rule Making**

Railroad freight car ownership, car utilization, distribution, rules and practices; investigation of adequacy ..... 10853

**Notices**

Applications for approval of amendments to agreements:
- Middle Atlantic Conference ..... 10869
- Middlewest Motor Freight Bureau ..... 10869

Fourth section applications for relief ..... 10870

Motor carrier:
- Temporary authority applications ..... 10870
- Transfer proceedings ..... 10870

### JUSTICE DEPARTMENT

**Notices**

Madison Parish, La.; certification of the Attorney General pursuant to Voting Rights Act of 1965 ..... 10855

### LABOR DEPARTMENT

*See* Wage and Hour Division.

### LAND MANAGEMENT BUREAU

**Rules and Regulations**

Public land orders:
- Alaska; revocation of previous order ..... 10796
- New Mexico; partial revocation of public water reserve ..... 10796


(*Continued on next page*)

## MARITIME ADMINISTRATION

**Notices**

American Export Isbrandtsen Lines, Inc.; application for approval of certain cruises ..... 10854

## SECURITIES AND EXCHANGE COMMISSION

**Notices**

*Hearings, etc.:*
Continental Vending Machine Corp ..... 10866
Corroon & Reynolds Corp ..... 10866
Cummings Engine Co., Inc ..... 10867
Second Diversification Fund, Inc ..... 10867

## TARIFF COMMISSION

**Notices**

Certain workers of Fram Corp.; report to Automotive Agreement Adjustment Assistance Board ..... 10868

## TREASURY DEPARTMENT

**Rules and Regulations**

Practice before the Internal Revenue Service ..... 10773

## UNITED STATES INFORMATION AGENCY

**Rules and Regulations**

Public contracts and property management; miscellaneous amendments ..... 10789

## WAGE AND HOUR DIVISION

**Notices**

Certificates authorizing employment of learners at special minimum rates ..... 10868


# 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, 1966, and specifies how they are affected.**

### 3 CFR

EXECUTIVE ORDER:
July 10, 1919 (revoked in part by PLO 4073) ..... 10796
11297 ..... 10765

### 7 CFR

5 ..... 10767
908 ..... 10767
910 ..... 10767
987 ..... 10768
991 ..... 10768

PROPOSED RULES:
1061 ..... 10800
1064 ..... 10800
1073 ..... 10825
1074 ..... 10825
1101 ..... 10847
1125 ..... 10847

### 14 CFR

39 (2 documents) ..... 10769
71 (9 documents) ..... 10769–10772
73 ..... 10772
161 ..... 10772

PROPOSED RULES:
39 ..... 10852
71 ..... 10852

### 31 CFR

10 ..... 10773

### 32 CFR

920 ..... 10779

### 32A CFR

BDSA (Ch. VI):
M11A (2 documents) ..... 10788, 10789

### 41 CFR

19–1 ..... 10789
19–2 ..... 10792
19–3 ..... 10793
19–6 ..... 10794
19–15 ..... 10794
19–16 ..... 10794

### 43 CFR

6 ..... 10796

PUBLIC LAND ORDERS:
1462 (revoked by PLO 4074) ..... 10796
4073 ..... 10796
4074 ..... 10796

### 45 CFR

801 ..... 10799

### 49 CFR

PROPOSED RULES:
95–97 ..... 10853

### 50 CFR

32 (4 documents) ..... 10797–10799

# Presidential Documents

## Title 3—THE PRESIDENT

### Executive Order 11297

#### COORDINATION OF FEDERAL URBAN PROGRAMS

WHEREAS our Nation has become predominantly urban in character and is confronted by serious problems arising from inherited urban decay and rapid urban growth; and

WHEREAS the living standards and general welfare of its people depend upon the solution of the problems of urban life; and

WHEREAS the Congress has provided in the Department of Housing and Urban Development Act that the Secretary of Housing and Urban Development (hereinafter referred to as the Secretary) shall "advise the President with respect to Federal programs and activities relating to housing and urban development; develop and recommend to the President policies for fostering the orderly growth and development of the Nation's urban areas; and exercise leadership at the direction of the President in coordinating Federal activities affecting housing and urban development"; and

WHEREAS such activities are closely interrelated with other important Federal activities affecting urban areas so that there is a need for maximum consultation and cooperation among Federal departments and agencies in their administration of programs having impact on urban areas; and

WHEREAS such consultation and cooperation are also essential to enable the Secretary to carry out his responsibilities under that Act to "provide technical assistance and information, including a clearinghouse service to aid State, county, town, village, or other local governments in developing solutions to community and metropolitan development problems; consult and cooperate with State Governors and State agencies . . . with respect to Federal and State programs for assisting communities in developing solutions to community and metropolitan development problems and for encouraging effective regional cooperation in the planning and conduct of community and metropolitan development programs and projects":

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

SECTION 1. *Functions of the Secretary of Housing and Urban Development.* (a) To assist the Secretary in carrying out his responsibilities pursuant to the Department of Housing and Urban Development Act, he shall convene, or authorize his representatives to convene, meetings at appropriate times and places of the heads, or representatives designated by them, of such Federal departments and agencies with programs affecting urban areas as he deems necessary or desirable for the following purposes:

(1) To provide a forum for consideration of mutual problems concerning Federal programs and activities affecting the development of urban areas and for the exchange of current information needed to achieve coordination of, and to avoid duplication in, such programs and activities.

(2) To promote cooperation among Federal departments and agencies in achieving consistent policies, practices, and procedures for administration of their programs affecting urban areas.

(3) To consult with and obtain the advice of the Federal departments and agencies with respect to:

(A) consultation and cooperation with State Governors and State and local agencies concerning Federal and State programs for assisting communities;

(B) provision of technical information, a clearinghouse service, and other assistance to State and local governments in solving community and metropolitan development problems; and

(C) encouragement of comprehensive planning of, and effective regional cooperation in, local urban, community, and metropolitan development activities.

(4) To identify urban development problems of particular States, metropolitan areas, or communities which require interagency or intergovernmental coordination.

(b) The Secretary shall make arrangements with such Federal departments and agencies for working groups to consider special problems arising with respect to matters described in subsection (a) of this section.

SEC. 2. *Agency responsibilities.* The heads of Federal departments and agencies having programs which have an impact on urban areas, or representatives designated by them, shall participate in meetings convened pursuant to this Order and, to the extent permitted by law and funds available, shall furnish information, at the request of the Secretary, pertaining to programs within the responsibilities of such departments or agencies, and such additional information as will assist the Secretary in providing a clearinghouse service to aid State and local governments in developing solutions to community and metropolitan development problems.

SEC. 3. *Construction.* Nothing in this Order shall be construed as subjecting any function vested by law in, or assigned pursuant to law to, any Federal department or agency or head thereof to the authority of any other agency or officer or as abrogating or restricting any such function in any manner.

SEC. 4. *Administrative arrangements.* (a) Each executive department and agency participating under section 1 or section 2 shall furnish necessary assistance for effectuating the provisions of this Order as authorized by section 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691).

(b) The Department of Housing and Urban Development shall provide necessary administrative services pursuant to this Order.

LYNDON B. JOHNSON

THE WHITE HOUSE,
*August 11, 1966.*

[F.R. Doc. 66-8927; Filed, Aug. 12, 1966; 12:06 p.m.]

# Rules and Regulations

## Title 7—AGRICULTURE

### Subtitle A—Office of the Secretary of Agriculture

[Amdt. 17]

### PART 5—DETERMINATION OF PARITY PRICES

#### Miscellaneous Amendments

The regulations of the Secretary of Agriculture with respect to the determination of parity prices (21 F.R. 761, as amended; 7 CFR 5.1–5.6) are amended as hereinafter specified in order to delete Austrian winter peas, crested wheatgrass, lupine, redtop, smooth bromegrass, Sudan grass, common vetch, purple vetch, and buckwheat from the list of commodities for which parity prices shall be calculated.

1. In § 5.2, the paragraph under the centerhead "Seed Crops" is amended to read as follows:

Alfalfa, bentgrass, crimson clover, Chewings fescue, red fescue, tall fescue, Kentucky bluegrass, Merion Kentucky bluegrass, Ladino clover, lespedeza, orchard grass, red clover, sweetclover, timothy, hairy vetch, and white clover.

2. In § 5.2, the paragraph under the centerhead "Other Commodities" is amended to read as follows:

Beeswax; broomcorn; cottonseed; hops; peas, dry field; peppermint oil; popcorn; potatoes; spearmint oil; and tobacco, types 61 and 62. All other commodities for which monthly price data are not available.

3. In § 5.4, the paragraph under the centerhead "Seed Crops" is amended to read as follows:

Alfalfa, bentgrass, crimson clover, Chewings fescue, red fescue, tall fescue, Kentucky bluegrass, Marion Kentucky bluegrass, Ladino clover, lespedeza, orchard grass, red clover, sweetclover, timothy, hairy vetch, and white clover.

4. In § 5.4, the paragraph under the centerhead "Other Commodities" is amended to read as follows:

Beef cattle; hogs; lambs; calves; sheep; chickens; turkeys; eggs; beeswax; potatoes; broomcorn; hops; peppermint oil; popcorn; spearmint oil; tobacco, types 61 and 62; barley; beans, dry edible; cottonseed; peas, dry field; flaxseed; hay, all baled; oats; rye; sorghum grain; soybeans; sweetpotatoes; and crude pine gum.

(Sec. 301, 52 Stat. 38, as amended; 7 U.S.C. 1301)

Done at Washington, D.C., this 10th day of August 1966.

ORVILLE L. FREEMAN,
*Secretary.*

[F.R. Doc. 66-8860; Filed, Aug. 12, 1966; 8:50 a.m.]

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

[Valencia Orange Reg. 174]

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

#### Limitation of Handling

**§ 908.474 Valencia Orange Regulation 174.**

(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 current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on August 11, 1966.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., August 14, 1966, and ending at 12:01 a.m., P.s.t., August 21, 1966, are hereby fixed as follows:

(i) District 1: 200,000 cartons;

(ii) District 2: 375,000 cartons;

(iii) District 3: unlimited movement.

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

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

Dated: August 12, 1966.

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

[F.R. Doc. 66-8924; Filed, Aug. 12, 1966; 11:37 a.m.]

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[Lemon Reg. 227]

### PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

#### Limitation of Handling

**§ 910.527 Lemon Regulation 227.**

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

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became avail-

able and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on August 9, 1966.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., August 14, 1966, and ending at 12:01 a.m., P.s.t., August 21, 1966, are hereby fixed as follows:

(i) District 1: Unlimited movement;

(ii) District 2: 255,750 cartons;

(iii) District 3: Unlimited movement.

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

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

Dated: August 11, 1966.

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

[F.R. Doc. 66-8871; Filed, Aug. 12, 1966; 8:50 a.m.]

## PART 987—DOMESTIC DATES PRODUCED OR PACKED IN A DESIGNATED AREA OF CALIFORNIA

### Subpart—Outlets for Substandard and Cull Dates

DISPOSITION OF SUBSTANDARD DATES FOR CERTAIN SPECIFIED PRODUCTS

The Date Administrative Committee has unanimously recommended that the disposition of certain Deglet Noor dates prior to November 1, 1966, be authorized as provided in § 987.256 (Subpart—Outlets for Substandard and Cull Dates, 31 F.R. 960) for the period January 25–July 31, 1966, both dates inclusive.

Section 987.256 became effective under § 987.56 of marketing agreement, as amended, and Order No. 987, as amended (7 CFR Part 987), regulating the handling of domestic dates produced or packed in a designated area of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Section 987.256 provided that during the period beginning January 25, 1966, and ending July 31, 1966, dates of the Deglet Noor variety which are inspected and certified as meeting the grade and size requirements for marketable Deglet Noor dates except for defects of broken skin, improper hydration, mashing, and mechanical injury may be disposed of for use, or used, in the production of date products for human consumption in the form of rings, chunks, pieces, syrup, butter, macerated, or paste.

Section 987.256 was designed to augment the supply of dates available to meet an active demand in the designated date product outlets and give producers a substantially higher return with respect to certain substandard dates than could be realized from disposition in the limited outlets listed in § 987.56 for substandard and cull dates. However, all such eligible substandard dates were not disposed of under § 987.256 by July 31, 1966, and a substantial quantity remains on hand.

Making § 987.256 effective for the additional period ending October 31, 1966 (before new crop dates are available), will permit quantities of these dates still on hand to be used in the production of the authorized date products and further the objectives of § 987.256.

Based on the information and recommendation submitted by the Committee, and other available information, it is found that the use of certain substandard dates of the Deglet Noor variety in specified products for human consumption, as hereinafter set forth, will tend to effectuate the declared policy of the act.

Therefore, § 987.256 of Subpart—Outlets for Substandard and Cull Dates is revised to read as follows:

**§ 987.256 Disposition of substandard dates for certain specified products.**

Beginning January 25, 1966, and ending October 31, 1966, dates of the Deglet Noor variety which are inspected and certified as meeting the grade and size requirements for marketable Deglet Noor dates except for defects of broken skin, improper hydration, mashing, and mechanical injury may, pursuant to § 987.56, be disposed of for use, or used, in the production of date products for human consumption in the form of rings, chunks, pieces, syrup, butter, macerated, or paste.

It is further found that it is impracticable, unnecessary and contrary to public interest to give preliminary notice and engage in public rule making procedure and that good cause exists for making this action effective as hereinafter specified and for not postponing the effective time until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1003) in that: (1) This action was recommended by the Date Administrative Committee on July 26, 1966; and (2) it relieves restrictions on the disposition of certain substandard Deglet Noor dates.

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

Issued as of July 31, 1966.

PAUL A. NICHOLSON,
*Deputy Director, Fruit and Vegetable Division.*

[F.R. Doc. 66-8835; Filed, Aug. 12, 1966; 8:48 a.m.]

## PART 991—HOPS OF DOMESTIC PRODUCTION

### Salable Quantity and Allotment Percentage for 1966–67 Marketing Year

Notice was published in the July 27, 1966, issue of the FEDERAL REGISTER (31 F.R. 10131) regarding a proposal to establish a salable quantity and allotment percentage applicable to hops produced in Washington, Oregon, Idaho, and California for the 1966–67 marketing year beginning August 1, 1966. The percentage herein established is based on the unanimous recommendation of the Hop Administrative Committee and the Hop Marketing Advisory Board, and other available information in accordance with the applicable provisions of Marketing Order No. 991 (31 F.R. 9713, 10072) regulating the handling of hops of domestic production, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The notice afforded interested persons opportunity to submit written data, views, or arguments with respect to the proposal. None were submitted.

After consideration of all relevant matter presented, including that in the notice, the information and unanimous recommendation submitted by the committee and the board, the applicable provisions of the marketing order, and other available information, it is found that: (1) The allotment percentage that may be applicable to the current crop can not be less than 93 percent; (2) the establishment of a higher percentage for the crop would result in there being available hops that may be freely marketed in such an amount as would not tend to effectuate the declared policy of the act; and (3) to establish a salable quantity and allotment percentage as hereinafter set forth will tend to effectuate the declared policy of the act.

Therefore, the salable quantity and allotment percentage to be applicable to the 1966–67 marketing year (August 1, 1966–July 31, 1967) are established as follows:

**§ 991.201 Allotment percentage and salable quantity for hops during the marketing year beginning August 1, 1966.**

For the marketing year beginning August 1, 1966, the allotment percentage shall be 93 percent, and the salable quantity shall be in an amount equal

to the quantity resulting from multiplying the total of all producer allotment bases by the allotment percentage.

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1003(c)) in that: (1) The order requires establishment of volume limitations prior to August 15, 1966, if such are to be applicable to the 1966–67 crop of hops; (2) the relevant provisions of the marketing order require that the allotment percentage established for a particular marketing year shall be applicable to all handling of hops during such year; and (3) the current marketing year began August 1, 1966, and the allotment percentage established herein will automatically apply to all such hops beginning with such date.

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

Dated: August 10, 1966.

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

[F.R. Doc. 66–8856; Filed, Aug. 12, 1966; 8:49 a.m.]

# Title 14—AERONAUTICS AND SPACE

## Chapter I—Federal Aviation Agency

### SUBCHAPTER C—AIRCRAFT

[Docket No. 7554; Amdt. 39–273]

### PART 39—AIRWORTHINESS DIRECTIVES

### Hawker Siddeley de Havilland Model 104 Dove Series Airplanes

There have been cases of improper installation of fire extinguisher bottles and faulty engine air intake fire extinguishing system nozzle assemblies on de Havilland Model 104 Dove Series airplanes. Since these conditions are likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require inspection of the fire extinguisher system and replacement of incorrect components.

Since a situation exists that requires immediate adoption of this regulation, it found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

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 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

HAWKER SIDDELEY. Applies to de Havilland Model 104 Dove Series airplanes equipped with an engine fire extinguisher system.

Compliance required within the next 100 hours' time in service after the effective date of this AD, unless already accomplished.

(a) Inspect the engine air intake fire extinguishing system nozzle assembly to determine that 0.25-inch diameter radial holes are present in nozzle jet, P/N P.117. Replace each nozzle jet without 0.25-inch diameter radial holes with jet, P/N P.117, with 0.25-inch diameter radial holes.

(b) Inspect the engine fire extinguishing system to determine that proper fire extinguisher bottle and flexible hoses from the fire extinguisher bottle to the firewall and from the firewall to the distributor are installed in accordance with Hawker Siddeley Aviation, Ltd., Technical News Sheet CT (104) No. 196, Issue 1, or later ARB-approved issue or an FAA-approved equivalent. Replace improper fire extinguisher bottles and flexible hoses.

(Hawker Siddeley Aviation, Ltd., Technical News Sheet Dove (104) Series CT (104) No. 195, Issue 1, pertains to this subject.)

This amendment becomes effective August 13, 1966.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423))

Issued in Washington, D.C., on August 5, 1966.

EDWARD C. HODSON,
*Acting Director, Flight Standards Service.*

[F.R. Doc. 66–8805; Filed, Aug. 12, 1966; 8:45 a.m.]

[Docket No. 7555; Amdt. 39–274]

### PART 39—AIRWORTHINESS DIRECTIVES

### Hawker Siddeley de Havilland Model 114 Heron Series Airplanes

There have been faulty engine air intake fire extinguishing system nozzle assemblies on de Havilland Model 114 Heron Series airplanes. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require replacement of faulty air intake nozzle assemblies on the subject airplanes.

Since a situation exists that requires immediate adpotion of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

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 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

HAWKER SIDDELEY. Applies to de Havilland Model 114 Heron Series airplanes equipped with an engine fire extinguisher system.

Compliance required within the next 100 hours' time in service after the effective date of this AD, unless already accomplished.

(a) Inspect the engine air intake fire extinguishing system nozzle assembly to determine that 0.25-inch diameter radial holes are present in nozzle jet, P/N P.117. Replace each nozzle jet without 0.25-inch diameter radial holes with jet, P/N P.117, with 0.25-inch diameter radial holes.

(b) Inspect the engine fire extinguishing system to determine that proper fire extinguisher bottle and flexible hoses from the fire extinguisher bottle to the firewall and from the firewall to the distributor are installed in accordance with Hawker Siddeley Aviation, Ltd., Technical News Sheet CT (104) No. 196, Issue 1, or later ARB-approved issue or an FAA-approved equivalent. Replace improper fire extinguisher bottles and flexible hoses.

(Hawker Siddeley Aviation, Ltd., Technical News Sheet Dove (104) Series CT (104) No. 195, Issue 1, pertains to this subject.)

This amendment becomes effective August 13, 1966.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on August 5, 1966.

EDWARD C. HODSON,
*Acting Director, Flight Standards Service.*

[F.R. Doc. 66–8806; Filed, Aug. 12, 1966; 8:45 a.m.]

### SUBCHAPTER E—AIRSPACE

[Airspace Docket No. 65–WE–89]

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

### Revocation of Control Area Extension, Amendment of Control Zone and Control Area, and Designation of Transition Areas

On June 1, 1966, a notice of proposed rule making was published in the FEDERAL REGISTER (31 F.R. 7760) stating that the Federal Aviation Agency was considering amendments to Part 71 of the Federal Aviation Regulations that would revoke the Fortuna, Calif., control area extension, amend the Arcata, Calif., control zone, designate the Arcata, Calif., and Fortuna transition areas, and amend Control Area 1415.

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

In the notice, the 700-foot portion of the Arcata transition area was described as that airspace extending upward from 700 feet above the surface within 2 miles each side of the 323° and 153° True bearings from the Arcata Radio Beacon, extending from 7.5 miles northwest to 14.5 miles southeast of the radio beacon. A change in the ILS instrument approach procedure to the Arcata Airport requires a 0.5-mile addition to the 14.5 miles extension to the southeast of the radio beacon. Since this change is minor in nature, notice and public procedure thereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., October 13, 1966, as hereinafter set forth.

1. In § 71.163 (31 F.R. 2050) Control 1415 is amended to read:

CONTROL 1415

That airspace within parallel boundary lines 4 nmi each side of the Fortuna, Calif., VOR 270° radial including the additional airspace within lines diverging at angles of 4.5° from the centerline extending to the E boundary of the Oakland Oceanic Control Area, excluding the portion below 5,000 feet MSL W of longitude 124°30'00" W.

2. In § 71.165 (31 F.R. 2055) the Fortuna, Calif., control area extension is revoked.

3. In § 71.171 (31 F.R. 2065) the Arcata, Calif., control zone is amended to read:

ARCATA, CALIF.

Within a 5-mile radius of Arcata Airport (latitude 40°58'45" N., longitude 124°06'25" W.); and within 2 miles each side of the 219°

bearing from the Arcata RBN, extending from the 5-mile radius zone to 8 miles SW of the RBN.

4. In § 71.181 (31 F.R. 2149) the following transition areas are added:

ARCATA, CALIF.

That airspace extending upward from 700 feet above the surface within 2 miles each side of the 323° and 153° bearings from the Arcata RBN, extending from 7.5 miles NW to 15 miles SE of the RBN; and that airspace extending upward from 1,200 feet above the surface bounded on the W by longitude 124°30'00" W., on the N by latitude 41°16'00" N., on the E and S by a line 9 miles NE of and parallel to the 333° and 153° bearings from the Arcata RBN to latitude 40°34'00" N., thence to latitude 40°22'00" N., longitude 124°12'00" W., thence to latitude 40°22'00" N., longitude 124°30'00" W.; and within 9 miles each side of the Fortuna, Calif., VOR 110° radial, extending from the VOR to 61 miles E of the VOR.

FORTUNA, CALIF.

That airspace extending upward from 700 feet above the surface within 2 miles each side of the Fortuna VOR 327° radial, extending from the VOR to 8 miles NW of the VOR; and within 2 miles NE and 4.5 miles SW of the Fortuna VOR 147° radial, extending from the VOR to 3.5 miles SE of the VOR.

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

Issued in Washington, D.C., on August 8, 1966.

H. B. HELSTROM,
*Chief, Airspace and Air Traffic Rules Division.*

[F.R. Doc. 66-8807; Filed, Aug. 12, 1966; 8:45 a.m.]

[Airspace Docket No. 65-AL-21]

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

### Revocation of Control Area Extension, Amendment of Control Zone and Designation of Transition Area

On June 2, 1966, a notice of proposed rule making was published in the FEDERAL REGISTER (31 F.R. 7836) stating that the Federal Aviation Agency was considering amendments to Part 71 of the Federal Aviation Regulations that would revoke the control area extension, alter the control zone, and designate a transition area at Yakataga, Alaska.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., October 13, 1966, as hereinafter set forth.

1. In § 71.165 (31 F.R. 2055) the Yakataga, Alaska, control area extension is revoked.

2. In § 71.171 (31 F.R. 2065) the Yakataga, Alaska, control zone is amended to read:

YAKATAGA, ALASKA

Within a 5-mile radius of the Yakataga Airport (latitude 60°05' N., longitude 142°30' W.); and within 2 miles each side of the SW course of the Yakataga R.R., extending from the 5-mile radius zone to the INT of the SW course of the Yakataga R.R. and the E course of the Hinchinbrook, Alaska R.R. This control zone is effective from 0545 to 2145 hours, local time, daily.

3. In § 71.181 (31 F.R. 2149) the following transition area is added:

YAKATAGA, ALASKA

That airspace extending upward from 1,200 feet above the surface within 5 miles NW and 8 miles SE of the Yakataga R.R. SW course, extending from 7 miles NE to 13 miles SW of the INT of the SW course of the Yakataga R.R. and E course of the Hinchinbrook, Alaska R.R.; and within 5 miles each side of the Yakataga R.R. SE course, extending from the R.R. to the INT of the SE course of Yakataga R.R. and the W course of the Yakutat, Alaska R.R.

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

Issued in Washington, D.C., on August 8, 1966.

H. B. HELSTROM,
*Chief, Airspace and Air Traffic Rules Division.*

[F.R. Doc. 66-8808; Filed, Aug. 12, 1966; 8:45 a.m.]

[Airspace Docket No. 66-CE-40]

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

### Alteration of Control Zone and Transition Area

On June 4, 1966, a notice of proposed rule making was published in the FEDERAL REGISTER (31 F.R. 7975) stating that the Federal Aviation Agency proposed to alter controlled airspace in the Hastings, Nebr., terminal area.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. In the one comment received, the Aircraft Owners and Pilots Association objected to that portion of the proposal which included the 14-mile control zone extension to the north. This proposed control zone extension was based on the proposed Hastings TerVOR approach procedure that states that the procedure turn will be made within 15 miles of the facility. A review of this approach procedure reveals that it can be modified by reducing the distance from the facility for the procedure turn to 11 miles without affecting the landing minimums and impairing safety. Consequently, the proposed control zone extension will be reduced to 9.5 miles north of the Hastings Municipal Airport.

Since this change reduces the amount of proposed airspace, it imposes no additional burden on any person, and further notice and public procedure thereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., October 13, 1966, as hereinafter set forth.

(1) In § 71.171 (31 F.R. 2065) the Hastings, Nebr., control zone is amended to read:

HASTINGS, NEBR.

Within a 5-mile radius of Hastings, Nebr., Municipal Airport (latitude 40°36'20" N., longitude 98°25'30" W.), within 2 miles each side of the 338° bearing from Hastings Municipal Airport extending from the 5-mile radius zone to 9.5 miles N of the airport, and within 2 miles each side of the 143° bearing from Hastings Municipal Airport extending from the 5-mile radius zone to 8 miles SE of the airport. The control zone shall be effective during the time established by a Notice to Airmen and continuously published in the Airman's Information Manual.

(2) In § 71.181 (31 F.R. 2149) the Hastings, Nebr., transition area is amended to read:

HASTINGS, NEBR.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Hastings Municipal Airport (latitude 40°36'20" N., longitude 98°25'30" W.), within 2 miles each side of the 323° bearing from Hastings Municipal Airport extending from the 7-mile radius zone to 8 miles NW of the airport; within 2 miles each side of the 338° bearing from Hastings Municipal Airport extending from the 7-mile radius zone to 9.5 miles N of the airport, and within 2 miles each side of the 143° bearing from Hastings Municipal Airport extending from the 7-mile radius zone to 8 miles SE of the airport; and that airspace extending upward from 1,200 feet above the surface within 8 miles NE and 5 miles SW of the 143° bearing from Hastings Municipal Airport extending from the Hastings Municipal Airport to 14 miles SE, within 5 miles E and 9 miles W of the 338° bearing from the Hastings Municipal Airport extending from the Hastings Municipal Airport to 13 miles N, and within 5 miles each side of the 066° bearing from Hastings Municipal Airport extending from the Hastings Municipal Airport to the S edge of V-138 and the area bounded on the S by a line 5 miles S of and parallel to the 286° bearing from Hastings Municipal Airport on the N by V-8 S and on the E by a line 9 miles W of and parallel to the 338° bearing from Hastings Municipal Airport.

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

Issued in Kansas City, Mo., on August 1, 1966.

EDWARD C. MARSH,
*Director, Central Region.*

[F.R. Doc. 66-8809; Filed, Aug. 12, 1966; 8:45 a.m.]

[Airspace Docket No. 66-CE-38]

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

### Alteration of Transition Area

On June 1, 1966, a notice of proposed rule making was published in the FEDERAL REGISTER (31 F.R. 7761) stating that the Federal Aviation Agency proposed to alter the controlled airspace in the Helena, Mont., terminal area.

Interested parties were afforded an opportunity to participate in the rule making through the submission of comments. The one comment received was favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective 0001 e.s.t., October 13, 1966, as hereinafter set forth:

In § 71.181 (31 F.R. 2149) the Helena, Mont., transition area is amended to read:

HELENA, MONT.

That airspace extending upward from 700 feet above the surface within 6 miles N and 8 miles S of the Helena VORTAC 089° and 269° radials extending from 18 miles E to 7 miles W of the VORTAC; and that airspace extending upward from 1,200 feet above the surface within 6 miles S and 9 miles N of the Helena VORTAC 089° and 272° radials extending from 12 miles E to 45 miles W of the VORTAC, within the area bounded on the N by a line 5 miles N of and parallel to the Helena VORTAC 089° radial and on the SW by a line 5 miles SW of and parallel to the Helena VORTAC 119° radial extending from the VORTAC to the arc of an 18-mile radius circle centered on the VORTAC, and the area bounded on the NW by a line 6 miles NW of and parallel to the Great Falls, Mont., VORTAC 222° radial, on the NE by the arc of a 40-mile radius circle centered on Malmstrom AFB (latitude 47°30'35" N., longitude 111°11'35" W.), on the SE by a line 5 miles SE of and parallel to the Helena VORTAC 023° radial and on the south by a line 9 miles N of and parallel to the Helena VORTAC 089° and 272° radials.

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

Issued in Kansas City, Mo., on July 28, 1966.

EDWARD C. MARSH,
*Director, Central Region.*

[F.R. Doc. 66-8810; Filed, Aug. 12, 1966; 8:45 a.m.]

[Airspace Docket No. 66-SO-67]

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

### Alteration of Control Zone and Transition Area

The purpose of these amendments to Part 71 of the Federal Aviation Regulations is to alter the Asheville, N.C., control zone and transition area.

The Asheville control zone is described in § 71.171 (31 F.R. 2065). An extension to the control zone is described in part as "* * * within 2 miles each side of a 341° bearing from the Broad River RBN * * *".

Because of a change in the final approach bearing from 341° to 340°, it is necessary to alter the control zone by redesignating the extension on the 340° bearing from the Broad River RBN.

The Asheville transition area is described in § 71.181 (31 F.R. 2149, 3338). Extensions to the 700-foot transition area are described as "* * * within 2 miles W and 8 miles E of a 341° bearing from the Broad River RBN, extending from the RBN to 7 miles N; within 2 miles E and 6 miles W of the 161° bearing from the Broad River RBN, extending from the RBN to 3 miles S of the RBN * * *". A portion of the 1,200-foot transition area is described, in part, as "* * * thence SW along the S boundary of V-222 to a line 6 miles W of and parallel to the 161° bearing from the Broad River RBN, thence N along a line 6 miles W of and parallel to the 161° and 341° bearings from the Broad River RBN * * *".

Because of a change in the procedure turn and final approach bearings, it is necessary to alter the 700-foot transition area extensions by redesignating them on the 340° and 160° bearings, respectively, from the Broad River RBN and alter the 1,200-foot portion of the transition area by redesignating the boundary on the 160° and 340° bearings from the Broad River RBN.

Since these changes are editorial in nature and impose no additional burden on the public, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., August 20, 1966, as hereinafter set forth.

In § 71.171 (31 F.R. 2065) the Asheville, N.C., control zone is amended to read:

ASHEVILLE, N.C.

Within a 5-mile radius of Asheville Airport (latitude 35°26'00" N., longitude 82°32'-25" W.); within 2 miles each side of a 340° bearing from the Broad River RBN extending from the 5-mile radius zone to 9 miles S of the airport; within 2 miles each side of a 159° bearing from the Asheville RBN extending from the 5-mile radius zone to 5.5 miles N of the airport; and within 2 miles each side of a 129° bearing from the Asheville Airport extending from the 5-mile radius zone to 7.5 miles SE of the airport.

In § 71.181 (31 F.R. 2149) the Asheville, N.C., transition area (31 F.R. 3338) is amended to read:

ASHEVILLE, N.C.

That airspace extending upward from 700 feet above the surface within 2 miles W and 8 miles E of a 340° bearing from the Broad River RBN extending from the RBN to 7 miles N; within 2 miles E and 6 miles W of a 160° bearing from the Broad River RBN, extending from the RBN to 3 miles S of the RBN; within 2 miles each side of the Asheville VORTAC 244° radial extending from 1 mile SW to 8 miles SW; and within 5 miles W and 6 miles E of the 159° and 339° bearings from the Asheville RBN extending from 6 miles N to 10 miles S of the RBN; and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at the intersection of a 25-mile arc centered at the Asheville Airport (latitude 35°26'00" N., longitude 82°32'25" W.) and a line 10 miles S of and parallel to the centerline of V-185, extending clockwise along this arc to the Asheville VORTAC 061° radial, thence SE along a line perpendicular to the Asheville VORTAC 061° radial to the S boundary of V-222, thence SW along the S boundary of V-222 to a line 6 miles W of and parallel to the 160° bearing from the Broad River RBN, thence N along a line 6 miles W of and parallel to the 160° and 340° bearings from the Broad River RBN to a line 10 miles S of and parallel to the centerline of V-185, thence NW along this line to the point of beginning; and that airspace bounded on the NW by V-222, on the NE by V-259, on the SE by V-20 and on the SW by V-296.

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

Issued in East Point, Ga., on August 3, 1966.

JAMES G. ROGERS,
*Director, Southern Region.*

[F.R. Doc. 66-8811; Filed, Aug. 12, 1966; 8:45 a.m.]

[Airspace Docket No. 66-SO-56]

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

### Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Tupelo, Miss., transition area.

The Tupelo transition area is described in § 71.181 (31 F.R. 2149). An extension to the transition area is described in part as "* * * within 2 miles each side of the Tupelo VOR 215° radial * * *".

Because of the redefining of the final approach radial, it is necessary to redesignate this extension on the Tupelo VOR 214° radial.

Since this change is minor in nature, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.181 (31 F.R. 2149) the Tupelo, Miss., transition area is amended to read:

TUPELO, MISS.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Tupelo Municipal Airport (latitude 34°15'30" N., longitude 88°45'55" W.); within 2 miles each side of the Tupelo VOR 214° radial, extending from the 5-mile radius area to 8 miles SW of the VOR; and that airspace extending upward from 1,200 feet above the surface within an 18-mile radius of the Tupelo Municipal Airport.

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

Issued in East Point, Ga., on August 2, 1966.

WILLIAM M. FLENER,
*Acting Director, Southern Region.*

[F.R. Doc. 66-8812; Filed, Aug. 12, 1966; 8:46 a.m.]

[Airspace Docket No. 66-CE-51]

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

### Alteration of Transition Area

On June 10, 1966, a notice of proposed rule making was published in the FEDERAL REGISTER (31 F.R. 8183) stating that the Federal Aviation Agency proposed to alter controlled airspace in the Topeka, Kans., terminal area.

Interested parties were afforded an opportunity to participate in the rule making through the submission of comments. The one comment received was favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective 0001 e.s.t., October 13, 1966, as hereinafter set forth:

In § 71.181 (31 F.R. 2149) the Topeka, Kans., transition area is amended to read:

TOPEKA, KANS.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Philip Billard Airport, Topeka, Kans. (latitude 39°04'09" N., longitude 95°37'18" W.), within 2 miles each side of the Topeka VORTAC 039° radial extending from the 7-mile radius area to 8 miles NE of the VORTAC, within 5 miles SW and 8 miles NE of the Philip Billard Airport ILS localizer NW course, extending from 3 miles SE to 12 miles NW of the OM, within a 7-mile radius of Forbes AFB, Topeka, Kans. (latitude 38°-57'10" N., longitude 95°39'50" W.), and within 2 miles each side of the Forbes AFB TACAN 321° radial extending from the 7-mile radius area to 9 miles NW of the TACAN; that airspace extending upward from 1,200 feet above the surface bounded by the Emporia, Kans., VORTAC 346° radial beginning at latitude 39°26'50" N., longitude 96°30'50" W., S to the NW edge of V-10, thence NE to latitude 39°00'00" N., longitude 95°09'00" W., thence N along longitude 95°09'00" W. to the S edge of V-71, thence NW to latitude 39°49'00" N., longitude 95°34'00" W., thence direct to point of beginning excluding the portion within the Emporia, Kans., transition area.

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

Issued in Kansas City, Mo., on August 1, 1966.

EDWARD C. MARSH,
*Director, Central Region.*

[F.R. Doc. 66-8813; Filed, Aug. 12, 1966; 8:46 a.m.]

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[Airspace Docket No. 66-WE-25]

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

### Designation of Transition Area

On June 17, 1966, a notice of proposed rule making was published in the FEDERAL REGISTER (31 F.R. 8498) stating that the Federal Aviation Agency was considering amendments to Part 71 of the Federal Aviation Regulations which would amend the Sidney, Nebr., transition area and designate the Hugo, Colo., transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. The one comment received was favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., October 13, 1966, as hereinafter set forth:

In § 71.181 (31 F.R. 2149) the Hugo, Colo., transition area is designated as follows:

HUGO, COLO.

That airspace SW of Hugo, Colo., VOR, extending upward from 8,500 feet MSL, bounded on the N by the S edge of V-108S, on the E by the W edge of V-169, on the S by the edge of V-210, and on the W by the E edge of V-81, excluding the airspace within Federal airways and the Pueblo and Colorado Springs, Colo., transition areas.

In § 71.181 (31 F.R. 2256) the Sidney, Nebr., transition area is amended by adding: "* * * and that airspace SW of Sidney VOR, extending upward from 8,500 feet MSL, bounded on the N by the S edge of V-138, on the E by the W edge of V-169, on the SE by the NW edge of V-172, on the SW by the NE edge of V-132, and on the NW by the SE edge of V-207, excluding the airspace within Federal airways."

In § 71.165 (31 F.R. 2057) the Colorado Springs, Colo., control area extension is revoked.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (72 Stat. 749; 49 U.S.C. 1348))

Issued in Los Angeles, Calif., on August 3, 1966.

LEE E. WARREN,
*Acting Director, Western Region.*

[F.R. Doc. 66-8815; Filed, Aug. 12, 1966; 8:46 a.m.]

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[Airspace Docket No. 66-SW-2]

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

## PART 73—SPECIAL USE AIRSPACE

### Designation and Revocation of Restricted Areas and Alteration of Continental Control Area

On March 5, 1966, a notice of proposed rule making was published in the FEDERAL REGISTER (31 F.R. 3469) stating that the Federal Aviation Agency was considering amendments to Parts 71 and 73 of the Federal Aviation Regulations which would designate a new restricted area, revoke two existing restricted areas and change the description of the continental control area.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. Comments were received from the Air Transport Association, and Mr. P. H. Welder, Post Office Box 1160, Victoria, Tex.

The Air Transport Association offered no objection to the proposal.

Mr. Welder commented that the proposed restricted area would deprive him of access to his ranch (Cameron Ranch). He requested that he be provided unrestricted airspace below 1,500 feet west of the McMullen-La Salle county line and along Highway 624 through the restricted area.

To accommodate Mr. Welder's requirements, the U.S. Navy has agreed to the establishment of a corridor through the area from the surface to 1,000 feet AGL, extending one-fourth mile either side of Highway 624. Further, prior to the issuance of the notice of proposed rule making, the Navy had already agreed to a 1,000-foot floor for that portion of the restricted area west of the McMullen-La Salle County line.

On June 7, 1966, U.S. Navy representatives met with Mr. Welder's representatives to discuss the above modifications to the area, and as a result, Mr. Welder withdrew his objection to the proposal.

The notice of proposed rule making stated that the floor of the area within 1 nautical mile of the Cameron Ranch Airport would be 1,000 feet AGL. However, information received after the publication of the notice of proposed rule making indicates that no requirement exists for a 1,000-foot floor within 1 nautical mile of the Cameron Ranch Airport. Therefore, action is taken herein to modify the area's description accordingly.

The substance of the proposed amendment having previously been published and for the reasons stated in the notice of proposed rule making, Parts 71 and 73 of the Federal Aviation Regulations are amended, effective 0001 e.s.t., September 15, 1966, as hereinafter set forth.

(a) Section 71.151 (31 F.R. 2047) is amended as follows:

(1) R-6301A Corpus Christi, Tex., is deleted.

(2) R-6301B Corpus Christi, Tex., is deleted.

(3) R-6312 Cotulla, Tex., is added.

(b) Section 73.63 (31 F.R. 2334) Texas is amended as follows:

(1) R-6301A Corpus Christi, Tex., is revoked.

(2) R-6301B Corpus Christi, Tex., is revoked.

(3) R-6312 Cotulla, Tex., is added as follows:

R-6312 COTULLA, TEX.

Boundaries: The area within 5 nmi of geographical points located at 28°14'50" N., 98°43'30" W.; and 28°05'53" N., 98°42'51" W.

Designated altitudes: Surface to 15,000 feet MSL, except for the area west of a line between 28°17'40" N., 98°47'55" W., and 28°11'55" N., 98°48'00" W., and the area along Highway 624 extending ¼ mile each side where the floor is 1,000 feet AGL.

Time of designation: Daylight hours, Monday through Saturday.

Controlling agency: Federal Aviation Agency, ARTCC, Houston, Tex.

Using agency: Chief of Naval Air Advanced Training Command, NAS Corpus Christi, Tex.

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

Issued in Washington, D.C., on August 5, 1966.

WILLIAM E. MORGAN,
*Acting Director, Air Traffic Service.*

[F.R. Doc. 66-8814; Filed, Aug. 12, 1966; 8:46 a.m.]

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## SUBCHAPTER I—AIRPORTS

[Docket No. 7553]

## PART 161—COLD BAY, ALASKA, AIRPORT

The purpose of this amendment to the Federal Aviation Regulations is to delete Part 161, "Cold Bay, Alaska, Airport." Part 161 prescribed landing and parking charges and rules governing loading and unloading areas at Cold Bay, Alaska, Airport. On May 27, 1966, the Director of the Bureau of the Budget, acting under the authority of section 45(a) of the Alaskan Omnibus Act (73 Stat. 152) and Executive Order No. 11230 of June

28, 1965 (30 F.R. 8447) transferred, effective June 1, 1966, all interest of the United States in the Cold Bay, Alaska, Airport (except the right to use certain tracts of the land without charge) to the State of Alaska. Since June 1, 1966, the State of Alaska has operated the Cold Bay, Alaska, Airport. As a result, Part 161 ceased to be effective at 12 p.m. on May 31, 1966.

Since this amendment merely deletes obsolete regulatory material, compliance with the notice, public procedure, and effective date provisions of the Administrative Procedure Act is not required.

In consideration of the foregoing, Part 161 of Chapter I of Title 14 of the Code of Federal Regulations is deleted.

(Sec. 313(a), Federal Aviation Act of 1958; 49 U.S.C. 1354(a))

Issued in Washington, D.C., on August 5, 1966.

WILLIAM F. MCKEE,
*Administrator.*

[F.R. Doc. 66-8816; Filed, Aug. 12, 1966; 8:46 a.m.]

# Title 31—MONEY AND FINANCE: TREASURY

## Subtitle A—Office of the Secretary of the Treasury

[Treas. Dept. Circular 230]

## PART 10—PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

On March 25, 1966, there was published in the FEDERAL REGISTER (31 F.R. 4960) a notice of proposed rule making concerning revision of the rules of practice before the Internal Revenue Service (31 Code of Federal Regulations, Part 10). Interested persons were given the opportunity to submit written comments within 60 days after publication. In addition, interested persons were afforded the opportunity to present their views at a hearing scheduled for June 13, 1966, and subsequently postponed until June 30, 1966 (31 F.R. 6318).

Both written and oral submissions were received and considered. Certain changes were made in the proposed regulation pursuant to these comments. The following changes are considered to be the most important:

(1) Section 10.4(b)(3) (iii) and (iv) have been changed to permit 5 years of continuous employment in the Internal Revenue Service, rather than 7 years, to be sufficient for enrollment to practice by virtue of past employment in the Service.

(2) A new section (§10.30 *Solicitation*) has been added.

(3) A new section (§10.31 *Practice of law*) has been added.

(4) Section 10.7(a)(7) has been changed to permit the Commissioner of Internal Revenue to deny the limited practice privilege in certain instances.

(5) The word "unreasonable" in § 10.28 has been changed to "unconscionable."

(6) The designation of § 10.51(a)(1)–(9) has been changed to "10.51(a)–(i)" and has been expanded to include in the definition of "disreputable conduct" the conviction of an offense involving dishonesty or breach of trust. Paragraph (b) which applied only to enrolled agents has been deleted.

(7) The designation of § 10.51(a)(8) has been changed to "§ 10.51(h)" and has been expanded to include as disreputable conduct the aiding and abetting of a person to practice before the Internal Revenue Service when such person is ineligible so to practice.

(8) Section 10.68 has been changed to permit parties to a disciplinary hearing to acquire copies of documentary exhibits upon payment of a reasonable charge.

(9) Section 10.90 has been changed to reflect new legislation concerning disclosure of information.

(10) Section 10.91 of the proposed regulation has been deleted.

Other changes include reorganization of text and changes in wording for purposes of clarity.

Accordingly, Part 10 of Title 31, Code of Federal Regulations is revised to read as set forth below.

[SEAL] FRED B. SMITH,
*General Counsel.*

AUGUST 9, 1966.

Sec.
10.0 Scope of part.

Subpart A—Rules Governing Authority To Practice

10.1 Director of Practice.
10.2 Definitions.
10.3 Who may practice.
10.4 Eligibility for enrollment.
10.5 Application for enrollment.
10.6 Enrollment.
10.7 Practice without enrollment.
10.8 Customhouse brokers.

Subpart B—Duties and Restrictions Relating to Practice Before the Internal Revenue Service

10.20 Information to be furnished.
10.21 Knowledge of client's omission.
10.22 Diligence as to accuracy.
10.23 Prompt disposition of pending matters.
10.24 Assistance from disbarred or suspended persons.
10.25 Practice by partners of Government employees.
10.26 Practice by former Government employees.
10.27 Notaries.
10.28 Fees.
10.29 Conflicting interests.
10.30 Solicitation.
10.31 Practice of law.

Subpart C—Rules Applicable to Disciplinary Proceedings

10.50 Authority to disbar or suspend.
10.51 Disreputable conduct.
10.52 Violation of regulations.
10.53 Receipt of information concerning attorneys, certified public accountants, and enrolled agents.
10.54 Institution of proceeding.
10.55 Conferences.
10.56 Contents of complaint.
10.57 Service of complaint and other papers.
10.58 Answer.
10.59 Supplemental charges.
10.60 Reply to answer.
10.61 Proof; variance; amendment of pleadings.
10.62 Motions and requests.
10.63 Representation.
10.64 Examiner.
10.65 Hearings.
10.66 Evidence.
10.67 Depositions.
10.68 Transcript.
10.69 Proposed findings and conclusions.
10.70 Decision of the Examiner.
10.71 Appeal to the Secretary.
10.72 Decision of the Secretary.
10.73 Effect of disbarment or suspension; surrender of card.
10.74 Notice of disbarment or suspension.
10.75 Petition for reinstatement.

Subpart D—General Provisions

10.90 Records.
10.91 Effective date of regulations.
10.92 Saving clause.
10.93 Special orders.

AUTHORITY: The provisions of this Part 10 issued under R.S. 161, sec. 3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 et seq.; 5 U.S.C. 22, 261, 1001–1011, Reorg. Plan No. 26 of 1950, 15 F.R. 4935, 64 Stat. 1280, 3 CFR, 1949–1953 Comp., except as otherwise noted.

### § 10.0 Scope of part.

This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, and other persons representing clients before the Internal Revenue Service. Subpart A of this part sets forth rules relating to authority to practice before the Internal Revenue Service. Subpart B prescribes the duties and restrictions relating to such practice. Subpart C of this part contains rules relating to disciplinary proceedings. Subpart D of this part contains general provisions, including provisions relating to availability of official records.

## Subpart A—Rules Governing Authority To Practice

### § 10.1 Director of practice.

(a) *Establishment of office.* There is established in the Office of the Secretary of the Treasury the office of Director of Practice. The Director of Practice shall be appointed by the Secretary of the Treasury.

(b) *Duties.* The Director of Practice shall act upon appeals from decisions of the Commissioner of Internal Revenue denying applications for enrollment to practice before the Internal Revenue Service; institute and provide for the conduct of disciplinary proceedings relating to attorneys, certified public accountants, and enrolled agents; make inquiries with respect to matters under his jurisdiction; and perform such other duties as are necessary or appropriate to carry out his functions under this part or as are prescribed by the Secretary of the Treasury.

(c) *Acting Director.* The Secretary of the Treasury will designate an officer or employee of the Treasury Department to act as Director of Practice in the event of the absence of the director or of a vacancy in that office.

### § 10.2 Definitions.

As used in this part, except where the context clearly indicates otherwise, the term:

(a) "Practice before the Internal Revenue Service" comprehends all matters connected with presentation to the Internal Revenue Service or any of its officers or employees relating to a client's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include the preparation and filing of necessary documents, correspondence with and communications to the Internal Revenue Service, and the representation of a client at conferences, hearings, and meetings. Neither the preparation of a tax return, nor the appearance of an individual as a witness for the taxpayer, nor the furnishing of information at the request of the Internal Revenue Service or any of its officers or employees is considered practice before the Service.

(b) "Attorney" means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia.

(c) "Certified public accountant" means any person who is duly qualified to practice as a certified public accountant in any State, possession, territory, Commonwealth, or the District of Columbia.

(d) "Commissioner" refers to the Commissioner of Internal Revenue.

**§ 10.3 Who may practice.**

(a) *Attorneys.* Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Service upon filing with the Service a written declaration that he is currently qualified as an attorney and is authorized to represent the particular party on whose behalf he acts. An enrollment card issued to such person before the effective date of this regulation shall be invalid and may not be used in lieu of such written declaration.[1]

(b) *Certified public accountants.* Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Service upon filing with the Service a written declaration that he is currently qualified as a certified public accountant and is authorized to represent the particular party on whose behalf he acts. An enrollment card issued to such person before the effective date of this regulation shall be invalid and may not be used in lieu of such written declaration.[1]

(c) *Enrolled agents.* Any person enrolled as an agent pursuant to this part may practice before the Internal Revenue Service.

(d) *Others.* Any person qualifying under § 10.7 or § 10.5(c) may practice before Internal Revenue Service.

[1] This supersedes the provision contained in a notice of interim course of action published in the FEDERAL REGISTER, Nov. 16, 1965 (30 F.R. 14331) which permitted attorneys and certified public accountants, who were enrolled as of Nov. 8, 1965, to continue to use their enrollment cards as evidence of authority to practice before the Service.

(e) *Government officers and employees; others.* No officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia, may practice before the Service, except that such officer or employee may, subject to the conditions and requirements of these regulations and of 18 U.S.C. 205, represent a member of his immediate family or any other person or estate for which he serves as guardian, executor, administrator, trustee, or other personal fiduciary. No Member of Congress or Resident Commissioner (elect or serving) may practice before the Service in connection with any matter for which he directly or indirectly receives, agrees to receive, or seeks any compensation. 18 U.S.C. 203, 205.

(f) *State officers and employees.* No officer or employee of any State, or subdivision thereof, whose duties require him to pass upon, investigate, or deal with tax matters of such State or subdivision, may practice before the Service, if such State employment may disclose facts or information applicable to Federal tax matters.

**§ 10.4 Eligibility for enrollment.**

(a) *Enrollment upon examination.* The Commissioner may grant enrollment to an applicant who demonstrates special competence in tax matters by written examination administered by the Internal Revenue Service and who has not engaged in any conduct which would justify the suspension or disbarment of any attorney, certified public accountant, or enrolled agent under the provisions of this part.

(b) *Enrollment of former Internal Revenue Service employees.* The Commissioner may grant enrollment to an applicant who has not engaged in any conduct which would justify the suspension or disbarment of any attorney, certified public accountant, or enrolled agent under the provisions of this part and who, by virtue of his past service and technical experience in the Internal Revenue Service has qualified for such enrollment, as follows:

(1) Application for enrollment on account of former employment in the Internal Revenue Service shall be made to the Commissioner. Each applicant will be supplied a form by the Commissioner, which shall indicate the information required respecting the applicant's qualifications. In addition to the applicant's name, address, citizenship, age, educational experience, etc., such information shall specifically include a detailed account of the applicant's employment in the Internal Revenue Service, which account shall show (i) positions held, (ii) date of each appointment and termination thereof, (iii) nature of services rendered in each position, with particular reference to the degree of technical experience involved, and (iv) name of supervisor in such positions, together with such other information regarding the experience and training of the applicant as may be relevant.

(2) Upon receipt of each such application, it shall be transmitted to the appropriate officer of the Internal Revenue Service with the request that a detailed report of the nature and rating of the applicant's services in the Internal Revenue Service, accompanied by the recommendation of the superior officer in the particular unit or division of the Internal Revenue Service that such employment does or does not qualify the applicant technically or otherwise for the desired authorization, be furnished to the Commissioner.

(3) In examining the qualification of an applicant for enrollment on account of employment in the Internal Revenue Service, the Commissioner will be governed by the following policies:

(i) Enrollment on account of such employment may be of unlimited scope or may be limited to permit the presentation of matters only of the particular class or only before the particular unit or division of the Internal Revenue Service for which his former employment in the Internal Revenue Service has qualified the applicant.

(ii) In the case of employees separated from employment in the Internal Revenue Service, application for enrollment on account of such employment must be made within 3 years after the termination thereof.

(iii) It shall be requisite for enrollment on account of such employment that the applicant shall have had a minimum of 5 years continuous employment in the Service during which he shall have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations thereunder relating to income, estate, gift, employment, or excise taxes.

(iv) For the purposes of subdivision (iii) of this subparagraph, an aggregate of 10 or more years of employment, at least 3 of which occurred within the 5 years preceding the date of application, shall be deemed the equivalent of 5 years continuous employment.

(c) *Citizens; natural persons.* Enrollment to practice may be granted only to natural persons who are citizens of the United States and who are over the age of 21 years.

(d) *Oath of allegiance.* No person shall be enrolled to practice if he is unable for any reason to take the oath of allegiance, and to support the Constitution of the United States, as required of persons prosecuting claims against the United States by section 3478 of the Revised Statutes (31 U.S.C. 204).

(e) *Attorneys; certified public accountants.* Enrollment is not available to persons who qualify to practice under § 10.3 (a) or (b).

**§ 10.5 Application for enrollment.**

(a) *Form; fee.* An applicant for enrollment shall file with the Commissioner of Internal Revenue an application on Form 23, properly executed under oath or affirmation. Such application shall be accompanied by a check or money order in the amount of $25.00, payable to the Internal Revenue Service, which amount shall constitute a fee which shall

be charged to each applicant for enrollment. The fee shall be retained by the United States whether or not the applicant is granted enrollment.

(b) *Additional information; examination.* The Commissioner, as a condition to consideration of an application for enrollment, may require the applicant to file additional information and to submit to any written or oral examination under oath or otherwise. The Commissioner shall, upon written request, afford an applicant the opportunity to be heard with respect to his application for enrollment.

(c) *Temporary recognition.* Upon receipt of a properly executed application, the Commisioner may grant the applicant temporary recognition to practice pending a determination as to whether enrollment to practice should be granted. Such temporary recognition shall not be granted if the application is not regular on its face; if the information stated therein, if true, is not sufficient to warrant enrollment to practice; if there is any information before the Commissioner which indicates that the statements in the application are untrue; or which indicates that the applicant would not otherwise qualify for enrollment. Issuance of temporary recognition shall not constitute enrollment to practice or a finding of eligibility for enrollment, and the temporary recognition may be withdrawn at any time by the Commissioner.

(d) *Appeal from denial of application.* (1) The Commissioner, in denying an application for enrollment, shall inform the applicant as to the reason(s) therefor. The applicant may, within 30 days after receipt of the notice of denial, file a written appeal therefrom, together with his reasons in support thereof, to the Director of Practice. A decision on the appeal will be rendered by the Director of Practice as soon as practicable.

(2) A decision of the Director of Practice in sustaining a denial of enrollment may be appealed to the Secretary of the Treasury within 30 days after receipt of the decision of the Director.

(Sec. 501, 65 Stat. 290; 5 U.S.C. 140)

**§ 10.6 Enrollment.**

(a) *Roster.* The Commissioner shall maintain rosters of all agents who are enrolled to practice, of all persons who have been disbarred or suspended from practice before the Internal Revenue Service, and of persons whose applications for enrollment have been denied.

(b) *Enrollment card.* (1) The Commissioner shall issue an enrollment card to each agent who is enrolled to practice before the Internal Revenue Service after the effective date of this regulation. Each such enrollment card shall be valid so long as the holder shall remain enrolled and in good standing before the Service. Unless advised to the contrary by the Commissioner, any officer or employee of the Internal Revenue Service may consider the holder of a valid enrollment card to be duly authorized to practice before the Service.

(2) An enrollment card issued prior to the effective date of this regulation to a person who continues to qualify for enrollment under the provisions of this part shall by its terms remain valid for a period of 5 years after the date of issuance.

(c) *Application for permanent enrollment card.* Application for a permanent enrollment card may be made at any time during a 24-month period commencing 12 months before and ending 12 months after the expiration of an enrollment card. Such application shall be filed on Form 23A at such place or places as may be designated by the Commissioner and there shall be annexed thereto the outstanding enrollment card. Copies of Form 23A may be obtained from the Commissioner of Internal Revenue and at the offices of District Directors of Internal Revenue. Each application shall be accompanied by a check or money order in the amount of $5.00, payable to the Internal Revenue Service, which amount shall constitute a fee which shall be charged each person who applies for issuance of a permanent enrollment card pursuant to the provisions of this paragraph.

(Sec. 501, 65 Stat. 290; 5 U.S.C. 140)

(d) *Termination of enrollment.* (1) Unless application for a permanent enrollment card is filed with the Commissioner of Internal Revenue within 12 months after the expiration date of an enrollment card, the enrollment of the holder of the card shall automatically terminate, his name shall be stricken from the roster of enrollees, and he shall not be authorized to practice before the Internal Revenue Service except by filing a new application for enrollment, as provided by § 10.5 and obtaining authority to practice from the Commissioner.

(2) The enrollment of any agent to whom an enrollment card is issued after the effective date of this regulation shall terminate at such time as such agent may become eligible to practice without enrollment under § 10.3 (a) or (b), and such agent shall forthwith return his enrollment card to the Commissioner of Internal Revenue for cancellation.

**§ 10.7 Limited practice without enrollment.**

(a) *In general.* Individuals may appear on their own behalf, and may otherwise appear without enrollment, provided they present satisfactory identification, in the following classes of cases:

(1) An individual may represent another individual who is his regular full-time employer, may represent a partnership of which he is a member or a regular full-time employee, or may represent without compensation a member of his immediate family.

(2) Corporations (including parents, subsidiaries or affiliated corporations), trusts, estates, associations, or organized groups may be represented by bona fide officers or regular full-time employees.

(3) Trusts, receiverships, guardianships, or estates may be represented by their trustees, receivers, guardians, administrators or executors or their regular full-time employees.

(4) Any governmental unit, agency, or authority may be represented by an officer or regular employee in the course of his official duties.

(5) Unenrolled persons may participate in rule making as provided by section 4 of the Administrative Procedure Act, 60 Stat. 238 (5 U.S.C. 1003).

(6) Enrollment is not required for representation outside of the United States before personnel of the Internal Revenue Service.

(7) Any person, who is not under disbarment or suspension from practice before the Internal Revenue Service or from practice of his profession by any other authority (in the case of attorneys, certified public accountants, and public accountants) and who signs a return as having prepared it for the taxpayer, or who prepared a return with respect to which the instructions or regulations do not require that it be signed by the person who prepared the return for the taxpayer, may appear without enrollment as the taxpayer's representative, with or without the taxpayer, before revenue agents and examining officers of the Audit Division in the offices of District Directors (but not at the District Conference in a District Director's office) with respect to the tax liability of the taxpayer for the taxable year or period covered by that return. Proper authorization from the taxpayer will be required. All such persons will be subject to such rules regarding standards of conduct, the extent of their authority, and other matters as the Commissioner of Internal Revenue shall prescribe. Such persons will be permitted to represent taxpayers within those limits without enrollment, except that the Commissioner may deny permission to engage in such limited practice to any person who has engaged in conduct which would justify suspension or disbarment of any attorney, certified public accountant, or enrolled agent under the provisions of this part.

(b) *Special appearance.* The Commissioner, subject to such conditions as he deems appropriate, may authorize any person to represent another without enrollment for the purpose of a particular matter.

**§ 10.8 Customhouse brokers.**

Nothing contained in the regulations in this part shall be deemed to affect or limit the right of a customhouse broker, licensed as such by the Commissioner of Customs in accordance with the regulations prescribed therefor, in any customs district in which he is so licensed, at the office of the District Director of Internal Revenue or before the National Office of the Internal Revenue Service, to act as a representative in respect to any matters relating specifically to the importation or exportation of merchandise under the customs or internal revenue laws, for any person for whom he has acted as a customhouse broker.

## Subpart B—Duties and Restrictions Relating to Practice Before the Internal Revenue Service

**§ 10.20 Information to be furnished.**

(a) *To the Internal Revenue Service.* No attorney, certified public accountant, or enrolled agent shall neglect or refuse promptly to submit records or informa-

tion in any matter before the Internal Revenue Service, upon proper and lawful request by a duly authorized officer or employee of the Internal Revnue Service, or shall interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service or its officers or employees to obtain any such record or information, unless he believes in good faith and on reasonable grounds that such record or information is privileged or that the request for, or effort to obtain, such record or information is of doubtful legality.

(b) *To the Director of Practice.* It shall be the duty of an attorney or certified public accountant, who practices before the Internal Revenue Service, or enrolled agent, when requested by the Director of Practice, to provide the Director with any information he may have concerning violation of the regulations in this part by any person, and to testify thereto in any proceeding instituted under this part for the disbarment or suspension of an attorney, certified public accountant, or enrolled agent, unless he believes in good faith and on reasonable grounds that such information is privileged or that the request therefor is of doubtful legality.

**§ 10.21 Knowledge of client's omission.**

Each attorney, certified public accountant, or enrolled agent who knows that a client has not complied with the revenue laws of the United States, or has made an error in or omission from any return, document, affidavit, or other paper which the client is required by law to execute in connection with any matter administered by the Internal Revenue Service, shall advise the client promptly of the fact of such noncompliance, error, or omission.

**§ 10.22 Diligence as to accuracy.**

Each attorney, certified public accountant, or enrolled agent shall exercise due diligence in preparing or assisting in the preparation of, approving, and filing returns, documents, affidavits, and other papers relating to Internal Revenue Service matters, in determining the correctness of representations made by him to the Internal Revenue Service, and in determining the correctness of representations made by him to clients with reference to any matter administered by the Internal Revenue Service.

**§ 10.23 Prompt disposition of pending matters.**

No attorney, certified public accountant, or enrolled agent shall unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

**§ 10.24 Assistance from disbarred or suspended persons.**

No attorney, certified public accountant, or enrolled agent shall in any Internal Revenue Service matter knowingly and directly or indirectly:

(a) Employ or accept assistance from any person who is under disbarment or suspension from practice before the Internal Revenue Service, or who to the knowledge of the attorney, certified public accountant, or enrolled agent solicits business, obtains clients, or otherwise conducts his practice in a manner forbidden under the regulations of this part; or

(b) Accept employment as associate, correspondent, or subagent from, or share fees with, any such person.

**§ 10.25 Practice by partners of Government employees.**

No partner of an officer or employee of the executive branch of the U.S. Government, of any independent agency of the United States, or of the District of Columbia, shall represent anyone in any matter administered by the Internal Revenue Service in which such officer or employee of the Government participates or has participated personally and substantially as a Government employee or which is the subject of his official responsibility (18 U.S.C. 207(c)).

**§ 10.26 Practice by former Government employees.**

(a) *In general.* No former officer or employee of the U.S. Government, of any independent agency of the United States, or of the District of Columbia, shall represent anyone in any matter administered by the Internal Revenue Service if the representation would violate any of the laws of the United States.

(b) *Personal and substantial participation.* No former officer or employee of the executive branch of the U.S. Government, of any independent agency of the United States, or of the District of Columbia, shall represent anyone in any matter administered by the Internal Revenue Service, involving a specific party or parties, in which he participated personally and substantially as an officer or employee. See 18 U.S.C. 207(a).

(c) *Official responsibility.* No former officer or employee of the executive branch of the U.S. Government, of any independent agency of the United States, or of the District of Columbia, shall, within 1 year after his employment has ceased, appear personally as agent or attorney for anyone before the Internal Revenue Service in any matter administered by the Internal Revenue Service, involving a specific party or parties, which was under his official responsibility as an officer or employee of the Government at any time within a period of 1 year prior to the termination of such responsibility. See 18 U.S.C. 207(b).

**§ 10.27 Notaries.**

No attorney, certified public accountant, or enrolled agent as notary public shall with respect to any matter administered by the Internal Revenue Service take acknowledgments, administer oaths, certify papers, or perform any official act in connection with matters in which he is employed as counsel, attorney, or agent, or in which he may be in any way interested before the Internal Revenue Service (26 Op. Atty. Gen. 236).

**§ 10.28 Fees.**

No attorney, certified public accountant, or enrolled agent shall charge an unconscionable fee for representation of a client in any matter before the Internal Revenue Service.

**§ 10.29 Conflicting interests.**

No attorney, certified public accountant, or enrolled agent shall represent conflicting interests in his practice before the Internal Revenue Service, except by express consent of all directly interested parties after full disclosure has been made.

**§ 10.30 Solicitation.**

No attorney, certified public accountant, or enrolled agent shall solicit employment, directly or indirectly, in matters related to the Internal Revenue Service. Solicitation includes the advertising of professional attainments or services. In the case of an enrolled agent, the phrase "enrolled to practice before the Internal Revenue Service," when appearing on the stationery, letterhead or professional card of such enrolled agent, is not considered to violate this prohibition.

**§ 10.31 Practice of law.**

Nothing in the regulations in this part shall be construed as authorizing persons not members of the bar to practice law.

## Subpart C—Rules Applicable to Disciplinary Proceedings

**§ 10.50 Authority to disbar or suspend.**

Pursuant to section 3 of the Act of July 7, 1884, 23 Stat. 258 (5 U.S.C. 261), the Secretary of the Treasury, after due notice and opportunity for hearing, may suspend or disbar from practice before the Internal Revenue Service any attorney, certified public accountant, or enrolled agent shown to be incompetent, disreputable or who refuses to comply with the rules and regulations in this part or who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement.

**§ 10.51 Disreputable conduct.**

Disreputable conduct for which an attorney, certified public accountant, or enrolled agent may be disbarred or suspended from practice before the Internal Revenue Service includes, but is not limited to:

(a) Conviction of any criminal offense under the revenue laws of the United States, or of any offense involving dishonesty, or breach of trust.

(b) Giving false or misleading information, or participating in any way in the giving of false or misleading information, to the Internal Revenue Service or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing such information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, or any other document or statement, written or oral, are included in the term "information."

(c) Solicitation of employment as prohibited under § 10.30 of this part, the use of false or misleading representations with intent to deceive a client or a prospective client in order to procure employment, or the use of signs, printing, or other written matter indicating some past or present connection with, or relationship to, the Internal Revenue Service or otherwise intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or officer or employee thereof.

(d) Willfully failing to make a Federal tax return in violation of the revenue laws of the United States, or evading, attempting to evade, or participating in any way in evading or attempting to evade any Federal tax or payment thereof, knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof, or concealing assets of himself or another to evade Federal taxes or payment thereof.

(e) Misappropriation of, or failure properly and promptly to remit funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(f) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor or thing of value.

(g) Disbarment or suspension from practice as an attorney, certified public accountant, or public accountant by any duly constituted authority of any State, possession, territory, Commonwealth, or the District of Columbia.

(h) Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person. Maintaining a partnership for the practice of law, accountancy, or other related professional service with a person who is under disbarment from practice before the Service shall be presumed to be a violation of this provision.

(i) Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations and statements knowing them to be false, or circulating or publishing malicious or libelous matter.

**§ 10.52 Violation of regulations.**

Any attorney, certified public accountant, or enrolled agent may be disbarred or suspended from practice before the Internal Revenue Service for willful violation of any of the regulations contained in this part.

**§ 10.53 Receipt of information concerning attorneys, certified public accountants and enrolled agents.**

If an officer or employee of the Internal Revenue Service has reason to believe that an attorney, certified public accountant, or enrolled agent has violated any provision of this part, or if any such officer or employee receives information to that effect, he shall promptly make a written report thereof, which report or a copy thereof shall be forwarded to the Director of Practice. If any other person has information of such violations, he may make a report thereof to the Director of Practice or to any officer or employee of the Internal Revenue Service.

**§ 10.54 Institution of proceeding.**

Whenever the Director of Practice has reason to believe that any attorney, certified public accountant, or enrolled agent has violated any provision of the laws or regulations governing practice before the Internal Revenue Service, he may reprimand such person or institute a proceeding for disbarment or suspension of such person. The proceeding shall be instituted by a complaint which names the respondent and is signed by the Director of Practice and filed in his office. Except in cases of willfulness, or where time, the nature of the proceeding, or the public interest does not permit, a proceeding will not be instituted under this section until facts or conduct which may warrant such action have been called to the attention of the proposed respondent in writing and he has been accorded opportunity to demonstrate or achieve compliance with all lawful requirements.

**§ 10.55 Conferences.**

(a) *In general.* The Director of Practice may confer with an attorney, certified public accountant, or enrolled agent concerning allegations of misconduct irrespective of whether a proceeding for disbarment or suspension has been instituted against him. If such conference results in a stipulation in connection with a proceeding in which such person is the respondent, the stipulation may be entered in the record at the instance of either party to the proceeding.

(b) *Resignation or voluntary suspension.* An attorney, certified public accountant, or enrolled agent, in order to avoid the institution or conclusion of a disbarment or suspension proceeding, may consent to suspension from practice before the Internal Revenue Service. An enrolled agent may also offer his resignation. The Director of Practice, in his discretion, may accept the offered resignation of an enrolled agent and may suspend an attorney, certified public accountant, or enrolled agent in accordance with the consent given.

**§ 10.56 Contents of complaint.**

(a) *Charges.* A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against him so that he is able to prepare his defense.

(b) *Demand for answer.* In the complaint, or in a separate paper attached to the complaint, notification shall be given of the place and time within which the respondent shall file his answer, which time shall not be less than 15 days from the date of service of the complaint, and notice shall be given that a decision by default will be rendered against the respondent in the event he fails to file his answer as required.

**§ 10.57 Service of complaint and other papers.**

(a) *Complaint.* The complaint or a copy thereof may be served upon the respondent by certified mail, or first-class mail as hereinafter provided; by delivering it to the respondent or his attorney or agent of record either in person or by leaving it at the office or place of business of the respondent, attorney or agent; or in any other manner which has been agreed to by the respondent. Where the service is by certified mail, the return post office receipt duly signed by or on behalf of the respondent shall be proof of service. If the certified matter is not claimed or accepted by the respondent and is returned undelivered, complete service may be made upon the respondent by mailing the complaint to him by first-class mail, addressed to him at the address under which he is enrolled or at the last address known to the Director of Practice. If service is made upon the respondent or his attorney or agent of record in person or by leaving the complaint at the office or place of business of the respondent, attorney or agent, the verified return by the person making service, setting forth the manner of service, shall be proof of such service.

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint or notice of institution of the proceeding, unless on application the time is extended by the Director of Practice or the Examiner. The answer shall be filed in duplicate with the Director of Practice.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which he knows to be true, or state that he is without sufficient information to form a belief when in fact he possesses such information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Director of Practice or the Examiner, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the Examiner may make his decision by default without a hearing or further procedure.

**§ 10.59 Supplemental charges.**

If it appears that the respondent in his answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has no knowledge sufficient to form a belief, when he in fact possesses such information, or if it appears that the respondent has knowingly introduced false testimony during proceedings for his disbarment or suspension, the Director of Practice may thereupon file supplemental charges against the respondent. Such supplemental charges may be tried with other charges in the case, provided the respondent is given due notice thereof and is afforded an opportunity to prepare a defense thereto.

**§ 10.60 Reply to answer.**

No reply to the respondent's answer shall be required, and new matter in the answer shall be deemed to be denied, but the Director of Practice may file a reply in his discretion or at the request of the Examiner.

**§ 10.61 Proof; variance; amendment of pleadings.**

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the Examiner may order or authorize amendment of the pleading to conform to the evidence: *Provided*, That the party who would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations of the pleading as amended; and the Examiner shall make findings on any issue presented by the pleadings as so amended.

**§ 10.62 Motions and requests.**

Motions and requests may be filed with the Director of Practice or with the Examiner.

**§ 10.63 Representation.**

A respondent or proposed respondent may appear in person or he may be represented by counsel or other representative who need not be enrolled to practice before the Internal Revenue Service. The Director may be represented by an attorney or other employee of the Internal Revenue Service.

**§ 10.64 Examiner.**

(a) *Appointment.* An Examiner, appointed as provided by section 11 of the Administrative Procedure Act, 60 Stat. 244 (5 U.S.C. 1010), shall conduct proceedings upon complaints for the disbarment or suspension of attorneys, certified public accountants, or enrolled agents.

(b) *Powers of Examiner.* Among other powers, the Examiner shall have authority, in connection with any disbarment or suspension proceeding assigned or referred to him, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and requests, which rulings may not be appealed from prior to the close of a hearing except, at the discretion of the Examiner, in extraordinary circumstances;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make initial decisions.

**§ 10.65 Hearings.**

(a) *In general.* The Examiner shall preside at the hearing on a complaint for the disbarment or suspension of an attorney, certified public accountant, or enrolled agent. Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be conducted pursuant to section 7 of the Administrative Procedure Act, 60 Stat. 241 (5 U.S.C. 1006).

(b) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to him, he shall be deemed to have waived the right to a hearing and the Examiner may make his decision against the absent party be default.

**§ 10.66 Evidence.**

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings on complaints for the disbarment or suspension of attorneys, certified public accountants, and enrolled agents. However, the Examiner shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to § 10.67 may be admitted.

(c) *Proof of documents.* Official documents, records, and papers of the Internal Revenue Service shall be admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Internal Revenue Service.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Examiner may authorize the withdrawal of the exhibit subject to any conditions which he deems proper.

(e) *Objections.* Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as ordered by the Examiner. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

**§ 10.67 Depositions.**

Depositions for use at a hearing may, with the written approval of the Examiner, be taken by either the Director of Practice or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 10 days' written notice to the other party before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in internal revenue matters. Such notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 10 days' notice may be waived by the parties in writing, and depositions may then be taken from the persons and at the times and places mutually agreed to by the parties. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogation shall be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the Examiner and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

**§ 10.68 Transcript.**

In cases where the hearing is stenographically reported by a Government contract reported, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Internal Revenue Service, a copy thereof will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (5 U.S.C. 140).

**§ 10.69 Proposed findings and conclusions.**

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the Examiner, prior to making his decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

**§ 10.70 Decision of the Examiner.**

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Examiner shall make the initial decision

in the case. The decision shall include (a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (b) an order of disbarment, suspension, or reprimand or an order of dismissal of the complaint. The Examiner shall file the decision with the Director of Practice and shall transmit a copy thereof to the respondent or his attorney of record. In the absence of an appeal to the Secretary of the Treasury, or review of the decision upon motion of the Secretary, the decision of the Examiner shall without further proceedings become the decision of the Secretary of the Treasury 30 days from the date of the Examiner's decision.

**§ 10.71 Appeal to the Secretary.**

Within 30 days from the date of the Examiner's decision, either party may appeal to the Secretary of the Treasury. The appeal shall be filed with the Director of Practice in duplicate and shall include exceptions to the decision of the Examiner and supporting reasons for such exceptions. If an appeal is filed by the Director of Practice, he shall transmit a copy thereof to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director of Practice. If the reply brief is filed by the Director, he shall transmit a copy of it to the respondent. Upon the filing of an appeal and a reply brief, if any, the Director of Practice shall transmit the entire record to the Secretary of the Treasury.

**§ 10.72 Decision of the Secretary.**

On appeal from or review of the initial decision of the Examiner, the Secretary of the Treasury will make the agency decision. In making his decision the Secretary of the Treasury will review the record or such portions thereof as may be cited by the parties to permit limiting of the issues. A copy of the Secretary's decision shall be transmitted to the respondent by the Director of Practice.

**§ 10.73 Effect of disbarment or suspension; surrender of card.**

In case the final order against the respondent is for disbarment, the respondent shall not thereafter be permitted to practice before the Internal Revenue Service unless and until authorized to do so by the Director of Practice pursuant to § 10.75. In case the final order against the respondent is for suspension, the respondent shall not thereafter be permitted to practice before the Internal Revenue Service during the period of suspension. If an enrolled agent is disbarred or suspended, he shall surrender his enrollment card to the Director of Practice for cancellation, in the case of disbarment, or for retention during the period of suspension.

**§ 10.74 Notice of disbarment or suspension.**

Upon the issuance of a final order disbarring or suspending an attorney, certified public accountant, or enrolled agent, the Director of Practice shall give notice thereof to appropriate officers and employees of the Internal Revenue Service and to interested departments and agencies of the Federal Government. Notice in such manner as the Director of Practice may determine may be given to the proper authorities of the State by which the disbarred or suspended person was licensed to practice as an attorney or accountant.

**§ 10.75 Petition for reinstatement.**

The Director of Practice may entertain a petition for reinstatement from any person disbarred from practice before the Internal Revenue Service after the expiration of 2 years following such disbarment. Reinstatement may not be granted unless the Director of Practice is satisfied that the petitioner, thereafter, is not likely to conduct himself contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest.

## Subpart D—General Provisions

**§ 10.90 Records.**

(a) *Availability.* There are made available to public inspection at the Office of the Commissioner of Internal Revenue the roster of all persons enrolled to practice and the roster of all persons disbarred or suspended from practice. Other records may be disclosed upon specific request, in accordance with the disclosure regulations of the Internal Revenue Service and the Office of the Secretary.

(b) *Disciplinary procedures.* A request by a practitioner that a hearing in a disciplinary proceeding concerning him be public, and that the record thereof be made available for inspection by interested persons may be granted if agreement is reached by stipulation in advance to protect from disclosure tax information which is confidential, in accordance with the applicable statutes and regulations.

**§ 10.91 Effective date of regulations.**

The regulations in this part shall become effective on the 31st day after the date of publication in the FEDERAL REGISTER and shall supersede all prior regulations related to practice before the Internal Revenue Service.

**§ 10.92 Saving clause.**

Any proceeding for the disbarment or suspension of an attorney, certified public accountant, or enrolled agent, instituted but not closed prior to the effective date of these revised regulations, shall not be affected by such regulations, except that any such proceeding based solely on conduct which would not justify disbarment or suspension under the provisions of the part as revised shall be dismissed. Any proceeding for disbarment or suspension based on conduct engaged in prior to the effective date of these regulations may be instituted subsequent to such effective date, provided that such conduct would continue to justify disbarment or suspension under the provisions of this part as revised.

**§ 10.93 Special orders.**

The Secretary of the Treasury reserves the power to issue such special orders as he may deem proper in any cases within the purview of this part.

[F.R. Doc. 66-8841; Filed, Aug. 12, 1966; 8:48 a.m.]

# Title 32—NATIONAL DEFENSE

## Chapter VII—Department of the Air Force

### SUBCHAPTER L—STANDARDS OF CONDUCT

## PART 920—STANDARDS OF CONDUCT

Present Part 920 is revised in its entirety and now reads as follows:

Sec.

920.0 Purpose.

Subpart A—General Provisions

920.1 Definitions.
920.2 Applicability.
920.3 Ethical standards of conduct.
920.4 Bribery and graft.
920.5 Gratuities.
920.6 Prohibition of contributions or presents to superiors.
920.7 Use of Government facilities, property, and manpower.
920.8 Use of civilian and military titles in connection with commercial enterprises.
920.9 Outside employment of Air Force personnel.
920.10 Gambling, betting, and lotteries.
920.11 Indebtedness.
920.12 Information to personnel.
920.13 Confidential Statement of Employment and Financial Interest (DD Form 1555).
920.14 Reporting suspected violations.

Subpart B—Conflict of Interest Laws

920.15 Full-time officers and employees.
920.16 Special Government employees.
920.17 Former officers or employees.
920.18 Retired Regular officers.
920.19 Officers of the Reserve components.

Subpart C—Special Government Employees; Advisors and Consultants; Temporary or Intermittent Employees

920.20 General.
920.21 Specific responsibilities with regard to advisors and consultants.
920.22 Temporary or intermittent employees.

Subpart D—Additional Guidance

920.23 Gratuities.
920.24 Confidential statements of employment and financial interests (DD Form 1555).

AUTHORITY: The provisions of this Part 920 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012, except as otherwise stated.

SOURCE: AFR 30-30, June 28, 1966.

**§ 920.0 Purpose.**

This part, in implementing Department of Defense Directive 5500.7, March 22, 1966 (31 F.R. 4989, Mar. 26, 1966, and 31 F.R. 5353, Apr. 5, 1966):

(a) Prescribes the standards of conduct relating to possible conflict between

private interests and official duties required of all Air Force personnel, regardless of assignment. Close adherence to these principles will insure compliance with the high ethical standards demanded of all public servants. Violations of this part may be cause for appropriate disciplinary action which may be in addition to any penalty provided by law.

(b) Also further implements Executive Order 11222 of May 8, 1965, prescribing Standards of Ethical Conduct for Government officers and employees (3 CFR, 1965 Supp., p. 130), and the Civil Service Commission Regulations of October 1, 1965 (30 F.R. 12529, Oct. 1, 1965; 5 CFR 735). It is in consonance with the Code of Ethics for Government Service contained in House Concurrent Resolution 175, 85th Congress, which applies to all Government personnel (see Subch. B, Pt. 40, App. A, Ch. 1 of this title).

(c) Includes standards of conduct based on the revisions of the conflict of interest laws enacted in 1962 (P.L. 87-777 and P.L. 87-849) (AFR 30-30, Attachment 3 (Digest of Conflict of Interest Laws))[1] (or see Subch. B, Pt. 40, App. A, Ch. 1 of this title).

## Subpart A—General Provisions

### § 920.1 Definitions.

(a) "DOD personnel," as used in this part, unless the context indicates otherwise, means all civilian officers and employees, including special Government employees, of all the offices, agencies, and departments in the Department of Defense (including nonappropriated fund activities) and all active duty officers and enlisted members of the Army, Navy, Air Force, and Marine Corps (officers includes commissioned and warrant).

(b) "Air Force personnel," as used in this part, unless the context indicates otherwise, means all civilian officers and employees, including special Government employees, in the Department of the Air Force (including nonappropriated fund activities) and all active duty officers and enlisted members of the Air Force (officers includes both commissioned and warrant).

(c) "Reserve Officers" includes both officers of the Air National Guard of the United States and Air Force Reserve.

### § 920.2 Applicability.

(a) This part applies to all Air Force personnel and activities.

(b) All Air Force personnel will familiarize themselves and comply with all of the attachments to AFR 30-30 which pertain to them.

### § 920.3 Ethical standards of conduct.

(a) *General.* Air Force personnel are bound to refrain from any private business or professional activity or from having any direct or indirect financial interest which would place them in a position where there is a conflict between their private interests and the public interests of the United States, particularly those related to their duties and responsibilities as Air Force personnel. Even though a technical conflict, as set forth in the statutes cited in this part, may not exist, Air Force personnel must avoid the appearance of such a conflict from a public confidence point of view. Air Force personnel will not engage in any private business or professional activity or enter into any financial transaction which involves the direct or indirect use, or the appearance of use, of inside information gained through an Air Force position, to further a private interest or for private gain for themselves or another person or entity, particularly one with whom they have family, business, or financial ties. Air Force personnel must not use their Air Force positions in any way to induce or coerce or give the appearance of inducing or coercing any person (including subordinates) or entity to provide any financial benefit to themselves or another person or entity, particularly one with whom they have family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information. This section does not preclude Air Force personnel from teaching, lecturing, and writing as authorized by § 920.9(c), nor does it preclude Air Force personnel from having financial interests or engaging in financial transactions to the same extent as private citizens not employed by the Government so long as they are not prohibited by law or this part.

(b) *Dealing with present and former military and civilian personnel.* Air Force personnel will not knowingly deal with military or civilian personnel or former military or civilian personnel of the Government, if such action will result in a violation of a statute or a policy set forth in this part.

(c) *Membership in associations.* All Air Force personnel who are members or officers of nongovernmental associations or organizations must avoid activities on behalf of the association or organization that are incompatible with their official Government positions.

(d) *Commercial soliciting by active duty members of the Air Force.* Air Force military personnel on active duty are prohibited from personal commercial solicitation and sale to military personnel junior in rank or grade, at any time, on or off duty, in or out of uniform. This limitation includes, but is not limited to, the personal solicitation and sale of life and automobile insurance, stocks, mutual funds, real estate or any other commodities, goods or services. As used in this paragraph, "personal commercial solicitation" refers to those situations where a military member is employed as a sales agent on commission or salary, and contacts prospective purchasers suggesting they buy the commodity, real or intangible, that he is offering for sale. This prohibition is not applicable to the one-time sale by an individual of his own personal property or privately owned dwelling. It is not the intent of this paragraph to discourage the off-duty employment of military personnel, but it is the intent to eliminate any and all instances where it would appear that coercion, intimidation, or pressure was used based on rank, grade, or position.

(e) *Assignment of Reserves for training.* Air Force personnel who are responsible for assigning Air Force Reserves for training should make an effort to assign them when they are on active duty for training to duties in which they will not obtain information that could be used by them or their employers to give them an unfair advantage over their civilian competitors.

(f) *Conduct prejudicial to the Government.* Air Force personnel shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government. Moreover, Air Force personnel shall avoid any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

### § 920.4 Bribery and graft.

In general, Air Force personnel may be subject to criminal penalties if they solicit, accept, or agree to accept anything of value in return for performing or refraining from performing an official act (see 18 U.S.C. 201).

### § 920.5 Gratuities.

(a) Except as provided in § 920.23, Air Force personnel will not solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, either directly or indirectly from any person, firm, corporation, or other entity which:

(1) Is engaged or is endeavoring to engage in procurement activities or business or financial transactions of any sort with any agency of the Department of Defense;

(2) Conducts operations or activities that are regulated by any agency of the Department of Defense; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the official duty of the Department of Defense personnel concerned.

Gifts, gratuities, favors, entertainment, etc., bestowed upon members of the immediate families of Air Force personnel are viewed in the same light as those bestowed upon Air Force personnel.

(b) Section 920.23 contains exceptions and additional guidance and instructions concerning gratuities.

(c) Procedures with respect to gifts from foreign governments are set forth

[1] Filed as part of original document.

in AFR 11–27 (Gifts to Individuals of the Air Force) (Part 826 of this ch.) and AFM 900–3 (Decorations, Service Awards, Unit Awards, Special Badges, Favorable Communications, Certificates and Special Devices).

(d) Procedures with respect to AFRO TC staff members are set forth in AFR 45–5 (Acceptance by AFROTC Staff Members of Benefits Offered by Educational Institutions).

**§ 920.6 Prohibition of contributions or presents to superiors.**

No officer or employee in the U.S. Government employ shall at any time solicit contributions from other officers or employees in the Government service for a gift or present to those in a superior official position; nor shall any such officials or superiors receive any gift or present offered or presented to them as a contribution from persons in Government employ receiving a salary in an amount smaller than their own; nor shall any officer or employee make any donation as a gift or present to any official superior. Every person who violates this subpart shall be discharged from the Government employ (see R.S. 1784; 5 U.S.C. 113 and AFR 11–27).

**§ 920.7 Use of Government facilities, property, and manpower.**

Air Force personnel will not directly or indirectly use, or allow the use of Government property of any kind, including property leased to the Government, for other than officially approved activities. Government facilities, property, and manpower, such as stenographic and typing assistance, mimeograph and chauffeur services, may be used only for official Government business. Air Force personnel have a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted to them. This section is not intended to preclude the use of Government facilities for activities which would further military-community relations provided they do not interfere with military missions.

**§ 920.8 Use of civilian and military titles in connection with commercial enterprises.**

(a) All civilian personnel and military personnel on active duty are prohibited from using their civilian and military titles or positions in connection with any commercial enterprises or in indorsing any commercial product. For the purpose of this section, the term "commercial enteprise" includes any organization other than a nonprofit or charitable organization which is exempt from Federal income taxation because it comes within subsections (1), (3), (4), (6), (7), (8), (9), (10), (11), (13), or subsection (14), of section 501(c) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 501). No civilian employee and no military member on extended active duty will use his civilian or military title or position in connection with any organization unless he first determines from the organization involved that it is exempt from taxation under one of the above subsections of the Internal Revenue Code. The foregoing shall not be deemed to preclude publication by such personnel of books, or articles, which identify them as author by reference to their military or civilian title or position, provided that publication of such material is permitted under § 920.9(c) and has been cleared under existing Air Force procedures. (See AFR 190–12 (Release of Information to the Public) and AFM 190–4 (Information Policies and Procedures) (Pt. 835 of this chapter).)

(b) All retired military personnel and all members of Reserve components, not on active duty, are permitted to use their military titles in connection with commercial enterprises. Such use of military titles shall in no way cast discredit on the Air Force or the Department of Defense. Such use is prohibited in connection with commercial enterprises when such use, with or without the intent to mislead, gives rise to any appearance of sponsorship, sanction, indorsement, or approval by the Department of the Air Force or the Department of Defense. The Department of the Air Force may restrict retired personnel and members of Reserve components not on active duty from using their military titles in connection with public appearances in oversea areas.

**§ 920.9 Outside employment of Air Force personnel.**

(a) Air Force personnel shall not engage in outside employment or other outside activity, with or without compensation, which:

(1) Interferes with, or is not compatible with, the performance of their Government duties.

(2) May reasonably be expected to bring discredit on the Government or the Department of Defense; or

(3) Is inconsistent with § 920.3(a), including such inconsistent acts as the acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value, in circumstances in which that acceptance may result in, or create the appearance of, conflicts of interest.

(b) No enlisted member of the Air Force on active duty may be ordered or permitted to leave his post to engage in a civilian pursuit or business, or a performance in civil life, for emolument, hire, or otherwise, if the pursuit, business or performance interferes with the customary or regular employment of local civilians in their art, trade, or profession (10 U.S.C. 8635).

(c) Air Force personnel are encouraged to engage in teaching, lecturing, and writing. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his Government employment, except when that information has been published or is available to the general public or will be made available on request, or when the agency head gives written authorization for the use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a civilian Presidential appointee shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs or operations of his agency or which draws substantially on official data or ideas which have not become part of the body of public information.

(d) No civilian employee may engage in outside employment under a State or local government except in accordance with Part 734 of the Civil Service Regulation (5 CFR Part 734).

(e) This section does not preclude Air Force personnel from:

(1) Participation in the activities of national or State political parties not proscribed by law or regulation.

(2) Participation in the affairs or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational, nonprofit recreational, public service or civic organization.

(f) Each major commander and each head of a separate operating agency will insure that local implementing regulations are published, or existing local regulations modified, to require, as a minimum, that Air Force personnel request approval from the local commander for any off-duty employment that involves working for any firm or other entity which is engaged, or is endeavoring to engage, in business transactions of any sort with any agency of the Department of Defense. Local commanders will establish internal administrative procedures to evaluate each request submitted and to notify the applicant whether the proposed off-duty employment is in consonance with this part.

**§ 920.10 Gambling, betting, and lotteries.**

Air Force personnel shall not participate while on Government-owned or leased property, or while on duty for the Government, in any gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order der 10927 (3 CFR, 1959–1963 Comp. p. 454), and similar Air Force approved activities.

**§ 920.11 Indebtedness.**

Air Force personnel shall pay each just financial obligation in a proper and timely manner, especially one imposed by law, such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Air Force to

determine the validity or amount of the disputed debt.

§ 920.12 Information to personnel.

(a) Each commander will insure that these standards of conduct are immediately brought to the attention of all Air Force personnel under his jurisdiction and that new Air Force personnel under his jurisdiction are informed of the standards of conduct specified in this part upon employment, or entry on duty. Each commander will bring these standards of conduct to the attention of all Air Force personnel under his jurisdiction by appropriate means at least semiannually. The Secretary of the Air Staff will insure that these requirements are met within Hq. U.S. Air Force. This requirement may be accomplished through various means, including, but not necessarily limited to, personal consultation, requiring the individual to read this part, daily bulletins, bulletin board items, regularly published media, and commander's calls. The Commander, Continental Air Command, is responsible for insuring that nonactive duty Air Force Reserve personnel, other than Part I Reserves assigned to other major commands, are appropriately informed. Major commanders have this responsibility for Part I Reserves within their respective commands. The Chief of the National Guard Bureau has this responsibility for the Air National Guard of the United States. The attention of Air Force personnel will be directed to each statute relating to ethical and other conduct that is referred to in this part and in AFR 30–30, Attachment 3.[1]

(b) All Air Force personnel will be advised that they may obtain additional clarification of the standards of conduct and conflict of interest set forth in this part and related statutes, rules, and regulations, from the local legal office providing legal service to their organization or activity. For this purpose, each base and other commander who has a responsibility for providing legal service to personnel will designate his Staff Judge Advocate and, if necessary, one or more Judge Advocates, to be deputy counselors. The deputy counselors will be responsible for providing advice and assistance to such personnel on all matters relating to standards of conduct and conflict of interest covered by this part, and for reviewing DD Forms 1555 and 1555–1, "Confidential Statements of Employment and Financial Interest."[2] The Judge Advocate General, or his designee, will be deputy counselor responsible for these functions within the Air Staff. The General Counsel of the Department of the Air Force, as Department Counselor, or his designee, will be responsible for these functions within the Office of the Secretary of the Air Force. Military personnel may request advice concerning entitlement to retired pay from AFAFC (ALR), 3800 York Street, Denver, Colo. 80205.

(c) Questions which cannot be resolved by the local legal office will be referred, with recommendations, through channels to higher authority. The General Counsel of the Department of the Air Force, Office of the Secretary of the Air Force, is responsible for proper coordination and final disposition of all problems relating to conflict of interest, including those relating to the review of DD Forms 1555 and 1555–1.

(d) Except as specifically provided herein, waivers of and exceptions to the provisions of this part may be authorized or approved only by the Secretary of the Air Force. It is emphasized that many of the provisions of this part are based on legal requirements and cannot be waived.

§ 920.13 Confidential statement of employment and financial interest (DD Form 1555).

(a) Full-time Air Force personnel in the following categories are required to submit, and keep current, a DD Form 1555, in accordance with the instructions contained in § 920.24:

(1) Air Force personnel paid at a level of the Federal Executive Salary Schedule established by the Federal Executive Salary Act of 1964, as amended.

(2) Air Force personnel in grade GS–16 or above of the General Schedule established by the Classification Act of 1949, as amended, or in comparable or higher positions not subject to that Act, including commissioned officers in the pay grade of 07 and above.

(3) Air Force civilian personnel in grades GS–13 and above or commissioned officers in the grade of 05 or above whose basic duties and responsibilities require the incumbent to exercise judgment in making or recommending a Government decision, or in taking or recommending Government action in regard to contracting or procurement, auditing, or activities in which the decision or action has an economic impact on the interests of any non-Federal enterprise.

(b) Section 920.24 contains additional guidance and instructions concerning this section. All personnel described in paragraph 3(a) (1) and (2) of this section, civilian employees in grade GS–13 or above, and military personnel in the grade of 05 or above, will read § 920.24 and comply with those provisions which are applicable to them. In addition, the officer responsible for the central civilian personnel office of each employing activity, and the Chief, Consolidated Base Personnel Office (CBPO) of each Air Force activity, will read and comply with § 920.24.

§ 920.14 Reporting suspected violations.

Air Force personnel who have information which causes them to believe that there has been a violation of a statute or policy set forth in this part will promptly report such incidents to their immediate superiors. If the superior believes there has been a violation, he will report the matter for further action in accordance with AFR 124–8 (Violations of Public Trust in Contract, Procurement, and Other Matters). Any question or doubt on the part of the immediate superior will be resolved in favor of reporting the matter.

## Subpart B—Conflict of Interest Laws

§ 920.15 Full-time officers and employees.

(a) *Definition.* The term "full-time officer or employee" includes all civilian officers and employees, and all military officers on active duty, except those who are "special Government employees" (see § 920.16). It does not include enlisted personnel.

(b) *Prohibitions.* Attachment 3A of AFR 30–30[1] (or see Part 40, Appendix A, Chapter I of this title) contains a discussion of criminal laws relating to conflict of interests and the exemptions therefrom. In general, a full-time officer or employee is subject to the following major prohibitions:

(1) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (see 18 U.S.C. 203 and 205).

(2) He may not receive any salary, or supplementation of his Government salary, from a private source as compensation for his services to the Government (see 18 U.S.C. 209).

(3) He may not participate[3] in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate, or person with whom he is negotiating for employment, has a financial interest (see 18 U.S.C. 208). Instead of participating in such a matter, he must promptly disqualify himself in accordance with paragraph (d) of this section, except as provided in paragraph (c) of this section.

(c) *Nondisqualifying financial interest.* A full-time officer or employee need not disqualify himself under paragraph (b) (3) of this section, if the financial holdings are in shares of a widely held diversified mutual fund or regulated investment company. The indirect interests in business entities which the holder of shares in a widely held diversified mutual fund or regulated investment company derives from ownership by the fund or investment company of stocks in business entities is hereby exempted from the provisions of 18 U.S.C. 208(a), in accordance with the provisions of 18 U.S.C. 208(b) (2) as being too remote or inconsequential to affect the integrity of the Government officers' or employees' services.

(d) *Disqualification procedures.* (1) In any case where a full-time officer or employee must disqualify himself under paragraph (b) (3) of this section, he will promptly notify his superior thereof and make a full disclosure of the financial interest. The superior will thereupon relieve him from his duty and repson-

[1] Filed as part of original document.

[2] Filed as part of original document. Copies available at respective military department publications counters.

[3] A person may "participate" through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise.

sibility in the matter, unless the Government official responsible for his appointment makes a written advance determination that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from the officer or employee. The original copy of such written determination will be made a matter of permanent record and will be maintained by the central civilian personnel officer or filed in the officer's Unit Personnel Record Group, as appropriate.

(2) In the case of a military officer or a civilian employee, the "official responsible for his appointment" shall, for the purpose of this section, be his superior, or such other person as the commander may designate, who is a full-time officer or employee serving in the grade of major, or GS–12, or higher. The designation, authorized to be made by commanders in the previous sentence, may be made by directors or heads of comparable offices in the Office of the Secretary of the Air Force and in Hq. U.S. Air Force for personnel assigned to their respective offices.

(3) In addition, where a superior thinks anyone responsible to him may have a disqualifying interest, he will discuss the matter with that person and, if he finds such an interest does exist, he will relieve the person of duty and responsibility in the particular matter.

(4) In cases of disqualification under this paragraph, the matter will be reassigned for decision and action to someone else who is not subordinate to the disqualified person.

**§ 920.16 Special Government employees.**

(a) *Definition.* The term "special Government employee" includes an officer or employee who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis (see 18 U.S.C. 202). The term also includes a Reserve officer while on active duty solely for training for any length of time, one who is serving on active duty involuntarily for any length of time, and one who is serving voluntarily on extended active duty for 130 days or less. It does not include enlisted personnel.

(b) *Prohibitions.* Attachment 4 (Extracts from P.L. 87–849, Conflict of Interest laws) of AFR 30–30 [1] contains extracts from the criminal laws relating to conflict of interest, and Attachment 3 to AFR 30–30 [1] (or see Pt. 40, App. B, Ch. I of this title) contains a discussion of them. In general, a special Government employee is subject to the following major prohibitions:

(1) He may not, except in the discharge of his official duties, represent anyone else:

(i) Before a court or Government agency in a matter in which the United States is a party or has an interest and in which he has at any time participated personally and substantially for the Government (see 18 U.S.C. 203 and 205).

(ii) In a matter pending before the agency he serves unless he has served there no more than 60 days during the past 365 (see 18 U.S.C. 203 and 205). He is bound by this restraint despite the fact that the matter is not one in which he has ever participated personally and substantially.

The restrictions described in subdivisions (i) and (ii) of this subparagraph, apply to both paid and unpaid representation of another.

(2) He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment, has a financial interest (see 18 U.S.C. 208). Instead of participating in such a matter, he must promptly disqualify himself in accordance with § 920.15(d), except as provided in § 920.15(c).

(3) After his Government employment has ended, he is subject to the prohibitions in § 920.17(b) as a "former employee" (see 18 U.S.C. 207).

**§ 920.17 Former officers or employees.**

(a) *Definition.* The term "former officer or employee" includes those full-time civilian officers or employees and former military officers who have left Government service, special Government employees who have left Government service, retired Regular officers, and Reserve officers released from active duty. It does not include enlisted personnel.

(b) *Prohibited activities.* Attachment 3B of AFR 30–30 (Laws applicable to former officers and employees) [1] (or see Pt. 40, App. B(B), Ch. I of this title), contains a more detailed discussion of the criminal law. In general, a former officer or employee is subject to the following major prohibitions:

(1) He may not, at any time after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (see 18 U.S.C. 207(a)).

(2) He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (see 18 U.S.C. 202(b) and 207(b)). This temporary restraint, of course, gives way to the permanent restriction described in subparagraph (1) of this paragraph, if the matter is one in which he participated personally and substantially.

**§ 920.18 Retired Regular officers.**

(a) *Prohibitions.* Attachment 3C of AFR 30–30 (Summary of laws applicable to retired Regular officers not on active duty) [1] (or see Pt. 40, App. B(C), Ch. I of this title) contains a summary of the laws applicable to retired Regular officers. In general, a retired Regular Air Force officer is subject to the following major prohibitions:

(1) As an officer whose "employment has ceased," he may not engage in the prohibited activities listed in § 920.17 (see 18 U.S.C. 207).

(2) He may not, at any time, assist in prosecuting a claim against the United States if he worked on that claim while on active duty (see 18 U.S.C. 283).

(3) He may not, within 2 years after his retirement, assist in prosecuting a claim which involves the Department in whose service he holds a retired status (see 18 U.S.C. 283).

(4) He may not, at any time, sell anything to the Department in whose service he holds a retired status (see 18 U.S.C. 281).

(5) He may not, within 3 years after retirement, sell supplies or war materials to any agency of the Department of Defense, the Coast Guard, the Coast and Geodetic Survey, or the Public Health Service (see 37 U.S.C. 801(c), as amended Oct. 9, 1962, P.L. 87–777, formerly 5 U.S.C. 59(c)). (See definition of "Selling," Attachment 3C of AFR 30–30 [1] or see Pt. 40, App. B(C), Ch. I of this title.)

(b) *Required statement of employment.* (1) Each Regular retired Air Force officer is required to file, within 30 days after retirement, a "Statement of Employment," DD Form 1357 (Attachment 7, AFR 30–30) [2] with AFAFC (ALR), 3800 York Street, Denver, Colo. 80205. Whenever the information in this statement is no longer accurate, each such officer shall file a new DD Form 1357.

(2) The Air Force Accounting and Finance Center will review the "Statement of Employment" to assure compliance with applicable statutes and regulations. Where it appears that a possible violation of a policy or statute, as set forth in this part may be involved, the retired member may be requested to furnish clarifying information. In those instances where the Commander, Air Force Accounting and Finance Center, is unable to resolve the issues, he will submit the matter, with recommendations, to Hq. USAF (AFJAG), Washington, D.C. 20330, for referral, if appropriate, with recommendations, to the General Counsel of the Department of the Air Force, Office of the Secretary of the Air Force.

(3) The retired member will request additional copies of DD Form 1357 from AFAFC (ALR), 3800 York Street, Denver, Colo. 80205. DD Form 1357 is stocked and issued only by the Air Force Accounting and Finance Center. The Center is authorized to locally reproduce DD Form 1357 on 8" x 10½" paper.

**§ 920.19 Officers of the Reserve components.**

(a) A Reserve officer who is voluntarily serving a period of extended active duty in excess of 130 days is a full-time Government officer, and § 920.15 applies to him.

[1] Filed as part of original document.

[2] Filed as part of original document. Copies available at respective military department publications counters.

*Exception.* Any Reserve who, before being ordered to active duty was receiving compensation from any person may, while he is on that duty, receive compensation from that person (see 10 U.S.C. 1033).

(b) A Reserve officer who is serving on active duty involuntarily for any length of time, and a Reserve officer who is voluntarily serving on extended active duty for 130 days or less, is a "special Government employee," and § 920.16 applies to him.

(c) A Reserve officer (unless otherwise a full-time officer or employee of the United States) who is on active duty solely for training for any length of time is a "special Government employee," and § 920.16 applies to him.

(d) When he is released from active duty, a Reserve officer described in paragraph (a), (b), or (c) of this section, is a "former officer," and § 920.17 applies to him.

(e) Membership in a Reserve component of the armed forces or in the National Guard does not, in itself, prevent a person from practicing his civilian profession or occupation before or in connection with any department (see 5 U.S.C. 30r (c), (d)).

(f) An officer of a Reserve component, whether in the Ready, Standby, or Retired Reserve, who is not on active duty is not, solely because of his status as a Reserve, considered to be an officer or employee of the United States for the purpose of bringing him within the prohibitions summarized in §§ 920.15, 920.16, and 920.17 (see 5 U.S.C. 30r (c), (d)).

(g) Receipt of retired pay by a Reserve or a former Reserve does not, in itself, make him an officer or employee or a former officer or employee for the purpose of bringing him within the prohibitions summarized in §§ 920.15, 920.16, and 920.17. Section 920.18 does not apply to a retired Reserve.

## Subpart C—Special Government Employees; Advisors and Consultants; Temporary or Intermittent Employees

### § 920.20 General.

(a) For purposes of this subpart, "Special Government Employee" has the meaning given that term in § 920.16(a). Paragraph I of Attachment 10, AFR 30–30 [1] (or see Note at end of this section) provides guidance on how to determine whether an individual is a full-time Government employee or a special Government employee, and paragraph II, Attachment 10, AFR 30–30 [1] (or see Note) provides guidance on how to determine whether the "60 day" rule (§ 920.16(b)(1)(ii)) applies. All special Government employees will familiarize themselves and comply with this subpart, Subpart A, and those portions of Subpart B and the attachments to AFR 30–30 [1] which apply to them.

(b) "Advisors and consultants" as used in this subpart are those:

(1) As defined in AFRs 40–921 (Employment of Experts and Consultants) and 160–97 (Civilian National Consultants);

(2) Employed under individual personal service contracts of AFR 25–4 (Expert and Consultant Services); and

(3) Members of Advisory Committees formed or utilized under AFR 25–7 (Air Force Committee Management).

(c) Additional policy guidance for use by advisors and consultants and other individuals serving as special Government employees is contained in paragraph III of Attachment 10, AFR 30–30 [1] (or see note) and guidance on the Air Force use of advisors and consultants is contained in paragraph V of Attachment 10, AFR 30–30 [1] (or see note).

(d) It is necessary at times to distinguish between advisors and consultants who must be regarded as employees, and persons invited by the Air Force to speak for industry in a representative capacity. For discussion of this distinction see paragraph IV of Attachment 10, AFR 30–30 [1] (or see note). Where there is a doubt whether a person furnishing information to the Air Force is to be regarded as an employee, or as acting in a representative capacity, the civilian personnel office should be contacted.

(e) "Other temporary and intermittent employees" primarily refers to such employees who are appointed under a regular Civil Service appointment procedure.

NOTE: Or see Chapter 735, Appendix C of the Civil Service Federal Personnel Manual, November 9, 1965; or see 5 CFR Part 735, Subpart C.

### § 920.21 Specific responsibilities with regard to advisors and consultants.

(a) Each advisor and consultant employed or to be employed will familiarize himself and comply with this subpart, Subpart A of this part and those portions of Subpart B of this part and the attachments to AFR 30–30 that apply to him. With the exception of those described in paragraph (b) of this section, each advisor and consultant:

(1) Will, prior to appointment or reappointment,[4] complete and file with the civilian personnel office of the employing activity a DD Form 1555–1, "Confidential Statement of Employment and Financial Interests,"[5] setting forth his Government employment, his private employment, and his financial interests in accordance with the instructions on that form and the following additional guidance:

(i) He must list all of his investments and other financial interests, such as a pension, retirement, group life, health, or accident insurance; and profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer. He is not required to list precise amounts of investments, or

(*a*) Savings and checking accounts in banks;

(*b*) Credit union shares;

(*c*) Building and loan association shares;

(*d*) Accumulated dividends on and cash values of life insurance policies.

(ii) The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this subpart, "member of an employee's immediate household" means those blood relations who are residents of the employee's household.

(iii) If any information required to be included on the "Confidential Statement of Employment and Financial Interests" or supplementary statement, including holdings placed in trust, is not known to the advisor or consultant but is known to another person, the advisor or consultant will request that other person to submit information in his behalf.

(2) Will report to the civilian personnel office changes in or additions to the information contained in DD Form 1555–1 in a supplementary statement at the end of the quarter in which the changes occur. Quarters end March 31st, June 30th, September 30th, and December 31st. If there are no changes or additions in a quarter, a negative report is not required. However, for the purpose of annual review, a supplementary statement, negative or otherwise, is required as of June 30th each year.

(3) Is not required to submit on a "Confidential Statement of Employment and Financial Interests" or supplementary statement any information relating to his connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this subpart, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's "Confidential Statement of Employment and Financial Interests."

(4) Will note that "Confidential Statements of Employment and Financial Interests" and supplementary statements, required of him are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

(b) The following categories of special Government employees, when performing the specific services listed in this paragraph, are not required to file the DD Form 1555–1 referred to herein.

(1) Physicians, dentists, and allied medical specialists performing care and service to patients.

(2) Veterinarians providing veterinary service to animals.

(3) Lecturers participating in educational activities.

(4) Chaplains performing religious services.

[1] Filed as part of original document.

[4] The term "appointment or reappointment" includes employment or reemployment of individuals by personal service contracts.

[5] Local reproduction of DD Form 1555–1 is authorized until the form is available through normal supply channels.

(5) Individuals of national prominence in the motion picture and television fields who are utilized as narrators or actors in motion picture or television productions produced by the Department of Defense.

(6) A special Government employee who is not a "consultant" or "expert" as those terms are defined in Chapter 304 of the Federal Personnel Manual.

(c) The Air Force will hold each DD Form 1555–1, supplementary statements, and related correspondence in confidence. Section 920.24(j) applies. The Air Force will not disclose any information contained in them except as the Secretary of the Air Force or the Civil Service Commission may determine for good cause shown.

(d) The central civilian personnel office of the employing activity will:

(1) Arrange to give each prospective advisor or consultant, and each advisor or consultant now employed, a copy of this part, to invite his attention especially to this subpart and to advise him of the name of the Deputy Counselor or Counselor from whom he should seek legal assistance should he have any question relating to conflict of interest.

(2) Prior to appointment or reappointment, arrange to secure a completed DD Form 1555–1, or a supplementary statement, as applicable.

(3) Determine, in consultation with the appropriate deputy counselor or counselor, whether the advisor or consultant is a special or full-time employee in accordance with the procedure set forth in paragraph I of Attachment 10, AFR 30–30 [1] or see Note in § 920.20. Any service to be rendered with other departments or agencies during the period will be taken into account in making this determination. This determination will be based on the statement filed by the individual.

(4) Prior to appointment or reappointment, arrange to furnish DD Form 1555–1, supplementary statements, and the position description to the official who will supervise the advisor or consultant, and the legal office, and to obtain their indorsement thereon (see pars. (e) and (f) of this section).

(5) Maintain the original DD Form 1555–1 and other papers relating thereto as prescribed in section 2934, AFM 40–1 (Air Force Civilian Personnel Manual).

(6) Record, as appropriate, one of the following in the remarks section of the SF 50, "Notification of Personnel Action":

(i) "Subject to conflict of interest laws and regulations as a special Government employee."

(ii) "Subject to conflict of interest laws and regulations as a regular Government employee."

(7) Determine, in consultation with the appropriate deputy counselor or counselor, in accordance with paragraph II of Attachment 10, AFR 30–30 (or see note in § 920.20), whether the 60-day rule will apply, and inform the individual.

(e) The official who supervises, or who will supervise, an advisor or consultant, will:

(1) Familiarize himself and comply with the provisions of this part and its attachments pertaining to him and to advisors and consultants.

(2) Review each DD Form 1555–1 and each supplementary statement, and forward to the deputy counselor or counselor a statement whether, in his opinion, the DD Form 1555–1 and supplementary statement disclose a conflict of interest or appearance thereof, and whether during the course of his employment, the advisor or consultant will participate in any matter the outcome of which would have a direct and predictable effect on any of the nongovernmental organizations listed in his DD Form 1555–1 and supplementary statement. This statement should follow the form of indorsement in § 920.24(m)(3). In an appropriate case, he will consult with the legal office before preparing this statement.

(f) The deputy counselor or counselor in the legal office providing legal assistance to the commander of the employing activity will:

(1) Furnish legal advice and assistance to the central civilian personnel office, the supervisors, and advisors, and consultants, on all matters relating to conflict of interest.

(2) Review each DD Form 1555–1 and each supplementary statement together with the position description and the report of the supervisor (paragraph (e)(2) of this section), furnish a written opinion thereon, and forward the entire file to the central civilian personnel office for filing.

(3) Take steps if he, or the official who supervises or will supervise the advisor or consultant, is not satisfied there is no conflict of interest or appearance thereof, to resolve it in accordance with § 920.24 (n) and (o).

(g) The Directorate of Civilian Personnel, Hq. USAF, will arrange for furnishing information requested by other agencies on advisors and consultants employed within the Air Force. Requests from other agencies should be directed to Hq. USAF (AFPCPAA), Washington, D.C. 20330.

### § 920.22 Temporary or intermittent employees.

The central civilian personnel office will:

(a) Brief each individual employed on a temporary or intermittent appointment as provided in § 920.12.

(b) Make the determinations as set forth in Attachment 10 of AFR 30–30 [1] (or see Note in § 920.20) on the basis of personnel records, and advise the employee of these determinations.

(c) Record one of the appropriate remarks on the SF 50, as provided in § 920.21(d)(6).

## Subpart D—Additional Guidance

### § 920.23 Gratuities.

This section supplements § 920.5.

(a) Except as provided in paragraph (b) of this section, Air Force personnel will not solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value either directly or indirectly from any person, firm, corporation, or other entity which:

(1) Is engaged or is endeavoring to engage in procurement activities or business or financial transactions of any sort with any agency of the DOD;

(2) Conducts operations or activities that are regulated by any agency of the DOD; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the official duty of the DOD personnel concerned.

Gifts, gratuities, favors, entertainment, etc., bestowed upon members of the immediate families of Air Force personnel are viewed in the same light as those bestowed upon Air Force personnel. Acceptance of gifts, gratuities, favors, entertainment, etc., no matter how innocently tendered and received, from those who have or seek business with the Department of Defense may be a source of embarrassment to the department and the personnel involved, may affect the objective judgment of the recipient and impair public confidence in the integrity of the business relations between the department and industry.

(b) For the purpose of this section, a gift, gratuity, favor, entertainment, etc., includes any tangible item, intangible benefits, discounts, tickets, passes, transportation, and accommodations or hospitality given or extended to or on behalf of the recipient. However, the restrictions in paragraph (a) of this section do not apply to the following:

(1) Instances in which the interest of the Government are served by participation of Air Force personnel in widely attended luncheons, dinners, and similar gatherings sponsored by industrial, technical, and professional associations for the discussion of matters of mutual interest to Government and industry. Participation by Air Force personnel is appropriate when the host is the association and not an individual contractor. Acceptance of gratuities, or hospitality from private companies in connection with such association's activities is prohibited.

(2) Situations in which the interest of the Government are served by participation of Air Force personnel in activities at the expense of individual defense contractors when the invitation is addressed to and approved by the employing agency of DOD. These activities include public ceremonies of mutual interest to industry, local communities, and the department, such as the launching of ships or the unveiling of new weapons systems, industrial activities which are sponsored by or encouraged by the Government as a matter of United States defense or economic policy, such as sales meetings to promote off-shore sales involving foreign industrial groups or governments.

(3) Luncheons or dinners at a contractor's plant on an infrequent basis, when the conduct of official business within the plant will be facilitated and when no provision can be made for individual payment.

[1] Filed as part of original document.

(4) Situations in which, in the judgment of the individual concerned, the Government's interest will be served by participation by Air Force personnel in activities at the expense of a defense contractor. In any such case in which Air Force personnel accept any gratuity, favor, entertainment, etc., either directly or indirectly from any person, firm, corporation, or any other entity which is engaged or is endeavoring to engage in business transactions of any sort with the department, a written report of the circumstances will be made within 48 hours. The recipient will submit the report to his commander (or, in the case of personnel assigned to the Air Staff, and Office of the Secretary, to his Deputy Chief of Staff or chief of comparable office, or his designee) for his review and disposition. The report will identify the gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, state when, where, and from whom received, and contain the justification for accepting it, showing how the recipient's participation in the activities concerned served the Government's interests. All Air Force personnel are expected to use sound judgment in determining initially whether acceptance of a proffered gift, gratuity, favor, entertainment, loan, or any other thing of monetary value would come within the purview of this paragraph, and to assume personal responsibility for making a report when required.

(5) Specialty advertising items of trivial intrinsic value.

(6) Customary exchange of social amenities between personal friends and relatives when motivated by such relationship and extended on a personal basis.

(7) Things available impersonally to the general public or classes of the general public such as a free exhibition by a defense contractor at a world's fair.

(8) Trophies, entertainment, rewards, prizes, given to competitors in contests which are open to the public generally or which are officially approved for participation in by Air Force personnel.

(9) Transactions between and among relatives which are personal and consistent with the relationship.

(10) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees such as home mortgage loans.

(11) Social activities engaged in by officials of the department and officers in command or their representatives with local civilian leaders as part of community relations programs.

(12) Contractor-provided local transportation while on official business and when alternative arrangements are clearly impracticable.

(13) Participation in civic and community activities by Air Force personnel when the relationship with the defense contractor can reasonably be characterized as remote, for example, participation in a little league or Combined Federal Campaign luncheon which is subsidized by a concern doing business with a defense activity.

(14) Receipt of bona fide reimbursement, not prohibited by law, from other than defense contractors for actual expenses for travel and other necessary subsistence for which no Government payment or reimbursement is made. However, an employee may not be reimbursed, and payment may not be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits.

(c) Except as provided in paragraph (b)(12) of this section, personnel on official business may not accept contractor-provided transportation, meals or overnight accommodations in connection with such official business so long as Government or commercial transportation or quarters are reasonably available. Where, however, the overall Government interest would be served by acceptance by Air Force members of such transportation or accommodations in specific cases, the order issuing authority may authorize it.

(d) Additional advice: Whenever any Air Force personnel need advice on the application of § 920.5 and this section to a particular case, they should consult the local legal office providing legal service to their organization or activity.

**§ 920.24 Confidential statements of employment and financial interests (DD Form 1555).**

This section supplements § 920.13.

(a) *Definitions.* (1) "Superior" means the military officer in grade 05 or above, or the civilian officer or employee in grade GS–14 or above, or such higher grade as the commander concerned may designate, who is the superior of the individual involved. In the Office of the Secretary of the Air Force and the Air Staff, the designation authorized by the previous sentence to be made by a commander may be made by directors or heads of comparable or higher offices. In the absence of a designation to the contrary, the director or head of a comparable office in the Office of the Secretary of the Air Force or the Air Staff is the "superior" for personnel under his jurisdiction.

(2) "Personnel office" includes both the Consolidated Base Personnel Office (CBPO) (for military personnel records) and the Central Civilian Personnel Office (for civilian personnel records).

(3) "Deputy counselor" means the deputy counselor or counselor designated in or pursuant to § 920.12(b).

(b) *Who files DD Form 1555.* Under § 920.13(a), the following full-time Air Force personnel are required to file DD Form 1555, "Confidential Statement of Employment and Financial Interests:"

(1) Air Force personnel paid at a level of the Federal Executive Salary Schedule established by the Federal Executive Salary Act of 1964, as amended.

(2) Air Force personnel in grade GS–16 and above of the General Schedule established by the Classification Act of 1949, as amended, or in comparable or higher positions not subject to that Act, including officers in the pay grade of 07 and above.

(3) Air Force personnel in grades GS–13 and above and commissioned officers in the grade of 05 and above whose basic duties and responsibilities require the incumbent to exercise judgment in making or recommending a Government decision, or in taking or recommending Government action in regard to:

(i) Contracting or procurement: For the purpose of this subparagraph (3) "contracting or procurement" includes all functions that pertain to the authorization, award and administration of contracts or grants with non-Governmental entities. This includes agreements, supplemental agreements, subcontracts, leases, service orders, task orders, purchase orders, delivery orders, change orders, property disposal contracts, communication service authorizations, and other instruments or agreements which obligate the United States. It includes preaward surveys; the evaluation, appraisal, selection, or approval of contractors and subcontractors, contractor and subcontractor facilities, and the location, transfer, or closing of work sites. It also includes purchasing, renting, leasing, or otherwise obtaining supplies or services from, and disposing or selling supplies to, non-Governmental entities and all functions that relate to obtaining or disposing of supplies and services, description and determination of requirements, preparation of specifications including the determination of technical requirements, selection and solicitation of sources, preparation, and award of contracts or grants, and all phases of contract and grant administration and monitoring, including all aspects of quality control and quality assurance, inspection and acceptance.

(ii) Auditing: Auditing a private or other non-Federal enterprise, including the supervision of auditors engaged in audit activities or the participation in the development of policies and procedures for performing such audits, including the authorization and monitoring of grants to institutions or other non-Federal enterprise.

(iii) Other: Activities in which the decision or action has an economic impact on the interests of any non-Federal enterprise.

(c) *Individual responsibility.* Each officer and employee coming within one of the foregoing categories is personally responsible for filing DD Forms 1555 and supplemental statements as prescribed in paragraphs (d) through (f) of this section.

(d) *Where to file DD Forms 1555.* (1) Except as provided in subparagraph (2) of this paragraph, each Air Force officer or employee who is required to file a DD Form 1555 and supplemental statement will file them with his superior (see par. (a)(1) of this section for the meaning of "superior").

(2) The Secretary, Under Secretary, and Assistant Secretaries of the Air Force will file DD Forms 1555 and supplemental statements with the General Counsel of the Department of Defense.

(e) *How to complete DD Form 1555.* (1) Each individual will complete the DD Form 1555 in accordance with the instructions on the form and the following guidance.

(2) Each DD Form 1555 and each supplemental statement will be completed in its entirety. "None" will be entered in each part where applicable.

(3) The following interests need not be reported on DD Form 1555:

(i) Savings and checking accounts in banks;

(ii) Credit union shares;

(iii) Building and loan association shares;

(iv) Accumulated dividends and on cash values of life insurance policies.

(4) The interest of a spouse, minor child, or other member of the individual's immediate household is considered to be an interest of the individual filing a DD Form 1555. For purposes of this subparagraph, "member of the individual's immediate household" means those blood relations who are residents of the household of the individual filing the DD Form 1555.

(5) If any information required to be included on a DD Form 1555 or a supplementary statement, including holdings placed in trust, is not known to the officer or employee filing the DD Form 1555 but is known to another person, the officer or employee will request that other person to submit to the superior information in his behalf.

(6) An officer or employee is not required to report on a DD Form 1555 or supplementary statement any information relating to his connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For purposes of this subparagraph, educational or other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in the DD Form 1555 of the officer or employee.

(7) Each officer or employee will submit the original of the DD Form 1555 to his superior, and retain a copy for his own file.

(f) *Time of filing.* Each officer and employee will file the DD Form 1555 not later than August 15, 1966, reporting the required information as of June 30, 1966. Each will file supplementary statements periodically thereafter as prescribed in paragraph (g) of this section. An officer or employee who is transferred or reassigned to another position not under his prior superior, who is required to file a DD Form 1555, will file it with his new superior within 30 days after reporting for duty, unless the new superior prescribes an earlier date. An officer or employee who enters Government service after the date of this part, who is required to file a DD Form 1555, will do so within 30 days from the date of commencement of such service.

(g) *Supplementary statements.* Changes in or additions to the information contained in a DD Form 1555 will be reported in a supplementary statement as of the end of the quarter in which the changes occur, and will be filed within 30 days after the end of the quarter in which the changes or additions occur. Quarters end March 31st, June 30th, September 30th, and December 31st. If there are no changes or additions in a quarter, a negative report is not required. However, for the purpose of annual review, a supplementary statement, negative or otherwise, is required as of June 30th each year and must be filed on or before July 31st. Each supplementary statement will be made on a DD Form 1555, with a notation thereon that it is a supplementary statement.

(h) *Excusable delay.* If by reason of his duty assignment it is impracticable for an individual to submit a DD Form 1555 or supplementary statement within the period required by this section, his superior may grant an extension of time therefor. Any extension in excess of 30 days requires the concurrence of the Under Secretary of the Air Force. Requests for such an extension will be submitted through channels, with an explanation of the reason therefor. DD Forms 1555 submitted pursuant to an extension of time granted hereunder shall include appropriate notation to that effect.

(i) *Effect of filing a DD Form 1555 on other requirements.* DD Form 1555 and supplementary statements required by this part are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a DD Form 1555 or supplementary statement by an officer or employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

(j) *Confidentiality of DD Form 1555, supplementary statements, and related correspondence.* The Air Force will hold DD Forms 1555, including supplementary statements, and related correspondence in confidence. All Air Force personnel required to review these papers will preserve their confidentiality. The Secretary of the Air Force is the official custodian of all these papers, although they are filed in the office of the appropriate deputy counselor. The Air Force will not disclose to any person outside the Department of Defense any information contained in them except as the Secretary of the Air Force or the Civil Service Commission may determine for good cause shown.

(k) *Review of position descriptions.* (Use AF Form 1378 for both civilian and military positions). Each position description of civilian employees in grades GS–13 through 15, and of military officers in grades 05 and 06, will be reviewed, and an entry placed therein stating whether the incumbent of the position must file a DD Form 1555. The determination whether the incumbent of a position must file a DD Form 1555 will be made by the incumbent's superior, who will notify the appropriate personnel office which will place a statement to that effect in the position description. This determination will be reviewed at least annually by the superior. Except for the initial review described in paragraph (1) of this section, the review of military positions will be accomplished on the date established for the incumbent's annual job classification.

(l) *Initial review of position descriptions.* In order to insure the timely filing of initial DD Forms 1555, the following procedures will be followed upon receipt of this part:

(1) The personnel offices of each Air Force activity will review the position description of all employees in grades GS–13 through 15, and of all military officers in grades 05 and 06, and will screen out those which clearly do not come within paragraph (b) (3) of this section. The personnel office will forward a copy of each of the remaining position descriptions (that is, those which may fall within paragraph (b) (3) of this section) to the incumbent's superior. The superior will determine whether the incumbent comes within the purview of paragraph (b) (3) of this section and inform the personnel office of his determination. The personnel office will enter on the position description a statement as to whether or not the incumbent must file a DD Form 1555.

(2) If the superior determines that there are other subordinates (in addition to those whose position descriptions had been forwarded to him by the personnel office) who come within paragraph (b) (3) of this section, he will inform the personnel office of his determination. The personnel office will enter on each position description involved a statement that the incumbent must file a DD Form 1555.

(3) The personnel office will also enter on the position description of each individual coming within paragraph (b) (1) or (2) of this section, a statement that the incumbent must file a DD Form 1555.

(4) Incumbents of positions described in paragraph (b) of this section may be excluded from the requirement of filing a DD Form 1555 (and supplementary statements) if the Under Secretary of the Air Force approves a determination by the individual's superior or higher authority that the incumbent's duties are at such a level of responsibility that the submission of a DD Form 1555 is not necessary because of the degree of supervision and review of the incumbent and the remote and inconsequential effect on the integrity of the Government. Request for approval of such determinations will be sent through command channels with the reasons therefor. Any intermediate command may disapprove the request and return it to the requestor.

(m) *Processing of DD Forms 1555.* (1) As soon as the personnel office ascertains that an officer or employee is required to file a DD Form 1555, it will forward to the superior a copy of the individual's position description (with a copy to the appropriate deputy counselor), together with two blank copies of DD Form 1555. (Local reproduction of

DD Form 1555 is authorized until the form is available through normal supply channels.) This includes all those required to file a DD Form 1555 under paragraph (b) (2) or (3) of this section and, with the exception of the Secretary, Under Secretary, and Assistant Secretaries of the Air Force, those required to file under paragraph (b) (1) of this section. (See paragraph (d) (2) of this section for civilian Presidential appointees.)

(2) The superior will give the DD Forms 1555 to the individual concerned for completion. He will insure that the individual completes and submits it, and all the required supplementary statements.

(3) When the superior receives a completed DD Form 1555 he will forward it directly to the local deputy counselor for filing if all the entries thereon are "none." In all other cases, the superior will review the DD Form in the light of the provisions of this part (particularly §§ 920.3, 920.9, and 920.15) and of the individual's duties and responsibilities. Except as provided in paragraph (n) of this section, he will then forward the DD Form 1555 directly to the local deputy counselor with the following endorsement:

I have reviewed the attached DD Form 1555 of _____ in the light
(Name of individual)
of AFR 30–30 and of his duties and responsibilities. In my opinion, the DD Form 1555 discloses no conflict of interest or the appearance thereof. I will not call upon _____, in the performance of his official duties, to participate in any matter the outcome of which would have a direct and predictable effect on any of the non-governmental organizations listed on his DD Form 1555, unless a written determination that he may participate is made in accordance with paragraph 15d(1) of AFR 30–30 [§ 920.15(d) (1) of this section].
(Name of individual)

In an appropriate case, the superior will consult with the local deputy counselor before preparing his indorsement. After such consultation, the superior may add to his indorsement any necessary explanations of why, in his opinion, there is no conflict or appearance thereof.

(4) On receipt of the DD Form 1555, the deputy counselor will review it in the light of provisions of this part, the individual's position description, and the indorsement of the superior. If he finds no reason to question the superior's indorsement described in subparagraph (3) of this paragraph, he will file the DD Form 1555 together with the superior's indorsement and the individual's position description. If the deputy counselor is not satisfied that there is no conflict of interest or appearance thereof, he will so inform the individual's superior, either orally or in writing, with a request for further consideration.

(n) *Resolution of a conflict or appearance of conflict of interest.* (1) In any case in which the superior is unable to complete the indorsement described in paragraph (m) (3) of this section, and in any case coming within the last sentence of paragraph (m) (4) of this section, the superior, in consultation with the deputy counselor, will discuss the conflict or appearance of conflict of interest with the individual concerned. If the conflict or appearance of conflict of interest persists and is not resolved as a result of discussion, the superior, in consultation with the deputy counselor will prepare and give the individual concerned written notice that there is a conflict or apparent conflict of interest, pointing out the reasons therefor. The notice will also inform the individual concerned that he is entitled to submit to the superior a written indorsement explaining the conflict or appearance of conflict.

(2) On receiving the individual's indorsement, the superior will forward the entire file to the local deputy counselor with the indorsement described in paragraph (m) (3) of this section if the superior concludes that the conflict or appearance of conflict is resolved. The deputy counselor will file the entire correspondence if he agrees with the superior's conclusion.

(3) If either the superior or the deputy counselor, after review of the explanation made by the employee in his indorsement, concludes that the conflict or appearance of conflict is not resolved, the commander will review the entire matter and, if he concludes that a conflict or appearance of a conflict does exist, will resolve it if possible.

(4) In any case arising at any echelon below Hq. U.S. Air Force level in which the commander concludes that there is a conflict or appearance of conflict of interest which is not resolved, he will forward the entire file, with detailed information and recommendations, through command channels to Hq. USAF (AFJAG) Washington, D.C. 20330, for resolution. Intermediate commands will attempt to resolve each case without forwarding it to Hq. U.S. Air Force.

(5) The Judge Advocate General, USAF, will forward to the General Counsel of the Air Force any case involving a conflict or appearance of a conflict which is not resolved by him or at a lower echelon. If the General Counsel is unable to resolve any case, he will refer the matter, with his recommendations, to the Under Secretary of the Air Force for decision.

(o) *How to resolve a conflict or apparent conflict of interest.* The resolution of a conflict or apparent conflict of interest either on review at the local level or after referral to Hq. U.S. Air Force, shall be effected promptly so that the conflict or appearance of conflict is ended. The resolution of the conflict or appearance of conflict may be accomplished by one or more means, such as changes in assigned duties, divestment of the conflicting interest, disqualification for a particular assignment, or disciplinary or administrative action. The resolution, whether by disciplinary action or otherwise, shall be effected in accordance with applicable laws, Executive Orders, and regulations.

(p) *Processing of supplementary statements and information furnished by other persons.* Supplementary statements submitted pursuant to paragraph (g) of this section, and information furnished by persons other than the officer or employee filing the DD Form 1555 pursuant to paragraph (e) (5) of this section, will be processed in accordance with paragraphs (m) to (o) of this section, applicable to DD Form 1555.

(q) *Supplemental regulation.* When considered necessary to insure the timely filing and proper legal review of DD Forms 1555, commanders may issue supplemental regulations consistent with this section.

By order of the Secretary of the Air Force.

LUCIAN M. FERGUSON,
*Colonel, U.S. Air Force, Chief, Special Activities Group, Office of The Judge Advocate General.*

[F.R. Doc. 66–8804; Filed, Aug. 12, 1966; 8:45 a.m.]

# Title 32A—NATIONAL DEFENSE, APPENDIX

## Chapter VI—Business and Defense Services Administration, Department of Commerce

[BDSA Order M–11A, Revised Schedule A of Aug. 15, 1966]

## M–11A—COPPER AND COPPER-BASE ALLOYS

### Revision of Schedule A—Set-Aside Percentages

This amendment of Schedule A to BDSA Order M–11A is found necessary and appropriate to promote the national defense and is issued pursuant to the Defense Production Act of 1950, as amended. In the formulation of this order, there was consultation with industry representatives, including trade association representatives, and consideration was given to their recommendations.

This amendment further changes Revised Schedule A of May 13, 1966, to BDSA Order M–11A, as amended December 18, 1956, by increasing the set-aside percentage for unalloyed plate, sheet, strip, and rolls from 6 to 7 percent, for alloyed plate, sheet, strip, and rolls from 6 to 7 percent, for alloyed seamless tube and pipe from 16 to 33 percent, for copper wire mill products (other than magnet wire) from 6 to 8 percent, and for copper foundry products from 3 to 4 percent, and by decreasing the set-aside percentage for alloyed rod, bar, shapes, and wire from 11 to 10 percent, and for copper magnet wire from 15 to 11 percent. This amendment applies to authorized controlled material orders calling for delivery after September 30, 1966.

Schedule A to BDSA Order M–11A is hereby further amended to read as follows:

SCHEDULE A TO BDSA ORDER M–11A

*Set-Aside Percentages* (see sec. 6(f) of BDSA Order M–11A).

*Base period—Calendar Year 1964* (see sec. 2(o) of BDSA Order M–11A).

| Product | Percentage for orders calling for delivery after Sept. 30, 1966 [1] |
|---|---|
| Brass mill products: | |
| Unalloyed: | |
| Plate, sheet, strip, and rolls | 7 |
| Rod, bar, shapes, and wire | 6 |
| Seamless tube and pipe | ([2]) |
| Alloyed: | |
| Plate, sheet, strip, and rolls | 7 |
| Rod, bar, shapes, and wire | 10 |
| Seamless tube and pipe | 33 |
| Military ammunition cups and discs | ([2]) |
| Copper wire mill products: | |
| Copper wire and cable: | |
| Bare and tinned | 8 |
| Weatherproof | 8 |
| Magnet wire | 11 |
| Insulated building wire | 8 |
| Paper and lead power cable | 8 |
| Paper and lead telephone cable | 8 |
| Asbestos cable | 8 |
| Portable and flexible cord | 8 |
| Communications wire and cable | 8 |
| Shipboard cable | 8 |
| Automotive and aircraft wire and cable | 8 |
| Insulated power cable | 8 |
| Signal and control cable | 8 |
| Coaxial cable | 8 |
| Copper-clad steel wire containing over 20 percent copper by weight regardless of end use | 8 |
| Copper foundry products | 4 |
| Unalloyed copper powder mill products | ([2]) |
| Copper-base alloy powder mill products | ([2]) |

[1] Schedule A revised as of May 13, 1966, to BDSA Order M–11A, as amended Dec. 18, 1956, applies to orders calling for delivery prior to Oct. 1, 1966.

[2] No reserve space provided. Producers of these products are nevertheless required to accept authorized controlled material orders for such products in accordance with the provisions of DMS Regulation No. 1 and this order. However, section 6(f) of Order M–11A does not apply to such authorized controlled material orders.

(Sec. 704, 64 Stat. 816, as amended, 50 U.S.C. App. 2154; sec. 1, P.L. 89–482, 80 Stat. 235)

This revised schedule shall take effect August 15, 1966.

BUSINESS AND DEFENSE SERVICES ADMINISTRATION,
FOREST D. HOCKERSMITH,
*Acting Administrator.*

[F.R. Doc. 66–8653; Filed, Aug. 12, 1966; 8:45 a.m.]

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[BDSA Order M–11A, Dir. 2, Amdt. 2, Aug. 15, 1966]

## M–11A—COPPER AND COPPER-BASE ALLOYS

### Domestic Refined Copper Set-Aside

This amendment is found necessary and appropriate to promote the national defense and is issued pursuant to the Defense Production Act of 1950, as amended. In the formulation of this amendment there was consultation with industry representatives and consideration was given to their recommendation.

This amendment affects Direction 2 to BDSA Order M–11A, of February 23, 1966, as amended, by changing the reserved portion of production, as set forth in section 8 of that direction, as amended by Amendment 1, of May 27, 1966, from thirteen percent (13%) to eighteen percent (18%). Amendment 1 of Direction 2 to BDSA Order M–11A, May 27, 1966, is superseded by this Amendment 2.

Section 8 of Direction 2 to BDSA Order M–11A, February 23, 1966, is hereby amended to read as follows:

**Sec. 8. Reserved portion of production (set-aside).**

From the date of opening his books in any month for the acceptance of rated orders for domestic refined copper, each producer of domestic refined copper shall reserve at least eighteen percent (18%) of his average monthly production of domestic refined copper (as defined in sec. 2(i) of this direction) for the acceptance of such rated orders calling for delivery in the immediately following month until the quantity of domestic refined copper for which he has accepted such rated orders is equal to at least the quantity thereof he is required to reserve, as indicated above; however, he need not accept such orders after the 10th day of that month even though he may not have accepted rated orders equivalent to the reserved quantity by that date: *Provided, however,* That DX rated orders must be accepted in accordance with the provisos contained in sec. 6 (2) and (5) above.

(Sec. 704, 64 Stat. 816, as amended, 50 U.S.C. App. 2154; sec. 1, P.L. 89–482, 80 Stat. 235.)

This amendment shall become effective August 15, 1966.

BUSINESS AND DEFENSE SERVICES ADMINISTRATION,
FORREST D. HOCKERSMITH,
*Acting Administrator.*

[F.R. Doc. 66–8688; Filed, Aug. 12, 1966; 8:45 a.m.]

# Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

## Chapter 19—U.S. Information Agency

## MISCELLANEOUS AMENDMENTS TO CHAPTER

The following amendments are made to Chapter 19 of Title 41.

## PART 19–1—GENERAL

### Subpart 19–1.1—Introduction

Sections 19–1.101 and 19–1.104 are revised to read as follows:

**§ 19–1.101 Establishment of USIA procurement policies and procedures.**

This subpart establishes U.S. Information Agency (USIA) procurement policies and procedures (Chapter 19) as prescribed by the Director of USIA, to provide uniform policies and procedures applicable to procurement of personal property and nonpersonal services (including construction) and the procurement of real property by lease, for all USIA activities.

**§ 19–1.104 Applicability.**

Chapter 19 applies to all purchases and contracts made by the U.S. Information Agency for the procurement of personal property and nonpersonal services (including construction) and the procurement of real property by lease, within the United States.

Subpart 19–1.2 is added as follows:

### Subpart 19–1.2—Definition of Terms

Sec.

19–1.201 Definitions.
19–1.206 Chief, Contract and Procurement Division.
19–1.250 Government.
19–1.251 Agency.
19–1.252 Director.
19–1.253 USIA.
19–1.254 USIS.
19–1.255 Overseas Establishment.
19–1.256 AR/CO.
19–1.257 Subcontract.
19–1.258 Services.

AUTHORITY: The provisions of this Subpart 19–1.2 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

**§ 19–1.201 Definitions.**

For the purposes of this chapter, the following terms have the meanings set forth in this subpart, unless otherwise indicated.

**§ 19–1.206 Chief, Contract and Procurement Division.**

The Chief of the Contract and Procurement Division, the "Head of the procuring activity," is also designated the "Chief Contracting Officer" and, in some cases, the "Agency Contracting Officer."

**§ 19–1.250 Government.**

"Government" means the Government of the United States of America, and shall be deemed to include any department or organizational component thereof, including the Agency.

**§ 19–1.251 Agency.**

"Agency" means the U.S. Information Agency, acting through any of its duly authorized officials.

**§ 19–1.252 Director.**

"Director" means the head or any assistant head of the Agency (see § 1–1.204 of this title).

**§ 19–1.253 USIA.**

"USIA" means the U.S. Information Agency.

**§ 19–1.254 USIS.**

"USIS" means U.S. Information Service, the name by which the Agency is known overseas.

**§ 19–1.255 Overseas Establishment.**

"Overseas Establishment" means USIS post or media extension.

§ 19–1.256 AR/CO.

"AR/CO" means Authorized Representative of the Contracting Office (see § 1.5305).

§ 19–1.257 Subcontract.

"Subcontract," in addition to other legal definition, is intended to include any prime contractor's purchase order accepted by a vendor, unless otherwise provided in the prime contract.

§ 19–1.258 Services.

"Services" means nonpersonal services.

Subpart 19–1.3 is revised as follows:

## Subpart 19–1.3—General Policies

Sec.

19–1.302 Procurement sources.
19–1.302–3 Contracts between the Government and Government employees or business concerns substantially owned or controlled by Government employees.
19–1.302–51 Contracts between the Government and former Government employees.
19–1.305–3 Deviations from Federal Specifications.
19–1.313 Records of contract actions.
19–1.317 Noncollusive bids and proposals.
19–1.354 Execution of contracts.
19–1.355 Violations of law.

AUTHORITY: The provisions of this Subpart 19–1.3 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 19–1.302 Procurement sources.

§ 19–1.302–3 Contracts between the Government and Government employees or business concerns substantially owned or controlled by Government employees.

(a) [Reserved]

(b) (1) Any exception, as described in § 1–1.302–3(a) of this title, must be supported by written findings and a determination signed by the Director. In these cases, the "Director" means only the Director or Acting Director of the Agency and does not include Assistant Directors.

(2) The Agency may purchase, rent, license, or otherwise acquire materials in which Agency employees have a financial interest, only after obtaining a written waiver signed by the Director. If the Agency employee is the author or originator of copyrighted material, it must be established that there is no real or apparent conflict of interest between his official duties and his rights to any royalties. To prevent such conflict, the Agency shall endeavor to obtain the employee's waiver of any royalty payments. In addition, the employee would be expected to discourage publicity regarding Agency use of his material.

§ 19–1.302–51 Contracts between the Government and former Government employees.

Negotiated contracts may be entered into with ex-employees of the Agency or with firms in which ex-employees are known to have a substantial interest, within a period of 2 years subsequent to the termination of employment, only with the written approval of the Director.

§ 19–1.305–3 Deviations from Federal Specifications.

Any deviation from a Federal Specification contemplated under § 1–1.305–3 of this title shall be submitted to the Chief of the Contract and Procurement Division of the Agency, for approval prior to use. The request shall include a statement describing the deviation, with justification therefor and, where applicable, a recommendation for revision or amendment of the specification.

§ 19–1.313 Records of contract actions.

(a) The documents, memoranda, and summary statements contemplated by § 1–1.313 of this title shall include but not be limited to the following, unless the Contracting Officer determines certain elements are not required:

(1) A copy of the procurement request;

(2) A copy of any required Determinations and Findings, or other statement and justification for negotiation;

(3) A list of sources solicited or a justification for limiting such sources;

(4) A copy of any determination to set-aside the procurement for small business or for a labor-surplus area;

(5) A copy of the Invitation for Bids or Request for Proposals, including any plans or specifications or references thereto;

(6) All bids or proposals received with an abstract thereof;

(7) The bidders' Statement of Contingent Fees;

(8) All preaward surveys;

(9) Selection of the successful Contractor, including—

(i) The reasons for selection,

(ii) The Contracting Officer's determination of the Contractor's responsibility, and

(iii) Any Small Business Administration Certificate of Competency;

(10) All price and cost data submitted or used, including Certificate of Current Cost or Pricing Data;

(11) A full record of negotiations, including but not limited to—

(i) Participants,

(ii) Dates of meetings or phone calls,

(iii) Government-furnished materials or facilities to be provided,

(iv) Subcontracting,

(v) Terms and conditions agreed to,

(vi) Deviations, if any, from prescribed contract clauses,

(vii) Technical recommendations, and

(viii) Justification for final price;

(12) Justification for type of contract used;

(13) Any exceptions or exemptions from the Buy American Act or from the Agency's Foreign Purchases policy (see Subpart 6.50 of this chapter);

(14) A copy of contract award;

(15) Evidence of legal review required, and copy of comments, if any, made by legal counsel;

(16) All pertinent correspondence;

(17) Copies of all change orders, and supplements, with supporting documents;

(18) Comprehensive termination data;

(19) Copies of royalty reports received;

(20) Final release upon completion of the contract;

(21) Required approvals of contract; and

(22) Any additional documents considered necessary to present a complete résumé of the contract action.

(b) Complete record of all advertised and negotiated contract action will be preserved for the period required by records management instructions.

(c) This § 19–1.313 does not apply in the case of small purchases.

(d) Memoranda, for documenting actions taken, should not duplicate information evident in other file documents except where clarification is required. Copies of all negotiation memoranda will be submitted to the Chief of the Contract and Procurement Division. All memoranda will be signed, and the drafting date will be indicated.

§ 19–1.317 Noncollusive bids and proposals.

(a)–(d) [Reserved]

(e) The Chief, Contract and Procurement Division, is authorized to make the determinations described in paragraph (d) of the Certification of Noncollusion prescribed in § 1–1.317 of this title.

§ 19–1.354 Execution of contracts.

Contracts, purchase orders, delivery orders, Government bills of lading, and other types of purchasing documents will be executed only by officials holding valid, written delegations or redelegations of procurement authority issued by the Director or other officer of the Agency designated in writing to make such delegations or redelegations. All purchasing documents, including amendments, will show the actual date of each signature required for their execution, and the Agency office executing such documents shall maintain a record of the actual date the documents were released to the vendor or contractor.

§ 19–1.355 Violations of law.

(a) In the event procurement personnel have reason to believe there is evidence of violation of law of any nature whatsoever in bids or proposals received, they will prepare a complete report for forwarding to the Office of the General Counsel through the Chief of the Contract and Procurement Division.

(b) In case of possible violation of antitrust laws, the report will be prepared in accordance with such guidance as provided in the Federal Procurement Regulations (see Subpart 1–1.9 of this title).

Subpart 19–1.6 is added as follows:

## Subpart 19–1.6—Debarred, Suspended, and Ineligible Bidders

Sec.

19–1.602 Establishment and maintenance of a list of concerns or individuals debarred, suspended, or declared ineligible.
19–1.604 Causes and conditions applicable to determination of debarment by an executive agency.

AUTHORITY: The provisions of this Subpart 19–1.6 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

**§ 19–1.602 Establishment and maintenance of a list of concerns or individuals debarred, suspended, or declared ineligible.**

The Contract Review and Procedures Staff of the Agency will maintain a consolidated list as indicated in § 1–1.602 of this title. The list will not be classified but will be marked "For Official Use Only." It will be coordinated with the Bidders Mailing List (see § 1–2.205 of this title), and appropriate notations will be made on both lists, when additions or deletions are necessary.

**§ 19–1.604 Causes and conditions applicable to determination of debarment by an executive agency.**

Personnel of the Agency who find that a firm or an individual should be added to the Debarred, Suspended, or Ineligible Bidders List, as indicated in Subpart 1–1.6 of this title, shall notify the Contract Review and Procedures Staff promptly. Debarment shall be made only upon approval of the Chief of the Contract and Procurement Division of the Agency.

Subpart 19–1.7 is added as follows:

## Subpart 19–1.7—Small Business Concerns

**§ 19–1.704 Agency program, direction and operation.**

The Chief of the Contract and Procurement Division is responsible for developing and supervising the USIA Small Business Program, as may be required for compliance with Subpart 1–1.7 of this title.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Subpart 19–1.9 is added as follows:

## Subpart 19–1.9—Reporting Possible Antitrust Violations

**§ 19–1.902 Documents to be transmitted.**

The Contracting Officer will submit a report, including the documents listed in § 1–1.902 of this title and any other pertinent documentary material, with his findings to the Chief of the Contract and Procurement Division.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Subpart 19–1.53 is added as follows:

## Subpart 19–1.53—Procurement Authority and Responsibility

Sec.

19–1.5301 General.
19–1.5302 Designation of Contracting Officers.
19–1.5303 General authority of Contracting Officers.
19–1.5304 General responsibility of Contracting Officers.
19–1.5305 Contracting Officers' representatives.
19–1.5306 Responsibility for assuring the availability of funds.
19–1.5307 Standards of conduct.

AUTHORITY: The provisions of this Subpart 19–1.53 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

**§ 19–1.5301 General.**

(a) This subpart deals with the authority to designate Contracting Officers and sets forth the general authorities and responsibilities of such officers (see § 1–3.801(b) of this title).

(b) An employee ordinarily binds the Government only when his actions are in accordance with authority actually granted to him. Contracting Officers are agents of the Government and shall act in accordance with law, regulations including FPR and IAPR, other pertinent directives, and sound business judgment, and within the limits of their prescribed duties and authorities.

**§ 19–1.5302 Designation of Contracting Officers.**

(a) Contracting Officers, as defined in § 1–1.207 of this title, shall be those employees in whom contracting authority is vested by the Director or his designees by means of appropriate delegations of authority and by redelegations of authority. The authority of such Contracting Officers shall be in accordance with the applicable delegations or redelegations of authority and with this Subpart 19–1.53.

(b) Delegations and redelegations of authority are generally directive on specific positions, rather than specific individuals. When a specific position carries delegated or redelegated contracting authority, an individual appointed to such a position is, therefore, a Contracting Officer. Such appointments are normally made by means of administrative personnel actions. When an individual is designated as a Contracting Officer by an instrument other than a personnel action, a copy of the designating instrument shall be forwarded to the appropriate personnel office for inclusion in the file of the individual affected. Designations shall be rescinded in the same manner upon termination of the assignment (but special assignments may be self-rescinding, as, for example, an assignment made in terms of the life of a specific contract, in which case a separate rescission instrument would not be required).

(c) In view of the high degree of individual responsibility and authority vested in Contracting Officers, care shall be exercised to insure that only well qualified individuals are appointed or designated and retained in such positions. Accordingly, the performance of their duties as Contracting Officers is subject to continuing review and evaluation.

**§ 19–1.5303 General authority of Contracting Officers.**

A contracting Officer is authorized to enter into, modify, and take other appropriate action with respect to contracts, within the limits of his prescribed duties and authority.

**§ 19–1.5304 General responsibility of Contracting Officers.**

(a) Contracting Officers are primarily responsible for assurance that contracts are authorized by law, for the execution and administration of contracts, for safeguarding the interest of the United States in contractual relationships, and for determining the facts under contracts.

(b) Contracting Officers shall personally sign all contracts and modifications entered into by them. The signing of original contractual documents shall not be accomplished by facsimile stamps or by proxy. However, the use of reproduced signatures on reproduced copies after the Contracting Officers have manually signed the master and other originals is acceptable.

(c) Contracting Officers are responsible for the legal, technical, and administrative sufficiency of the contracts they make. To this end, they shall secure necessary legal, technical, and financial advice within USIA.

(d) Contracting Officers are responsible for assuring contract compliance on the part of the Contractor.

**§ 19–1.5305 Contracting Officers' representatives.**

(a) Any properly qualified Government employee or group of employees, or a firm or individual under contract to the Government for this purpose, may be designated to act as the Authorized Representative of a Contracting Officer. Such designation shall be in writing and shall define the scope and limitations of the Authorized Representative's authority.

(b) A designation authorized by this § 19–1.5305 may be made by instructions referring to particular contractual instruments or categories of instruments and may empower the Authorized Representative to take any or all action thereunder which could lawfully be taken by the Contracting Officer to the extent not specifically prohibited by the terms of the contractual instrument involved or this § 19–1.53505. In no event shall an Authorized Representative, by virtue only of his designation as such, be empowered to execute or agree to any contract or modification thereof; such powers must be specifically included as a part of, or supplement to, the designation.

(c) A Contracting Officer may assign administration of a specific contractual instrument to another Contracting Officer, provided the assignee Contracting Officer's delegated authority permits, and the Contractor shall be so notified. Such an assignment shall define the extent to which part or all of the original Contracting Officer's authority is transferred but shall not pass on to the successor any authorities which would exceed the limitations imposed on the successor by existing directives.

**§ 19–1.5306 Responsibility for assuring the availability of funds.**

Prior to the incurrence of an obligation, Contracting Officers shall assure themselves that adequate funds are available.

**§ 19–1.5307 Standards of conduct.**

All personnel engaged in procurement and related activities shall conduct business in a manner above reproach in every respect. Transactions relating to

expenditure of public funds require the highest degree of public trust to protect the interests of the Government. While many Federal laws and regulations place restrictions on the actions of governmental personnel, the latter's official conduct must, in addition, be such that the individual would have no reticence about making a full public disclosure thereof.

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Part 19–2 is added as follows:

## PART 19–2—PROCUREMENT BY FORMAL ADVERTISING

### Subpart 19–2.2—Solicitation of Bids

Sec.


19–2.203 Methods of soliciting bids.
19–2.203–1 Mailing or delivering to prospective bidders.
19–2.204 Records of invitations for bids and records of bids.
19–2.205 Bidders mailing lists.
19–2.205–1 Establishment of lists.
19–2.205–5 Release of bidders mailing lists.


### Subpart 19–2.3—Submission of Bids


19–2.304 Modification of withdrawal of bids.


### Subpart 19–2.4—Opening of Bids


19–2.401 Receipt and safeguarding of bids.
19–2.402 Opening of bids.
19–2.403 Recording of bids.
19–2.406 Mistakes in bids.
19–2.406–3 Other mistakes disclosed before award.
19–2.406–4 Disclosure of mistakes after award.
19–2.407 Award.
19–2.407–3 Discounts.
19–2.407–5 Other factors to be considered.
19–2.407–7 Statement and certificate of award.
19–2.407–8 Protests against award.


AUTHORITY: The provisions of this Part 19–2 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

### Subpart 19–2.2—Solicitation of Bids

**§ 19–2.203 Methods of soliciting bids.**

**§ 19–2.203–1 Mailing or delivering to prospective bidders.**

The initial distribution of invitations for bids and preinvitation notices shall be made to firms on Agency bidders mailing lists and to all others whom the Contracting Officer may select.

**§ 19–2.204 Records of invitations for bids and records of bids.**

Each branch of the Contract and Procurement Division shall maintain a record of each invitation for bids issued and distributed by it as well as a record of all bids. The prospective bidders listed for each invitation shall be furnished with applicable amendments or notices, and a record will be kept of their distribution. Records of bids shall be kept in accordance with the procedures set forth in § 2.403.

**§ 19–2.205 Bidders mailing lists.**

**§ 19–2.205–1 Establishment of lists.**

Bidders mailing lists shall be established and maintained by the Contract Review and Procedures Staff for use in all Agency procurement activities and requirement offices. Lists shall include all eligible and qualified bidders who have requested listing or whom Contracting Officers consider eligible and qualified to furnish the requirements of a particular procurement. The latter shall be requested to submit a completed Standard Form 129 and an Agency Form IA–407A, Commodity and Service Code Lists. Agency procurement activities and requirement offices should recommend the establishment of additional lists for anticipated requirements of nonlisted commodities or services and furnish the names and addresses of prospective bidders.

**§ 19–2.205–5 Release of bidders mailing lists.**

(a) [Reserved]

(b) Except as provided in § 1–2.205–5 (b) of this title, the list of prospective bidders, to whom invitations for bids were sent, shall not be released outside the Agency and shall not be made available for inspection to individuals, firms, or trade organizations. Lists may, however, be made available to other Government agencies.

### Subpart 19–2.3—Submission of Bids

**§ 19–2.304 Modification or withdrawal of bids.**

(a) Bid modifications received prior to time of opening shall be processed in the same manner as bids and shall be attached to the bid envelope.

(b) The receipt required for withdrawal of a bid (see § 1–2.304 of this title) shall read as follows:

I certify that I am a bona fide, fully authorized ☐ agent, ☐ official, ☐ employee, ☐ representative of _____ whose bid on IFB No. _____ is scheduled for opening on _____. I hereby withdraw that bid from consideration.

_____
(Name)

_____
(Date)

I hereby acknowledge return of the abovementioned bid.

_____
(Name)

_____
(Date)

### Subpart 19–2.4—Opening of Bids

**§ 19–2.401 Receipt and safeguarding of bids.**

(a) All bid envelopes or modifications thereto shall be date stamped immediately upon receipt and then promptly delivered unopened to the issuing office. Bids received by the issuing office from the mail room shall be recorded on the applicable mailing list and kept in a locked cabinet until the time for public opening of bids. Bids delivered by messenger shall be marked by the recipient with the date and time of receipt.

**§ 19–2.402 Opening of bids.**

(a) Public bid openings shall be held at the time and place announced in invitations for bids by the Contracting Officer or his designee. Bid openings shall be opened to business representatives, members of the press, and the general public, and a record made of their attendance. The names of bidders or their representatives in attendance shall be recorded in the appropriate column of the Abstract of Bids.

(b) The information required to be abstracted on Agency Form IA–22, Abstract of Bids, shall be read aloud by the official in charge of the bid opening. Duplicate copies of bids shall be made available for public examination until the Abstract of Bids is completed and made available in lieu thereof. Bids submitted in an original only shall be made available for examination in accordance with § 1–2.402(c) of this title.

(c) The official in charge of a bid opening shall not discuss the relative merits of bids or issue any statements relative to award or mistakes in bids. Answers to protests of bidders and inquiries regarding award shall be deferred until after the completion of the bid opening and evaluations by the Contracting Officer.

**§ 19–2.403 Recording of bids.**

(a) Agency Form IA–22, Abstract of Bids, shall be used to record bids at the time and place of bid opening. Upon completion of the tabulation, normally within 24 hours, the bid opening officer shall certify on the abstract that he opened and read all bids received and verified all entries made thereon. Late bids determined to be eligible shall be included on the abstract.

(b) Immediately upon mailing notices of awards, a copy of the abstract indicating the successful bidder(s) shall be delivered to the Contract Review and Procedures Staff for placement in the Abstract of Bid register where it shall be available for examination by the public. The original abstract with all related correspondence shall be placed in the official contract file.

(c) The invitation mailing list shall, upon award, be coded to indicate action to be taken with respect to the master Bidders Mailing List. The original shall be placed in the official contract file and the duplicate delivered to the Contract Review and Procedures Staff. Lists shall be coded as follows:

| | Code |
|---|---|
| Received award | A |
| Submitted a bid | B |
| Sumbitted a late bid (returned) | L |
| Failed to respond | X |
| Failed to bid, retain | XR |
| New, place on list | N |

In the event of a split award, all successful bidders shall be coded "A."

**§ 19–2.406 Mistakes in bids.**

**§ 19–2.406–3 Other mistakes disclosed before award.**

(a) The Chief, Contract and Procurement Division, is the designated authority to make administrative determinations regarding withdrawal or correction of bids.

(b) Evidence in support of an alleged mistake, together with the data set forth in § 1–2.406–3(d)(3) of this title, will be referred to the Chief, Contract and Procurement Division, for a determination.

§ 19–2.406–4 Disclosure of mistakes after award.

(a) The Chief, Contract and Procurement Division, is the designated authority to make administrative determinations with respect to mistakes disclosed after award.

(b) Whenever a mistake is alleged or disclosed after award and the Contracting Officer proposes the contract be rescinded or reformed, he shall furnish the Chief, Contract and Procurement Division, with the Contractor's statement, evidence, and the data set forth in § 1–2.406–4(f)(2) of this title, upon which to base a determination.

§ 19–2.407 Award.

§ 19–2.407–3 Discounts.

Offers of discounts for prompt payment in less than 20 calendar days will not be considered in the evaluation of bids.

§ 19–2.407–5 Other factors to be considered.

(a) Award to a bidder who offers to furnish foreign-made products will be dependent upon price factors mentioned in § 6.500 of this chapter.

(b) A bid which is qualified or deviates from the specifications of a single item need not be rejected provided the invitation does not restrict the Agency's right to award by item. Certain items or groups of items may be rejected as nonresponsive, whereas those which are not qualified or do not deviate from the specifications may be considered for award.

§ 19–2.407–7 Statement and certificate of award.

When an award is to be made to other than the low bidder, the names of all low bidders and the amounts of their bids shall be listed on the Statement and Certificate of Award, Standard Form 1036. The Contracting Officer also shall state, on the Standard Form 1036, the reason for rejection of each lower bid and acceptance of the higher offer.

§ 19–2.407–8 Protests against award.

(a) In the event that a protest against the making of an award has been lodged directly with the Comptroller General, a determination to make an award pursuant to § 1–2.407–8(b)(3) of this title by the Contracting Officer will be made only upon receipt of written approval of the Chief, Contract and Procurement Division.

(b) When a protest is received after award of a contract, the Contracting Officer will prepare a statement with respect to all the pertinent facts in the case and prepare a reply to the protest. The reply will be submitted for the concurrence of the Chief, Contract and Procurement Division, and the Office of the General Counsel.

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Part 19–3 is added as follows:

# PART 19–3—PROCUREMENT BY NEGOTIATION

Subpart 19–3.1—Use of Negotiation

Sec.
19–3.150 Selection of sources.

Subpart 19–3.3—Determinations, Findings, and Authorities

Sec.
19–3.305 Form and requirements of determinations and findings.

Subpart 19–3.4—Types of Contracts

19–3.405 Cost-reimbursement type contracts.
19–3.405–5 Cost-plus-a-fixed-fee contract.
19–3.406 Other types of contracts.
19–3.406–1 Time and materials contract.
19–3.408 Letter contract.
19–3.450 Oral contract.

Subpart 19–3.6—Small Purchases

19–3.602 Policy.
19–3.603 Competition.
19–3.603–1 Solicitation.
19–3.604 Imprest funds (petty cash) method.
19–3.604–6 Procurement and payment.
19–3.605 Purchase order forms.
19–3.605–3 Agency order forms.
19–3.606 Blanket purchase arrangements.
19–3.606–5 Agency implementation.

AUTHORITY: The provisions of this Part 19–3 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

## Subpart 19–3.1—Use of Negotiation

§ 19–3.150 Selection of sources.

In the selection of sources for requests for proposals, procurement personnel will use the bidders mailing lists to the fullest extent and will be guided by § 2.205 of this chapter.

## Subpart 19–3.3—Determinations, Findings, and Authorities

§ 19–3.305 Form and requirements of determinations and findings.

(a) The form of determinations and findings is not prescribed beyond the requirements in § 1–3.305 of this title except that they must all be in writing and signed by an Agency official. Any determination and findings signed by an official other than the Contracting Officer will be initialed by the Contracting Officer when inserted in a contract file as a supporting document.

## Subpart 19–3.4—Types of Contracts

§ 19–3.405 Cost-reimbursement type contracts.

§ 19–3.405–5 Cost-plus-a-fixed-fee contract.

(a) and (b) [Reserved]

(c) *Limitations.* (1) The "estimated cost of the contract, exclusive of the fee, as determined by the Agency head," required by section 304(b) of the Act (41 U.S.C. 254(b)), will be prepared in writing for signature by the Chief, Contract and Procurement Division.

(2) Indirect or overhead costs, in cost-plus-a-fixed-fee contracts, which are calculated as a stipulated percentage of direct labor or other costs, are prohibited except where there is a provision for a subsequent adjustment to the actual indirect costs.

§ 19–3.406 Other types of contracts.

§ 19–3.406–1 Time and materials contract.

(a) and (b) [Reserved]

(c) *Limitations.* The determination, that no other type of contract will suitably serve, will be made in a memorandum with supporting findings for the contract file and signed by the Contracting Officer.

§ 19–3.408 Letter contract.

(a) and (b) [Reserved]

(c) *Limitations.* (1) The determination, that no other type of contract is suitable, will be made in a memorandum with supporting findings for the contract file and signed by the Chief of the Contract and Procurement Division.

(2) [Reserved]

(3) A letter contract should be superseded by a definitive contract within 3 months of the effective date of the letter contract. Any extension beyond 3 months must be approved by the Chief of the Contract and Procurement Division.

(4) The maximum liability of the Government under a letter contract shall not exceed 50 percent of the total estimated cost of the project or procurement as established by the head of the Agency, except upon a written determination with supporting findings, signed by the Chief of the Contract and Procurement Division, that it is in the best interest of the Government.

§ 19–3.450 Oral contract.

Oral contracts may be made by an authorized Agency Contracting Officer only, in cases of unusual urgency where delivery of a letter contract is not possible, if the agreement would otherwise be a valid written contract. The oral agreement must be reduced to writing as soon as possible and will be subject to the same Agency process of clearances and approvals as any other written contract. The exercise of this authority must be justified in a memorandum for the Chief of the Contract and Procurement Division, and a copy of the memorandum will be placed in the contract file.

## Subpart 19–3.6—Small Purchases

§ 19–3.602 Policy.

Agency procurement personnel will be guided by Subchapter E of the Federal Property Management Regulations—Supply and Procurement—Parts 101–25 through 101–31, as well as by Subpart 1–3.6 of this title and this Subpart 19–3.6.

§ 19–3.603 Competition.

§ 19–3.603–1 Solicitation.

(a)–(c) [Reserved]

(d) Quotations as a result of oral solicitation will be recorded on Form IA–25 (Rev). Use of this form will not be required to document routine single-item purchases which may be recorded on the requisition provided such record contains all information called for on Form IA–25.

§ 19–3.604 Imprest funds (petty cash) method.

§ 19–3.604–6 Procurement and payment.

(a) Small purchases utilizing imprest funds may be made only by employees authorized by the Chief of the Contract and Procurement Division in a written

redelegation of this specific type of procurement authority.

(b) The cost of cash purchases must be kept within reasonable bounds by ordinary shopping procedures of price comparison (competition), and the buyer must take advantage of any obtainable discounts.

§ 19–3.605 Purchase order forms.

§ 19–3.605–3 Agency order forms.

Where Standard Forms 147 and 148 are not appropriate, Agency order forms prescribed in Subpart 16–3 of this chapter shall be used.

§ 19–3.606 Blanket purchase arrangements.

§ 19–3.606–5 Agency implementation.

(a) The use of limited charge accounts, for all Agency offices and installations having responsibility for maintaining their own supply points, is a preferred Agency procedure. Blanket purchase arrangements will be made and the necessary procurement authority redelegated by the Chief of the Contract and Procurement Division when offices which provide their own supplies can make numerous purchases of a wide variety of regularly needed items from local vendors.

(b) Blanket purchase arrangements will be in writing, signed by both the vendor and an official of the Agency office concerned, and filed with the appropriate paying office. The writing may be in the form of simple offer and acceptance letter and will ordinarily cover the vendor's complete line of merchandise or services available at his published list prices less any obtainable discounts, limited in time to one calendar quarter and in amount by $2,500 or less. More than one arrangement may be advisable where the volume of purchases warrants such competitive arrangements. Charge tickets will be made for each order and delivered to the responsible office with receipt of the goods indicated thereon by the receiving office. Monthly invoices will be compared by the responsible office with delivery receipts prior to certification for payment.

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Part 19–6 is added as follows:

## PART 19–6—FOREIGN PURCHASES

Subpart 19–6.1—Buy American Act—Supply and Service Contracts

Sec.
19–6.103 Exceptions.
19–6.103–3 Unreasonable cost or inconsistency with the public interest.
19–6.105 Excepted articles, materials, and supplies.

Subpart 19–6.50—Other Price Differentials

19–6.5001 General.

AUTHORITY: The provisions of this Part 19–6 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

### Subpart 19–6.1—Buy American Act—Supply and Service Contracts

§ 19–6.103 Exceptions.

§ 19–6.103–3 Unreasonable cost or inconsistency with the public interest.

(a) It has been determined by the Director that the application of the Buy American Act to the purchase of books, maps, periodicals, newspapers, and other publications and films not published in the United States would be inconsistent with the public interest. Therefore, such items may be procured from foreign sources.

(b) Contracting Officers are authorized to make determinations of unreasonable cost or inconsistency with the public interest on other domestic source end products, both prior to entering into contracts and in the course of contract administration, provided that in the latter case the Government receives adequate consideration. A copy of each determination will be included in the contract file.

§ 19–6.105 Excepted articles, materials, and supplies.

Contracting Officers are authorized to make determinations of nonavailability (see § 1–6.103–2 of this title), both prior to entering into contracts and in the course of contract administration, provided that in the latter case the Government receives adequate consideration. A copy of each determination will be included in the contract file.

### Subpart 19–6.50—Other Price Differentials

§ 19–6.5001 General.

(a) Agency policy for procurement from foreign sources for use outside the United States requires the application of price differentials favoring materials and equipment produced in the United States. The individual requests for proposals or invitations for bids will indicate the extent of applicable differentials.

(b) The Agency will, to the maximum extent consistent with effective discharge of its program responsibilities, forgo or postpone the purchase of materials and equipment which are not obtainable as domestic source end products (as defined in § 1–6.101(d) of this title), or the award of contracts for nonpersonal services (including construction) to other than U.S. citizens or firms which are more than 50 percent owned by U.S. citizens, except where payment may be made with excess foreign currencies (as designated by the Treasury Department) at no greater cost than corresponding domestic source end products or contracts with U.S. citizens or firms more than 50 percent owned by U.S. citizens.

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Part 19–15 is added as follows:

## PART 19–15—CONTRACT COST PRINCIPLES AND PROCEDURES

### Subpart 19–15.50—Cost Principles and Procedures

Sec.
19–15.5000 Cost-reimbursed air travel.
19–15.5000–1 Use of American and foreign airlines.

AUTHORITY: The provisions of this Subpart 19–15.50 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 19–15.5000 Cost-reimbursed air travel.

It is the policy of the Agency to require the use of less than first-class air accommodations for all cost-reimbursed travel, except when less than first-class accommodations are not reasonably available to meet necessary mission requirements. For example, less than first-class accommodations are considered not reasonably available where less than first-class accommodations would:

(a) Increase the duration of a flight (one way) by 25 percent or more;

(b) Increase the total elapsed travel time of a trip by 25 percent or more;

(c) Require flights on regular commercial routes in excess of 14 hours, including scheduled stopovers of less than 8 hours, without a 24-hour interruption of the trip for rest;

(d) Result in additional costs which would offset the transportation savings;

(e) Offer accommodations which are not adequate for the medical needs of the traveler.

The term "less than first-class," in relation to air travel accommodations, means all categories for which the cost to the Government is less than for first-class accommodations. The difference in cost between first-class air accommodations and less than first-class accommodations is an unallowable cost except as provided for in this section.

§ 19–15.5000–1 Use of American and foreign airlines.

It is the policy of the Agency to require the use of American flag airlines for all cost-reimbursed air travel except when travel on American flag airlines is not reasonably available. For example, travel on American flag airlines is not considered reasonably available when:

(a) There is no regularly scheduled American flag airline between authorized points of origin and destination; or

(b) To use a combination of foreign and American flag airlines would increase costs over costs on only foreign lines (including reimbursement for traveler's time) by 50 percent or more; or

(c) Travel by an American flag airline could not be performed in time to carry out the mission to be performed.

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Part 19–16 is added as follows:

## PART 19–16—PROCUREMENT FORMS

Subpart 19–16.1—Forms for Advertised Supply Contracts

Sec.
19–16.104 Terms, conditions, and provisions.

Subpart 19–16.2—Forms for Negotiated Supply Contracts

19–16.250 General provisions, negotiated supply contracts.
19–16.250–1 General Provisions (Service Contract) (Form IA–355).
19–16.250–2 Request for Proposals and Proposal (Negotiated Fixed-Price Contract) (Form IA–408).
19–16.250–3 Award Notice (Form IA–351).
19–16.250–4 Amendment of Contract (Form IA–19).

Subpart 19–16.3—Purchase and Delivery Order Forms

19–16.350 U.S. Information Agency purchase and delivery order forms.

Sec.
19–16.350–1 Purchase Order (Form IA–24).
19–16.350–2 Order for Materials and Services under Contract (Form IA–135).
19–16.350–3 Requisition-Purchase Order-Invoice (For Professional Services) (Form IA–44).

Subpart 19–16.8—Miscellaneous Forms

19–16.802 Bidder's Mailing List Application.
19–16.850 Other Agency forms.
19–16.850–1 Department of Labor form letter (Walsh - Healey Public Contracts Act).
19–16.850–2 Department of Labor poster Walsh-Healey Public Contracts Act).
19–16.850–3 Notice of Award of Contract.
19–16.850–4 Notice to Labor Unions or Other Organizations of Workers.
19–16.860 USIA forms.
19–16.860–1 Bidder's Commodity and Service Code Lists (Form IA–407A).
19–16.860–2 Telephone Bid Tabulation (Form IA–25).
19–16.860–3 Memorandum of Loan (Form IA–431).
19–16.860–4 Certificate of Export letter (Form IAL–368).

AUTHORITY: The provisions of this Part 19–16 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

## Subpart 19–16.1—Forms for Advertised Supply Contracts

### § 19–16.104 Terms, conditions, and provisions.

Whenever General Provisions (Supply Contract) (Standard Form 32) are used, Supplemental Provisions (Supply Contract) (Agency Form IA–332) shall be used in conjunction therewith.

## Subpart 19–16.2—Forms for Negotiated Supply Contracts

### § 19–16.250 General provisions, negotiated supply contracts.

General Provisions (Supply Contract), Standard Form 32, is prescribed for use in negotiated supply contracts. When used, it should be supplemented by the provision contained in Agency Form IA–332 in accordance with § 16.104.

### § 19–16.250–1 General Provisions (Service Contract) (Form IA–355).

Form IA–355 is prescribed for use in connection with service contracts (excluding construction) whenever Standard Form 32, General Provisions (Supply Contract), is inappropriate.

### § 19–16.250–2 Request for proposals and proposals.

The following forms (together with authorized contract provisions) shall be used in connection with the negotiation of fixed-price contracts for supplies or services (other than personal) when desirable to begin negotiations by soliciting offers which, if there is a written acceptance by the Agency, would create a binding contract without further action.

(1) Request for Proposals and Proposal (Negotiated Fixed-Price Contract), Form IA–408.

(2) Schedule, Request for Proposals and Proposal, Form IA–408A.

(3) Acceptance of Proposal (Negotiated Fixed-Price Contract), Form IA–408B.

(4) Continuation Sheet, SF–148 (when required with IA–408A and 408B).

### § 19–16.250–3 Award Notice (Form IA–351).

Form IA–351 is prescribed for use in connection with narrative contracts and with other type contracts when required internally for fiscal accounting and receiving report purposes.

### § 19–16.250–4 Amendment of Contract (Form IA–19).

Form IA–19 is prescribed for use whenever it becomes necessary to amend a contract.

## Subpart 19–16.3—Purchase and Delivery Order Forms

### § 19–16.350 U.S. Information Agency purchase and delivery order forms.

The Agency forms prescribed in this § 19–16.350 shall be used when purchases are authorized or required to be made by purchase order or delivery order in accordance with Subpart 1–3.6 of this title, small purchase procedures.

### § 19–16.350–1 Purchase Order (Form IA–24).

Forms IA–24 and 24A (continuation sheet) are prescribed for use when Standard Forms 147 and 148 are inapplicable (see § 3.605–3 of this chapter).

### § 19–16.350–2 Order for Materials and Services under Contract (Form IA–135).

Forms IA–135 and 135A (continuation sheet) are prescribed for use by media purchasing activities when placing orders against Agency open-end contracts.

### § 19–16.350–3 Requisition-Purchase Order-Invoice (For Professional Services) (Form IA–44).

Form IA–44 is prescribed for use by media purchasing activities to obtain talent vendor services (narration, script-writing—translation) when authorized pursuant to a specific redelegation of authority.

## Subpart 19–16.8—Miscellaneous Forms

### § 19–16.802 Bidder's Mailing List Application.

Whenever a Standard Form 129 is furnished to a prospective bidder, a copy of Agency Form IA–407A, Bidder's Commodity and Service Code Lists, shall also be furnished to obtain information necessary for placement of applicant on the Agency's Bidder's Mailing Lists.

### § 19–16.850 Other Agency forms.

The forms listed in this § 19–16.850 shall be used in compliance with directives of the applicable regulatory agency of the Government and in accordance with Chapter 1 of this title.

### § 19–16.850–1 Department of Labor form letter (Walsh-Healey Public Contracts Act).

Form WH–12, a Department of Labor form letter, is prescribed for use in accordance with § 1–12.604 of this title.

### § 19–16.850–2 Department of Labor poster (Walsh-Healey Public Contracts Act).

Form PC–13, a Department of Labor poster, is prescribed for use in accordance with § 1–12.604 of this title.

### § 19–16.850–3 Notice of Award of Contract.

Standard Form 99, Notice of Award of Contract, is prescribed for use in accordance with § 1–12.604 of this title.

### § 19–16.850–4 Notice to Labor Unions or Other Organizations of Workers.

Standard Form 38, Notice to Labor Unions or Other Organizations of Workers, is prescribed for use in accordance with § 1–12.805–3 of this title.

### § 19–16.860 USIA forms.

This § 19–16.860 prescribes Agency forms, other than procurement contract forms, to be used in the procurement process.

### § 19–16.860–1 Bidder's Commodity and Service Code Lists (Form IA–407A).

Form IA–407A is prescribed for use in conjunction with Standard Form 129, Bidder's Mailing List Application, in accordance with § 16.802.

### § 19–16.860–2 Telephone Bid Tabulation (Form IA–25).

Form IA–25 is prescribed for use in accordance with § 3.603–1 of this chapter.

### § 19–16.860–3 Memorandum of Loan (Form IA–431).

Form IA–431 is prescribed for use to obtain the loan of items from private owners, business firms, and nonprofit institutions for use in the Agency's exhibit program.

### § 19–16.860–4 Certificate of Export letter (Form IAL–368).

Form IAL–368, a USIA Certificate of Export letter, is prescribed for use to furnish manufacturer-vendors with proof of export for items purchased exclusive of Manufacturer's Excise Tax.

*Effective date:* These regulations shall become effective on the date of their publication in the FEDERAL REGISTER.

Issued: August 10, 1966.

BEN POSNER,
*Assistant Director, United States Information Agency (Administration).*

[F.R. Doc. 66–8846; Filed, Aug. 12, 1966; 8:48 a.m.]

# Title 43—PUBLIC LANDS: INTERIOR

## Subtitle A—Office of the Secretary of the Interior

## PART 6—PATENT REGULATIONS

### Subpart B—Licenses

MISCELLANEOUS AMENDMENTS

Part 6B, Title 43, Subtitle A, of the Code of Federal Regulations is amended as follows:

1. Section 6.51 is revised to read as follows:

**§ 6.51 Purpose.**

It is the purpose of the regulations in this subpart to secure for the people of the United States the full benefits of Government research and investigation in the Department of the Interior (a) by providing a simple procedure under which the public may obtain licenses to use patents and inventions in which the Secretary of the Interior has transferable interests and which are available for licensing; and (b) by providing adequate protection for the inventions until such time as they may be made available for licensing without undue risk of losing patent protection to which the public is entitled.

2. Section 6.52 is revised as follows:

**§ 6.52 Patents.**

Patents in which the Secretary of the Interior has transferable interests, and under which he may issue licenses or sublicenses, are classified as follows:

* * * * *

3. Section 6.54 is revised to read as follows:

**§ 6.54 Use or manufacture by or for the Government.**

A license is not required with respect to the manufacture or use of any invention assigned or required to be assigned without restrictions or qualifications to the United States when such manufacture or use is by or for the Government for governmental purposes. A license or sublicense may be required, however, for such manufacture or use in the case of Class B patents or patent rights when the terms under which the Secretary of the Interior acquires interests therein necessitate the issuance of a license or sublicense in such circumstances.

4. Section 6.55, paragraph (a) is revised to read as follows:

**§ 6.55 Terms of licenses or sublicenses.**

(a) No license or sublicense shall be granted under any patent in which the Secretary of the Interior has transferable interests, except as set forth under these regulations, the terms and conditions of which shall be expressly stated in such license and sublicense. The terms of licenses and sublicenses issued under this subpart shall not be unreasonably restrictive.

* * * * *

5. Section 6.55, paragraph (b), subparagraph (2), is revised to read as follows:

**§ 6.55 Terms of licenses or sublicenses.**

* * * * *

(b) * * *

(2) Licenses and sublicenses shall be nontransferable. Upon a satisfactory showing that the Government or public will be benefited thereby, they may be granted to properly qualified applicants royalty-free. If no such showing is made, they shall be granted only upon a reasonable royalty or other consideration, the amount or character of which is to be determined by the Solicitor. A cross-licensing agreement may be considered adequate consideration.

*Effective date.* Because it is in the public's interest that these amendments be issued in order to clarify the Department's policy and procedure on Patents and Patent Regulations, these amendments will become effective on publication in the FEDERAL REGISTER.

STEWART L. UDALL,
*Secretary of the Interior.*

AUGUST 8, 1966.

[F.R. Doc. 66-8783; Filed, Aug. 12, 1966; 8:45 a.m.]

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 4073]

[New Mexico 0560179]

### NEW MEXICO

### Partial Revocation of Public Water Reserve

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 July 10, 1919, creating Public Water Reserve No. 65 is hereby revoked so far as it affects the following described lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

GROUP I (PATENTED LANDS)

T. 3 N., R. 17 E.,
Sec. 3, SE¼NE¼;
Sec. 13, NE¼SE¼;
Sec. 14, NE¼SE¼;
Sec. 24, NE¼SE¼;
Sec. 25, NW¼NW¼.
T. 4 N., R. 17 E.,
Sec. 34, SW¼SE¼.
T. 2 N., R. 18 E.,
Sec. 3, lot 2;
Sec. 4, lot 4.
T. 3 N., R. 18 E.,
Sec. 18, lot 4;
Sec. 19, NE¼NE¼, and E½NW¼;
Sec. 31, lot 4;
Sec. 33, NW¼SE¼.
T. 2 N., R. 19 E.,
Sec. 4, SE¼SW¼.
T. 1 S., R. 19 E.,
Sec. 12, SE¼NE¼.

GROUP II (PUBLIC LAND)

T. 3 N., R. 17 E.,
Sec. 13, SW¼NW¼, and NW¼SW¼;
Sec. 14, SE¼NE¼.
T. 3 N., R. 18 E.,
Sec. 17, E½SW¼;
Sec. 19, SE¼NE¼.

The areas described aggregate 641.34 acres of privately owned lands and 240 acres of public domain.

2. The lands are within an area of 5 to 40 miles southeast of the town of Vaughn, N. Mex., in southwestern Guadalupe County and northeastern Lincoln County, N. Mex. Elevations range from 4,800 to 6,000 feet. The terrain varies from rolling hills to low rolling terrain with many sinkholes throughout the area. The soils over most portions are thin and range from reddish sandy loams to black silty loams in the sinkholes. There are numerous gravelly to rocky outcrops on the higher areas. Vegetative cover consists of a good to fair turf of native grasses, snakeweed, yucca and some scattered cholla cacti.

3. At 10 a.m. on September 13, 1966, the public domain, identified as Group II above, 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 received at or prior to 10 a.m. on September 13, 1966, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The land will be open to location for nonmetalliferous minerals at 10 a.m. on September 13, 1966. It has been open to applications and offers under the mineral leasing laws, and to location under the U.S. mining laws for metalliferous minerals.

The State of New Mexico has waived the preference right of applications granted to certain States by R.S. 2276, as amended (43 U.S.C. 852).

Inquiries concerning the land shall be addressed to Chief, Division of Lands and Minerals Program Management and Land Office, Post Office Box 1449, Santa Fe, N. Mex. 87501.

HARRY R. ANDERSON,
*Assistant Secretary of the Interior.*

August 8, 1966.

[F.R. Doc. 66-8832; Filed, Aug. 12, 1966; 8:47 a.m.]

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[Public Land Order 4074]

[Anchorage 025267, 032051]

### ALASKA

### Revocation of Public Land Order No. 1462

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. 1462 of August 7, 1957, which withdrew the following described lands for administration or transfer under the act of May 4, 1956 (70 Stat. 130), is hereby revoked:

ANCHORAGE 025267

SEWARD MERIDIAN

T. 13 N., R. 3 W.,
Sec. 13, lot 47.
Containing 2.50 acres.

ANCHORAGE 032051

Lot 1, U.S. Survey 3198.
Containing 1.73 acres.

The areas described aggregate 4.23 acres.

2. Until 10 a.m. on October 8, 1966, the State of Alaska shall have a preferred right to select the lands as provided by the act of July 28, 1956 (70 Stat. 709), section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339), and the regulations in 43 CFR 2222.9. After that time the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirement of applicable law. All valid applications received at or prior to 10 a.m. on October 8, 1966, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands will be open to location under the U.S. mining laws at 10 a.m. on October 8, 1966. They have been open to applications and offers under the mineral leasing laws.

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

HARRY R. ANDERSON,
*Assistant Secretary of the Interior.*

AUGUST 8, 1966.

[F.R. Doc. 66-8833; Filed, Aug. 12, 1966; 8:47 a.m.]

# Title 50—WILDLIFE AND FISHERIES

## Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

## PART 32—HUNTING

### Wheeler National Wildlife Refuge, Ala.

The following special regulations are issued and are effective on date of publication in the FEDERAL REGISTER.

§ 32.22 **Special regulations; upland game; for individual wildlife refuge areas.**

ALABAMA

WHEELER NATIONAL WILDLIFE REFUGE

Public hunting of squirrels, foxes, and crows is permitted on the entire land area of the refuge. This open area, comprising approximately 13,850 acres, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 809 Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State regulations governing the hunting of squirrels, foxes, and crows, subject to the following conditions:

(1) The open season for hunting the game listed above extends from October 8 through October 15, 1966, October 9 excluded, from daybreak to sunset.

(2) The use of dogs is not permitted.

(3) No shooting is allowed within 100 yards of private residences adjoining the refuge boundary.

(4) Shotgun shells with larger than number 6 shot are prohibited.

(5) A Federal permit is required to enter the refuge with firearms. It may be obtained by writing to the Wheeler National Wildlife Refuge, Box 1643, Decatur, Ala. 35601, prior to October 3, 1966, or by applying in person at the refuge office on October 3, 1966, between the hours 7:30 a.m. and 4:30 p.m. A maximum of 1,100 permits will be issued.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through October 15, 1966.

WHEELER NATIONAL WILDLIFE REFUGE

Public hunting of raccoons, opossums, and foxes only is permitted on the entire land area of the refuge. This open area, comprising approximately 13,850 acres, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 809 Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State regulations governing the hunting of raccoons, opossums, and foxes, subject to the following conditions:

(1) The open season for hunting raccoons, opossums, and foxes on the refuge extends from February 1, 1967, through February 18, 1967, excluding February 5 and 12, 1967.

(2) Hunting shall be limited to the hours between 7 p.m. and 5 a.m. only.

(3) The use of dogs is permitted.

(4) Shotguns only may be used and must not exceed 28 gauge in size.

(5) Axes, saws, and shotgun shells with larger than number 8 shot are prohibited. No live timber may be cut.

(6) A Federal permit is required to enter the refuge with firearms. It may be obtained by writing to the Wheeler National Wildlife Refuge, Box 1643, Decatur, Ala. 35601, prior to February 1, 1967, or by applying at the refuge office during the period February 1 to 18, 1967, between the hours 7:30 a.m. and 4:30 p.m., Saturdays and Sundays excluded. A maximum of 350 permits will be issued. Only one permit will be required per hunting party.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through February 18, 1967.

WHEELER NATIONAL WILDLIFE REFUGE

Public hunting of quail, crows and foxes only is permitted on approximately 40 percent of the refuge area. This open area, comprising approximately 13,850 acres, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 809 Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State regulations governing the hunting of quail, crows, and foxes, subject to the following conditions:

(1) The open season for hunting quail, crows, and foxes will be on February 18 and 20, 1967, only.

(2) During the above open season, hunting shall be limited to the hours between 8 a.m. and 5 p.m.

(3) The use of dogs is permitted.

(4) No shooting is allowed within 100 yards of private residences adjoining the refuge boundary.

(5) Only shotguns with not larger than number 7½ shot may be used. Shells with larger shot sizes are prohibited.

(6) A Federal permit is required to enter the refuge with firearms. It may be obtained by writing to the Wheeler National Wildlife Refuge, Box 1643, Decatur, Ala. 35601, prior to February 13, 1967, or by applying in person at the refuge office on February 13, 1967, between the hours of 7:30 a.m. and 4:30 p.m. A maximum of 300 permits will be issued.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through February 20, 1967.

WHEELER NATIONAL WILDLIFE REFUGE

Public hunting of rabbits, foxes, and crows is permitted on the entire land area of the refuge. This open area, comprising approximately 13,850 acres, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 809 Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State regulations governing the hunting of rabbits, foxes, and crows, subject to the following conditions:

(1) The open season for hunting rabbits, foxes, and crows on the refuge extends from February 22, 1967, through February 28, 1967, excluding February 26, 1967.

(2) Hunting shall be limited to the hours between 8 a.m. and 5 p.m. only.

(3) The use of dogs is permitted.

(4) Shotguns only with not larger than number 6 shot may be used. Larger shot sizes are prohibited.

(5) No shooting is allowed within 100 yards of buildings adjoining the refuge boundary.

(6) A Federal permit is required to enter the refuge with firearms. It may

be obtained by writing to the Wheeler National Wildlife Refuge, Box 1643, Decatur, Ala. 35601, prior to February 20, 1967, or by applying in person at the refuge office on February 20 between the hours of 7:30 a.m. and 4:30 p.m. A maximum of 750 permits will be issued.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through February 28, 1967.

W. L. TOWNS,
*Acting Regional Director, Bureau of Sport Fisheries and Wildlife.*

AUGUST 4, 1966.

[F.R. Doc. 66-8828; Filed, Aug. 12, 1966; 8:47 a.m.]

## PART 32—HUNTING

### Certain National Wildlife Refuges

The following special regulations are issued and are effective on date of publication in the FEDERAL REGISTER.

**§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.**

KENTUCKY

REELFOOT NATIONAL WILDLIFE REFUGE

Public hunting of raccoons on the Reelfoot National Wildlife Refuge, Ky., is permitted only on the area designated by signs as open to hunting. This open area, comprising 2,034 acres, is delineated on maps available at refuge headquarters, Samburg, Tenn., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 809 Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State regulations covering the hunting of raccoons subject to the following special conditions:

(1) Raccoons may be taken without limit on the refuge from September 19 through September 24, 1966, and October 3 through October 8, 1966.

(2) Hunting hours shall be from 7 p.m. to midnight.

(3) The use of guns and dogs is permitted.

(4) No axes, saws or other cutting implements will be permitted.

(5) A Federal permit will not be required; however, all hunters will be required to check in and check out at the designated check station, the location of which may be obtained from the Refuge Manager, Reelfoot National Wildlife Refuge, Samburg, Tenn. 38254.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through October 8, 1966.

REELFOOT NATIONAL WILDLIFE REFUGE

Public hunting of squirrels on the Reelfoot National Wildlife Refuge, Ky., is permitted only on the area designated by signs as open to hunting. This open area, comprising 2,034 acres, is delineated on maps available at refuge headquarters, Samburg, Tenn., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 809 Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State regulations covering the hunting of squirrels subject to the following special conditions:

(1) Squirrels may be hunted on the refuge from September 19 through September 24, 1966, and from October 3 through October 8, 1966.

(2) The hunting of crows, woodchucks, and gray foxes, without limit, is permitted during the refuge squirrel hunt.

(3) Only shotguns incapable of holding more than three shells and .22 caliber rifles are permitted.

(4) Dogs are not permitted.

(5) A Federal permit is required to enter the public shooting area. Permits may be obtained from the Refuge Manager, Reelfoot National Wildlife Refuge, Samburg, Tenn. 38254, starting September 12, 1966.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through October 8, 1966.

TENNESSEE

REELFOOT NATIONAL WILDLIFE REFUGE

Public hunting of raccoons on the Reelfoot National Wildlife Refuge, Tenn., is permitted only on the area designated by signs as open to hunting. This open area, comprising 2,600 acres, is delineated on maps available at refuge headquarters, Samburg, Tenn., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 809 Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State regulations covering the hunting of raccoons subject to the following special conditions:

(1) Raccoons may be taken without limit on the refuge from September 19 through September 24, and October 3 through October 8, 1966.

(2) Hunting hours shall be from 7 p.m. to midnight.

(3) The use of guns and dogs is permitted.

(4) No axes, saws, or other cutting implements will be permitted.

(5) A Federal permit will not be required; however, all hunters will be required to check in and check out at the designated check station, the location of which may be obtained from the Refuge Manager, Reelfoot National Wildlife Refuge, Samburg, Tenn. 38254.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through October 8, 1966.

REELFOOT NATIONAL WILDLIFE REFUGE

Public hunting of squirrels on the Reelfoot National Wildlife Refuge, Tenn., is permitted only on the area designated by signs as open to hunting. This open area, comprising 9,092 acres, is delineated on maps available at refuge headquarters, Samburg, Tenn., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 809 Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State regulations covering the hunting of squirrels subject to the following special conditions:

(1) Squirrels may be hunted on the refuge from September 19 through September 24, and October 3 through October 8, 1966.

(2) The hunting of crows, woodchucks, and gray foxes, without limit, is permitted during the refuge squirrel hunt.

(3) Only shotguns incapable of holding more than three shells and .22 caliber rifles are permitted.

(4) Dogs are not permitted.

(5) A Federal permit is required to enter the public shooting area. Permits may be obtained from the Refuge Manager, Reelfoot National Wildlife Refuge, Samburg, Tenn. 38254, starting September 12, 1966.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through October 8, 1966.

LAKE ISOM NATIONAL WILDLIFE REFUGE

Public hunting of squirrels on Lake Isom National Wildlife Refuge, Tenn., is permitted only on the areas designated by signs as open to hunting. This open area, comprising 1,350 acres, is delineated on maps available at refuge headquarters, Samburg, Tenn., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 809 Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State regulations covering the hunting of squirrels subject to the following special conditions:

(1) Squirrels may be hunted on the refuge from September 19 through September 24, and October 3 through October 8, 1966.

(2) The hunting of crows, woodchucks, and gray foxes, without limit, is permitted during the refuge squirrel hunt.

(3) Only shotguns incapable of holding more than three shells and .22 caliber rifles are permitted.

(4) Dogs are not permitted.

(5) A Federal permit is required to enter the public shooting area. Permits may be obtained from the Refuge Manager, Reelfoot National Wildlife Refuge, Samburg, Tenn. 38254, starting September 12, 1966.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through October 8, 1966.

LAKE ISOM NATIONAL WILDLIFE REFUGE

Public hunting of raccoons on Lake Isom National Wildlife Refuge, Tenn., is

permitted only on the areas designated by signs as open to hunting. This open area, comprising 1,350 acres, is delineated on maps available at refuge headquarters, Samburg, Tenn., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 809 Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State regulations covering the hunting of raccoons, subject to the following special conditions:

(1) Raccoons may be taken without limit on the refuge from September 19 through September 24, and October 3 through 8, 1966.

(2) Hunting hours shall be from 7 p.m. to midnight.

(3) The use of dogs and guns is permitted.

(4) No axes, saws or other cutting implements will be permitted.

(5) A Federal permit will not be required; however, all hunters will be required to check in and check out at the designated check station, the location of which may be obtained from the Refuge Manager, Reelfoot National Wildlife Refuge, Samburg, Tenn. 38254.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through October 8, 1966.

W. L. TOWNS,
*Acting Regional Director, Bureau of Sport Fisheries and Wildlife.*

AUGUST 5, 1966.

[F.R. Doc. 66-8829; Filed, Aug. 12, 1966; 8:47 a.m.]

## PART 32—HUNTING

### Moosehorn National Wildlife Refuge, Maine

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

**§ 32.32 Special regulations; big game; for individual wildlife refuge areas.**

MAINE

MOOSEHORN NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Moosehorn National Wildlife Refuge, Maine, is permitted, except on areas designated by signs as closed, from November 1, 1966, to December 5, 1966, inclusive, except Sundays. This open area, comprising 21,000 acres, is delineated on maps available at refuge headquarters, Post Office Box 285, Calais, Maine 04619 and from the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Mass. 02109. Hunting shall be in accordance with all applicable State regulations covering the hunting of deer.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 5, 1966.

RICHARD E. GRIFFITH,
*Regional Director, Bureau of Sport Fisheries and Wildlife.*

AUGUST 3, 1966.

[F.R. Doc. 66-8830; Filed, Aug. 12, 1966; 8:47 a.m.]

## PART 32—HUNTING

### Carolina Sandhills National Wildlife Refuge, S.C.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

**§ 32.32 Special regulations; big game; for individual wildlife refuge areas.**

SOUTH CAROLINA

CAROLINA SANDHILLS NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Carolina Sandhills National Wildlife Refuge, S.C., is permitted only on the area designated by signs as open to hunting. This open area, comprising 45,000 acres, is delineated on a map available at the refuge headquarters, McBee, S.C., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 809 Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State regulations covering the hunting of deer subject to the following conditions:

(1) The open season extends from October 31 through November 12, 1966, except Sunday, November 6, 1966.

(2) Only bucks with visible antlers may be taken.

(3) The bag limit is two bucks per hunter for the season.

(4) Guns for hunting deer are limited to shotguns 20 gauge or larger, loaded with rifled slugs or buckshot No. 1 or larger, and any type center fire rifle.

(5) Stalk and still hunting will be permitted throughout the day. Driving will be permitted between 9 a.m. and 3 p.m., e.s.t. only. Noise makers will be confined to nonexplosive types; fireworks are not permitted.

(6) Dogs are prohibited.

(7) All deer killed during the hunt must be checked out at refuge headquarters.

(8) Camping will be permitted only in the Lake Bee camping area.

(9) Hunters may not enter hunting area before 5 a.m., and must leave by 7:30 p.m., e.s.t.

(10) A Federal permit is required. Permits will be issued during the period September 1 through October 15, 1966, upon written request to the Refuge Manager, Carolina Sandhills National Wildlife Refuge, McBee, S.C. 29101.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 12, 1966.

W. L. TOWNS,
*Acting Regional Director, Bureau of Sport Fisheries and Wildlife.*

AUGUST 1966.

[F.R. Doc. 66-8831; Filed, Aug. 12, 1966; 8:47 a.m.]

# Title 45—PUBLIC WELFARE

## Chapter VIII—Civil Service Commission

## PART 801—VOTING RIGHTS PROGRAM

### Appendix A

LOUISIANA

Appendix A to Part 801 is amended as set out below to show, under the heading "Dates, Times, and Places for Filing," one additional place for filing in Louisiana:

LOUISIANA

| Parish; | Place for filing; | Beginning date. |
|---|---|---|
| Madison; | Tallulah—Post Office; | August 13, 1966. |

(Secs. 7 and 9 of the Voting Rights Act of 1965; P.L. 89-110)

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

[F.R. Doc. 66-8922; Filed, Aug. 12, 1966; 11:13 a.m.]

# Proposed Rule Making

## DEPARTMENT OF AGRICULTURE

### Consumer and Marketing Service

### [ 7 CFR Parts 1061, 1064 ]

[Docket Nos. AO 327-A8, AO 23-A28]

### MILK IN ST. JOSEPH, MO., AND GREATER KANSAS CITY MARKETING AREAS

### Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Kansas City, Mo., on November 22–24, 1965, pursuant to notices thereof issued on September 27, 1965 (30 F.R. 12487), and October 7, 1965 (30 F.R. 13015), and was subsequently reopened on March 15, 1966, pursuant to a notice issued March 3, 1966 (31 F.R. 4148), and June 7, 1966, pursuant to a notice issued May 17, 1966 (31 F.R. 7831).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Associate Administrator on June 30, 1966 (31 F.R. 9279; F.R. Doc. 66–7373), filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto. On June 29, 1966 (31 F.R. 9130), the Assistant Secretary issued his decision on the reopened hearing (June 7–8, 1966, at St. Louis) so far as it affected the computation of Class I prices for the Greater Kansas City and St. Joseph orders and the other 71 milk orders. A final order amending each of the 73 orders was issued by the Assistant Secretary July 1, 1966 (31 F.R. 9206; F.R. Doc. 66–7376). The Class I milk price issue of this reopened hearing as it relates to the merged and enlarged Greater Kansas City order is made a part of this decision.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision (31 F.R. 9279; F.R. Doc. 66–7373) are hereby approved and adopted and are set forth in full herein subject to the following modifications:

1. Under Issue 2, paragraphs 5, 8, and 25 are revised; six new paragraphs are added after paragraph 18 and paragraph 32 is deleted.

2. Under Issue 3, two new paragraphs are added at the end of the discussion;

3. Under Issue 7, a new paragraph is added at the end of the discussion; and

4. Under Issue 8, a new paragraph is added after paragraph 7.

The material issues on the record of the hearing relate to:

1. Merger of the two orders and expansion of the marketing area.

a. Merger of orders.

b. Marketing area expansion.

c. The merged and expanded area.

2. Pool plant requirements.

3. Class I price and location differentials.

4. Class II and III prices.

5. Butterfat differentials.

6. Cooperative as a handler on bulk tank milk.

7. Base and excess plan.

8. Producer milk diversions.

9. Administrative and miscellaneous changes.

*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. *Merger of the two orders and expansion of the marketing area.* The St. Joseph, Mo., and the Greater Kansas City milk orders should be consolidated. The marketing area of the merged orders should be expanded to include the 13 additional Kansas counties of Atchison, Clay, Cloud, Dickinson, Jackson, Jefferson, Marshall, Ottawa, Pottawatomie, Republic, Saline, Wabaunsee, and Washington. The expanded marketing area covered by the consolidated order should be designated the "Greater Kansas City marketing area." The St. Joseph, Mo., order should be revoked.

a. *Merger of orders.* Merger of the St. Joseph and Greater Kansas City orders and expansion of the marketing area to include 12 additional counties were proposed by 8 cooperative associations representing more than 90 percent of the producers in the 2 markets. Handlers proposed that 17 counties in addition to those proposed by the cooperative associations be added to the expanded marketing area. Merger of the orders was opposed by four St. Joseph handlers.

The two markets have become so closely integrated in distribution and procurement operations that regulation under a single order is necessary to promote orderly marketing of milk within the area. Merger and expansion of the marketing areas would more nearly encompass the major sales territories of handlers in the markets and insure uniform pricing to producers of milk distributed throughout the area.

Kansas City is the larger of the two markets proposed for merger. The marketing area straddles the line forming the eastern boundary of Kansas and the western boundary of Missouri. The marketing area is contiguous with those of the Neosho Valley and Wichita markets on the south and abuts the St. Joseph marketing area on the north. Kansas City and Topeka are the principal cities in the marketing area. About 55 million pounds of producer milk are pooled under the order each month.

The St. Joseph marketing area is north of and immediately adjacent to the Kansas City market. It covers territory in Kansas and Missouri and abuts the Nebraska-Western Iowa marketing area on the Nebraska State line. An average of 12 million pounds of producer milk is pooled under this order in a month. St. Joseph, approximately 50 miles north of Kansas City, is the principal city in the marketing area.

A close sales relationship exists between these two adjacent markets. The distribution areas of handlers have been expanding in recent years. Routes of handlers extend from one marketing area into the other in each market. Three of the six St. Joseph handlers have fluid milk distribution in the Greater Kansas City marketing area. Nine handlers regulated by the Kansas City order distribute fluid milk on routes in the St. Joseph marketing area. Also, packaged fluid milk products move between the pool plants of handlers regulated under the two orders. The cooperative pool plant under the St. Joseph order is an outlet for excess milk from the Kansas City market.

In recent years, daily Class I disposition in the St. Joseph marketing area from Kansas City plants has averaged 23,000 pounds. Class I disposition in the Kansas City marketing area in these years from St. Joseph pool plants has averaged in excess of 20,000 pounds daily. One handler who closed his pool plant under the St. Joseph order continues to supply packaged fluid milk to the St. Joseph market from his pool plant under the Kansas City order.

Under these conditions of close competition, shifts of Class I sales and producers from one market to another can cause sharp movements in the uniform price to producers. Particularly has this been true with respect to the uniform price to producers under the smaller St. Joseph market. Class I sales into the St. Joseph market from Kansas City plants have shown a tendency to in-

crease in recent periods. St. Joseph has producer milk receipts only one-fifth as large as receipts under the Kansas City order. Hence, a shift of Class I sales from the St. Joseph market to another can cause significant monthly changes in the uniform price. The St. Joseph milkshed is almost wholly contained within the Kansas City milkshed. Providing a proportionate sharing among all producers of the returns from the total Class I sales in the consolidated market will stabilize prices and reduce the price uncertainty involved in shifts of sales between markets.

Proponent cooperatives proposed that the producer-settlement fund balances and the administrative and marketing service funds of the separate orders be combined under the merged order. They also proposed that the Greater Kansas City administrative deduction be increased from the present 2 to 3 cents per hundredweight and the deduction for marketing services be increased from 5 to 6 cents per hundredweight.

The assets in the administrative funds of both orders should be consolidated as a corollary matter in the efficient and equitable merger of the orders. All currently regulated handlers who contributed to the administrative funds of the separate orders will continue to be regulated under the merged order. Because the liabilities of each of the present funds would be paid from the consolidated fund, it is equitable to use accumulated moneys to pay such liabilities and to carry over any minor balances to be used for administrative costs of the merged order.

All producers who contributed to the marketing service fund of the Greater Kansas City order are expected to continue to supply milk for the expanded market. The present St. Joseph order provides for a marketing service fund but because all producers for the market are members of cooperatives providing that service, no marketing service fund has been accumulated. However, it is appropriate to continue the marketing service provision in the merged order. In the event nonmember producers come on the market in the St. Joseph area in the future, they would receive the benefit of verification of weights and tests of their milk and market information in the same manner as provided in the present St. Joseph order for producers who are not receiving such services from a cooperative association.

The present maximum deduction of 5 cents per hundredweight from producers' returns to cover marketing services performed by the market administrator should be increased to 6 cents under the expanded order. The volume of milk delivered by producers who are not members of a cooperative is the most important factor in determining the individual rate of deduction needed to carry out the marketing service program. Also, the distances between plants to which nonmember producers deliver their milk bear on the costs of performing such services. All the producers for the St. Joseph market are members of cooperatives performing marketing services for them. Nonmember producers on the Greater Kansas City market are small in number and widely scattered throughout the production area. Expansion of the marketing area and the consequent regulation of additional handlers will add some nonmember producers in widely scattered locations for whom the market administrator must provide marketing services.

It may reasonably be estimated that a maximum deduction of 6 cents per hundredweight of milk received from each producer for whom marketing services are to be performed will be necessary to provide sufficient funds to carry on the program under the amended order. However, if it should appear at any time that the marketing services can be performed adequately at a lower rate, provision is made so that the Secretary may set a lower rate without the necessity of amending the order.

The maximum rate of deduction for administrative expenses should be increased to 3 cents per hundredweight under the merged order. Official notice is hereby taken that the maximum rate of 2 cents provided under the present Greater Kansas City order has been effective since January 1, 1964. The maximum rate for administration costs under the St. Joseph order is 5 cents. Merger of the orders may permit some efficiencies to be gained in the cost of administering the operations of a single order instead of two. However, in view of the number of small handlers expected to become newly regulated by the amended order, the distances involved, and the cost of administering orders in markets with comparable milk volumes, a maximum assessment rate of 3 cents per hundredweight is reasonable to meet the expenses of administration of the proposed amended order. If experience shows that a lesser rate will provide adequate revenue to administer the order properly, provision is made that the Secretary may set a rate of less than 3 cents without amending the order.

Any producer-settlement fund balances collected under the separate orders should be consolidated in the producer-settlement fund of the merged order. Most of the producers for the combined market currently supply milk to one or the other of the present markets. The major part of the monies in the separate funds will be reflected in the uniform prices of the producers whose money will be in the consolidated fund reserves. There would be little object in distributing the separate producer-settlement fund reserves to producers and accumulating the required reserve for the consolidated order. To do so would increase administrative expenses without adding substantially to returns to producers for the present markets.

The present Kansas City order provides an interest charge of one-half percent each month on payments due to or from the administrative, marketing service, and producer-settlement funds and on payments due to cooperative associations and producers from handlers. Prompt payment of amounts due from handlers under the order terms is essential to the operation of the order provisions. An interest charge will encourage payment of amounts due on or before the specified date. The rate of one-half of 1 percent provided in the present Kansas City order is reasonable to compensate for the cost of borrowing money in accordance with normal business practices and should be continued under the amended order.

The provision for an interest charge should be retained with respect to obligations of handlers but interest payments should not apply to obligations payable by the market administrator for the producer-settlement fund, marketing service fund, and administrative fund. These funds are in the custody of the market administrator who collects and disburses them in accordance with the order terms.

Following the effective date of the merged order accrued interest should be payable under the consolidated order on any overdue obligations incurred and still outstanding under the present Greater Kansas City and St. Joseph orders. This will insure payment of all obligations required by the present separate orders and will assist in the orderly transition to the merged order.

Basically, the present Greater Kansas City order provisions should be the provisions of the merged order. This was proposed by proponents of the merger. Most of these provisions have proved satisfactory in the dominant Kansas City market and they are similar to those of the St. Joseph order. In general, the present Kansas City order provisions should operate satisfactorily as the basic provisions of the merged order except as expressly modified herein in accordance with proposals considered at the hearing.

(b) *Marketing area expansion.* The marketing area of the consolidated order, comprised of 33 counties in Kansas and Missouri, should be expanded to include the 13 Kansas counties of Atchison, Clay, Cloud, Dickinson, Jackson, Jefferson, Marshall, Ottawa, Pottawatomie, Republic, Saline, Wabaunsee, and Washington. The 8 cooperative associations in the market proposed the addition of 12 of these counties. Several handlers proposed the addition of another county (Saline) to the marketing area. This territory has become an integral part of the distribution area of handlers regulated by the two present orders.

The 8 proponent cooperatives proposed the addition of 12 counties to the marketing area and handlers proposed the inclusion of 17 others for a total of 29 counties considered at the hearing for addition to the consolidated area.

The five counties of Atchison, Jackson, Jefferson, Pottawatomie, and Wabaunsee generally lie between and are surrounded by the marketing areas of the St. Joseph and Greater Kansas City orders. These counties were proposed by the cooperatives for inclusion in the marketing area. All the fluid milk sales in these counties are made by regulated handlers under

the St. Joseph and Kansas City orders. There are no unregulated plants located in these five counties. The addition of these five counties to the marketing area will impose no additional burden of regulation on any person. It will provide a contiguous marketing area and lessen the burden of reporting separate in-area and out-of-area sales by regulated handlers. There was no objection to the addition of these counties to the regulated area.

The cooperatives proposed also that seven counties west and northwest of the present St. Joseph and Kansas City areas be included in the merged order marketing area. These seven counties of Clay, Cloud, Dickinson, Marshall, Ottawa, Republic, and Washington are a primary sales area of presently regulated Greater Kansas City and St. Joseph handlers. They compete in these counties contiguous to the merged area for fluid milk sales with unregulated handlers and handlers regulated by other Federal orders. The cooperatives asked that the area be expanded to cover these counties to assure that unregulated distributors in the area will not be afforded a competitive price advantage over regulated handlers in buying milk for distribution in the area.

The largest unregulated distributing plant serving fluid sales outlets in the seven-county area is located at Concordia in Cloud County. This handler buys milk from about 45 dairy farmers, most of whom are members of one of the proponent cooperatives. The cooperatives asked that this handler be regulated in order to assure that he pays minimum prices for milk which are based on his use of milk. The prices paid dairy farmers at the plant are now based on the blend price paid producers by Greater Kansas City order handlers. Because the primary business of this handler is packaging and distributing fluid milk, his Class I utilization exceeds that of the average Kansas City handler. The plant does not maintain a reserve supply of producer milk but purchases supplemental milk from a St. Joseph pool plant at Sabetha, Kans. Since this handler obtains his milk supply at the Kansas City blend price but sells mostly Class I milk, he has a significant price advantage in procurement of milk for Class I sales over that of Kansas City order handlers. Handlers now regulated by the Kansas City and St. Joseph orders together with this handler have more than half of the fluid sales in each of the seven counties.

Two presently unregulated handlers have plants at Abilene in Dickinson County. These plants would be fully regulated by the addition of the seven-county area. The milk distribution of these plants is contained within Dickinson County. They each buy milk from one to two dairy farmers and together furnish 15 to 20 percent of the fluid milk requirements of Dickinson County. These unregulated handlers purchase milk for fluid use at prices based on the competitive Kansas City uniform prices in the area although they have higher fluid milk utilization in their plants than the average Class I utilization of Kansas City handlers.

Two unregulated handlers with plants located at Salina proposed that Saline County be added to the merged order area. This proposal was supported by the cooperative which furnishes all of one of these handlers' milk supply and a part of the supply for the other handler. One handler buys his full supply of milk delivered from about 20 farms by this cooperative located in Wichita and another has a regular supply of milk from seven dairy farmers and purchases his supplemental needs from the Wichita cooperative. These handlers pay the cooperative according to Kansas City class prices based on each plant's utilization although no regular audit of plant operations is made by any agency. Both of the Salina handlers proposed that Saline County be included in the marketing area if nearby counties, particularly Dickinson County, were included so that their major sales area would be encompassed by the marketing area. The principal distribution area for these handlers is in Saline County. Both handlers sell milk in Dickinson County and one sells also in Ottawa County, both counties proposed for addition to the marketing area. These two handlers, together with the presently regulated Kansas City and St. Joseph handlers and the handler at Concordia who would be regulated by adding the seven counties discussed heretofore, have virtually all the sales in Saline County.

While no unregulated handlers have plants located in the counties of Marshall, Washington, Republic, Clay, or Ottawa, these counties should be included in the expanded marketing area. They represent a primary sales area of handlers who would be regulated by the expanded consolidated order and will form a contiguous marketing area. In each of the counties handlers who would themselves be regulated by the expanded Kansas City order now have more than half the sales.

Orderly marketing will be promoted by including in the marketing area Saline County and the seven counties proposed for inclusion by the cooperatives. This will assure that all competing distributors selling milk in the area are placed on a uniform minimum pricing basis in milk procurement. The producers delivering milk to these handlers will have opportunity to share proportionately in the proceeds of Class I sales made by all handlers.

Eight other counties proposed by a handler for addition to the marketing area should not be included. These are the counties of Mitchell, Jewell, Smith, Phillips, Norton, Decatur, Rawlins, and Thomas adjoining the recommended marketing area on the west and extending along the northern border of Kansas to within one tier of counties on the Colorado border. The primary interest expressed by the handler in including these counties was to insure that his Concordia plant would remain pooled under the Kansas City milk order. Another handler supported inclusion of seven of the eight counties wherein he has sales.

The handler with a plant at Concordia who proposed that the eight counties be added to the marketing area has 15 percent of his plant sales in the eight counties. No unregulated handlers distribute milk in these counties, and no disorderly marketing conditions were shown to be present. However, handlers who are regulated by either the Wichita or Nebraska-Western Iowa orders have substantial distribution in these counties. Other counties immediately to the south of these eight counties have been proposed for inclusion in an order merging the Wichita and Southwest Kansas marketing areas. If subsequent developments indicate any need for extending regulation in any part of the area after a decision has been reached on the counties to the south, such need could be considered more appropriately at a new amendment hearing. Hence, their inclusion in this proposed area is denied at this time.

The eight counties of Anderson, Chase, Coffey, Elk, Franklin, Greenwood, Osage, and Woodson should not be added to the expanded marketing area. These counties are located immediately to the south of the present Kansas City marketing area and adjoin the Wichita and Neosho Valley marketing areas.

This eight-county area was proposed to be added to the marketing area by a handler operating a Kansas City pool plant located at Council Grove, Kans. The handler could point to no indication of disorderly marketing conditions in the area. His proposal was made for the purpose of insuring that sales from the Council Grove plant in the eight counties would be included in determining that such plant meets the pool plant standards of the Kansas City order and remains under that order. Fluid milk sales from the Council Grove plant in the eight-county area represent 11 percent of the total fluid milk distribution of the plant. The plant also has 15 percent of its sales in the Wichita marketing area, 11 percent in the Southwest Kansas area, and 8 percent in the Neosho Valley marketing area. About 44 percent of its sales are in the present Greater Kansas City and St. Joseph marketing areas. There is no indication from these percentage distribution figures that the Council Grove plant would not continue to be pooled under the Kansas City order. Moreover, if the fluid distribution patterns changed so that the plant became pooled under another order, there is no indication that such change would be improper or would disrupt orderly marketing conditions in this market or the other market.

Four unregulated handlers have fluid milk sales in four of the eight counties. One purchases milk from five dairy farmers, one buys from nine dairy farmers, and another buys from one dairy farmer. The record is not clear whether the other handler buys milk from dairy farmers at his plant. At least three of these unregulated handlers buy fluid milk products from presently regulated Kansas City handlers to supplement their receipts of milk from dairy farmers. Two of these four distributors opposed

expansion of the marketing area to include their operations. One of these distributors claimed that all five of the producers delivering milk to his plant oppose expansion of the marketing area to this area. The cooperative associations in the market did not support the addition of the eight counties to this marketing area. One other regulated handler supported addition of four of the eight counties.

Marketing conditions in the area were not shown to be so unstable or disrupted as to require regulation at this time by the Greater Kansas City order. A Kansas City handler testified that he had lost two school milk accounts to an unregulated handler. The unregulated handler distributes fluid milk products purchased in part from Kansas City pool plants. The record does not indicate whether the milk used to serve the school accounts is unregulated or whether it is priced under the Kansas City order.

Since the record does not clearly establish how the inclusion of these eight counties in the marketing area would tend to effectuate the purposes of the Act, they should not be included at this time.

c. *The merged and expanded area.* Milk handling under the proposed amended order is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk and its products. Milk from farms in Missouri, Kansas, Iowa, Nebraska, and Minnesota is transported regularly across State lines to be processed at plants of various Kansas and Missouri handlers who would be regulated under the consolidated order. These Kansas and Missouri handlers are in direct competition in their route distribution with each other in the proposed marketing area. Also, they compete for fluid milk sales with other handlers with plants located in Nebraska and Iowa at locations inside and outside the marketing area. During months of seasonally low production, milk is transported to this market from plants located in Iowa, Minnesota, and Wisconsin. Handlers and cooperative associations in the consolidated market either manufacture milk excess to fluid milk needs of the market or ship such milk to manufacturing plants. Products manufactured from producer milk at these plants are shipped to locations outside the States of Kansas and Missouri.

The area recommended as the Greater Kansas City marketing area represents an area of similar minimum sanitary standards in the production, processing, and distribution of Grade A milk products sold for fluid consumption. Fluid milk products sold by all handlers who would be regulated by the proposed amended order are distributed under a Grade A label and must be approved by local and state health authorities. Local authorities are governed by health ordinances, practices, and procedures patterned after the U.S. Public Health Ordinance and Code. Movements of Grade A milk, in bulk and packaged form, between various localities in the marketing area are made with the reciprocal approval of the responsible health authorities.

Territory within the boundaries of the designated marketing area such as Government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments should be considered as a part of the marketing area. The present Greater Kansas City order contains this provision and the present St. Joseph order does not. There are no such establishments in the present St. Joseph marketing area. The Greater Kansas City marketing area and the territory herein proposed to be added to the consolidated area does contain such establishments. No proposal was made to exempt sales by a handler to such an agency. So that there will be no doubt as to the intent of the application of the marketing area definition, the order should designate that all premises within the marketing area, as described above, will be included in the marketing area.

Because all producer milk must be fully regulated regardless of where it is sold, it is not feasible to differentiate, for the purpose of regulation, between handlers' Class I sales inside and outside the marketing area. Otherwise, the effect of the order would be nullified and the orderly marketing process jeopardized.

If only his "in-area" sales were subject to classification, pricing and pooling, a regulated handler with Class I sales both inside and outside the marketing area could assign any value he chose to his outside sales. He thereby could reduce the average cost of all of his Class I milk below that of other regulated handlers having all, or substantially all, of their Class I sales within the marketing area. In short, unless all milk of such a handler is fully regulated under the order, he in effect would not be subject to effective price regulation. The absence of effective classification, pricing and pooling of such milk would disrupt orderly marketing conditions within the regulated marketing area and would lead to a complete breakdown of the order. If a pool handler were free to value a portion of his milk at any price he chooses, it would be impossible to enforce uniform prices to all fully regulated handlers or a uniform basis of payments to the producers who supply the market.

It is essential, therefore, that the order price all the producer milk received at a pool plant regardless of the point of disposition.

Limited quantities (as provided) of Class I milk may be sold within the regulated marketing area from plants not under any Federal order. One source of such milk is a plant which distributes in the marketing area less than an average of 600 pounds of milk per day. This provision is contained in the present Greater Kansas City order and is appropriate for the merged order with the expanded area. One partially regulated handler under the St. Joseph order may qualify for this exemption. Such a plant is exempted because such small sales are not considered to be a significant competitive factor in this large market. Another source of milk not subject to full regulation is a plant which fails to qualify as a pool distributing plant because its distribution of fluid milk products on routes is less than required for pool plant status. There is, of course, no way to treat such unregulated milk uniformly with regulated milk other than to regulate it fully. Nevertheless, it has been concluded that the application of "partial" regulation to plants having less association than required for market pooling would not jeopardize marketing conditions within the regulated marketing area. Official notice is taken of the June 19, 1964, decision (29 F.R. 9110) supporting amendments to several orders, including the Greater Kansas City order.

The operator of a partially regulated plant is afforded the option of: (1) Paying an amount equal to the difference between the Class I price and the weighted average value of producer milk with respect to all Class I sales made in the marketing area, (2) purchasing at the Class I price under any Federal order sufficient Class I milk to cover his limited disposition within the marketing area, or (3) paying his dairy farmers an amount not less than the value of all their milk computed on the basis of the classification and pricing provisions of the order (the latter representing an amount equal to the order obligation for milk which is imposed on fully regulated handlers).

While all fluid milk sales of the partially regulated plant are not necessarily priced on the same basis as fully regulated milk, the provisions described are, however, adequate under most circumstances to prevent sales of milk not fully regulated (pooled) from adversely affecting operation of the order and the fully regulated milk.

Regulation of the handling of milk in the area under one order will promote the orderly marketing of milk in the entire expanded marketing area. It is clear that a single market has developed where separate markets existed previously. The economic stresses, marketing instability and price uncertainties which have developed will be ameliorated by the adoption of one milk order with a single marketwide pool. The issuance of one order for the expanded marketing area will contribute to the improvement of many of the marketing conditions in this area and will tend to effectuate the declared policy of the Act.

The present Greater Kansas City order provisions including pooling, classification, pricing, base and excess, and payments to producers are appropriate for the proposed amended order and expanded marketing area, except as expressly modified herein in accordance with the record evidence.

2. *Pool plant requirements.* The pooling provisions of the consolidated order should be basically those contained in the present Kansas City order but revised to reflect marketing practices in the merged market.

A distributing plant should be pooled in a month in which (1) not less than 15 percent of its total Grade A fluid milk product receipts is disposed of in the marketing area on routes, and (2) not less than 35 percent of such receipts in April through June, 50 percent in September and October, and 45 percent in all other months is disposed of during the month on routes. If these requirements are met in either the current or preceding month the plant would be pooled during the current month. A distributing plant would be defined as a plant from which a Grade A fluid milk product that is processed or packaged in such plant is disposed of during the month in the marketing area on routes.

As now provided in the Kansas City order, a distributing plant must dispose of (1) not less than 15 percent of its receipts on routes in the marketing area, and (2) not less than 45 percent of its receipts in July through February and 35 percent March through June on routes to qualify as a pool plant. If a plant met these requirements in either the current or preceding month, it would be pooled during the current month.

In determining pool plant qualification, packaged milk transferred between plants is credited as Class I route disposition at the transferor plant and an equal volume is excluded from the Class I disposition of the transferee plant. Also, in determining whether a distributing plant meets the pooling standard, the present provision includes as receipts at the plant, receipts of milk from dairy farmers qualified to become producers, receipts in bulk from other approved plants, and receipts from a cooperative acting as a handler on member producer milk delivered in bulk to the pool plant of another handler.

A supply plant should be pooled during a month in which its shipments of fluid milk products to pool distributing plants plus its disposition in the marketing area on routes represent at least 50 percent of its receipts of Grade A milk from dairy farmers qualified to become producers. This would include dairy farmers whose milk is delivered by cooperatives acting in the capacity of a handler on bulk milk delivered to such plant. Any plant that met the monthly 50 percent requirement in four of the five months of September through January would be permitted to pool without further shipment in the following February through August. A supply plant would be defined as a plant from which a Grade A fluid milk product is shipped during the month to a pool plant.

Presently, a supply plant may attain pool plant status under the Kansas City order in any month by shipping at least 50 percent of its dairy farmer receipts, less any milk disposed of as Class I on routes, to pool distributing plants. If it meets the shipping requirements monthly in August through December, it is accorded pool plant status in the following January through July.

The cooperative associations proposed that pool distributing plant requirements be strengthened to insure that milk is available to the market when it is needed for Class I uses. All distributing plants serving the present market and those to be regulated by the amended order may be expected to meet the proposed qualification requirements for pooling.

These cooperatives also supported a proposal that was modified at the hearing to revise the shipping requirements for pooling supply plants. The modified proposal is designed to assure the pooling under the consolidated order of a plant operated by a cooperative association under the St. Joseph order. This is the only supply plant expected to be regulated at this time under this amended order. The proposal would permit a plant to pool automatically in months of highest production based on shipments to pool distributing plants of 50 percent of dairy farmer receipts in four of the five immediately preceding short production months of September through January.

The minimum class prices of the order should apply to that milk eligible for distribution as Grade A milk which is received from dairy farmers at plants substantially engaged in supplying fluid milk products for sale on retail or wholesale routes in the marketing area. Such plants would be defined as pool plants.

It is essential to the operation of the consolidated order to establish pool plant performance standards that will insure that an adequate supply of pure and wholesome milk is maintained for the market. The basis for determining which plants shall be pool plants, and thereby fully subject to regulation, should apply uniformly to all plants wherever located. Any plant, regardless of location, should have equal opportunity to comply with the standards of regulation and have the producers at such plant share in the available Class I sales. Whether plants and producers choose to supply the market will depend upon the economic circumstances with which they are faced, such as prices, transportation costs, and alternative outlets.

Performance standards should be such that any plant which supplies a substantial portion of its receipts to the market would pool its sales and share in the marketwide equalization. On the other hand, plants only casually or incidentally associated with the market should not be subject to complete regulation in this market. They should not be permitted or required to equalize their sales with all plants in the market. If a milk plant were to be permitted to share the Class I utilization of an entire market without bearing any responsibility for supplying the fluid milk needs of the market, the differentials paid by users of Class I milk could be dissipated without accomplishing their intended purpose.

Permitting a plant that is only casually or incidentally associated with the market to pool its surplus in this market would not assure its milk being made available when needed for Class I purposes in this market. Such a distribution of equalization payments would reduce uniform prices to those producers upon which the market depends as regular suppliers of its Class I needs.

A distributing plant should continue to be required to dispose of at least 15 percent of its Grade A receipts during the month as Class I milk on routes in the marketing area. This represents no change from the percentage distribution requirements of the present Greater Kansas City and St. Joseph orders.

A distributing plant having more than 85 percent of its business outside the marketing area or in other outlets should not be considered as essentially associated with this market. It is not advisable to bring such a plant under full regulation because it has a minor share of its business in the marketing area. Full regulation is not necessary to accomplish the purpose of the order and might well place such plant at a competitive disadvantage in supplying an unregulated market. A minimum of 15 percent is necessary, however, to avoid the possibility that a plant not associated with the market might qualify for equalization to its own advantage, but to the disadvantage of the market, by means of minor sales in the marketing area.

Only plants primarily engaged in route distribution of fluid milk products should be qualified as pool distributing plants under this order. Therefore, a further condition should be placed on a distributing plant. Its route distribution of Class I milk (both inside and outside the marketing area) must amount to not less than 50 percent of its total receipts of Grade A milk in September and October, 35 percent in April through June, and 45 percent in other months. This represents an increase from 35 to 45 percent in March and from 45 to 50 percent in September and October. These recommended total route distribution requirements are reasonably aligned with the seasonally variable relationship of producer milk supplies and Class I needs of the market.

One handler opposed increasing the requirements for pooling distributing plants. He indicated that because of a large cottage cheese manufacturing operation in his Blue Springs, Mo., plant, which is presently a pool plant under the Kansas City order, it might have difficulty in meeting these requirements in some months. The handler suggested that fluid milk and cottage cheese processed and packaged at a plant for sale to another plant be excluded from the receipts and utilization of the plant performing the processing operation and be included in the receipts and utilization of the plant making the route disposition. This proposed modification of the pooling provisions for distributing plants should not be adopted.

A plant from which milk for Class I uses is distributed regularly in the marketing area under normal circumstances may be expected to dispose of its milk in such a way as to exceed by a reasonable margin the minimum performance standards necessary to qualify as a pool plant. The handler operating the Blue Springs plant presently qualifies the plant as a pool plant under the Kansas City order and testified that he maintains more than 50 percent of the milk at the plant in Class I uses. It is inap-

propriate to include in the pool, to receive the benefit of uniform prices, those plants that are not a primary and dependable part of the market supply for fluid milk uses. A plant in which the principal operation is the manufacture of dairy products may be attracted to the pool primarily to participate in the higher valued Class I utilization of the fluid market while withholding milk for manufacture when it is needed at other pool plants for fluid milk needs of consumers in the market.

The proposed pool plant performance standards for distributing plants are substantially lower than the average marketwide Class I utilization in all months. Any plant that does not qualify for pool status on the basis of its route distribution of Class I milk should be deemed to be primarily a supply plant and its pool plant status should be determined by the standards applied to such plants.

Exception was taken to the failure to adopt a proposal to establish a route sales requirement for a distributing plant to pool at 50 percent of its receipts in February, March, and August. This would be equivalent to the same performance standards recommended for a distributing plant in the fall months when production in relation to fluid milk needs is the shortest.

The months of February and March are included in the base paying period of the base and excess plan of payment to producers. These months are normally months in which production is in excess of Class I needs plus a necessary reserve. It would be inconsistent with the pattern of supplies and sales in this market to establish a higher requirement for pooling of distributing plants in these months.

The performance standards for pool distributing plants should not be increased for the month of August. Considerable testimony on the hearing record indicated that a supply plant would have difficulty in qualifying to pool during this month. This is because distributing plants in the month of August tend to have greater supplies of milk delivered directly from farms in relation to their Class I sales than in the months of September and October.

A handler operating a Kansas City pool distributing plant excepted to increasing the total Class I distribution requirements for pool plants to more than 45 percent of receipts in any month. This handler has a substantial cottage cheese manufacturing operation and supplies packaged cottage cheese to other regulated handlers in the area, primarily to a handler now under the St. Joseph order. The exceptor contended that his cottage cheese sales to other handlers should be subtracted from his receipts and plant utilization and credited to the other handlers' receipts and utilization. This suggested treatment would have merit only on the premise that the milk used by the exceptor to make cottage cheese is a reserve supply for the fluid milk requirements of other handlers in the market.

The St. Joseph handler referred to testified at the hearing and gave no indication that he considered the proponent's cottage cheese operation as a reserve for his fluid sales. He stated that he purchased cottage cheese solely on the comparative prices of alternative sources of cottage cheese. He indicated that plants in Wisconsin could just as readily be depended on to supply his requirements for cottage cheese as any local source.

In only 2 months of the year (September and October) are the pooling requirements for distributing plants higher than 45 percent. In these months distributing plants must have 50 percent of their receipts used in Class I for pooling status. However, the excepting handler's concern was directed to a possible loss of pooling status during the summer months of July and August. In these months the 45 percent requirements of the present Kansas City order remain unchanged by this amending order.

The provision permitting a handler to combine the receipts and utilization of all his distributing plants in determining pool plant qualification should not be used in determining whether 15 percent of a plant's receipts is distributed on routes in the marketing area. The handler's plant system basis should continue to apply, however, in determining whether the total Class I route disposition of the handler's plants meets the minimum distribution requirements for pool plant status.

The present Greater Kansas City order requires a handler operating more than one distributing plant to use the combined receipts and disposition of his plants in determining pool plant qualification. Proponents proposed that this procedure be continued under the amended order. It would be applicable to at least three handlers in the market who have multiple plant operations.

Distributing plants are those at which fluid milk products are processed and packaged and from which Grade A fluid milk products are disposed of on routes in the marketing area. The extent of this distribution measures a distributing plant's association with a particular marketing area. Combining the receipts and utilization of two or more plants of a handler in determining marketing area route distribution would obscure the performance of individual plants and make it difficult to make the critical measurement necessary to determine a distributing plant's association with this market. By such combination of receipts and utilization at a handler's distributing plants, a plant serving consumers in an entirely different market, regulated or unregulated, could be pooled arbitrarily in the Kansas City market. This could result in producers delivering milk to the plant sharing in the pool even though their milk was not used to serve the fluid needs of this market.

The provision for using combined receipts and utilization of a handler's distributing plants in determining whether they meet the total Class I route distribution requirements for pool plant status should be continued under the amended order. The market trend is for handlers operating more than one plant to concentrate operations for handling their reserve supply of milk in one plant. In such cases it becomes difficult for a single plant to qualify for pool plant status based on its total Class I route distribution because of the specialized manufacturing operations for using milk in excess of fluid needs, although the handler's system could easily qualify.

Permitting a handler to combine the receipts and utilization of all his distributing plants in determining whether the total Class I disposition requirements are met will contribute to orderly marketing in this area. Providing that each distributing plant meets the marketing area route disposition requirements individually will tend to insure that the pool is adequately protected from any dissipation of its funds by plants and producers not associated with the market.

The performance standards for supply plants to qualify for pool plant status should reflect their functions in supplying milk to regulated distributing plants for their Class I sales. To assure that all producer milk pooled will be available for Class I uses in the marketing area, supply plant standards should be set at levels which require that such milk will be made available.

To qualify as a pool plant a supply plant should ship to distributing plants which are pool plants (including any direct marketing area route distribution) at least 50 percent of its Grade A milk receipts from dairy farmers in the current month. A supply plant from which a proportionately lesser quantity is shipped should not be considered as primarily associated with the expanded Greater Kansas City order market.

Shipping standards are the basis for determining which supply plants are an integral part of the market and constitute the source of regular and dependable supplies for the market. They are specifically intended to distinguish between plants meeting a reasonable standard of regular and customary service to the market and those which do not. Unless adequate pool plant requirements are provided, there is no assurance that milk will be available to the market when needed.

The demand for supply plant milk will be greatest during the season of low production. During the months of flush production, supplies at distributing plants will generally be more than adequate for the market's Class I needs. The performance provisions should not force milk to be transported to distributing plants in the months of seasonally high production in order to maintain the eligibility of supply plants to pool.

A supply plant that met the 50 percent requirement in 4 of the 5 months of September through January would be permitted to pool without further shipment in the following February through August. Pool plant status would automatically accrue to a supply plant in each month of February through August unless the handler notified the market administrator that he elected to have nonpool plant status for such plant beginning with any month during such period.

There are no supply plants pooled under the present Kansas City order. It

is expected that only one supply plant will be pooled under the merged order. That is a plant operated by a cooperative association at Sabetha, Kans. It is now a pool distributing plant under the St. Joseph order.

Proponents supported a modified proposal designed to assure that the Sabetha plant will attain pool plant status under the merged order during the months from the effective date of the amended order until September 1, 1966, the beginning of the fall qualification months for automatic pooling in the following flush production months.

In recent months the Sabetha plant has been called upon to furnish increasing quantities of milk to Kansas City area handlers to meet their requirements for Class I milk. Shipments from this plant to Kansas City handlers in some months have approached the point where it would have qualified as a pool plant under the Greater Kansas City order instead of the St. Joseph order. While additional milk supplies were available at the plant, they were not shipped to fill Kansas City area handlers' Class I needs because further shipments would have resulted in shifting the Sabetha plant from St. Joseph to Kansas City regulation, thereby disturbing the relationship of uniform prices to producers between the markets.

The pooling standards recommended for supply plants will provide a suitable standard for plants having a continuing association with the market. It is a reasonable standard and one which emphasizes the responsibility of supply plants associated with the market to contribute toward the Class I needs of consumers. Plants which may be considered an integral part of that supply should be able to meet these requirements without difficulty.

The order provisions relating to a plant which simultaneously meets the pooling requirements of the Greater Kansas City order and those of another order should be revised. The Greater Kansas City order should regulate a plant until the third consecutive month in which its sales of fluid milk products are greater in the other regulated marketing area, if the other order has complementary provisions.

The Greater Kansas City order now provides that a plant at which the handling of milk is fully subject to the pricing and payment provisions of another order and from which Class I milk disposition in the other order marketing area exceeds such disposition in this marketing area shall be exempt from all but the reporting provisions of this order.

The proponent cooperative association representative stated that the "lock-in" provision would minimize month-to-month shifting of plants from the regulation of one order to another. The proponent's plant at Hillsboro, Kans., is presently pooled under the Wichita order but has sales in the proposed expanded Greater Kansas City marketing area. It is possible that other handlers with sales in this marketing area and other marketing areas could shift from one regulation to another from month to month. The proposal was made primarily to avoid temporary shifts of plants between the Greater Kansas City order and the Wichita order. However, it would apply equally to plants selling under any other order with complementary provisions.

A plant selling in two or more marketing areas should be regulated under the order in which it has the greatest proportion of its fluid milk sales to prevent its having any undue competitive advantage. When the larger proportion of a handler's sales shifts from one market to another the change in regulation should be made as soon as possible. However, to avoid possible disruption of orderly marketing of milk at a plant it is appropriate that a handler be given reasonable notice of a prospective change in regulation. In this interim period, a plant may be permitted to be pooled by the order in a market where it has the lesser portion of its sales.

The lock-in provision is intended to be complementary to similar provisions in other orders. It would require that the Greater Kansas City order continue to regulate a plant until the third consecutive month in which its fluid milk sales are greater in the marketing area of another order. In the third month the Greater Kansas City order would relinquish regulation if the plant qualified as a fully regulated plant under the other order. If the other order does not have a complementary pooling provision but requires that the plant be pooled under that order, the plant should be exempt from all but the reporting provisions of the Greater Kansas City order.

The Greater Kansas City order should exempt from full regulation any plant with more fluid milk sales in this marketing area than in another marketing area but which is subject to full regulation under the other order. This would apply to any plant which continues to be regulated under another order for 2 months under a similar provision while having its greater fluid milk product disposition in the Greater Kansas City marketing area.

The lock-in pooling provision should apply to both distributing plants and supply plants. In determining with which market a plant has the greater association, fluid milk products disposed of on routes in each marketing area as well as shipments of bulk or packaged fluid milk products to pool distributing plants in this and the other marketing area should be used. A supply plant's association with a market should be based on its shipments of fluid milk products to pool distributing plants under each order and should include any direct route distribution it may have in addition to its qualifying shipments to such plant. Exemption of a supply plant from this order would not apply during the months of February through August, however, if the operator of the plant notifies the market administrator in writing that he wishes to retain automatic pool plant status for his plant under the Greater Kansas City order during these months.

The provision in the present Greater Kansas City order that provides pool plant status for a plant which is operated by a cooperative association which delivers more than 65 percent of its producer-member milk to pool plants of other handlers should not be included in the amended order. Need for this provision no longer exists. There are no plants operated by a cooperative association in this market at which milk is handled in this manner.

3. *Class I price and location differentials.* The Class I pricing provisions of the present Kansas City order should be adopted in the amended order. The Class I and uniform prices at St. Joseph area plants should be reduced by a differential of 10 cents per hundredweight. Elsewhere, at plants inside the marketing area, Class I and uniform prices would be at the f.o.b. Kansas City price. A 10-cent location differential would apply at plants outside the marketing area and 50–70 miles from the nearer of the City Halls of Kansas City, Mo., or Topeka, Kans. An additional 1.5 cents location adjustment would apply for each additional 10 miles distance or fraction thereof that a plant is in excess of 70 miles from the nearer of such basing points.

The Kansas City Class I price each month is determined by adding to the basic formula price for the preceding month $1.10 for the months of April through July and $1.40 for all other months. The resulting price is then adjusted according to the current supply of producer milk in relation to Class I sales as compared to the normal ratio. The St. Joseph Class I price is 10 cents per hundredweight less than the Kansas City price.

The supply-sales relationship is computed by using the combined producer milk and Class I sales for both the Kansas City and St. Joseph markets. The Class I sales and producer milk to be added by bringing additional handlers under regulation will not affect the sales-receipts ratio significantly. Thus, the sales and receipts under the merged order will be about the same as those used presently by combining data for the two markets.

The cooperative proponents of the merged order and expanded area of regulation proposed that the July Class I price be increased by 30 cents. They proposed that the St. Joseph area plant prices be increased 10 cents, to the Class I and uniform price levels at Kansas City area plants. Also, a Central Kansas zone was proposed to cover six counties in the western part of the marketing area. One cooperative proposed an additional four counties for inclusion in such zone. Cooperatives proposed, at plants in the Central Kansas zone, a 10-cent higher Class I price than the Kansas City area price.

Proponents for an increase in the July Class I price testified that it would encourage producers to deliver more milk in July and in the fall months. Handlers opposed the increase and maintained that adequate supplies of milk are available in July to meet the market's fluid needs.

The combined producer receipts and Class I utilization of producer milk in

both markets show that an average of 77 percent of producer milk was used in Class I in 1963 and 75 percent in 1964. The Class I utilization of producer milk in July of both these years was less than the average for each year. In July 1965, producer milk used in Class I represented 75 percent of receipts. The April 1965 Class I utilization was 78 percent. April is usually a month of high seasonal production but for the past 3 years it has been a month of shorter supplies of producer milk in relation to Class I needs than July.

The greatest requirement for supplemental milk for Class I uses in the two markets has been in the months of August and September. July in recent years has been a month in which at least 25 percent of producer milk receipts were in excess of Class I uses and were disposed of in manufactured dairy products. Since there is no basis for increasing the July Class I price by 30 cents per hundredweight, this proposal should not be adopted.

Cooperatives proposed that the Class I price for handlers regulated under the St. Joseph order be increased by 10 cents to the Class I price now applicable to Kansas City area handlers. Four of the six St. Joseph handlers opposed any increase. The remaining two handlers are cooperative associations who joined in the proposal to increase the price. Kansas City handlers supported the proposed increase for St. Joseph plants.

Since the inception of the order the St. Joseph Class I price has been 10 cents less than the Kansas City Class I price. Producers testified that recent highway improvement between Kansas City and St. Joseph has now made either market equally accessible to many St. Joseph producers. They maintained that there is very little or no difference in the cost of hauling milk from a given farm location to either market. The Class I price increase was requested for the St. Joseph market to assist in maintaining adequate supplies of milk in that area in competition with the Kansas City market.

The Class I price in the St. Joseph area should be established at a level that, in conjunction with the Class II and Class III prices, will result in returns to producers sufficient to maintain an adequate supply of milk to meet the needs of consumers in the area. The present Class I price has resulted in an adequate supply of milk to meet the fluid needs of the St. Joseph market. In 1963, producers on the St. Joseph market received an average uniform price of $4.10 per hundredweight. This was 3 cents more than the Kansas City uniform price. The uniform price of $4.09 to St. Joseph producers in 1964 was 7 cents lower than the Kansas City uniform price. This relationship of uniform prices under the two orders continued in 1965 when the St. Joseph uniform price at $4.16 per hundredweight was 10 cents less than the Kansas City price. Official notice is taken of recent monthly price announcements and statistical information released by the market administrator. In the January through May 1966 period, the St. Joseph uniform price averaged 13 cents under the comparable Kansas City price.

Even though the St. Joseph uniform price has dropped below the Kansas City price, an adequate supply of milk for the market has been maintained at that price level. For the year of 1964, Class I utilization of producer milk declined to 74 percent from 83 percent in the preceding year. In 1965, only 75 percent of producer milk on the St. Joseph market was used in Class I. In each month of January through April 1966 the percentage of producer milk used in Class I in the St. Joseph market has been lower than for the same month a year ago. Clearly, present price levels have maintained adequate supplies of milk for the St. Joseph market.

Some St. Joseph producers are located in counties that are a part of the Kansas City milkshed. The majority of producers for the St. Joseph market have farms located in counties to the north and east of the city of St. Joseph. Very few producers for the Kansas City market are located in these counties representing the principal milk production area for the St. Joseph market. No specific hauling rates were given for moving milk from the major St. Joseph milkshed counties of Andrew and Buchanan to either Kansas City or St. Joseph. A cooperative representative testified that haulers are paid 20 cents per hundredweight to move milk from St. Joseph to Kansas City. He also indicated that if a hauler could be assured of a regular movement of milk to Kansas City a lower rate could be negotiated. However, the witness did not think a hauling rate of less than 10 cents per hundredweight of milk could be negotiated.

In view of the distance between the two cities of St. Joseph and Kansas City at current hauling rates in the area, the present 10-cent differential in the Class I price and uniform price between these cities is justified. Therefore, the St. Joseph area price should not be increased by 10 cents to the Kansas City area price level.

The Class I and uniform prices of the Greater Kansas City order should be reduced by 10 cents at plants located outside the marketing area and more than 50 miles but not more than 70 miles from the nearer basing point. These prices should be reduced an additional 1.5 cents for each additional 10 miles or fraction thereof that plants outside the marketing area are located more than 70 miles from such city hall.

The Kansas City order now provides a location adjustment of 10 cents to apply first on milk received at a plant outside Pettis County, Mo., and more than 50 but not more than 70 miles from the nearest of the city halls of Kansas City, Mo., and Lawrence, Topeka, Manhattan, Council Grove, and Emporia, Kans. An additional location adjustment of 1.5 cents per 10 miles or fraction thereof applies at plants in excess of 70 miles from the nearest basing point. The St. Joseph order location adjustment at the same rate (10 cents plus 1.5 cents each additional 10 miles) is first applicable at pool plants within 50 and 60 miles of the nearer of St. Joseph, Mo., and Sabetha, Kans.

Producer associations proposed that the present Kansas City order location adjustment mileages and rates be continued in the merged order to be applicable at plants located outside the marketing area. Abilene and Concordia, Kans., were proposed as additional basing points in the western part of the expanded area. The cities of Lawrence, Manhattan, Council Grove, and Emporia were proposed to be deleted from the order as basing points.

The value of milk to this market for fluid purposes is greater at plants in the nearby area than at plants from which milk must be moved to the area. Beyond 50 miles from the nearer basing point milk has a lower value because of its location with respect to the major consuming centers in the marketing area and the added cost of transportation. Kansas City and Topeka are the major population centers in the marketing area and should be retained as basing points under the amended order. Since Abilene and Concordia are relatively small centers of population, shipments of milk from plants outside the marketing area and more than 50 miles from such places are not likely to be needed to supply fluid sales in such towns. Hence, there is no need to add such towns as basing points. Similarly, there is no need to continue to measure distances for location adjustments from the present basing points of Lawrence, Manhattan, Council Grove, and Emporia, Kans. These places are also small centers of population.

It is expected that there will be no plants regulated by the expanded order that will receive location adjustments with the exception of the St. Joseph area plants previously discussed. Nevertheless, if plants located outside the marketing area qualify as pool plants under the amended order, location adjustments measured from the population centers of Topeka, Kans., and Kansas City, Mo., should apply. These location adjustment rates with distances measured from such cities are consistent with those used in the present Kansas City order and are representative of the cost of transporting milk to the market by an efficient means.

A proposal by one cooperative would establish a Class I price at plants in Riley, Geary, Morris, and Lyon Counties 10 cents higher than the Kansas City area Class I price. This proposal should not be adopted. These four counties are presently in the Kansas City marketing area and milk received at plants in the area is priced at the same level as the price applicable at Kansas City and Topeka. This four-county area is located a short distance west and south of Topeka.

Cooperatives supplying the Wichita market and a Wichita handler supported the proposal. The proponent and its supporters testified that such an increase would improve the alignment of Class I prices between Kansas City regulated and Wichita regulated

plants. All four handlers with plants in this area which are located at Manhattan, Junction City, Council Grove, and Emporia opposed establishing a ten cents higher price level at their plants.

These counties are relatively sparsely populated. Riley County, which contains the city of Manhattan, has the largest population (31 thousand) of the four counties. Morris County has the smallest population of the four with 7,000. In total there are 88 thousand residents in the four counties. In contrast, the Kansas counties of Wyandotte and Johnson in the Kansas City metropolitan area and Shawnee County which contains Topeka have a combined population of 520,000.

The four-county area is primarily an area in which milk is produced for sale in other areas rather than an area into which milk is imported for fluid sales. The milk produced in these four counties and delivered to Kansas City pool plants is about twice the quantity consumers in the area require for fluid consumption (based on an average daily consumption of three-fourths pound per person). In May 1965 there were 116 Kansas City producers in this area who delivered 3.8 million pounds of milk. Producers in these counties who do not ship to plants in the counties ship mostly to Topeka plants.

Handlers in these four counties testified that they have an adequate supply of milk at present prices. Milk in this area that is in excess of fluid requirements is diverted regularly to Topeka plants and occasionally to Kansas City area plants. The record evidence indicates that more milk excess to fluid needs in the four counties is moved to Topeka and Kansas City than is moved to plants in the four counties.

Farms of producers delivering to handlers in Riley, Geary, Morris, and Lyon Counties are intermingled with farms of producers delivering milk to more distant plants. Although supporters of the higher Class I price testified only with respect to Class I price alignment, their proposal would also affect the blend price paid producers at plants located in these counties. Establishing a 10-cent higher blend price than applies presently at plants in these counties would create an incentive for more producers in the area to deliver milk to these nearby plants where it is not needed. On the other hand, producers in these counties would be reluctant to ship to Topeka and Kansas City plants where the price would be 10 cents lower and the haul a greater distance.

There is only one plant in the four-county area from which Class I milk is disposed of in the Wichita marketing area. This is a plant located at Council Grove which, as heretofore stated, has 15 percent of its total route disposition in the Wichita marketing area. However, this plant has 44 percent of its route sales in the Kansas City marketing area. This handler's principal competition is with Topeka handlers. Thus, an increase in the Class I price at Council Grove would raise this handler's price by 10 cents over the price paid by his competitors in his major sales area.

The Class I price under the Kansas City order has been about 27 cents less than the Wichita Class I price. Council Grove is about 100 miles from Wichita and at a transportation cost of one and one-half cents per 10 miles, it would cost about 15 cents to move milk from Council Grove to Wichita. Thus, the Council Grove plant has some price advantage relative to Wichita handlers on the 15 percent of the plant's sales made in Wichita.

On the other hand, the Council Grove plant is about 50 miles from Topeka and hence incurs some additional cost as compared with its competitors in transporting milk to its principal sales area. This disadvantage more than offsets any advantage which the handler may have on the Class I price plus transportation cost to Wichita.

The operator of the Council Grove plant requested that several counties located between the Kansas City and Wichita areas be added to the Kansas City area to assure that his plant would continue to be regulated by the Kansas City order even though his sales in the Wichita area (or some other regulated area) increased. That proposal is denied herein. If this handler increases sales in the Wichita marketing area to the point where his sales in Wichita exceed those in Kansas City, the order provides that he will be regulated by the Wichita order. In that case his principal competition will be with Wichita handlers, not Kansas City handlers, and he will be required to pay the Wichita order price.

The proposal by eight cooperatives for zone pricing in six other central Kansas counties should not be adopted. They proposed that the Class I and uniform prices at plants located in these six counties on the western side of the marketing area be 10 cents higher than the prices at Kansas City area plants. A handler with a distributing plant at Concordia, Kans., who purchases most of his supply of milk from cooperatives under the Kansas City and St. Joseph orders, opposed the ten cents higher price for this area in which his plant is located. Two other handlers with smaller operations who buy from dairy farmers have plants in this area at Abilene. They offered no testimony on prices.

The witness testifying for proponents of the 10-cent higher price in this six-county area supported the proposal on the grounds that handlers with plants located in this area had paid prices higher than those paid to dairy farmers by handlers with plants regulated under the Kansas City order. However, this witness offered an exhibit which shows that prices paid for milk at the Concordia plant, which has the largest volume of sales among the plants in these counties, have been about equal to the Kansas City uniform price plus the 10-cent bulk tank premium which Kansas City area handlers have paid on all milk for some time. In 1963 the average price paid farmers by this plant exceeded the Kansas City uniform price plus bulk tank premium by 9 cents, in 1964 by 1 cent, and in the first 10 months of 1965 was 4 cents less than the Kansas City price including premium. This indicates that the handler is able to obtain the milk requirements for his plant located at Concordia at about the same uniform price as that paid by Kansas City handlers.

Although specific prices were not supplied with respect to payments made by the two smaller handlers with plants located at Abilene, it was indicated that these plants match the prices paid by Kansas City regulated handlers in paying their farmers for milk.

Since these plants are not now subject to regulation and they tend to have higher Class I usage than the average of all Kansas City handlers, their cost of milk used in Class I products is now somewhat less than for Kansas City handlers. The extension of regulation to these handlers will assure that they pay minimum class prices for milk according to the use they make of it. This will provide uniformity in the cost of milk as between these handlers and handlers now purchasing milk under the terms of the Kansas City order.

Another point raised by the proponents was the desire to align Class I prices at these plants more closely with the Class I price established under the Wichita order. The issue in this respect related primarily to the price applicable at the Concordia plant since the two handlers at Abilene sell milk only within a small area surrounding their plants. The Concordia plant has distribution mostly west and south of Concordia. However, 60 percent of the sales from this plant are made within the eight-county area which is herein proposed to be added to the merged Kansas City and St. Joseph marketing area. In this area the majority of sales are made by the Concordia plant and by handlers now regulated by the Kansas City and St. Joseph orders.

The Concordia plant does not now make sales in the Kansas City marketing area. The plant has apparently refrained from making sales in the Kansas City area in order to avoid having its complete receipts and sales regulated by that order. With the inclusion of these additional counties in which the plant has its principal sales, this reason for curtailing sales in the Kansas City area is removed.

In addition to this plant's sales in the area proposed to be added to the Kansas City marketing area, another 15 percent of its sales are made in eight northwestern Kansas counties which were proposed for inclusion in the Kansas City area but which are not recommended for inclusion on the basis of this record. This leaves 25 percent of the plant's sales which are made in other areas. Some part of the sales are made in the Wichita marketing area and in the area proposed in another proceeding to be added to that marketing area. The Concordia plant is located 141 miles from Wichita and, based on a hauling cost of 1½ cents per 10 miles, milk could be moved from the plant to Wichita for about 21 cents. At the present relationship between Wichita and Kansas City Class I prices, this would give the Concordia plant some

price advantage in excess of the hauling cost on milk moved to Wichita. However, a flat increase of 10 cents per hundredweight on all milk disposed of as Class I from the Concordia plant would raise its price relative to those paid by its competitors regulated by the Kansas City order to the extent that the plant would then have a price disadvantage in its primary sales area.

The six-county area is essentially a rural area. There are about 75,000 inhabitants in the six counties. Hence, there is no indication that a higher price is needed to attract milk to this area.

While Saline County was not proposed specifically for inclusion in the 10-cent higher-priced zone, cooperatives in their brief asked that it be included if the higher price were established for the counties referred to above. In view of the conclusions with respect to the 10-cent higher-priced zone proposed for the other 10 counties, no further consideration is given to a higher price at plants in Saline County.

The uniform prices paid to producers supplying plants at which location differentials apply should continue to be adjusted the same way Class I prices are adjusted. This reflects the savings in cost of delivering milk to such plants instead of to plants in the major population center of the market. The association of a producer with a market is based primarily on his supplying milk for the Class I needs of the market. Thus, the uniform price returned to him should be adjusted at the same rate and for the same reason as the location adjustment is applied to the Class I price.

No location adjustments should apply to the uniform excess prices in the base-paying months. This is because under the base and excess plan the uniform base prices will reflect the value of Class I milk for which location adjustments apply. Therefore, location adjustments to producers should apply only on base milk.

The attached order includes a temporary price amendment identical to that recently included in the present Greater Kansas City order which is reflected also in the St. Joseph pricing provision. Such amendment provides that for the purpose of computing the Class I milk prices to be effective through March 1967, the basic formula price shall be not less than $4. Proponents of the merged and expanded marketing area testified at the reopened hearing held in St. Louis, Mo., June 7–8, 1966, that any action taken by the Secretary to amend the St. Joseph and Kansas City orders would be appropriate for the proposed merged and expanded Greater Kansas City order. On the basis of the record of the reopened session of the hearing, and for the same reasons as those stated in the emergency decision (31 F.R. 9130) upon which the Kansas City order was amended and such action was reflected in the St. Joseph order, it is concluded that for Class I milk pricing purposes to be effective through March 1967, the basic formula price for the Greater Kansas City order as included herein should be not less than $4 per hundredweight.

Several cooperative associations filed exceptions pointing to a need to increase by 10 cents the Class I and uniform prices at plants in the St. Joseph area and at plants in the western part of the recommended marketing area. In making the exception they cited a recent shift in a handler's operation which may result in an increased demand for milk at St. Joseph and Topeka. The record contains no information on this marketing development. If an increased demand for milk at these plant locations develops and is not supplied at the proposed price level, the proper price level at these locations could be considered at another amendment hearing.

4. *Classes II and III prices.* The present method for determining the Class III prices under the Greater Kansas City and St. Joseph orders should be used for pricing Class III milk under the expanded order.

Based on the record of a reopened hearing, Class III pricing formula amendments to both orders became effective April 16, 1966. Under the present provisions of the orders the Class III prices are based on the prices paid for manufacturing grade milk at plants in Minnesota and Wisconsin. However, such prices are limited to not more than a price calculated by a butter-powder formula.

The handling of reserve milk at plants in the expanded area is such that the Class III pricing basis which applies to presently regulated Kansas City and St. Joseph order prices will accommodate the handling of such milk. Producers proposed that the same level of Class III prices apply under the merged order as for the separate orders. There was no opposition to the proposal.

The Class II price under the amended order for milk used in cottage cheese should be the Class III price plus 15 cents but not less than the Minnesota-Wisconsin price which is used to establish the basic formula price.

The St. Joseph and Greater Kansas City orders, since April 1965, price milk in cottage cheese use at the average of prices paid for manufacturing grade milk at plants in Minnesota and Wisconsin. Producer associations proposed that the price for Class II milk be increased to the Minnesota-Wisconsin price plus 15 cents. Handlers generally opposed any increase in the Class II price.

Handlers manufacturing cottage cheese in this market generally request cooperative associations to supply Grade A producer milk for use in cottage cheese manufacture. There is no requirement throughout the area that Grade A milk be used in making cottage cheese. However, there is a great demand for Grade A milk in cottage cheese use if sufficient quantities are available. Because of the demand by handlers in this market for Grade A skim milk for use in cottage cheese, some added value should attach to producer skim milk in cottage cheese use above its value in other manufactured dairy products.

Cottage cheese is the largest outlet in this market for Grade A milk in excess of fluid uses which must be made into manufactured dairy products. About 13 percent of the total producer milk on the Kansas City market is so utilized each month. St. Joseph handlers use an average of 2 percent of producer milk in cottage cheese. When sufficient Grade A milk is not available for use in cottage cheese, handlers have depended primarily on ungraded skim milk which is purchased for them by local producer associations who supply their requirements of Grade A milk.

The order price for skim milk and butterfat in producer milk used in cottage cheese should not be established at a level higher than the cost of acceptable alternative supplies of skim milk and butterfat. To establish any higher price would encourage the use of other source supplies of milk and prevent the continued orderly marketing of producer milk in cottage cheese in this market. However, the price should be established at a level that will obtain the highest possible returns to producers and that will result in the orderly marketing of milk in the area. If producer skim milk is priced at less than the cost of alternative supplies, producers do not receive the full market value for milk used in cottage cheese. Hence, the price should be established at a level that will assure producers of the highest possible returns and yet provide sufficient economic incentive to handlers to continue the use of producer skim milk in cottage cheese in preference to alternative sources such as unregulated Grade A milk, ungraded skim milk, or cottage cheese manufactured at other plants.

The cost of supplies of ungraded skim milk purchased by cooperative associations to supplement the cottage cheese requirements of handlers in this market exceeded the cost of skim milk from producer milk throughout 1965. The Class II skim milk value of producer milk under the present Kansas City order has ranged from 77 cents to $1.10 per hundredweight since the separate price for milk used in cottage cheese became effective April 1, 1965. The cost of ungraded skim milk purchased by cooperatives for Kansas City handlers ranged from $1.30 to $1.70 per hundredweight in the 11-month period April 1965–February 1966. These costs included plant handling charges and the cost of hauling from the ungraded milk plants. The handling charge and extra hauling cost could be avoided if the ungraded milk were purchased directly from farmers instead of through plants.

The Class III prices as proposed herein are closely related to the prices paid to dairy farmers at manufacturing grade milk plants in the area surrounding Kansas City and St. Joseph. Official notice is taken of the decision relating to Class III pricing under the St. Joseph and Kansas City orders issued April 8, 1966 (31 F.R. 5693), and the amendments to such orders which became effective April 16, 1966.

Had the present order Class III pricing provision been in effect for the entire period of 1965, the average value of Class III skim milk would have been 80 cents per hundredweight, the same as the Class II skim milk value per hun-

dredweight for the year under the Kansas City order. In January 1966 by use of the April 16, 1966, amendment, the Class III skim value would have been 82 cents and in February 1966 it would have been 84 cents per hundredweight. These values are representative of the value of skim milk in ungraded milk supplies at plants in this area.

Nonfat dry milk is frequently used by cottage cheese manufacturers to fortify skim milk and increase the yield of cottage cheese. It can also be reconstituted with water into liquid skim milk for use in making cottage cheese. Prices of nonfat dry milk since April 1965 have been from 14.2 to 14.6 cents per pound. With a yield of nine pounds of nonfat dry milk per hundredweight of skim milk, the cost of using this product to manufacture cottage cheese has been from $1.28 to $1.31 per hundredweight of skim equivalent. This cost is substantially higher than the cost of skim milk from producer milk.

Other order markets represent potential sources of cottage cheese for this area and Grade A milk for use in making cottage cheese. The prices for milk in cottage cheese uses under nearby orders are about the same or about 5 cents less than the price proposed herein except that in recent months the price for cottage cheese use under the Nebraska-Western Iowa order has been 15 cents higher. Thus, milk for cottage cheese uses in these nearby order markets would be priced at a level comparable to the recommended Class II price in this market.

Two plants were indicated to be actual or potential sources of cottage cheese or cottage cheese curd for this market. These are a plant located in Wisconsin and a plant at Eldorado Springs, Mo. The Wisconsin plant is located in the area in which prices paid to dairy farmers at manufacturing plants are used to determine the Minnesota-Wisconsin price series. Hence, the Minnesota-Wisconsin series should be indicative of the price paid to dairy farmers delivering to this plant. The handler operating the Eldorado Springs plant paid ungraded producers $3.48 in January and $3.50 in February 1966. The price proposed herein for milk used in cottage cheese was $3.47 in January and $3.58 in February.

Establishing the Class II price in this market at the Minnesota-Wisconsin price plus 15 cents as proposed by producers would possibly result at the present time in a price so high as to discourage the continued use of producer milk in cottage cheese. This is because the prices paid at plants in Minnesota and Wisconsin have reflected the heavy demand for milk by cheese plants. Plants in this Kansas-Missouri area which are primarily engaged in making butter and nonfat dry milk have paid a slightly lower price reflecting the relatively lower price for butter than for cheese. The lower price paid by these plants making butter and nonfat dry milk was the principal reason for setting a ceiling on the Class III price which would adjust for the current disparity of butter and cheese prices. The ungraded milk receipts at area butter and nonfat dry milk manufacturing plants are an important source of ungraded skim milk for use in cottage cheese when producer skim milk is not available. Providing that the Class II price shall be 15 cents more than the Class III price and not less than the Minnesota-Wisconsin price recognizes that ungraded skim milk is available in the area at approximately the order Class III price, but that there is some extra value attached to the use of Grade A producer skim milk in cottage cheese in this market.

Official notice is taken of the Class II price for April 1966 and the Class III price for the latter half of that month as announced by the Kansas City order market administrator. The Class II price was $3.64 and the Class III price was $3.47. Adding 15 cents to the present Class II price currently would have priced producer milk used in cottage cheese in that period at a level 32 cents higher than the price for milk at butter and powder manufacturing plants in the area. This difference in price levels under the order could encourage handlers to develop an alternative source of supply for cottage cheese instead of using local producer milk.

Official notice is also taken of the Class II and Class III prices as announced by the market administrator for May 1966. In that month the Class II price was $3.65 and the Class III price was $3.56. This reflected the closer relationship of butter prices to cheese prices. The proposed Class II price at 15 cents over the Class III price would have been $3.71, 6 cents higher than the actual price in May.

Providing that the Class II price shall be 15 cents per hundredweight higher than the Class III price but not less than the Minnesota-Wisconsin price series is appropriate at this time in recognition of present pricing relationships for reserve milk in its several uses. As prices for the several manufactured dairy products return to a more normal relationship in the area than in the recent past, use of the recommended formula for Class II pricing will permit producer milk used in cottage cheese to be priced at 15 cents over the Minnesota-Wisconsin price. At the same time the Class II pricing formula will preserve a close relationship with the Class III price which represents the price of alternative supplies of ungraded milk for use in cottage cheese in this area.

5. *Butterfat differentials.* The handler and producer butterfat differentials of the present Greater Kansas City order should be continued at the same level under the amended order.

The Class I butterfat differential under the Greater Kansas City and St. Joseph orders is the average price per pound of Grade A (92-score) butter at Chicago as reported for the preceding month multiplied by 0.120. The Class II and Class III butterfat differentials under both orders are such butter price for the current month times 0.115.

The producer butterfat differential for the Greater Kansas City order is computed by adding four cents to the Chicago Grade A butter price, dividing the resulting sum by 10, and rounding to the nearest one-tenth cent. Under the St. Joseph order the producer butterfat differential is the weighted average of the handler butterfat differentials for the three classes.

Cooperative proponents proposed that the factor of 0.115 percent of the Chicago Grade A butter price be substituted for the factor of 0.120 times the butter price in determining the butterfat differential for Class I milk. Handlers opposed reducing the Class I butterfat differential without an offsetting reduction in the Class I price to compensate for any increase in the value of the skim milk component of Class I milk that would result.

Producers contended that lowering the butterfat differential for Class I milk would encourage the use of more butterfat in fluid milk disposition and would increase sales of cream. They maintained that with increased sales of low-fat fluid milk products a higher value should be allocated to the skim component in fluid milk products in Class I.

While the demand for low-fat fluid milk products is increasing relative to other fluid milk products, there is some question that reducing the butterfat differential would result in increased use of butterfat in fluid milk products. Handlers maintained that such increased use of butterfat would not result and that they would continue to sell milk which meets the demands of generally diet conscious consumers.

The butterfat test of Class I milk in the Kansas City and St. Joseph markets in recent months has averaged slightly less than 3.5 percent butterfat, the test at which the Class I price is announced. Without any adjustment in the price for Class I milk testing 3.5 percent butterfat, a reduction in the butterfat differential would increase the value of skim milk in Class I. The returns to producers would be increased only by a small amount at this time. Certain handlers opposed an increase in the skim milk value because of competition for sales of low-fat Class I products with handlers in other markets where the higher butterfat differential is used.

Handlers who would be regulated under the merged order compete for sales with handlers regulated in other nearby order markets. A reasonable alignment of butterfat differentials between this market and the other markets is desirable for the orderly marketing of milk in this area. Maintaining the present relationship of handler butterfat differentials for the three classifications of milk in this market will tend to promote the alignment of butterfat differentials to handlers in this market in their competition with handlers in surrounding markets.

There is economic justification in pricing butterfat used in fluid milk products at a somewhat higher level than butterfat used in manufactured dairy products. Prices for milk used in Grade A fluid milk products are customarily higher than prices for manufacturing grade milk in recognition of the additional cost of producing milk of high quality standards. If the Class I butterfat differential were placed at the same level as the butterfat differential in other classes, the skim component of fluid milk would

bear the entire added value attached to Class I milk above manufacturing grade milk values. The value of butterfat used in Class I would be the same as the value of butterfat used in manufactured products.

The method of computing the butterfat differential to producers contained in the present Kansas City order should be used under the merged order. This method was proposed by producers and was not opposed.

The Class II and Class III butterfat differentials should continue to be based on the average price of butter in the current month. The cooperatives proposed that all butterfat differentials be based on the butter prices in the month preceding the current month. It was not shown why it would be more desirable to use the preceding month's butter prices for adjusting the Class II and Class III prices or how it would contribute to more effective operation of the order.

The Class I price is announced on the 5th day of the month to which it applies so that handlers may have advance notice of their Class I fluid milk product costs. The Class II and Class III prices are announced on the 5th day following the month to which they apply. Similarly, the Class II and Class III butterfat differentials should be announced at this time based on butter prices for the same period used to determine Class II and Class III prices. Thus, the Class II and Class III butterfat differentials will reflect the market value of butterfat in the most recent month for which such information is available. Fluctuations in the butter market will be reflected without lag in the Class II and Class III butterfat differentials based on butter prices for the most current month.

6. *Cooperative as a handler on bulk tank milk.* A cooperative association which delivers milk of its producers to pool plants of other handlers in tank trucks directly from the farm should continue to be defined as a handler under the amended order. Milk so delivered by the cooperative as a handler under these conditions is determined to be received at the pool plant. For milk so delivered by a cooperative, the plant operator should be responsible for paying the cooperative association the uniform price for the milk as though it were a receipt of milk directly from producers.

The Greater Kansas City order now provides that a cooperative may report as a handler on bulk tank milk of its members that is delivered to the pool plant of another handler. This milk is considered as having been received by the cooperative at the plant to which it is delivered and the operator of the pool plant is responsible for paying the class prices on such milk to the cooperative association. The cooperative association in turn pays to or draws from the producer-settlement fund the difference between the value of such milk at the class prices and its value at the uniform price. Under these provisions, when an audit of the handler's records results in a change of classification the market administrator must adjust the difference in value with the cooperative association which then must adjust with the handler.

Proponents wish to avoid this somewhat cumbersome procedure by requiring the handler operating the pool plant to pay the cooperative the uniform price. The handler operating the pool plant would equalize with the producer-settlement fund and be responsible for any change in classification found on audit.

Under the terms of the order, the person receiving milk from producers is held responsible for accounting for such milk and for payments to producers. Once milk from a producer has been mingled with milk of other producers in a tank truck there is no further opportunity to measure, sample, or reject the milk of an individual producer whose milk is included in the load. The operator of the pool plant to which the load is delivered has opportunity only to determine the weight and butterfat test of the total load. Where a tank truck picking up milk at a farm is operated under the supervision of a cooperative association, it is the association that determines the weight and butterfat content of the deliveries of individual producers. It is desirable that the cooperative be held the responsible handler under these circumstances. The milk delivered by the cooperative as a handler would be classified, allocated and priced at each plant of receipt according to its use. The operator of the plant would be obligated to pay the cooperative the uniform price applicable at the plant and would make or receive equalization payments from the producer-settlement fund at the difference between his classified use value of such milk and its value at the uniform price.

Defining a cooperative association as the handler on bulk tank milk it receives at farms for delivery to pool plants promotes more efficient marketing by accommodating the flexible movement of this milk to the plants where it is needed from day to day. As a handler for such milk, a cooperative would be required to report the quantities of such milk from each producer and the pool plants to which it was delivered. This information would be readily available to the cooperative. Its reports, in conjunction with the reports from pool plant operators, will enable the market administrator to establish the quantities of producer milk to be accounted for at each plant.

The full 2 percent maximum allowance for shrinkage classified in Class III would be permitted the handler who is the operator of the pool plant receiving producer milk from a cooperative association as a handler only if he is purchasing the milk on the basis of farm weights and tests. Otherwise, the maximum shrinkage in Class III allowed the handler on such milk would be 1.5 percent and the cooperative would be responsible for pooling any difference between the weight and butterfat tests of producer milk received in the tank truck at the farms and that delivered to pool plants. This procedure is provided by the present Kansas City order and in a number of other Federal orders. It provides a reasonable basis for the allocation of the shrinkage allowance in those instances wherein the cooperative is the responsible handler with respect to milk picked up at producer's farms in bulk tank trucks.

A cooperative association should continue to be defined as a handler on producer milk which it diverts from a pool plant to a nonpool plant for its account. Also, a cooperative or a handler operating a pool distributing plant should be allowed to divert producer milk from a pool distributing plant to a pool supply plant. The plant that is expected to become a pool supply plant under the amended order now serves as an outlet for excess milk from both of the present Kansas City and St. Joseph markets. Providing for diversions of producer milk to such plant in the above described manner will accommodate the disposal of reserve milk under the amended order. Milk diverted to a nonpool plant or to a pool supply plant by a cooperative association for its account would be treated as a receipt of producer milk by such association. The plant location at which such producer milk diversions would be priced is discussed herein under Issue 8, producer milk.

A cooperative is defined as a handler under the current Greater Kansas City order on member milk delivered in cans to pool plants of two or more handlers. There is no need for this provision in the amended order. The cooperatives in this market do not handle milk in cans in the manner provided for such handler status. This definition should not be included in the amended order.

7. *Base and excess plan.* A base and excess plan modeled after that effective in the present Greater Kansas City order should be used under the merged order for distributing among producers the payments for milk produced in the months of February through June of each year. This plan would become effective beginning with the base-forming period of September through December 1966.

The base and excess plan considered at this hearing is that authorized by the Agricultural Marketing Agreement Act prior to the enactment of the Food and Agriculture Act of 1965. It has for its purpose, distribution of payments among producers only in accordance with their seasonal patterns of production. The 1965 Act contained additional authority relating to base-excess provisions while retaining all the authority then contained in the Act with respect to such provisions.

Since the base-excess plan has been effective in the Greater Kansas City order, production of milk during the fall months has increased in relation to the annual average production. Also, production during the spring months has decreased. For these reasons producers and handlers supported continuation of the base-excess plan in the merged order for the purpose of encouraging producers to maintain a uniform level of production of milk seasonally to coincide closely with the market's demand for Class I milk.

September through December are normally the months in which the pro-

duction of milk is low in relation to Class I needs. These are the base-forming months under the present Kansas City order and were proposed by cooperatives to be continued as the appropriate base-forming months under the amended order.

The months of February through June should be used as the base-operating period under the amended order. July should be dropped as a month in which separate "base milk" and "excess milk" uniform prices are computed. Producers suggested that the month of July be removed from the base-operating period because it is usually a month when the association of more producer milk with the market is desirable. July in the past 3 years has been a month of lower daily production on both the markets than any of the months of February through June. Discontinuing July from the base-operating period should tend to encourage producers to deliver more milk in the month which immediately precedes months of lowest production in relation to Class I needs of the market. The daily base rules as contained in the Kansas City order should be used under the amended order in the application of the base-excess plan.

Cooperatives excepted to the dropping of the month of July from the base-operating period. The cooperatives which represent the majority of producers in the Kansas City market indicated that removal of the month of July as a base-paying month would not affect production to a degree that would justify such action. A review of the record evidence in light of the exceptions filed indicates that the present base-operating period of February through July should be continued under the proposed amended order.

8. *Producer milk.* "Producer milk" should be defined under the amended order to include all skim milk and butterfat in Grade A milk received at a pool plant directly from a dairy farmer or from a cooperative association in its capacity as a handler. Producer milk would also include milk diverted under certain conditions from a pool plant to a nonpool plant that is not an other order plant or to a pool supply plant by either a handler operating a pool plant or a cooperative in its capacity as a handler diverting milk for its account. This revised definition will facilitate application of the various order provisions by specifying that milk for which each handler shall be responsible for paying the class prices established by the order according to his use of milk.

This revised definition will require the handler operating the pool plant at which milk is received from a cooperative as a handler pursuant to § 1064.7(c) to pay the cooperative at the uniform price the same as on milk received directly from producers.

Diversions of producer milk should be permitted to nonpool plants other than an other order plant. Milk diverted to a nonpool plant should continue to be considered as received by the diverting handler at the location of the plant from which it is diverted for pooling and pricing purposes except that milk diverted to a nonpool plant more than 125 miles from the nearer of Kansas City, Mo., or Topeka should be considered as a receipt at the nonpool plant for pricing and location adjustment purposes.

The present order permits a handler operating a pool plant or a cooperative association as a handler to divert producer milk from pool plants to nonpool plants to the extent of not more than 16 days production during the months of September through December. Unlimited diversions are permitted during the other months of the year. The diverted milk is considered to be received at the pool plant from which it is diverted. However, if it is diverted to a nonpool plant more than 125 miles from the nearer of Kansas City, Mo., or Topeka, Kans., it is considered to be a receipt at the nonpool plant for pricing purposes.

Cooperative associations proposed that the diversion provision be strengthened by requiring the milk of any producer to be received at a pool plant for at least 6 days' production in any month. A handler who is the operator of a pool plant could divert producer milk without limitation during the other days of such month. The total amount of milk diverted would not exceed 25 percent of the milk received at such plant from producers who are not members of a cooperative in the months of July through December and a 50-percent limitation would apply in each month of January through June.

Proponents would apply equivalent percentage limitations to cooperatives acting as a handler on diverted milk. The 25 percent and 50 percent limitation would be based on the total member-producer milk of such cooperative received at all pool plants during the month. Diversions in excess of the applicable percentages would not be considered producer milk nor deemed to have been received by the diverting handler. Furthermore, the diverting handler would be required to specify the dairy farmers whose milk would not be included as producer milk during the month. These diversion provisions should be adopted.

When milk is not needed in the market for Class I purposes the movement of such milk to a nonpool plant for manufacturing purposes should be facilitated. Allowing for greater diversions during months when reserve supplies are greatest will contribute to this end. It is necessary to provide for lesser quantity diversions in the other months of the year when milk regularly associated with the market is needed to supply the Class I needs of the market. Limited diversions are necessary during such months to enable handlers to divert producer milk on such occasions as weekends or holidays when the milk is not needed for Class I purposes. The diversion privilege is primarily intended to obtain efficiency in the marketing of milk not needed at pool plants for fluid uses. Instead of being physically received at the pool plant and then transferred to the nonpool plant, excess milk may be hauled directly from the farms to nonpool plants without losing its pooling status under the order.

Exceptions were received to the inclusion in producer milk of a supply plant those receipts of milk directly from dairy farmers which were not eligible as producer milk at another plant under the diversion privilege. Failure to regard such milk as producer milk at either plant would exempt it from the pricing and pooling provisions applicable to producer milk. Such exemption is not warranted in the case of milk which meets the basic requirements of physical receipt at a pool plant.

Diversions of producer milk to the plant of a producer-handler should not be permitted under the amended order.

A cooperative association in the market now diverts milk directly from farms in its tank trucks to at least two large producer-handler operations (one is a governmental agency the status of which is described under the discussion of handler definition). A receipt of diverted milk which is delivered directly from the farm is not distinguishable from a receipt of dairy farmer milk at the producer-handler's plant either directly from an individual producer or from a cooperative acting as a handler. When milk is received directly from a dairy farmer's farm at a producer-handler plant, the producer-handler should lose his exempt status and become a fully regulated handler operating a pool plant.

Milk moved from a farm directly to an other order plant should not be considered as producer milk under the Greater Kansas City order. Without a provision in the order regulating the other order plant to exclude diversions of producer milk from a Greater Kansas City plant, it would be treated as producer milk under the other order. This would result in pricing and pooling the same quantity of milk as producer milk under both orders.

A producer association representative testified that milk does not normally move in this market in a manner that could be considered as a diversion to an other order plant. Producer milk that is moved to an other order plant from this market is usually moved on a permanent basis as a shift of producers to the other order plant. Providing for diversions of producer milk to other order plants is not necessary for the orderly marketing of reserve milk in this area. There are adequate facilities at plants in this area for disposal of milk excess to the market's fluid needs.

A proposal was made to permit diversions of milk by a cooperative association from a pool plant to a pool supply plant. Cooperative associations acting as handlers on bulk tank milk sometimes deliver excess milk to a pool supply plant for manufacturing uses. Such diversions are not included in determining pool plant status in the receipts of this plant, which is now a pool plant under the St. Joseph order. Since this pool supply plant serves also as an outlet for excess milk diverted from pool distribut-

ing plants, the exclusion of such diversions from this pool supply plant's receipts for the purpose of computing pool plant status should be continued.

9. *Administrative and miscellaneous changes*—(a) *Governmental agency plant exemption.* The plants of governmental agencies from which fluid milk products are distributed in the marketing area should be exempt from order regulation. Fluid milk products transferred to such plants or diverted by a handler (including cooperatives in their capacity as a diverting handler) from a pool plant should be classified as Class I unless the governmental agency certifies that such milk was acquired for use in Class II or Class III products. Fluid milk products received at a pool plant from such plants should first be assigned to Class III.

The Kansas State University, now operating as a producer-handler, proposed that it be exempt from the present classification of milk required by the order on milk moved from Kansas City handlers to the plant of a producer-handler.

The Kansas State University operates a processing plant and maintains a dairy herd at Manhattan, Kans. About 150,000 pounds of milk are processed monthly at the plant. The herd consists of approximately 100 cows. Milk supplemental to the production of the University herd is obtained from a cooperative association acting in its capacity as a handler under the Greater Kansas City order. Distribution of fluid milk products packaged in the plant is limited to the University campus. The plant is equipped to manufacture almost any dairy product including ice cream, cottage cheese, butter, and nonfat dry milk. The manufactured products are used for educational, research purposes. In some months milk excess to the fluid needs of the University is disposed of to other manufacturing plants. Excess milk moved to these other plants has not exceeded 17,000 pounds in any past month.

The dairy farm and plant of the University are operated for the purpose of carrying out a recognized function of the State of Kansas. The Kansas State University plant and the plant of any other governmental agency similarly situated should be exempted from regulation. This will have the effect of excluding from regulation the own-farm production of such operations.

The present source of supplemental supplies of the Kansas State University is milk moved in tank trucks directly from the farms of producers by a cooperative as diverted milk. Because the University plant is now and under the amended order would be a nonpool plant, milk received at the plant from sources other than Kansas City pool plants and Kansas City producers would not be subject to regulation by the order. Therefore, milk received at the University plant directly from producers' farms may qualify for pooling under the Kansas City order only on the basis of its having been diverted from a pool plant. Otherwise, such milk would lose its producer milk status and would not be pooled, classified and priced under the order.

During the holiday seasons, vacation periods, and on weekends, the own-farm production of the University is usually more than sufficient to supply all of its Class I needs. Excess milk that is moved from the University plant to pool plants cannot be depended upon by handlers in this market as either a regular or supplemental supply of milk. At times when the Kansas City market is short of milk for bottling needs the University is usually short of milk for fluid needs. Any excess milk from the University plant that may be received at pool plants is clearly surplus milk incidental to the operation of the University plant. Accordingly, the amended order should provide that milk received at pool plants from such exempt operation be allocated first to Class III milk. Any such milk that may be allocated to Class I at a pool plant would be subject to a compensatory payment at the difference between the Class III and the Class I prices.

The Kansas State University representative proposed that the University plant be permitted to purchase milk by transfer or diversion from pool plants for use in manufactured dairy products and have it classified as Class II or Class III milk. This proposal was supported by the principal cooperatives. Hence, if the authorized representative of the governmental agency certifies that milk received by transfer or diversion from pool plants was used in Class II or Class III products it shall be so classified.

(b) *Cooperative association payment plan.* The provision contained in the present Kansas City order that relates to the right of a cooperative association to pay members under such association's payment plan should be deleted from the amended order. In 7 U.S.C., section 608(c)(5)(F) of the Act which authorizes the issuance of Federal milk orders, this right to blend the net proceeds of all its sales in all markets in all use classifications is extended to a cooperative. No useful purpose would be served by including a similar provision in the individual milk order since it is provided under the overall statutory authority.

(c) *Other miscellaneous changes.* Certain parts of the Kansas City order need revision to make them more compatible with modern marketing conditions in the handling of milk in this area. These revisions do not change the essential effect of the provisions and have proved useful in the formulation of milk orders.

The dates for making payment to the market administrator for marketing service deductions and administrative expense should be changed from the 12th to the 14th day after the end of the month. This will assist in the efficient administration of the order and will coincide with the payment date of amounts due to the producer-settlement fund.

The present Kansas City order requires that a producer-handler provide proof satisfactory to the market administrator that all the resources necessary for the production of milk in his name are the personal enterprise and risk of such person. In addition to this requirement, under the amended order a producer-handler should also provide proof satisfactory to the market administrator that the processing, packaging, and distribution of the fluid milk products handled are his personal enterprise and risk. The term producer-handler is not intended to include any person who does not accept responsibility and risk for the operation of the plant in which the milk of his own production is packaged for sale.

The term "advance" payment used in the present Kansas City order should be "partial" payment under the amended order. This reference is more precise because producers do not receive payment for milk in advance of its delivery to handlers. They receive a partial payment from handlers on the 25th day of the month for milk delivered to pool plants during the first 15 days of the month. Final payment for milk is then made to the producer on or before the 15th day of the month following the month in which the milk is delivered to a handler.

A "diverted milk" definition is provided for easy reference throughout other provisions of the order.

Cooperatives and handlers supported revising the order to permit the pro rata assignment at a pool plant of producer milk received from pool supply plants, other order plants, and unregulated supply plants in determining Class I location adjustments. The procedure suggested by proponents for assigning milk for Class I location adjustment credit should be adopted.

Most of the producer milk in this proposed expanded Kansas City area is received directly at distributing plants from producers' farms. When milk is so delivered by producers, all of the costs of transporting milk to these distributing plants is borne by such producers. There is only one pool supply plant serving the area. Under the present assignment of receipts for the purpose of calculating Class I location adjustment credits, milk received at distributing plants from a supply plant receives Class I adjustment credit only after all receipts directly at the distributing plant from producers' farms are assigned Class I and milk from other order plants and unregulated supply plants receives a pro rata share of Class I use at the distributing plant.

For the handler who buys his milk delivered from farms to his distributing plant, there are no additional costs due to transportation on the Class II milk which he may need in his plant operations. However, for a handler who purchases a part of his supply from a supply plant to which a location credit is applicable the location credit applies only on the assigned Class I use. Thus, for a distributing plant some additional cost is involved in procuring milk from a supply plant in that such a plant will normally have some Class II milk for which a transportation credit is not allowable.

The pro rata assignment of Class I disposition in the distributing plant to all producer milk whether received from another pool plant or directly from producers' farms will reduce the cost advantage which handlers purchasing milk

directly from producers' farms now enjoy as compared to those who purchase some milk from supply plants.

The Food and Agriculture Act of 1965 provides that any base plan to become effective in any marketing order must be approved separately by producers in a referendum in which each individual producer has one vote. This Act further provides that disapproval of such order provisions shall not be considered disapproval of the order or other terms of the order. Accordingly, the base and excess provisions of this order are listed herein separately and will be subject to the separate voting procedure in a referendum as provided in such Act.

*Rulings on proposed findings and conclusions.* Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

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

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

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

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 3 cents per hundredweight or such amount not to exceed 3 cents per hundredweight as the Secretary may prescribe, with respect to (i) producer milk (including such handler's own production), (ii) other source milk allocated to Class I pursuant to § 1064.46(a) (3) and (7) and the corresponding steps of § 1064.46(b), and (iii) Class I milk disposed of from a partially regulated distributing plant (except a handler exempt pursuant to § 1064.60) on routes in the marketing area that exceeds Class I milk received during the month at such plants from pool plants and other order plants.

*Rulings on exceptions.* In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

*Marketing agreement and order.* Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Greater Kansas City Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Greater Kansas City Marketing Area" (which is a consolidation of and amendment to the orders regulating the handling of milk in the St. Joseph, Mo., and Greater Kansas City marketing areas), which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

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

*Referenda order; determination of representative period; and designation of referenda agent.* It is hereby directed that a referendum be conducted to determine whether the issuance of the attached order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Greater Kansas City marketing area, is approved or favored by the producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area. This referendum shall be conducted to determine whether the issuance of all amendments except those applicable to the base and excess plan as specified in the attached order amending the order are approved or favored by the producers.

It is hereby directed that a separate referendum in which each individual producer has one vote be conducted to determine whether the issuance of the base and excess plan of payment to producers as specified in the attached order amending the order, as amended, regulating the handling of milk in the Greater Kansas City marketing area, is separately approved or favored by the producers as defined under the terms of the order, as amended and as so proposed to be amended, and who during the representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The month of June 1966 is hereby determined to be the representative period for the conduct of such referenda. Mr. U. Grant Grayson is hereby designated agent of the Secretary to conduct such referenda in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (30 F.R. 15412), such referenda to be completed on or before the 30th day from the date this decision is issued.

Signed at Washington, D.C., on August 10, 1966.

GEORGE L. MEHREN,
*Assistant Secretary.*

*Order[1] Amending the Order Regulating the Handling of Milk in the Greater Kansas City Marketing Area*

**§ 1064.0 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 Greater Kansas City 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 con-

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met and for the additional provisions and insertions 1 through 13 relating to the base and excess plan, unless and until the requirements of § 608c(5)(B)(ii)(d) of the Agricultural Marketing Agreement Act of 1937, as amended, have been met.

ditions 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, 3 cents per hundredweight or such amount not to exceed 3 cents per hundredweight as the Secretary may prescribe, with respect to (i) producer milk (including such handler's own production), (ii) other source milk allocated to Class I pursuant to § 1064.46(a) (3) and (7) and the corresponding steps of § 1064.46(b), and (iii) Class I milk disposed of from a partially regulated distributing plant (except a handler exempt pursuant to § 1064.60) on routes in the marketing area that exceeds Class I milk received during the month at such plants from pool plants and other order plants.

*Order relative to handling.* It is therefore ordered, that on and after the effective date hereof, the orders regulating the handling of milk in the St. Joseph, Mo., and Greater Kansas City marketing areas shall be amended and consolidated into one order and the handling of milk in the consolidated marketing area (redefined as the Greater Kansas City marketing area) shall be in conformity to and in compliance with the terms and conditions of Part 1064 as hereby amended. Part 1061 is hereby revoked and Part 1064 is hereby amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Associate Administrator, on June 30, 1966, and published in the FEDERAL REGISTER on July 7, 1966 (31 F.R. 9279; F.R. Doc. 66-7373) shall be and are the terms and provisions of this order, and are set forth in full herein subject to the following revisions:

1. Section 1064.12(b) is revised.
2. Section 1064.50 is revised.
3. Section 1064.62(c) is revised.
4. The provisions relating to the base and excess plan are revised to add the month of July as a base-paying month.

DEFINITIONS

**§ 1064.1 Act.**

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

**§ 1064.2 Secretary.**

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

**§ 1064.3 Department.**

"Department" means the U.S. Department of Agriculture.

**§ 1064.4 Person.**

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

**§ 1064.5 Cooperative association.**

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

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or milk products for its members.

**§ 1064.6 Greater Kansas City marketing area.**

"Greater Kansas City marketing area," hereinafter called "marketing area," means all the territory within the boundaries of the counties listed below, including territory within such boundaries occuped by Government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments:

MISSOURI COUNTIES

| | |
|---|---|
| Andrew. | Henry. |
| Atchison. | Holt. |
| Bates. | Jackson. |
| Buchanan. | Johnson. |
| Cass. | Lafayette. |
| Clay. | Nodaway. |
| Clinton. | Pettis. |
| Daviess. | Platte. |
| De Kalb. | St. Clair. |
| Gentry. | Worth. |

KANSAS COUNTIES

| | |
|---|---|
| Atchison. | Marshall. |
| Brown. | Miami. |
| Clay. | Morris. |
| Cloud. | Nemaha. |
| Dickinson. | Ottawa. |
| Doniphan. | Pottawatomie. |
| Douglas. | Republic. |
| Geary. | Riley. |
| Jackson. | Saline. |
| Jefferson. | Shawnee. |
| Johnson. | Wabaunsee. |
| Leavenworth. | Washington. |
| Lyon. | Wyandotte. |

**§ 1064.7 Handler.**

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant to a nonpool plant or a pool supply plant for the account of such cooperative association;

(c) Any cooperative association with respect to the milk of its producers which is received by the cooperative from the farm for delivery to the pool plant of another handler in a tank truck owned or operated by or under contract to such cooperative association if the cooperative association, prior to delivery, notifies the market administrator in writing that it will be the handler for the milk. Such milk shall be considered to have been received at the location of the pool plant to which delivery is made;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler, any person who operates an unregulated supply plant, or any person who operates an other order plant that is either a distributing plant or a supply plant; and

(f) A state educational institution which operates either a nonpool distributing plant or supply plant.

**§ 1064.8 Producer-handler.**

"Producer-handler" means a person who operates both a dairy farm and a distributing plant at which each of the following conditions is met during the month:

(a) Milk is received from the dairy farm of such person but from no other dairy farm;

(b) The butterfat or skim milk disposed of in the form of a fluid milk product does not exceed the butterfat or skim milk, respectively, received in the form of milk from the dairy farm of such person and in the form of a fluid milk product from pool plants of other handlers; and

(c) Such person shall furnish proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for the production of milk in his name and the operation of the processing and packaging business are the personal enterprise and risk of such person.

**§ 1064.9 Producer.**

"Producer" means any person (except a handler pursuant to § 1064.7(f), or a producer-handler as defined in any order (including this part) issued pursuant to the Act, or a person who is a producer of the same milk under the terms of another order issued pursuant to the Act) who produces milk in compliance with Grade A insepction requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1064.15 from a pool plant to a nonpool plant.

**§ 1064.10 Distributing plant.**

"Distributing plant" means a plant from which a Grade A fluid milk product that is processed or packaged in such plant is disposed of during the month in the marketing area on routes.

**§ 1064.11 Supply plant.**

"Supply plant" means a plant from which a Grade A fluid milk product is shipped during the month to a pool plant.

**§ 1064.12 Pool plant.**

"Pool plant" means a plant (except a plant exempt pursuant to §§ 1064.60 or 1064.62) specified in paragraph (a) or (b) of this section:

(a) A distributing plant from which during the month or the immediately preceding month:

(1) Not less than 15 percent of the total Grade A fluid milk products received at such plant, including producer milk diverted to other plants pursuant to § 1064.15 by the handler operating such plant is disposed of in the marketing area on routes; and

(2) Not less than the following percentage of the total Grade A fluid milk products received at such plant, including producer milk diverted to other plants pursuant to § 1064.15 by the handler operating such plant is disposed of on routes: *Provided*, That the combined receipts and disposition of each handler who operates more than one distributing plant, each of which meets the performance requirement of subparagraph (1) of this paragraph, shall be used in determining the percentages specified in this subparagraph:

(i) April through June, 35 percent;

(ii) September and October, 50 percent; and

(iii) All other months, 45 percent.

(b) A supply plant from which during the month the volume of Grade A fluid milk products shipped to and received at pool plants pursuant to paragraph (a) of this section and/or disposed of in the marketing area as Class I on routes is not less than 50 percent of the volume of Grade A milk received from dairy farmers at such plant (including receipts from a handler pursuant to § 1064.7(c) except receipts of diverted milk pursuant to § 1064.15): *Provided*, that any supply plant which is a pool plant by reason of meeting the required percentages of this paragraph during 4 of the 5 months of September through January shall be pooled for the following months of February through August if the required percentages pursuant to this paragraph are not met, unless such operator requests the market administrator in writing that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and thereafter until the plant qualifies as a pool plant on the basis of shipments.

**§ 1064.13 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 (except the plant of a handler pursuant to § 1064.7(f), an other order plant, or a producer-handler plant) from which Grade A fluid milk products in consumer-type packages or dispenser units are distributed in the marketing area on routes during the month.

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and which is not an other order plant, a producer-handler plant, or a plant of a handler pursuant to § 1064.7(f).

**§ 1064.14 Producer milk.**

"Producer milk" means the skim milk and butterfat contained in Grade A milk:

(a) Received at a pool plant directly from a producer or a handler pursuant to § 1064.7(c);

(b) Diverted subject to the provisions of § 1064.15 from a pool plant to a pool supply plant or to a nonpool plant other than an other order plant; or

(c) Received by a cooperative association handler pursuant to § 1064.7(c) from producers in excess of the quantity delivered to pool plants.

**§ 1064.15 Diverted milk.**

"Diverted milk" means producer milk that is normally received at a pool distributing plant but which is moved directly from a dairy farm to a nonpool plant or to a pool supply plant for the account of a handler operating a pool distributing plant or a handler pursuant to § 1064.7(b). Such milk shall be deemed to have been received by the diverting handler at the location of the pool plant from which diverted except that milk diverted to a plant located more than 125 miles by the shortest highway distance as determined by the market administrator from the nearest of the City Halls of Kansas City, Mo., or Topeka, Kans., shall be deemed to have been received at the location of the plant to which diverted in applying §§ 1064.53 and 1064.81. The diversion of producer milk from a pool plant to a nonpool plant or a pool supply plant is subject to the following conditions:

(a) A handler pursuant to § 1064.7(b) may divert for its account without limit during the other days of the month the milk of any member producer whose milk is received at a pool distributing plant for at least 6 days' production during the month. The total quantity of milk so diverted may not exceed 25 percent in each of the months of July through December and 50 percent in each of the months of January through June of its member producer milk received at all pool distributing plants during the month;

(b) A handler in his capacity as the operator of a pool distributing plant may divert for his account the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to paragraph (a) of this section, whose milk is received at his pool distributing plant for at least 6 days production during the month, without limit during the other days of such month. However, the total quantity of milk so diverted may not exceed 25 percent in each of the months of July through December and 50 percent in each of the months of January through June of the milk received at such plant during the month from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (a) of this section; and

(c) Diversions in excess of the applicable percentages pursuant to paragraphs (a) and (b) of this section shall first be assigned to diversions to nonpool plants and any excess quantity assigned to nonpool plants shall not be producer milk and shall not be deemed to have been received by the diverting handler. The diverting handler shall specify the dairy farmers whose milk shall not be included as producer milk pursuant to this paragraph. Excess diversions to a pool supply plant shall be producer milk at the supply plant in applying §§ 1064.12, 1064.53, and 1064.81.

**§ 1064.16 Other source milk.**

"Other source milk" means the skim milk and butterfat contained in or represented by:

(a) Receipts during the month of fluid milk products except:

(1) Producer milk;

(2) Fluid milk products received from other pool plants;

(3) Fluid milk products in inventory at the beginning of the month; and

(4) Sterilized cream received and disposed of in the same hermetically sealed container; and

(b) Products (other than fluid milk products, cottage cheese and cottage cheese curd) from any source (including those produced at the plant) that are reprocessed, converted into or combined with another product in the plant during the month, and any disappearance of products other than fluid milk products not otherwise accounted for.

**§ 1064.17 Fluid milk product.**

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, fortified milk or skim milk, reconstituted milk or skim milk, sweet or sour cream and any mixture of such cream and milk or skim milk (including such mixtures containing less than the required butterfat standard for cream but not including any cultured sour mixtures to which cheese or any food substance other than a milk product has been added in an amount not less than 3 percent by weight of the finished product) and concentrated (frozen or fresh) milk, flavored milk, or flavored milk drinks which are neither sterilized nor in hermetically sealed cans.

**§ 1064.18 Route.**

"Route" means a delivery either direct or through a distributing facility such as a distribution point, a plant store, a vendor or vending machine of a fluid milk product classified as Class I pursuant to § 1064.41(a)(1), other than a delivery to a pool plant or a nonpool plant.

MARKET ADMINISTRATOR

**§ 1064.20 Designation.**

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall

be entitled to such compensation as may be determined by, and shall be subject to removal by the Secretary.

§ 1064.21 Powers.

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

(a) Administer its terms and provisions;

(b) Receive, investigate, and report to the Secretary complaints of violations;

(c) Make rules and regulations to effectuate its terms and provisions; and

(d) Recommend amendments to the Secretary.

§ 1064.22 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 such duties, and conditioned upon the faithful performance of such duties in an amount and with surety thereon satisfactory to the Secretary;

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

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

(d) Pay out of funds provided by § 1064.88 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 1064.87) 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 herein, and upon request by the Secretary surrender the same to such other person as the Secretary may designate;

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

(g) Verify all reports and payments by each handler by audit or such other investigation as may be necessary, of such handler's records and facilities and of the records and facilities of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends;

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

(1) Made reports pursuant to §§ 1064.30 through 1064.32,

(2) Maintained adequate records and facilities pursuant to § 1064.33, or

(3) Made payments pursuant to §§ 1064.80 through 1064.86;

(i) On or before the 14th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from such cooperative association in its capacity as a handler pursuant to § 1064.7(c) and directly from members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in proportion to the utilization by such handler in each class remaining after the allocation pursuant to § 1064.46(a) (1) through (9) and the corresponding steps of § 1064.46(b);

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

(1) On or before the 5th day of each month, the minimum prices for Class I milk pursuant to § 1064.51(a) and the Class I butterfat differential pursuant to § 1064.52, both for the current month; and on or before the 5th day of each month the minimum prices for Class II milk pursuant to § 1064.51(b) and Class III milk pursuant to § 1064.51(c) and the Class II and Class III butterfat differentials pursuant to § 1064.52, all for the month immediately preceding; and

(2) On or before the 12th day of each month the applicable uniform prices computed pursuant to §§ 1064.71 and 1064.72 and the producer butterfat differential computed pursuant to § 1064.82, both applicable to milk delivered during the previous month;

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

(l) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1064.46(a)(8) and the corresponding step of § 1064.46(b), the market administrator shall estimate and publicly announce the combined utilization (to the nearest whole percentage) in Class II and Class III 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 fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1064.46 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 fluid milk products to an other order plant, the classification to which the skim milk and butterfat in such fluid milk products were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

REPORTS, RECORDS AND FACILITIES

§ 1064.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month each handler, except a producer-handler, a handler pursuant to § 1064.7(c), and a handler pursuant to § 1064.7(f), shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(a) The receipts at each plant of milk from each producer, the average butterfat test, the pounds of butterfat contained therein, the number of days on which milk was received from such producer and the total quantity of milk and butterfat received from each handler pursuant to § 1064.7(c);

(b) The quantities of skim milk and butterfat contained in (or used in the production of) fluid milk products received from other pool plants;

(c) The quantities of skim milk and butterfat contained in receipts of other source milk;

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

(e) The disposition of fluid milk products on routes wholly outside the marketing area;

(f) The pounds of skim milk and butterfat contained in all fluid milk products on hand at the beginning and at the end of the month; and

(g) Such other information with respect to receipts and utilization as the market administrator may prescribe;

(h) Each handler specified in § 1064.7(d) who operates a partially regulated distributing plant shall report as required in this section, with receipts in Grade A milk reported in lieu of those in producer milk. Such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of in the marketing area as Class I milk on routes.

§ 1064.31 Payroll reports.

On or before the 23d day of each month, each handler except a producer-handler, a handler pursuant to § 1064.7(f), or a handler making payments pursuant to § 1064.61(b) shall submit to the market administrator his producer payroll (or in the case of a handler making payments pursuant to § 1064.61(a) his payroll for dairy farmers delivering Grade A milk) for receipts during the preceding month which shall show:

(a) The total pounds of milk, the average butterfat test thereof, and the pounds of butterfat received from each producer and cooperative association, and the number of days on which milk was received from such producer;

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

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

§ 1064.32 Other reports.

(a) Each producer-handler, each handler pursuant to § 1064.7(f), and each handler making payments pursuant to § 1064.61(b) shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler pursuant to § 1064.7(c) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the 7th day after the end of each month the quantities of skim milk and butterfat in producer milk delivered to each pool plant in such month and all other producer milk for which it is the handler.

(c) Each handler who receives milk from producers, payment for which is to be made to a cooperative association pursuant to § 1064.80(c) shall report to such cooperative association with respect to each such producer, on forms approved by the market administrator, as follows:

(1) On or before the 23rd day of the month, the total pounds of milk received during the first 15 days of the month;

(2) On or before the 7th day after the end of the month;

(i) The pounds per shipment, the total pounds of milk and the average butterfat test of milk received from such producer during the month;

(ii) The amount or rate and nature of any deductions; and

(iii) The amount of any payments due such producer pursuant to § 1064.86.

§ 1064.33 Records and facilities.

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

(a) The receipts of producer milk and other source milk and the utilization of such receipts;

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

(c) Payments to producers and cooperative associations; and

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

§ 1064.34 Retention of records.

All books and records required under this order to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the calendar 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 in a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1064.40 Skim milk and butterfat to be classified.

(a) The skim milk and butterfat required to be reported pursuant to § 1064.30 and § 1064.32(b) shall be classified by the market administrator pursuant to the provisions of §§ 1064.41 through 1064.46; and

(b) If any water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk utilized or disposed of in such product shall be considered to be a quantity equivalent to the nonfat milk solids contained in such product plus all the water originally associated with such solids.

§ 1064.41 Classes of utilization.

Subject to the conditions set forth in §§ 1064.43 and 1064.44, 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 the form of a fluid milk product except:

(i) Fluid milk products classified as Class III pursuant to paragraph (c) (2), (3), (4), and (5) of this section;

(ii) Fluid milk products which are fortified with nonfat milk solids shall be Class I in an amount equal only to the weight of an equal volume of an unfortified product of the same butterfat content; and

(iii) Sterilized cream disposed of in the same hermetically sealed container in which received; and

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

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat used to produce or added to cottage cheese and cottage cheese curd except cottage cheese and cottage cheese curd disposed of as livestock feed or dumped after prior notification to and opportunity for verification by the market administrator: *Provided*, That Class II classification shall not include the weight of water associated with nonfat milk solids (as computed pursuant to § 1064.40) used to fortify fluid milk products used to produce or added to cottage cheese or cottage cheese curd.

(c) *Class III milk.* Class III milk shall be:

(1) Skim milk and butterfat used to produce:

(i) Any product other than those products designated as Class I or Class II pursuant to paragraphs (a) and (b) of this section; and

(ii) Cottage cheese and cottage cheese curd which is disposed of as livestock feed or dumped after prior notification to and opportunity for verification by the market administrator;

(2) Skim milk and butterfat delivered in bulk (not including consumer-type packages or dispenser units) to and used at commercial food establishments in the manufacture of processed foods for human consumption off the premises, bakery products or candy;

(3) Skim milk and butterfat in fluid milk products disposed of for livestock feed;

(4) Skim milk and butterfat dumped after prior notification to and opportunity for verification by the market administrator;

(5) In the weight of fortified fluid milk products which is not classified as Class I pursuant to paragraph (a)(1) of this section or as Class II pursuant to paragraph (b) of this section;

(6) Skim milk and butterfat in inventory of fluid milk products at the end of the month;

(7) Skim milk and butterfat, respectively, in shrinkage allocated pursuant to § 1064.42(b)(1) but not in excess of:

(i) Two percent of producer milk, except that received from a handler pursuant to § 1064.7(c) or diverted pursuant to § 1064.15 to a nonpool plant;

(ii) Plus 1.5 percent of milk received in bulk tank lots from other pool plants;

(iii) Plus 1.5 percent of producer milk received from a handler pursuant to § 1064.7(c) and receipts at a pool supply plant from a handler pursuant to § 1064.7(b), except that if the handler operating the pool plant files notice with the market administrator that the purchase of such milk is on the basis of farm tests and weights determined by farm bulk tank calibrations, the applicable percentage shall be 2 percent;

(iv) Plus 1.5 percent of milk received in bulk tank lots from other order plants, exclusive of the quantity for which Class II or Class III utilization was requested by the operators of both plants;

(v) Plus 1.5 percent of milk in bulk tank lots from unregulated supply plants, exclusive of the quantity for which Class II or Class III utilization was requested by the handler;

(vi) Less 1.5 percent of milk in bulk tank lots transferred from pool plants to other plants; and plus

(vii) In the case of milk received by a cooperative in its capacity as a handler pursuant to § 1064.7 (b) and (c) 0.5 percent of such receipts from producers as determined by farm tests and weights measured by farm bulk tank calibrations, unless the exception in subparagraph (7)(iii) of this paragraph applies; and

(8) Skim milk and butterfat in shrinkage allocated pursuant to § 1064.42(b)(2).

§ 1064.42 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 receipts of skim milk and butterfat in:

(1) The net quantity of producer milk and other milk specified in § 1064.41(c)(7); and

(2) Bulk fluid milk products in other source milk exclusive of that specified in § 1064.41(c)(7).

**§ 1064.43 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.

**§ 1064.44 Transfers.**

Skim milk or butterfat in the form of a fluid milk product shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred 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 in any class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1064.46(a)(8) and the corresponding step of § 1064.46(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1064.46(a)(3) and the corresponding step of § 1064.46(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 § 1064.46(a)(7) or (8) and the corresponding steps of § 1064.46(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, if such classification would change the classification of producer milk on the market or the classification of such other source milk received by the transferor handler during the month;

(b) As Class I milk if:

(1) Transferred from a pool plant in bulk or packaged form to a producer-handler;

(2) Transferred or diverted in bulk form from a pool plant to the plant of a handler pursuant to § 1064.7(f), unless the handler pursuant to § 1064.7(f) certifies that such milk is acquired for use in Class II or Class III products for research or educational purposes; and

(3) Transferred from a pool plant in packaged form to a nonpool plant that is neither an other order plant nor a producer-handler plant;

(c) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant, a producer-handler plant or the plant of a handler pursuant to § 1064.7(f), located more than 400 miles, by the shortest highway distance as determined by the market administrator, from the nearer of the City Halls of Kansas City, Mo., or Topeka, Kans., except that cream so transferred may be classified as Class III, subject to such verification of alternate utilization as the market administrator may make, if notice is given to the market administrator prior to shipment and each container is labeled or tagged with a certificate by the transferor that such cream is sold as Grade C cream for manufacturing only;

(d) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant, a producer-handler plant, or the plant of a handler pursuant to § 1064.7(f), located not more than 400 miles, by the shortest highway distance as determined by the market administrator, from the nearer of the city halls of Kansas City, Mo., or Topeka, Kans.; 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 pursuant to § 1064.30 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 together with the facilities of the plant, if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred or diverted shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any Class I utilization disposed of on routes in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of Grade A milk for such nonpool plant;

(ii) Any Class I utilization disposed of on routes in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply 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;

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred or diverted shall be classified as Class II milk to the extent such utilization is available and then to Class III milk; and

(v) If any skim milk or butterfat is transferred or diverted to a second nonpool plant under this paragraph the same conditions of audit, classification, and allocation shall apply; and

(e) 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 packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in Class I if allocated as a fluid milk product to Class I under the other order, in Class II if allocated to Class II under an order that provides three classes and in Class III if allocated to Class III under the other order or if allocated to Class II under an order that provides only two classes (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 II or Class III to the extent of the Class II or 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, if the transferee order provides for only 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 the other class shall be classified as Class III; and

(6) If the form in which any fluid milk product 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 § 1064.41.

**§ 1064.45 Computation of skim milk and butterfat in each class.**

For each month the market administrator shall correct mathematical and other obvious errors in the report of receipts and utilization submitted by each handler and shall compute the total

pounds of skim milk and butterfat, respectively, in each class for such handler.

**§ 1064.46 Allocation of skim milk and butterfat classified.**

After making the computations pursuant to § 1064.45, the market administrator shall determine the classification of producer milk for each handler as follows:

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

(1) Subtract from the total pounds of skim milk in Class III, the pounds of skim milk classified as Class III pursuant to § 1064.41(c)(7);

(2) Subtract from the remaining pounds of skim milk in each class, the pounds of skim milk in fluid milk products received in packaged form from other order plants as follows:

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

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products for which Grade A certification is not established, or which are from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order; and

(iv) Receipts of fluid milk products from a handler pursuant to § 1064.7(f);

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II milk or Class III milk but not in excess of such quantity, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from an unregulated supply plant:

(*a*) For which the handler requests Class II or Class III in series beginning with the requested class; or

(*b*) In series beginning with Class III, which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk, the sum of the pounds of skim milk in producer milk, receipts from other pool plants, and receipts in bulk from other order plants; and

(ii) Receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, if Class II or Class III was requested by the operators of both plants in series beginning with the requested class;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III milk, the pounds of skim milk in inventory of fluid milk products at the beginning of the month;

(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 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 fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraph (4)(ii) of this paragraph:

(i) In series beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated combined Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1064.22(m) or the percentage that combined Class II and Class III utilization remaining is of the total remaining utilization 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 fluid milk products from pool plants of other handlers according to the classification assigned pursuant to § 1064.44(a);

(10) If the pounds of skim milk remaining 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; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

## Minimum Prices

**§ 1064.50 Basic formula price.**

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the 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 simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the Department for the month. The basic formula price shall be rounded to the nearest cent. However, for the purpose of computing the Class I price for each month from the effective date of this order through March 1967, the basic formula price shall not be less than $4.

**§ 1064.51 Class prices.**

Subject to the provisions of §§ 1064.52 and 1064.53, and rounded to the nearest cent, the minimum class prices per hundredweight for the month shall be as follows:

(a) *Class I milk.* The Class I price shall be the basic formula price for the preceding month plus $1.10 during each of the months of April through July, plus $1.40 during all other months, and plus or minus a supply-demand adjustment of not more than 45 cents, computed as follows:

(1) Divide the amount computed pursuant to subdivision (i) of this subparagraph by the amount computed pursuant to subdivision (ii), multiply the result by 100 and round to the nearest whole number. The result shall be known as the "current utilization percentage."

(i) Add the total receipts of producer milk in the second and third months preceding.

(ii) Add the total gross volume of Class I milk at pool plants in the second and third months preceding, excluding interhandler transfers which duplicate Class I sales.

(2) Compute a "net deviation percentage" as follows:

(i) If the current utilization percentage is neither less than the minimum standard utilization percentage specified below nor in excess of the maximum standard utilization percentage specified below, the net deviation percentage is zero;

(ii) Any amount by which the current utilization percentage is less than the minimum standard utilization percentage specified below is a "minus net deviation percentage";

(iii) Any amount by which the current utilization percentage exceeds the maximum standard utilization percentage specified below is a "plus net deviation percentage."

| Delivery period for which price applies | Delivery period used in computation | Percentages | |
|---|---|---|---|
| | | Minimum | Maximum |
| January | October-November | 132 | 140 |
| February | November-December | 133 | 141 |
| March | December-January | 131 | 139 |
| April | January-February | 126 | 134 |
| May | February-March | 124 | 132 |
| June | March-April | 128 | 136 |
| July | April-May | 138 | 146 |
| August | May-June | 143 | 151 |
| September | June-July | 134 | 142 |
| October | July-August | 128 | 136 |
| November | August-September | 124 | 132 |
| December | September-October | 124 | 132 |

(3) For a minus "net deviation percentage" the Class I price shall be increased and for a plus "net deviation percentage" the Class I price shall be decreased as follows:

(i) One-half cent times each such percentage point of net deviation; plus

(ii) One-half cent times the lesser of:

(*a*) Each such percentage point of net deviation, or

(*b*) Each percentage point of net deviation of like direction (plus or minus, with any net deviation percentage of opposite direction considered to be zero for purposes of computations of this subparagraph) computed pursuant to subparagraph (2) of this paragraph for the month immediately preceding; plus

(iii) One-half cent times the least of:
(a) Each such percentage point of net deviation;
(b) Each percentage point of net deviation of like direction computed pursuant to subparagraph (2) of this paragraph for the month immediately preceding, or
(c) Each percentage point of net deviation of like direction computed pursuant to subparagraph (2) of this paragraph for the second preceding month;
(iv) Less one-half cent, if necessary, to round down to the nearest whole cent.

(b) *Class II milk.* The Class II price shall be the Class III price plus 15 cents but shall not be less than the basic formula price for the month; and

(c) *Class III milk.* The Class III price shall be the basic formula price for the month, but not to exceed a price computed as follows:

(1) Multiply by 4.2 the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade AA (93-score) bulk creamery butter per pound at Chicago as reported by the Department during the month: *Provided,* That if no price is reported for Grade AA (93-score) butter, the highest of the prices reported for Grade A (92-score) butter for that day shall be used;

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

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 48 cents, and round to the nearest cent.

**§ 1064.52 Butterfat differentials to handlers.**

For milk containing more or less than 3.5 percent butterfat, the class prices for the month pursuant to § 1064.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at a rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I milk.* Multiply the butter price specified in § 1064.50 by 0.12.

(b) *Class II milk.* Multiply the butter price specified in § 1064.50 by 0.115.

(c) *Class III milk.* Multiply the butter price specified in § 1064.50 by 0.115.

**§ 1064.53 Location adjustments to handlers.**

(a) For milk received from producers at a plant located in Brown, Doniphan, or Nemaha Counties in the State of Kansas, or in Andrew, Atchison, Buchanan, Clinton, Daviess, De Kalb, Gentry, Holt, Nodaway, or Worth Counties in the State of Missouri which is classified as Class I milk or assigned location adjustment pursuant to paragraph (c) of this section, and for other source milk for which location adjustments are applicable, the Class I price shall be reduced by 10 cents.

(b) For milk received from producers at a pool plant located outside the marketing area and more than 50 miles but not more than 70 miles by shortest highway distance as measured by the market administrator, from the nearer of the City Halls in Kansas City, Mo., or Topeka, Kans., which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (c) of this section and for other source milk to which location adjustments are applicable, the price computed pursuant to § 1064.51(a) shall be reduced by 10 cents, and by an additional 1.5 cents for each 10 miles or fraction thereof that such plant is more than 70 miles from such City Hall.

(c) For purposes of calculating such adjustment, bulk transfers between pool plants shall be assigned to the Class I disposition at the transferee plant prorated with the sum of receipts at such plant of producer milk and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants.

**§ 1064.54 Use of equivalent prices.**

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

APPLICATION OF PROVISIONS

**§ 1064.60 Exempt handlers.**

Sections 1064.40 through 1064.46, 1064.50 through 1064.53, 1064.61, 1064.70, 1064.71, and 1064.80 through 1064.88 shall not apply to a handler pursuant to § 1064.7(f), a producer-handler, or to a handler operating a plant from which less than an average of 600 pounds of Class I milk per day is distributed on routes in the marketing area.

**§ 1064.61 Obligations of handler operating a partially regulated distributing plant.**

Each handler who operates a partially regulated distributing plant except a handler exempt pursuant to § 1064.60 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 §§ 1064.30(h) and 1064.31 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 § 1064.70 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 § 1064.70(e) and a credit in the amount specified in § 1064.84(a)(2)(ii) with respect to receipts from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1064.30(h) and 1064.31 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 § 1064.12(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 in the marketing area on routes;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(4) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class III price).

**§ 1064.62 Plants subject to other Federal orders.**

The provisions of this part shall not apply to any plant which meets the requirements of paragraph (a), (b), or (c) of this section, except that the handler operating such plant shall with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administra-

tor at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1064.30 through 1064.32) and allow verification of such reports by the market administrator:

(a) A distributing plant qualified pursuant to § 1064.12 which also meets the pooling requirements of another Federal order and a greater volume of fluid milk products was disposed of during the month on routes in such other marketing area and to pool plants qualified on the basis of route distribution in such other 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 fluid product disposition is made in the above described manner in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated under such other order.

(b) A distributing plant qualified pursuant to § 1064.12 which also meets the pooling requirements of another Federal order and a greater volume of fluid milk products was disposed of during the month on routes in this marketing area and to pool plants qualified on the basis of route distribution 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 § 1064.12, which also meets the pooling requirements of another Federal order, from which greater direct marketing area route disposition and qualifying shipments are made to plants regulated under such other order than are made in this marketing area on routes and to plants regulated under this part, except that during the months of February through August if the operator of such plant gives written notification to the market administrator on or before the 1st day of any such month that he elects to maintain automatic pool status for such plants under this part for the month and each subsequent month through August.

DETERMINATION OF UNIFORM PRICE

**§ 1064.70 Computation of the net pool obligation of each pool handler.**

The net pool obligation of each pool handler (as described in § 1064.7 (a), (b), and (c)) 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 § 1064.46(c), by the applicable class prices (adjusted pursuant to §§ 1064.52 and 1064.53);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1064.46(a)(10) and the corresponding step of § 1064.46(b) by the applicable class prices;

(c) Add the amount obtained by multiplying the difference between the Class III price for the preceding month and:

(1) The Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1064.46(a)(5) and the corresponding step of § 1064.46(b); and

(2) The Class II price for the current month by the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1064.46(a)(5) and the corresponding step of § 1064.46(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 § 1064.46(a)(3) and the corresponding step of § 1064.46(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 weight was received, with respect to skim milk and butterfat subtracted from Class I pursuant to § 1064.46(a)(7) and the corresponding step of § 1064.46(b).

**§ 1064.71 Computation of uniform price.**

For each month the market administrator shall compute the "uniform price" per hundredweight of milk received from producers (or "weighted average price") as follows:

(a) Combine into one total the values computed pursuant to § 1064.70 for all handlers who filed the reports prescribed by §§ 1064.30 and 1064.32(b) for the month and who made the payments pursuant to §§ 1064.80 and 1064.84 for the preceding month;

(b) Add an amount equal to the total value of the location differentials computed pursuant to § 1064.81;

(c) Subtract, if the average butterfat content of the milk specified in paragraph (e) of this section is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent, an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 1064.82 and multiplying the result by the total hundredweight of such milk;

(d) Add an amount equal to not less than 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 § 1064.70 (e); and

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

PAYMENTS

**§ 1064.80 Time and method of payment.**

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of each month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) or (d) of this section, at not less than the applicable uniform price(s) pursuant to § 1064.71 adjusted by the butterfat differential computed pursuant to § 1064.82, subject to the location adjustment to producers pursuant to § 1064.81, and less the following amounts: (1) the payments made pursuant to paragraph (b) of this section, (2) marketing service deductions pursuant to § 1064.87, and (3) any deductions authorized by the producer: *Provided,* That if by such date such handler has not received full payment for such month pursuant to § 1064.85 he may reduce his total payment to all producers uniformly by not less than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator.

(b) On or before the 25th day of each month to each producer (1) for whom payment is not received from the handler by a cooperative association pursuant to paragraphs (c) and (d) of this section; and (2) who had not discontinued shipping milk to such handler before the 18th day of the month, a partial payment with respect to milk received from such producer during the first 15 days of the month at the approximate value of such milk, not to be less than the Class III price for 3.5 percent milk for the preceding month, without deduction for hauling.

(c) To a cooperative association which has filed a written request for such payment with such handler and with respect to producers for whose milk the market administrator determines such cooperative association is authorized to collect payment as follows:

(1) On or before the 20th day of the month, an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (b) of this section less any deductions authorized in writing by such cooperative association;

(2) On or before the 14th day after the end of each month an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a) of this section, less proper deductions authorized in writing by such cooperative association.

(d) To a cooperative association with respect to milk for which such association is acting in the capacity of a handler pursuant to § 1064.7(c):

(1) On or before the 20th day of the month an amount equal to the rate specified in paragraph (b) times the volume received during the first 15 days of the month; and

(2) On or before the 14th day after the end of each month an amount equal to not less than the value of such milk at the applicable weighted average or uniform price pursuant to § 1064.71 less payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments to producers pursuant to paragraph (a) of this section, each handler shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The pounds per shipment, the total pounds, and the average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to the producer is required under the provisions of §§ 1064.80, 1064.81, and 1064.82;

(4) The rate which is used in making payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deduction claimed under paragraph (b) of this section and § 1064.87 together with a description of the respective deductions;

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

**§ 1064.81 Location differentials to producers and on nonpool milk.**

(a) The uniform price pursuant to § 1064.71 for producer milk received at a pool plant or diverted from a pool plant shall be reduced according to the location of the pool plant at the rate set forth in § 1064.53, subject to § 1064.15.

(b) For purposes of computations pursuant to §§ 1064.84 and 1064.85 the weighted average price shall be adjusted at the rates set forth in § 1064.53 applicable at the location of the nonpool plant from which the milk was received.

**§ 1064.82 Producer butterfat differential.**

In making payments pursuant to § 1064.80, there shall be added to or subtracted from the uniform price for each one-tenth of 1 percent that the average butterfat content of the milk received from the producer is above or below 3.5 percent, respectively, an amount computed by adding 4 cents to the butter price specified in § 1064.50 dividing the resulting sum by 10, and rounding to the nearest one-tenth cent.

**§ 1064.83 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 funds received pursuant to paragraph (a) of this section and out of which he shall make all payments required pursuant to paragraph (b) of this section.

(a) Payments made by handlers pursuant to § 1064.61 (a) and (b), and §§ 1064.84 and 1064.86.

(b) Payments due handlers pursuant to §§ 1064.85 and 1064.86: *Provided*, That payments due any handler shall be offset by payments due from such handler pursuant to §§ 1064.61, 1064.84, 1064.86, 1064.87 and 1064.88.

**§ 1064.84 Payments to the producer-settlement fund.**

(a) On or before the 14th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in subparagraph (1) of this paragraph exceed the amounts specified in subparagraph (2) of this paragraph.

(1) The total of the net pool obligation computed pursuant to § 1064.70 for such handler; and

(2) The sum of:

(i) The amount required to be paid producers (including payments to producers through cooperative associations) pursuant to § 1064.80 before deductions authorized by the producer or cooperative association or for marketing services pursuant to § 1064.87; and

(ii) The value at the weighted average price(s) applicable at the location of the plant(s) from which received (not to be less than the Class III price) with respect to other source milk for which a value is computed pursuant to § 1064.70(e).

**§ 1064.85 Payments out of the producer-settlement fund.**

On or before the 14th 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 § 1064.84(a)(2) exceeds the amount computed pursuant to § 1064.84(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payment and shall complete such payments as soon as the necessary funds are available.

**§ 1064.86 Adjustment of accounts.**

(a) Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due the market administrator or any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of the amount due and payment therefor shall be made within 5 days if such amount is due the market administrator, or on or before the next date for making payments to producers or a cooperative association, if such amount is due them. Whenever such audit discloses errors resulting in moneys due such handler from the market administrator, payment shall be made within 5 days.

(b) *Overdue accounts.* Any unpaid obligation of a handler pursuant to §§ 1064.80, 1064.84, 1064.86(a), 1064.87, and 1064.88 shall be increased one-half of 1 percent on the 1st day of the month next following the due date of such obligation and on the 1st day of each month thereafter until such obligation is paid.

**§ 1064.87 Marketing service.**

(a) *Deductions.* Except as set forth in paragraph (b) of this section, each handler in making payments to producers other than himself pursuant to § 1064.80(a), shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from producers during the month, and shall pay such deductions to the market administrator on or before the 12th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from and to provide market information to such producers.

(b) *Deductions with respect to members of a cooperative association.* In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions from the payments to be made directly to producers pursuant to § 1064.80(a), as are authorized by such producers, and on or before the 12th day after the end of each month, pay over such deductions to the association of which such producers are members, accompanied by a statement showing the amount of the deduction and the quantity of milk for which it was computed for each such producer.

**§ 1064.88 Expense of administration.**

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 12th day after the end of the month 3 cents per hundredweight, or such lesser amount as the Secretary may prescribe, of (a) producer milk (including such handler's own production), (b) other source milk allocated to Class I pursuant to § 1064.46(a)(3) and (7) and the corresponding steps of § 1064.46(b), and (c) Class I milk disposed of from a partially regulated distributing plant (except by a handler exempt pursuant to § 1064.60) 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.

**§ 1064.89 Termination of obligation.**

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

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

(1) The amount of the obligation;

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

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

(b) If a handler fails or refuses, with respect to any obligation under this order, to make available to the market administrator or his representative all books and records required by this order 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 1st day of the calendar month following the month during which all such books and records pertaining to such obligations are made available to the market administrator or his representatives.

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

**§ 1064.90 Effective time.**

The provisions of this part or any amendment hereto shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 1064.91.

**§ 1064.91 Suspension or termination.**

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

**§ 1064.92 Continuing obligations.**

If, upon the suspension or termination of any or all provisions of this part, there are any obligations under this part 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.

**§ 1064.93 Liquidation.**

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

MISCELLANEOUS PROVISIONS

**§ 1064.100 Agents.**

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

**§ 1064.101 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.

*Base and excess plan.* The provisions relating to a base and excess plan which if approved by individual producers voting in a separate referendum would require the following additional provisions and insertions as indicated:

1. Section 1064.19 is added as follows:

**§ 1064.19 Base milk and excess milk.**

(a) "Base milk" means that producer milk received by a handler from a producer in each month of February through July that is not in excess of such producer's daily base computed pursuant to § 1064.65 multiplied by the number of days of production in the month that such milk was received by the handler.

(b) "Excess milk" means that producer milk received by a handler from a producer in each month of February through July that is in excess of base milk received from such producer in such month and shall include all milk received from a producer for whom no daily base can be computed pursuant to § 1064.65.

2. In § 1064.22, paragraph (l) is added as follows:

**§ 1064.22 Duties.**

* * * * *

(l) On or before February 1 of each year in writing notify each producer who made deliveries of milk during the previous September through December and the handler receiving milk from such producer of the daily base established by such producer;

* * * * *

3. In § 1064.30(a), immediately after the provision "the number of days on which milk was received from such producer", the following provision is inserted: "(for each of the months of February through July, the total pounds of base and excess milk received from each producer)".

4. In § 1064.31(a), immediately after the provision "cooperative association,", the following provision is inserted: "including, for each month of February through July, such producer's deliveries of base milk and excess milk."

5. In § 1064.32(b), the following provision is added to the end of such paragraph: "For each month of February through July the quantity of producer milk that is base milk and excess milk shall also be reported."

6. A centerheading and § 1064.65 is added as follows:

DETERMINATION OF BASE

**§ 1064.65 Computation of daily base for each producer.**

The daily base for each producer applicable during each month of February through July, inclusive, shall be determined by the market administrator as follows: Divide the total pounds of milk received by a handler at a pool plant from such producer during the immediately preceding months of September through December by the number of days during such period on which milk was received from such producer or by 90 whichever is greater. In the case of producers delivering milk to a plant which first became a pool plant during or after the end of the base-forming period, the daily average base for each producer at such plant shall be that which would have been calculated for such producer for the entire base-forming period if the handler's plant had been a pool plant during such period.

7. Section 1064.66 is added as follows:

**§ 1064.66 Daily base rules.**

(a) Except as provided in paragraph (b) of this section, a daily base shall apply only to milk produced by the producer in whose name such milk was delivered to the handler(s) during the base forming period.

(b) A producer may transfer his daily base during the period of February through July by notifying the market administrator in writing before the last day of any delivery period that such base is to be transferred to the person named in such notice but under the following conditions only:

(1) In the event of the death or entry into military service of a producer, the entire daily base may be transferred to a member of such producer's immediate family who carries on the dairy operation on the same farm; and

(2) If a base is held jointly and such joint holding is terminated on the basis of written notice to the market administrator from the joint holders the entire daily base may be transferred to one of the joint holders, or divided in accordance with such notice between the former

joint holders if they continue dairy operations.

8. In § 1064.71(f), immediately after the provision "'weighted average price' and", the following provision is inserted: "for the months of August through January shall be".

9. Section 1064.72 is added as follows:

**§ 1064.72 Computation of uniform prices for base milk and excess milk.**

For each month of February through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk as follows:

(a) Subtract from the amount resulting from the computations made pursuant to paragraphs (a) through (d) of § 1064.71 an amount computed by multiplying the weighted average price times the hundredweight of milk specified in § 1064.71(e)(2);

(b) Determine the value of excess milk by multiplying the hundredweight of producer milk determined to be excess milk in series beginning with Class III by the respective class prices for milk of 3.5 percent butterfat content, and adding together the resulting amounts;

(c) Divide the total value of excess milk obtained in paragraph (b) of this section by the total hundredweight of such milk, and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(d) Subtract the value of excess milk obtained in paragraph (b) of this section from the aggregate value of milk obtained in paragraph (a) of this section and adjust by any amount involved in adjusting the uniform price of excess milk to the nearest cent;

(e) Divide the amount obtained in paragraph (d) of this section by the total hundredweight of producer milk determined to be base milk; and

(f) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (e) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content received from producers.

10. In § 1064.80(a), immediately after the provision "pursuant to § 1064.71", the following provision is inserted: "or § 1064.72".

11. In § 1064.81(a), immediately after the provision "pursuant to § 1064.71", the following provision is inserted: "and the uniform price for base milk pursuant to § 1064.72".

12. In § 1064.84, paragraph (b) is added as follows:

**§ 1064.84 Payments to the producer-settlement fund.**

* * * * *

(b) During each month of February through July each handler pursuant to § 1064.7(c), on or before the 14th day after the end of the month, shall pay to the market administrator the amount, if any, by which the total amounts specified in subparagraph (1) of this paragraph exceed the amounts specified in subparagraph (2) of this paragraph:

(1) The total value of such association's member producer milk at the applicable weighted average price computed pursuant to § 1064.71; and

(2) The total value of such association's member producer base and excess milk at the applicable uniform base and excess prices computed pursuant to § 1064.72.

13. In § 1064.85, immediately after the provision "pursuant to § 1064.84(a)(2)" the provision "or (b)(2)" is inserted and immediately after the provision "pursuant to § 1064.84(a)(1)" the provision "or (b)(1)" is inserted.

[F.R. Doc. 66-8857; Filed, Aug. 12, 1966; 8:50 a.m.]

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## [7 CFR Parts 1073, 1074]

[Docket Nos. AO 173-A17, AO 249-A7]

# MILK IN WICHITA, KANS., AND SOUTHWEST KANSAS MARKETING AREAS

## Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Wichita, Kans., on November 16–17, 1965, pursuant to notice thereof issued on October 5, 1965 (30 F.R. 12847), and was subsequently reopened June 7, 1966, pursuant to notice issued May 27, 1966 (31 F.R. 7831).

Upon the basis of the evidence introduced at the hearings and the records thereof, the Deputy Administrator, Regulatory Programs, on June 29, 1966 (31 F.R. 9218; F.R. Doc. 66-7318), filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto. On June 29, 1966 (31 F.R. 9130), the Assistant Secretary issued his decision on the reopened hearing (June 7–8, 1966, at St. Louis) so far as it affected the computation of Class I prices for Wichita, Kans., and Southwest Kansas orders and the other 71 milk orders. A final order amending each of the 73 orders was issued by the Assistant Secretary July 1, 1966 (31 F.R. 9206; F.R. Doc. 66-7376). The Class I milk price issue of the reopened hearing as it relates to the merged and enlarged Wichita order is made a part of this decision.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision (31 F.R. 9218; F.R. Doc. 66-7318) are hereby approved and adopted and are set forth in full herein subject to the following modifications:

1. In the 17th paragraph under Issue No. 1, a minor editorial change is made; and

2. A new paragraph is substituted for the paragraph preceding the final paragraph of Issue 4(a), Class I price.

The material issues on the record of the hearing relate to:

1. Merger of the Wichita, Kans., and Southwest Kansas orders with inclusion of additional territory in the marketing area.
2. Milk to be priced and pooled.
3. Classification and allocation.
4. Class prices.
5. Location adjustments to the Class I and producer prices.
6. Take out-pay back plan of distributing returns to producers.
7. Miscellaneous administrative and conforming changes.

A decision and order based on the record of this hearing concerning the classification and pricing of skim milk and butterfat used to produce cottage cheese as it applies to the present Wichita order for the period required for action on the remaining issues have been issued. This decision concerns itself with the classification and pricing of cottage cheese as it applies to the proposed merged and expanded marketing area, as well as all other 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. *Merger of Orders No. 73 and 74.* Order No. 73 regulating the handling of milk in the Wichita, Kans., marketing area and Order No. 74 regulating the handling of milk in the Southwest Kansas marketing area should be merged into a single regulation and the marketing area extended. The order thus created should be designated as the Wichita, Kans., marketing area.

The marketing area should include all the territory within the following 43 Kansas counties:

| Zone I | |
|---|---|
| Barber. | Marion. |
| Barton. | McPherson. |
| Butler. | Pawnee. |
| Comanche. | Pratt. |
| Cowley. | Reno. |
| Edwards. | Rice. |
| Ellis. | Rush. |
| Harper. | Russell. |
| Harvey. | Sedgwick. |
| Kingman. | Stafford. |
| Kiowa. | Sumner. |
| **Zone II** | |
| Clark. | Lane. |
| Finney. | Meade. |
| Ford. | Morton. |
| Gove. | Ness. |
| Grant. | Scott. |
| Gray. | Seward. |
| Greeley. | Stanton. |
| Hamilton. | Stevens. |
| Haskell. | Trego. |
| Hodgeman. | Wichita. |
| Kearny. | |

The present Wichita, Kans., order includes the Kansas counties of Butler, Cowley, Harvey, Marion, Sedgwick, and Sumner. The total population of these six counties is slightly more than 460,000.

The present Southwest Kansas marketing area includes the territory within the boundaries of 26 cities and 14 townships located in 23 different Kansas counties. The total population of the cities and townships of the marketing area is approximately 124,000. The total population of the 23 counties is 195,000.

In addition to the 23 counties where cities and townships of the Southwest Kansas marketing area are located it is proposed to add 14 counties. One of these counties is Haskell County, which is surrounded by certain of the present 23 counties. Another is Morton County adjoining the States of Colorado and Oklahoma in the extreme southwest corner of Kansas. Seven other counties are Greeley, Wichita, Lane, Gove, Trego, Ellis, and Russell, lying to the north of the present Southwest Kansas marketing area. The population of these nine counties is 57,000. It is further proposed that the Kansas counties of McPherson, Rice, Reno, Kingman, and Harper, with a population of 118,000, be added to the marketing area. These five counties lie between the present marketing areas. These additions will result in one contiguous and practicable marketing area composed of 43 Kansas counties. The principal cities in the territory to be added are Hutchinson (Reno County) with a population of about 38,000, Hays (Ellis County), 13,000; McPherson (McPherson County) 10,000; Russell (Russell County) 6,000 and Lyons (Rice County) 5,000. The total population of the newly created area is approximately 830,000.

There is no further need of two separate orders. Milk moves freely between the two markets both from the farm, in bulk transfers and in processed form.

There are two cooperative associations representing producers in these marketing areas. The major cooperative association currently represents almost all the producers in the Southwest Kansas market and approximately 75 percent of producers in the present Wichita market. This cooperative operates supply plant facilities in Dodge City and Wichita, Kans., and a manufacturing plant located at Arkansas City. It supplies, at the present time, approximately 80 percent of the milk needed for fluid milk products by Wichita handlers and nearly all of the supply of fluid milk products needed by handlers currently regulated by the Southwest Kansas order. The association moves milk in bulk tanks both from farms and from these plants to handler plants in each of the presently constituted marketing areas. In addition to furnishing the supply of milk for handlers in these two marketing areas, it also supplies milk to the Neosho Valley, Kansas City, and Rio Grande Valley marketing areas. Bulk milk supplies are also furnished several unregulated markets. It has been the practice of this cooperative to blend the returns from the sale of milk from the various markets to its member producers.

During the past several years handlers regulated by the Wichita order have expanded the distribution of fluid milk products throughout the present Southwest Kansas marketing area as well as throughout the proposed expanded area. At the present time, approximately one-third of the Class I milk sales in the Southwest Kansas marketing area are made by handlers presently regulated by the Wichita order.

The other cooperative association with producer members operates distributing plants at Hillsboro and Hutchinson, Kans., at which the milk of its members is received. The Hillsboro operation also processes manufacturing milk products. The plant of this association at Hutchinson, Kans., is not now regulated but would be regulated by the addition of McPherson, Rice, Reno, Kingman, and Harper Counties that are proposed to be added to the marketing area.

The seven counties (Greely, Wichita, Lane, Gove, Trego, Ellis, and Russell) lying north of the present Southwest Kansas marketing area and Haskell and Morton Counties should be added to the marketing area. Handlers now regulated by the present orders distribute fluid milk products on routes throughout these counties as well as in the area of the 23 counties wherein lie the cities and townships of the present Southwest Kansas marketing area.

A handler not now regulated is located in Ellis County. There are no handlers in the other eight counties referred to. At the present time the major cooperative association supplying milk to regulated handlers in the Southwest Kansas marketing area also supplies milk to the handler in Ellis County in addition to the milk he buys from about 12 dairy farmers not members of the cooperative association.

The five-county area of McPherson, Rice, Reno, Kingman, and Harper has located within its boundaries three handlers receiving milk from approximately 42 producers. These handlers also receive additional supplies from the major cooperative association. It has been the practice of these three handlers as well as the one located in Ellis County to buy supplemental supplies of milk from the major cooperative association in the area. They have thus not been burdened with excess supplies or even the necessity of carrying a normal reserve supply of milk to meet their needs. The reserve supply of milk for these four handlers has been carried by the producers supplying handlers in the Southwest Kansas and Wichita, Kans., orders.

In addition to the plants that would become fully regulated by the addition of the counties proposed herein, three other handlers selling 10 to 15 percent of their total Class I sales in the proposed added area would be regulated under the proposed expanded Greater Kansas City order. The primary sales area of these three handlers has been proposed, in a concurrent decision, to be added to the Greater Kansas City order and thus they would be fully regulated under that order.

In the 14 counties proposed to be added to the marketing area, handlers now regulated by the Southwest Kansas and Wichita orders distribute about 45 percent of the fluid milk products, unregulated handlers 50 percent and the remaining 5 percent is distributed by handlers regulated by other Federal milk orders.

With the adoption of the proposed order, regulated handlers will distribute 85 percent of the fluid milk products in these counties (45 percent by present handlers and 40 percent by newly regulated handlers). The remaining distribution of fluid milk products in this new area will be from plants to be regulated by the Greater Kansas City order as proposed in the concurrent decision to expand the marketing area of that order.

The operator of one of the presently unregulated plants opposed the addition to the marketing area of counties to the north of the present Southwest Kansas order. This handler was concerned about possible changes in regulation of his Concordia, Kans., plant between the revised Wichita and Greater Kansas City orders. Since the record does not reveal the percentage of the total Class I business in each county proposed to be added to the area, it can only be estimated that the total distribution of fluid milk products in the marketing area as proposed herein will approximate 15 percent of the total distribution of these products from the Concordia plant. Approximately 60 percent of this plant's Class I business will be in the amended Greater Kansas City order (see concurrent decision). Therefore, unless this handler makes significant changes in the distribution of fluid milk products in these two proposed marketing areas, his Concordia plant will be consistently regulated by the Greater Kansas City order.

The counties of Ellsworth, Graham, Lincoln, Osborne, Rooks, and Sheridan with a total population of about 40,000 should not be added to the marketing area. Only one handler purchasing milk from three dairy farmers is located within these six counties. This handler is located in Lincoln County and all his sales are in this county. Forty percent of the Class I milk sales in Lincoln County are made by this handler, 6 percent by handlers presently regulated by the Wichita order and 54 percent by handlers to be regulated by the Greater Kansas City order. In the remaining five counties the evidence is inconclusive with respect to the amount of fluid milk products distributed by unregulated handlers and handlers regulated by the Greater Kansas City order. Omission of these counties should in no way contribute to disorderly marketing. A hearing was held in Kansas City, November 22–24, 1965, on proposals which included merger of the present St. Joseph, Mo., and Greater Kansas City marketing areas and further enlargement of the resulting marketing area. Handlers currently listed as unregulated and distributing milk in the counties of Ellsworth, Graham, Osborne, Rooks, and Sheridan would all be regulated under a combined and expanded St. Joseph-Greater Kansas City order as a result of this hearing and as proposed in a concurrent decision on this matter. A handler

located in Ellis County who would become fully regulated by the addition of counties proposed herein has slightly less than 30 percent of his Class I milk sales in Rooks County. All of the remaining sales area of this handler is in the marketing area in the counties of Gove, Trego, Ellis, and Graham.

The handling of milk in the 43 Kansas counties included in the marketing area as proposed herein is in the current of, or burdens, obstructs or affects interstate commerce. Milk is received from producers located in the States of Colorado and Oklahoma. Such milk is commingled with milk received from producers whose farms are in Kansas and is used for route disposition throughout the marketing area. Bulk tank supplies of milk from plants located in the marketing area are sold to handlers regulated by the Greater Kansas City and Neosho Valley marketing orders as well as to unregulated handlers in the State of Texas. Dairy farmers in the marketing area are located in the same area where producers under the proposed expanded order ship milk directly from their farms through their cooperative association to handlers regulated in the Rio Grande Valley marketing area.

For the reasons set forth above it is concluded that the Southwest Kansas and Wichita, Kans., orders should be combined into a single order with a marketwide pool. The order should be called the Wichita, Kans., marketing order as proposed by the cooperative associations. The recommended order adopts most of the provisions of the present Wichita Order No. 73. Particular findings are generally limited to those matters where substantive changes have been made in the Wichita order provisions, where there were differences in views expressed at the hearing or where there is now substantial difference between the terms of the two orders.

To accomplish the merger effectively and equitably the assets in the custody of the market administrator in the administrative, marketing service and producer-settlement funds established under the present orders Nos. 73 and 74 should be combined when the merger of the two orders is effective. Liabilities of such funds under the individual orders should be paid from the newly combined funds and obligations due to such funds under the separate orders should be paid to the combined funds under the merged order. To distribute the funds under either or both orders and again accumulate the necessary reserve would entail unnecessary administrative expense with no advantage to either handlers or producers. Administrative efficiency and equity among handlers and producers can best be served by merging the funds of the two orders.

When the merger is effective order No. 74 should be revoked.

2. *Milk to be priced and pooled.* The sanitary requirements relative to the production, processing and sale of fluid milk are substantially the same throughout the proposed marketing area. Throughout the area fluid milk products sold under a Grade A label must be approved by health authorities who are governed by health ordinances and practices patterned after those prescribed by the U.S. Public Health Service Ordinance and Code. In addition, the health ordinance for the city of Wichita, Kans., requires that the skim milk and butterfat used to produce cottage cheese must meet Grade A standards.

The extensive movement of milk both in the form of packaged and bulk fluid milk products between the present marketing areas and in the proposed expanded area demonstrates the comparability of sanitary standards throughout the proposed Wichita, Kans., marketing area. As pointed out previously handlers regulated by the present Wichita, Kans., order distribute about one-third of the fluid milk products in the present Southwest Kansas marketing area and approximately 70 percent in the counties proposed to be added to the marketing area. In addition, milk produced for one market moves directly from the farm to plants in the other market.

It is no longer necessary to provide that approval of the sanitary standards of agencies of the U.S. Government for milk to be used for fluid consumption in its institutions or bases located in the marketing area be mentioned because these standards and the standards of the U.S. Public Health Ordinance and Code are either the same or similar.

In view of the similarity of the health regulations and the free movement of milk, any dairy farmer whose milk is produced in compliance with the Grade A requirement of any duly constituted health authority should be eligible to share in the marketwide pool if his milk is received at a plant having sufficient association with the market to qualify as a pool plant.

Provision is made for a definition of distributing plant, supply plant, route disposition and a slightly revised pool plant definition. These definitions provide for substantially the same performance standards as are now required under the present Wichita, Kans., order for participation in proceeds of the marketwide pool. While these definitions differ from the present Southwest Kansas order provisions, they are appropriate for the combined and expanded marketing area.

A distributing plant should be one having approval of an appropriate health authority and from which during the month there is route disposition in the marketing area.

A supply plant should be one having appropriate health authority approval and from which Grade A fluid milk products eligible for distribution in the marketing area are moved to and physically received at a distributing plant.

Route disposition should be the delivery of fluid milk products (defined in the findings under the heading of classification and allocation) from a distributing plant to retail and wholesale outlets. Such deliveries should include specifically any delivery by a vendor, from a plant store or through vending machines. Deliveries to any milk processing plant or bulk deliveries to a commercial food processing establishment for use in food products prepared for consumption off the premises should be specifically excluded from this definition.

The present pool plant performance standards of the Wichita order were proposed with minor changes for the combined marketing area. These performance standards should be modified to provide that a distributing plant should dispose through route disposition fluid milk products in an amount equal to 25 percent during the months of March through July, and 35 percent during all other months, of its receipts of Grade A milk from dairy farmers, supply plants and cooperative associations in their capacity as a handler of bulk tank milk and such plant should have route disposition of 10 percent or more of such receipts in the marketing area.

The essential difference between the present and recommended order is that performance standards for pool distributing plants would be based on the percent of fluid milk products disposed of through route disposition rather than the percent disposed of as Class I milk. No plant at present or in recent years would have failed to qualify as a pool distributing plant on the basis of the recommended performance standards. Performance standards for pool distributing plants customarily require that a substantial portion of receipts be disposed of on routes, either in or out of the marketing area, in order to distinguish distributing plants from those that must qualify as supply plants. Present standards would permit the pooling of a plant as a distributing plant even though such plant's major business activity is supplying plants in other markets. In the interest of orderly marketing and under the current market conditions only plants primarily engaged in route disposition of fluid milk products should be qualified as pool distributing plants. To distinguish further between distributing and supply plants, a pool supply plant should be required to deliver to pool distributing plants 50 percent or more of the Grade A milk received by such plant from dairy farmers and from cooperative associations in their capacity as handlers of bulk tank milk. Automatic pooling status for such a plant would be established during December through July if such plant qualified as a pool supply plant in each of the preceding months of August through November unless the plant operator requests the market administrator in writing that such plant not be a pool plant. It was proposed and is herein recommended that if such a plant becomes a nonpool plant such status shall be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of required shipments.

It should be further provided that any plant operated by a cooperative association and 60 percent or more of the milk delivered during the current month by producers who are members of such association is delivered directly or is transferred by the association to other handlers' pool distributing or supply plants shall be a pool plant. However, if such

a plant qualifies as a pool plant under another order issued pursuant to the Act by delivering 50 percent or more of its Grade A receipts from dairy farmers to plants which qualified as pool plants under such other order, it should not be a pool plant under this order. The conditional suspension order issued March 12, 1963 (28 F.R. 2354), with respect to this provision will no longer be needed and should be revoked.

The pool plant performance standards described herein are, with the stated modifications, those of the present Wichita order. These standards will insure that milk plants whose receipts are included in the marketwide pool of the merged and expanded order will be substantially associated with the Wichita market. The use of these standards serves to prevent dissipation of the proceeds of the higher Class I milk price by the inclusion in the marketwide pool of quantities of milk acquired by handlers primarily for manufacturing purposes. Such dissipated proceeds could accrue to the benefit of producers supplying milk to handlers who do not regularly or dependably furnish the fluid milk needs of consumers in the marketing area. Unless adequate standards of marketing performance are provided to determine which milk and plants will participate fully in the market pool funds, the uniform price of the market could be depressed to the point that it would not serve its function of attracting an adequate supply of milk for the fluid needs of the market without a Class I price higher than otherwise would be necessary.

Milk plants with less than 300 pounds of route disposition in the Southwest Kansas area are now exempt from regulation under that order. Such a provision was not proposed for and is not included in the revised Wichita order. The performance standards required of plants for in-area and total route disposition previously discussed are appropriate for the merged and enlarged area. The provisions for partial regulation of nonpool plants disposing of milk in the marketing area are appropriate for any plant failing to meet these standards.

Presently, all producer milk disposed of both within and outside the marketing area is fully regulated and priced under the separate orders. It is necessary that this arrangement be continued under the expanded Wichita, Kans., order; otherwise, the effect of the order would be nullified and the orderly marketing processes would be jeopardized.

If only a handler's "in-area" sales were subject to classification, pricing, and pooling, a pool handler with Class I milk sales both inside and outside the marketing area could assign any value he chose to his outside sales. Thus, such a handler could reduce his average cost of all of his Class I milk below that of other pool handlers having all or substantially all of their Class I milk sales within the marketing area. Unless all milk of such a handler is fully regulated he would not be subject to effective price regulation. The absence of effective classification, pricing, and pooling of such milk would disrupt orderly marketing conditions within the regulated marketing area and could lead to a complete breakdown of the regulation. If a pool handler were free to value a portion of his milk at any price he chose it would be impossible to enforce uniform prices to all fully regulated handlers or a uniform basis of payment to producers who supply the market. It is essential, therefore, that the expanded marketing order recommended herein continue to price all the producer milk received at a pool plant, regardless of the point of disposition.

Limited quantities (as provided) of Class I milk may be sold within the defined marketing area from plants not under any federal order. There is no precise way to treat such unregulated milk uniformly with regulated milk other than to regulate it fully. Nevertheless it has been concluded that the application of "partial" regulation to plants having less association than required for market pooling would not jeopardize marketing conditions within the regulated marketing area. Official notice is taken of the June 19, 1964, decision (29 F.R. 9213) supporting amendments to several orders including the Southwest Kansas and Wichita, Kans., orders.

The operator of a partially regulated plant should be afforded the options of:

1. Paying an amount equal to the difference between the Class I milk price and the uniform price of producer milk with respect to all Class I milk sales made in the marketing area;

2. Purchasing at the Class I milk price under any Federal order sufficient Class I milk to cover his limited disposition within the marketing area; or

3. Paying his dairy farmers an amount not less than the value of all their milk computed on the basis of the classification and pricing provisions of the order. This amount, of course, equals the order obligation for milk which is imposed on fully regulated handlers. While all fluid milk sales of the partially regulated plant are not necessarily priced on the same basis as fully regulated milk, the provisions described are, however, adequate under most circumstances to prevent sales of milk not fully regulated (pooled) from adversely affecting operation of the order and the fully regulated milk.

The present Wichita, Kans., order has such a provision at this time. It is appropriate that it be applied to the combined and extended marketing area, although there are no known plants that would be partially regulated at this time.

The present provisions of the Wichita, Kans., order relating to a plant which simultaneously meets the pooling requirements of the order and also the pooling requirements of another Federal milk order should be modified as provided herein for the expanded Wichita, Kans., order to provide that a distributing plant which is a pool plant retain such status until the third month in which it has greater route distribution in the other marketing area if the other order has complementary provisions. The present Wichita, Kans., order now provides that if a handler disposes from a distributing plant a greater portion of Class I milk in another order marketing area than in this marketing area and his plant is pooled in the other market, the handler shall be exempt from all but reporting provisions of this order. If such a plant is not pooled under the other order, however, it would be fully regulated by the Wichita, Kans., order. The present Wichita, Kans., order does not distinguish between distributing plants and supply plants in this respect. The Southwest Kansas order merely provides a "majority rule" with respect to sales in two or more marketing areas.

The operator of a plant at Concordia, Kans., in Cloud County expressed concern with respect to the possible month-to-month shifting of the regulation of his distributing plant from one order to another. He also contended that more orderly marketing would result if, as the cooperative associations proposed, the pooling of distributing plants having sales in two or more markets would not shift between orders immediately upon a change in the amount of sales from the plant into one or the other of the markets involved. Such a provision is appropriate for the combined and enlarged marketing area and should be included. Under it, a distributing plant would continue to be pooled under the Wichita, Kans., order until the third consecutive month in which greater Class I milk distribution is made from the plant in another marketing area than is made in the Wichita, Kans., marketing area. If the other order does not have a complementary pooling provision but requires that the plant be pooled under such other order, the plant should be exempt from all but the reporting provisions of the Wichita, Kans., order. The 3-month lag will provide a handler sufficient time to make adjustments in his operations if he so desires in view of an impending shift in regulation. The continuous pooling of such a plant in the same market will result in more stability in producer prices in the two markets involved than likely would result otherwise with month-to-month shifts between orders.

The order also should exempt from full regulation a distributing plant doing a greater proportion of its total Class I milk business in the Wichita, Kans., marketing area than in another order marketing area but which is subject nevertheless to full regulation under the other order. This latter provision will complement other Federal orders which have similar "lock-in" provisions.

The order should exempt also a supply plant which meets the pooling requirements under both this and another order if greater qualifying shipments from such plants are made during the month to plants regulated under another order than are made to plants regulated under the Wichita, Kans., order. Such exemption should not apply during the months of December through July, however, if the operator of such plant chooses to retain automatic pooling status under the Wichita, Kans., order during these months.

The producer-handler definition should be similar to that provided in the present orders but should permit such a handler to supplement his own production with milk purchased from pool plants of other handlers. The definition should further specify that the maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging and distribution of the milk are the personal enterprise and the personal risk of the producer-handler. These provisions permit the producer-handler to supplement his own production with milk priced and pooled under the order and at the same time make it clear that the producer-handler operation is the sole enterprise of such person. The proponent cooperative association also requested that a producer-handler be able to purchase supplies of bulk milk from a cooperative association in its capacity as a handler of bulk tank milk and packaged fluid milk products from other Federal order plants. The purchase of packaged fluid milk products from other order plants should be permitted. Such milk is priced and pooled under another order. If it is necessary for a producer-handler to purchase bulk supplies of milk from a cooperative association in addition to milk from pool plants of other handlers, such a producer-handler can do so by obtaining such bulk supplies in transfers from plants operated by cooperative associations. This puts the cooperative associations and proprietary handlers on the same basis in providing bulk milk supplies to a producer-handler. The provisions of the order now assure the Class I price for such milk if transferred from a pool plant to the plant of a producer-handler. Accordingly, the proposal that a producer-handler be able to purchase bulk tank milk delivered directly from farms through a cooperative association is denied.

3. *Classification and allocation.* The expanded Wichita, Kans., order should provide for three classes. Class I milk should be that primarily disposed of on routes as fluid milk products or held in packaged form in inventory. Class II milk should be skim milk and butterfat used to produce cottage cheese or added to cottage cheese curd and Class III milk should be the skim milk and butterfat used to produce manufactured products plus shrinkage and items dumped or disposed of to commercial food establishments.

The present Southwest Kansas order does not classify skim milk and butterfat used to produce cottage cheese separately from other manufactured dairy products. The present Wichita order, however, is a three-class market and classifies skim milk and butterfat used to produce cottage cheese as Class II milk. This classification provision has been in effect since 1958, although stated differently until amended effective January 1, 1966. The city of Wichita requires that cottage cheese be made from Grade A milk. Wichita is the principal population center of both the present and proposed Wichita marketing areas. All pool plants under the present Wichita order that produce cottage cheese are approved for sales in the Wichita area.

Wichita handlers distribute cottage cheese throughout the expanded marketing area where cottage cheese is not required to be made from Grade A milk.

A separate class should be provided in the order for the merged and expanded marketing area to include milk used to produce cottage cheese, as now provided in the Wichita order. Handlers use fresh fluid skim milk as the principal raw material for production of cottage cheese curd. The level of the Class II price is discussed in detail under the issue of class prices.

With this classification, other source milk should be defined essentially as now provided in the Wichita order. Other source milk should include all manufactured products, except cottage cheese and cottage cheese curd, from any source, including those from the plant's own manufacturing operation, which are processed or converted into another product during the month. It should also include all skim milk and butterfat contained in fluid milk products, except producer milk, and receipts from other pool plants. Cottage cheese and cottage cheese curd should be excluded from other source milk since such products are not interchangeable with producer milk in the production of Class III milk items. If such items were included as other source milk the effect would be to "upgrade" producer milk through the allocation procedure and "downgrade" such items to Class III milk even though such items cannot be used to produce another Class III item.

Concentrated milk disposed of for fluid consumption other than in hermetically sealed metal or glass containers should be specifically included as a fluid milk product. While this item is not produced or distributed in the marketing area at the present time, cooperative associations requested its inclusion as a fluid milk product on the basis that future developments may bring this product into the market. Federal milk orders generally include concentrated milk as a fluid milk product.

Sour cream disposed of under a Grade A label should continue to be classified as Class I. Sour cream is required to be made from Grade A milk and the finished product must be labeled Grade A. It was proposed that sour cream to which cheese or any food substance other than a milk product has been added in an amount equal to 3 percent or more by weight of the finished product be classified as Class III. Such products in the State of Kansas cannot be labeled Grade A. Products that are required to be made from Grade A milk should be classified as Class I milk. Since sour cream products such as "dips" may not be labeled Grade A, it is preferable to make the distinction for the purpose of classification between sour cream and sour cream products on the basis of Grade A requirements rather than on the basis of the percent of foreign substance used.

Sterilized products packaged in hermetically sealed containers should be classified as Class III. Such products generally are not made from Grade A products and are distributed from central locations over wide areas of the country.

The provision for Class III classification of dumped products should be extended to include the butterfat as well as the skim milk in such products, and the skim milk and butterfat in cottage cheese dumped should also be classified as Class III under the same provision. It is difficult and impractical to salvage butterfat from such products as chocolate milk and cottage cheese. When skim milk and butterfat must be dumped or disposed of for livestock feed it should be classified as Class III milk. The value of skim milk and butterfat is such that handlers will salvage both whenever practical. Fluid milk products disposed of in bulk form to any commercial food processing establishment and used in food products prepared for consumption off the premises should also be classified as Class III. This provision is similar to that of the present Wichita order which classifies milk used for baking and candy making as Class III and merely extends this classification to use in comparable food products.

The present Wichita order provides that fluid milk products which are fortified with nonfat milk solids shall be Class I milk in an amount equal only to the weight of an equal volume of an unfortified product of the same butterfat content. Approximately the same result is provided in the Southwest Kansas order which does not require accounting for the milk equivalent of nonfat dry milk solids. The Wichita provision should be continued in the order for the expanded area. The addition of nonfat solids used in fortification cannot be considered as displacing producer milk in Class I milk except to the extent that the volume of the product is increased. The addition of such solids to make a more desirable product may in fact increase the sales of producer milk—in any event any displacement of producer milk for Class I milk use is limited to the resulting minor increase in volume.

The proposed Wichita transfer provisions are generally the same as in the present orders and are generally adopted as proposed by the cooperative associations. It should be noted, however, that the provision to classify as Class I milk, skim milk and butterfat transferred or diverted to a nonpool plant located more than 250 miles from the nearest location basing point differs somewhat from the present two orders. Cooperative associations in this market transfer or divert to nonpool plants nearly all the milk that must be so handled. The 250 mile limit from these points encompasses all the manufacturing facilities now available under either order, and makes them equally available for surplus disposal of all handlers.

Fluid milk products on hand in packaged form at the end of the month should be classified as Class I milk. Fluid milk products on hand at the end of the month in bulk form should continue to be classified as Class III.

Classification of packaged inventories of fluid milk products as Class I milk, rather than as Class III milk, will diminish the monetary importance of their exact location in the distribution system of the handler as of the end of the accounting period. Presently, administrative feasibility has generally required that inventories be restricted to those physically located in the plant where processed. Packaged milk moved to distribution points is classified as Class I milk even though it may be on hand at the distribution point at the end of the month. Handlers have thus been paying the Class I milk price of one month for products disposed of from the processing plant, but held elsewhere in their distribution systems, and that of the following month for inventories of packaged milk held in their processing plants. Under the system herein recommended, the extent of this difference will be substantially reduced or eliminated.

The adoption of the plan of classifying all fluid milk products on hand in packaged form at the end of the month as Class I milk will, in the long run, neither affect handlers' costs nor producers' returns. In the first month in which it is effective, it will increase handlers' costs by the difference between the Class I and Class III prices on the volume of packaged milk classified as inventory. This difference will be recovered, however, since there will be no reclassification charge on inventory of packaged fluid milk products allocated to Class I milk in subsequent months.

To insure that all handlers pay the current month's Class I milk price for fluid milk disposed of during the month, it is provided that if the Class I milk price increases over the previous month, the handler will be charged the difference between the Class I milk price for the current month and the Class I milk price for the preceding month on the quantity of ending inventory assigned to Class I milk in the preceding month. Likewise, if the Class I milk price decreases, the handler will receive a corresponding credit.

To accommodate this change in the classification of fluid milk products in packaged form in inventory, the allocation section of the order should provide that inventory of such packaged fluid milk products on hand at the beginning of the month be subtracted from Class I milk utilization immediately after the allocation of shrinkage and packaged fluid milk products from other orders and before making the other assignments therein provided. Inventory of fluid milk products in bulk form would continue to be handled as under the present provisions of the order.

The shrinkage allowance on milk disposed of in bulk tank lots from pool plants to other milk plants should be modified. Presently, under both orders the shrinkage allowance in such instances is one-half of 1 percent when milk is so disposed of to other pool plants, but 2 percent shrinkage is allowable on bulk tank lots transferred from a pool plant to other milk plants not a pool plant. It is concluded that only 0.5 percent shrinkage should be allowed regardless of whether the plant receiving the milk is a pool or nonpool plant. There is no essential difference in plant operations due to the pool status of the trans-

The order should provide that when milk is diverted to a nonpool plant in bulk tanks and the receiving plant does not accept the farm weights, a shrinkage allowance of 0.5 percent should apply. The Wichita order presently makes no provision for a shrinkage allowance on diverted milk. When milk moved from the farm to the plant in cans, it was weighed at the plant of receipt. The plant operator was obligated for the pounds of milk he received in his plant. Any loss between the farm and the plant scale was borne by the producer. The only shrinkage allowance was for loss incurred in the processing operation. When bulk tanks came into use and the milk was measured on the farm, it became apparent that some loss occurred between farm and plant. As a result the 2 percent shrinkage allowance generally permitted was divided between the receiving and processing operations. While no shrinkage is incurred in the processing operation by the handler who diverts milk to a manufacturing plant, the farm to plant shrinkage is the same as on movements to pool plants. Accordingly, the handler should be permitted a shrinkage allowance of up to 0.5 percent on milk diverted in bulk tanks to be classified as Class III milk.

Cooperative association proponents proposed that pool plant operators should submit a separate report for each pool plant. The proposal further provided that Class I milk classification and shrinkage should be based upon the operation of each individual plant. Separate reports for each pool plant will permit shrinkage to be computed separately for each such pool plant. This provision will preclude a handler operating two or more plants from offsetting shrinkage in one plant against overage in another.

If no milk is transferred between pool plants of the same handler, there is no way in which overage in one of such plants could be the cause of shrinkage in any of the remaining pool plants. Should milk be transferred between pool plants of the same handler the same care should be given to recording the weights and tests of milk so transferred as is given to transfers to pool plants of other handlers. The requirement that each plant must be separately accountable for shrinkage or overage will result in the multiple pool plant operator accounting to the pool on the same basis for shrinkage or overage as is now required of the operator of an individual plant. The present Wichita allocation provisions should be adopted with minor modifications to conform to the change in classification of packaged milk in inventory. Allocation should be performed separately at each pool plant unless the pool plant handler receives other source milk that is subject to pro rata assignment. Since shrinkage will have been computed separately for each plant such allocation will provide the handler with a separate computation of his obligations at each plant.

The market administrator should combine the reports of receipts and utilization of a multiple plant operator, for the purpose of allocation and computation of pool obligations when it is determined that receipts from an unregulated supply plant or from an other order plant require Class I milk classification. This procedure when integrated with the allocation provisions is designed to prevent a handler with more than one plant from discriminating against either his own producers or those supplying another market by importing milk not serving a bona fide need for Class I milk use.

4. *Class prices.*—(a) *Class I price.* The merged order should provide for two Class I price zones. The Class I price for Zone I (Wichita area) should be the Minnesota - Wisconsin manufacturing milk price plus $1.60, subject to applicable supply-demand adjustments. Such price should not vary beyond stated limits from the Greater Kansas City order Class I price. The Zone II (Dodge City area) Class I price should be 5 cents higher than the Zone I price.

Class I prices under the Wichita and Southwest Kansas orders are now based on a basic formula price which is the average price per hundredweight for manufacturing grade milk in Minnesota and Wisconsin. To this price, as announced by the Department for the preceding month, is added a Class I differential of $1.57 in the case of the Wichita order and $1.65 for the Southwest Kansas order. Class I prices under both orders are subject to price adjustments reflecting changes in producer milk supplies and in Class I sales. The Wichita Class I price cannot vary beyond certain limits from the Class I price of the neighboring Greater Kansas City market. Similarly, the Southwest Kansas Class I price is tied to the Class I prices in the nearby Wichita and Texas Panhandle markets. Also, on the basis of emergency amendatory action, the Class I price in each market for the months of May and June 1966 cannot be less than the Class I price for the preceding month of April.

In 1964 and 1965, the Class I prices for the Wichita market averaged $4.75 and $4.85, respectively, for milk of 3.5 percent butterfat content. Comparable prices under the Southwest Kansas order were $4.79 in 1964 and $4.90 in 1965.[1] These prices for both markets reflect a temporary increase in the Class I price level for the period of November 1964 through February 1965 resulting from emergency price amendments to the orders.

The two cooperative associations advocating the order consolidation proposed that two pricing zones be established. The Class I price for the eastern zone would be the presently used basic formula prices plus $1.60 and the western zone price would be 10 cents higher. The

[1] Official notice is taken of the price announcements and statistical releases, issued by the market administrator for the Wichita and Southwest Kansas markets, which contain data for the months of October through December 1965 for such markets.

associations proposed that the Wichita supply-demand adjustment computation be used under the merged order but with a revised seasonal pattern of the standard utilization percentages. In anticipation of certain changes in the Greater Kansas City order, they also proposed that for July through March the Zone I Class I price not be less than the Greater Kansas City Class I price plus 10 cents, and for the remaining months not less than the Greater Kansas City Class I price plus 20 cents. Also, the Zone I price could not exceed the Greater Kansas City Class I price by more than 50 cents in July through March, and 60 cents in April through June. Proponents suggested that the new Class I price formula be reviewed at a hearing within two years of its effective date.

A handler proposed that any supply-demand adjustor for the merged order reflect the changes in producer receipts and Class I sales under both the merged order and the Neosho Valley Federal order. Another handler proposal, predicated on the adoption of the Wichita order's supply-demand adjustor for the merged order, would modify the current rate of price adjustment in response to supply-demand changes. This proposal was not supported at the hearing, however, and no further consideration of it is given herein.

The zoning arrangement proposed by the cooperative associations should be adopted. The 22 counties in the proposed marketing area east of Trego, Ness, Hodgeman, Ford, and Clark Counties should be in Zone I. Zone II, for which a higher price would be applicable, should comprise the remaining 21 counties in the proposed marketing area. The specific counties in each zone are set forth under Issue No. 1.

The Class I price for Zone I should be the basic formula price for the preceding month, as now used under the separate orders, plus $1.60, subject to supply-demand adjustments and price limits described later. The Zone II Class I price should be five cents higher than the effective Zone I price. These Class I differentials represent a 3-cent increase for plants regulated by the present Wichita order and a 5-cent decrease for certain plants now regulated by the Southwest Kansas order with no change for the remaining plants regulated by that order. For 1964 and 1965 the average net effect of these changes on the total Class I milk under the two orders would have been an increase of 2.4 cents in the Class I differential. All plants to be newly regulated are located in Zone I for which the $1.60 Class I differential applies.

Setting the Zone II Class I price five cents higher than the Class I price for Zone I would maintain the general price alignment now existing between the Wichita and Southwest Kansas markets. Because of the effect of the supply-demand adjustors and price ties with other markets, the Wichita and Southwest Kansas Class I prices actually differed by only 4 cents in 1964 and 5 cents in 1965. In view of the supplies of producer milk available in the Southwest Kansas market, a Zone II price differential at the level proposed by producers does not appear necessary. There is no indication that the alignment of Class I prices of these two markets has been improper with respect to the competitive relationship of handlers involved.

The Class I prices under the merged order should be subject to adjustments based on relative changes in the quantity of producer milk received by handlers regulated under the order and the quantities of such milk assigned to Class I. The supply-demand computation used under the Wichita order, with certain modifications, should be adopted for this purpose. The present standard utilization percentages should be revised, without changing the annual average, to reflect the recent seasonal patterns of production and Class I use in the Wichita and Southwest Kansas markets. Also, such percentages should be based on the amount of producer milk assigned to Class I rather than on the gross Class I utilization of handlers. The standard utilization percentages now contained in the Wichita order and those adopted herein for the proposed merged order are set forth in the following table.

| Pricing month | Standard utilization percentages | | | |
|---|---|---|---|---|
| | Present Wichita order | | Proposed Wichita order | |
| | Minimum | Maximum | Minimum | Maximum |
| January | 125 | 135 | 119 | 129 |
| February | 124 | 134 | 126 | 136 |
| March | 125 | 135 | 129 | 139 |
| April | 125 | 135 | 130 | 140 |
| May | 132 | 142 | 131 | 141 |
| June | 136 | 146 | 132 | 142 |
| July | 143 | 153 | 141 | 151 |
| August | 137 | 147 | 145 | 155 |
| September | 131 | 141 | 139 | 149 |
| October | 131 | 141 | 135 | 145 |
| November | 130 | 140 | 124 | 134 |
| December | 126 | 136 | 116 | 126 |

The average of the monthly midpoints of the proposed standard percentages is 135.6 percent, compared with the average percentages of 135.4 and 134.8 reflected in the standard utilization percentages now used in the Wichita and Southwest Kansas orders. This represents the actual average ratio of producer receipts to producer milk assigned to Class I for the Wichita and Southwest Kansas markets combined for the months of October 1963 through October 1965, the months used to compute monthly utilization percentages used in the supply-demand adjustments for the pricing months in 1964 and 1965.

The proposed standard percentages thus represent an annual level of utilization almost identical with that of the present Wichita order, adjusted seasonally to the pattern of the recent 2-year period.

The annual relationship of production to Class I utilization of producer milk for the combined markets was virtually the same for these 2 years. For 1964 and 1965, producer receipts averaged 135.9 percent and 135.3 percent, respectively, of Class I use. Also, the seasonal patterns of the monthly percentages were quite similar in both years. Such production and use data, therefore, represent a reasonable basis on which to establish standard utilization percentages for use under the merged order. The average of the percentages adopted is the same as that proposed by producers.

It is desirable that supply-demand adjustments be based on the amount of producer milk assigned to Class I. Presently, the gross Class I utilization of handlers is used. The latter utilization reflects the quantities of both producer milk and other source milk assigned to Class I. The demand for producer milk for Class I purposes is more accurately measured by basing price adjustments on the relative amounts of producer milk assigned to Class I.

Under current marketing practices, this change in the supply-demand adjustment computation would not result in price adjustments significantly different from those that would result if they were based on the gross Class I use. Relatively little other source milk imported by handlers in the two markets has been allocated to Class I. Thus, the Class I sales by such handlers represent for all practical purposes the actual sale of producer milk.

As described earlier, packaged Class I products in inventory are to be assigned to Class I. The revised method of computing the supply-demand adjustment makes unnecessary an adjustment of the Class I quantity used in the computation to compensate for this method of accounting for inventory.

Using the proposed standard percentages and producer milk assigned to Class I instead of gross Class I utilization, there would have been no supply-demand adjustments under the proposed merged order in any month had it been in effect in 1964 and 1965. This may be compared with the actual experience under the separate orders.

For this 2-year period the average effect of the supply-demand adjustments of the separate orders represented a reduction of slightly less than three-tenths cent per hundredweight of the combined Class I utilization of producer milk in the two markets. Monthly adjustments were somewhat greater under the Southwest Kansas order, due to the application of a more sensitive adjustor to smaller production and sales volume. Under this order, the average adjustment due to supply-demand was a reduction of 3.5 cents per hundredweight. Under the Wichita order the average effect was an increase of four-tenths cent per hundredweight.

The average effect of the proposed supply-demand computation thus would not represent a significant departure from the average effect of the supply-demand adjustors under the separate orders. The new standard utilization percentages, however, would minimize monthly adjustments resulting from an improper reflection in the supply-demand computation of the "normal" seasonal pattern of the production-sales relationship.

The two cooperative associations proposed that the standard utilization percentages which are now applicable to the

pricing month of January, for instance, be applicable to the month of March, with a corresponding 2-month shift of the other percentages. The seasonal pattern of the supply-sales relationship for the two markets combined has not shifted uniformly as this proposal would suggest. This may be noted from a comparison of the standard utilization percentages for the present and proposed Wichita orders in the table above. The percentages adopted herein more nearly reflect what apparently is a relatively "normal" supply-demand relationship for the two markets combined. For this reason the associations' proposed standard percentages should not be adopted.

The producer receipts and Class I sales data for the Neosho Valley market should not be included in the supply-demand computation for the merged order. A handler advocated the inclusion of such data to minimize any instability in the supply-demand relationship which might result from the shifting of producers between the consolidated market and the Neosho Valley market. The handler cited the shifting of producers between markets by a cooperative association which has members in all three of the southern Kansas markets.

Under present conditions it does not appear necessary to compute the supply-demand adjustment for the merged order in this manner. Wide, short-term fluctuations in the relationship between producer receipts and Class I sales are not a current problem in the Wichita and Southwest Kansas markets. Moreover, the consolidation of the two orders would be expected to lessen the possibility of this problem arising in the future. With greater volumes of producer receipts and Class I sales involved under the merged order, changes in such volumes would tend to have a lesser impact upon the Class I price. There is no evidence that there has been any substantial shifting of sales between the Neosho Valley market and the proposed Wichita market. The need for consolidating the supplies and sales of markets for supply-demand adjustment purposes arises when both supplies and sales (and frequently pool plants) shift back and forth between such markets. There is no indication that such is the case in these markets.

The current limits within which the present Wichita Class I price can vary from the Greater Kansas City Class I price should be applicable to the proposed Zone I Class I price. Under this arrangement the Zone I price in August through March could not be less than the Greater Kansas City Class I price, and for the remaining months not less than the Greater Kansas City Class I price plus 10 cents. Also, the Zone I price could not exceed the Greater Kansas City Class I price by more than 50 cents in August through March, and 60 cents in April through July.

The cooperative associations proposed that the minimum limit be set 10 cents higher for all months. In addition, they proposed that the two groupings of months for which different limitations apply be changed so that July no longer would be included with the months of April, May, and June. These proposals were made on the assumption that certain changes in the Greater Kansas City order would be made on the basis of a hearing held for that market in November 1965.

A concurrent decision based on the Kansas City hearing does not adopt the changes just mentioned. Thus, the price limitations now used under the Wichita order would continue to be appropriate under the merged order.

The Class I prices adopted herein, in conjunction with the other adopted pricing factors, should continue under normal conditions to attract the milk supplies necessary to meet the fluid needs of handlers who would be regulated under the merged order. Had these and the other class prices proposed herein been in effect through 1964 and 1965, the combined returns to all producers supplying the consolidated market would have been within one-half cent per hundredweight of the actual combined returns received during these years by producers under the two separate orders. The actual average return to producers was $4.512 per hundredweight, while the proposed pricing would have returned $4.507.

In this 2-year period 73.5 percent of the producer milk of the combined markets was used in Class I. This is substantially the same average level of supply adopted as the standard for supply-demand adjustment of the Class I price (the equivalent of 73 percent of producer milk in Class I). The pricing mechanism of the order therefore must be such as would have produced returns to producers comparable to those received in 1964 and 1965 if they are to be expected to attract an adequate supply of milk under circumstances comparable to those prevailing in these years.

The prices provided herein for Class II milk used to produce cottage cheese are approximately 65 cents per hundredweight less than those effective for 1964 and 1965 in the larger Wichita market, but about 15 cents more than for the Southwest Kansas market. The price for Class II milk under the Wichita order had been 80 cents per hundredweight more than the Class III price for a number of years. While requirements for production of cottage cheese were never included in the supply-demand adjustment norms of adequate supply for the market, the increased price for cottage cheese produced income which contributed to attracting an adequate supply of milk for Class I uses. Marketing conditions changed so that it was no longer possible to maintain the price at this level without loss of cottage cheese markets for Wichita handlers and consequent loss of income to producers (decision issued Dec. 20, 1965; 30 F.R. 16008). This source of income is consequently no longer available to aid in attracting an adequate supply of milk for Class I uses. It is therefore necessary to make certain adjustments in the Class I prices to produce the income necessary to attract supplies of milk adequate for Class I needs and necessary reserves. The exact nature and amount of such adjustments have been set forth in detail in the preceding findings.

The attached order includes a temporary price amendment identical to those recently included in the Wichita and Southwest Kansas orders. Such amendments provide that, for the purpose of computing the Class I milk prices to be effective through March 1967, the basic formula price shall not be less than $4. Proponents of the merged and expanded marketing area testified at the reopened hearing held in St. Louis, June 7–8, 1966, that any action taken by the Secretary to amend the Wichita and Southwest Kansas orders would be appropriate for the proposed merged and enlarged Wichita, Kans., order. On the basis of the record of the reopened session of the hearing, and for reasons identical with those stated in the emergency decision (31 F.R. 9130) upon which the separate orders were amended, it is concluded that for Class I pricing purposes to be effective through March 1967, the basic formula price for the Wichita order as included herein should not be less than $4 per hundredweight.

The merged order should not provide that the Class I price expire at some future date as suggested by producers. The need for a review of the Class I pricing within 1 or 2 years because of marketing changes resulting from the order consolidation is not likely. The Class I pricing adopted herein is quite similar to that which exists currently under the two orders. If new marketing conditions arise later which appear to warrant some change in the order provisions, a review of the Class I pricing can be requested at that time.

(b) *Class II price.* The Class II price under the merged order should be the Class III price plus 15 cents. As described later, the Class III price would be the average price for manufacturing grade milk in Minnesota and Wisconsin, as limited by certain factors. The Class II price would apply only to skim milk and butterfat used in the production of cottage cheese.

Under the Southwest Kansas order milk used in cottage cheese is priced at the Class II, or manufacturing class, price. Such price, which is based on the average U.S. manufacturing price, averaged $3.22 in 1965. The Wichita order provides for a separate manufacturing class for milk used in cottage cheese. Until January 1, 1966, the price for this Class II milk was the Wichita Class III price plus 80 cents. In 1965 this Class II price, which also was based on the average U.S. manufacturing price, averaged $4.02.

On the basis of this hearing the Wichita Class II price was reduced from 80 cents to 15 cents over the Class III price, effective January 1, 1966. This temporary action was taken pending a decision on all the issues of the hearing. The reasons for the change are set forth in the decision on proposed amendments to the Wichita order issued December 20, 1965 (30 F.R. 16008).

No decision was made at that time as to what the Class II price should be under the merged order.

If skim milk from producer milk is priced at less than the cost of alternative supplies of cottage cheese or dairy products for making cottage cheese, producers do not receive the full market value for their milk. However, if milk used in cottage cheese were priced higher than the alternative product cost, use of skim milk from producer milk might be discouraged.

Handlers in the Wichita and Southwest Kansas markets rely substantially, if not almost entirely, on local Grade A supplies of producer milk for cottage cheese production. Undoubtedly, the major influence to do so is the fact that the city of Wichita requires that cottage cheese sold there be made from Grade A milk. Wichita is the predominant population center in the two markets and thus represents the principal outlet for cottage cheese.

Under the proposed order provisions, the average value for skim milk in Class II would have been 85 cents per hundredweight in 1965. This represents what handlers would have had to pay under the merged order for producer skim milk used in the production of cottage cheese. Assuming a yield of 14 pounds of cottage cheese curd per hundredweight of skim milk, the ingredient cost of curd would have been 6 cents per pound.

Handlers choosing not to use producer milk in making cottage cheese probably would use imported dry cottage cheese curd or nonfat dry milk. Manufacturing grade milk could be used for this purpose. However, local supplies of such milk are decreasing and thus cannot be considered as a reliable source of milk. Moreover, cottage cheese made from such milk cannot be sold in Wichita.

A primary source for cottage cheese curd would be a large manufacturing plant at Springfield, Mo. The price quoted for dry curd f.o.b. Springfield was 12.75 cents per pound. An additional 1 cent per pound was quoted for hauling the curd to the Wichita area. Under the proposed pricing, the cost of using producer skim milk would have been well under the quoted price for dry curd f.o.b. Wichita.

Nonfat dry milk may be purchased by handlers and reconstituted into skim milk for use in making cottage cheese. The price per pound of spray process nonfat dry milk in the Chicago area averaged 14.27 cents in 1965.[2] With an approximate yield of 9 pounds of nonfat dry milk per hundredweight of skim milk, the cost of nonfat milk solids is about $1.28 per hundredweight of skim equivalent. This is substantially in excess of the cost of nonfat milk solids derived from producer milk under the proposed pricing scheme.

Local producers thus represent the cheapest source of cottage cheese milk for handlers who would be regulated under the merged order. The 15-cent differential above the Class III price, as proposed by producers, represents a reasonable return to producers for supplying Grade A milk for cottage cheese production.

There is no indication that the proposed Class II price would cause handlers in the consolidated market to be at a competitive disadvantage with handlers in other markets with respect to cottage cheese sales. Several major handlers supported the Class II price adopted herein, which would indicate that the price apparently would not adversely affect their sales of cottage cheese.

In 1965 this Class II price would have averaged $3.37 per hundredweight on a 3.5 percent butterfat basis. With this price the cost under the order for milk used in cottage cheese would have been 65 cents per hundredweight less for Wichita handlers and 15 cents per hundredweight more for Southwest Kansas handlers than was actually incurred under the separate orders. Such cost changes reflect not only the proposed change in the differential between the Class II and Class III prices, but the proposed change in the matter of computing the Class III price.

(c) *Class III price.* The Class III price should be the average price per hundredweight for manufacturing grade milk f.o.b. plants in Minnesota and Wisconsin, as reported by the U.S. Department of Agriculture, adjusted to a 3.5 percent butterfat test. Such class price should not exceed a butter-powder formula price.

The surplus price (Class III) under the Wichita order is the higher of the average U.S. manufacturing price or the average of the prices paid by four local milk manufacturing plants. The former price has been the effective Class III price for some years past. The surplus price (Class II) under the Southwest Kansas order is the average U.S. manufacturing price. In 1965 the surplus prices averaged $3.22 under both orders.

The two cooperative associations proposed that the Class III price under the merged order be the Minnesota-Wisconsin manufacturing price. They also proposed that for the months of January through August handlers receive a 15-cent credit for producer milk used in the production of butter and nonfat dry milk. The associations suggested at the hearing that the average of the local manufacturing plant prices be used as an alternative to the Minnesota-Wisconsin price, with the higher of the two prices being the effective Class III price.

The price for manufacturing milk should be at a level which will provide the highest possible returns to producers in the market while at the same time encouraging the orderly marketing of such milk. A Class III price based on the average Minnesota-Wisconsin manufacturing milk price, not to exceed a limit related to butter and nonfat dry milk values, should adequately meet these pricing objectives. The desirability of using a competitive pay price is based on the premise that in the highly competitive dairy industry average prices which are paid in areas where there is substantial competition for manufacturing milk provide as good a measure of its value as can be obtained. The Minnesota-Wisconsin price series is representative of prices paid to farmers for about one-half of the manufacturing grade milk sold in the United States. In Minnesota about 84 percent of the milk sold off farms is of manufacturing grade and in Wisconsin, about 58 percent.[3] There are many plants in these States which are competing for such milk supplies. This price series reflects a price level determined by competitive conditions which are affected by demand in all of the major uses of manufactured dairy products. Further, it reflects the supply and demand of manufactured dairy products within a highly coordinated marketing system which is national in scale. Milk products which are manufactured by handlers in the Wichita and Southwest Kansas markets compete within this system.

The Minnesota-Wisconsin price series is presently used under the order as the basic formula for establishing the price for Class I milk. Official notice is taken of the decision on proposed amendments to various orders issued by the Assistant Secretary on July 23, 1962 (27 F.R. 7437), concerning the adoption of this price series as the basic formula price for the Wichita and Southwest Kansas orders. This decision describes the manner in which the price series is obtained.

The proposed 15-cent credit for milk used in butter and nonfat dry milk should not be adopted. Instead, the Class III price should be limited to a butter-nonfat dry milk formula price. The formula, as incorporated in the attached order, would be computed by first multiplying the average price per pound of Grade AA (93-score) butter at Chicago by 4.2. To this value there would be added an amount computed by multiplying the average price per pound of spray process nonfat dry milk in the Chicago area by 8.2. Then, 48 cents would be subtracted from this total. This formula was recently incorporated in the nearby Greater Kansas City order for the same purpose.

Cooperative associations in the combined market assume the responsibility of disposing of milk not needed by handlers for fluid and cottage cheese uses. Some of the milk is manufactured into butter and powder, particularly during the flush production months. Such manufactured products are generally considered to be the lowest-return manufacturing uses for milk. Because of this it is desirable that the Class III price under the merged order not exceed a price level based on the market values of butter and nonfat dry milk.

The use of a butter-powder price for setting a ceiling on the Class III price would insure that the Class III price will continue to reflect the product values of butter and powder in the event of an undue divergence in the relationship

[2] Official notice is taken of the nonfat dry milk prices for November and December 1965 as stated in "Federal Milk Order Market Statistics" issued in February 1966 by the U.S. Department of Agriculture.

[3] Official notice is taken of the "Supplement for 1963–64 to Dairy Statistics through 1960," Statistical Bulletin No. 303, Economic Research Service, USDA, June 1965.

between such values and the Minnesota-Wisconsin prices. Recognition should be given to the possibility that a particular segment of the manufactured milk industry may be unduly influenced occasionally by certain supply-demand conditions not affecting the remainder of the industry. Such conditions may not be reflected sufficiently in the Minnesota-Wisconsin price series. A comparable price ceiling is used in a number of Federal order markets in connection with the use of the Minnesota-Wisconsin price for pricing milk in manufacturing uses similar to the proposed Class III uses.

Under the pricing scheme proposed herein, the Class III price would have averaged $3.17 in 1964, or 4 cents higher than the actual surplus milk prices under the two orders that year. The proposed 1965 Class III price of $3.22 would have been the same as actually existed for the two markets. For these 2 years the Minnesota-Wisconsin price would have been limited by the proposed tie to the butter-powder values. Such limits would have averaged 1 cent in 1964 and 5 cents in 1965.

The local manufacturing plant pay prices should not be incorporated as a part of the Class III pricing scheme under the merged order. For the reasons stated above, the pricing scheme proposed herein should result in the appropriate Class III price under the order.

(d) *Butterfat differentials.* The handler butterfat differential for Class I milk should be the average price for Grade A butter at Chicago, as reported for the preceding month, times 0.120. The butterfat differentials for Class II and Class III milk should be the Chicago butter price for the current month times 0.115. The producer butterfat differential should be the weighted average of the handler butterfat differentials for the three classes. Such differentials should result in a reasonable allocation of value to the skim milk and butterfat components of milk being priced under the merged order.

The handler and producer butterfat differentials under the Wichita order differ from this arrangement only in that the factor used in computing the Class II differential is 0.120. Under the Southwest Kansas order the factors used in computing the Class I and Class II differentials are 0.125 and 0.115, respectively. The producer butterfat differential for the Southwest Kansas order is computed by multiplying the Chicago Grade A butter price by 0.120.

Producers proposed that the factor of 0.115 be used in determining the handler differentials for all three classes. They contended that lowering the differentials now applicable to the higher valued products would induce handlers to use more butterfat in such products. It was maintained that this would result in a better balance between the amount of butterfat in producer milk and the amount used in fluid milk products. It was not clear from the testimony whether producers expected that the adoption of their proposal would increase materially returns to producers.

This proposal should be adopted only insofar as the Class II and Class III differentials are concerned. For Class I, the factor 0.120 should be used.

Under the proposal, no purpose would be served by encouraging the greater use of butterfat in fluid milk products. The value of butterfat used in Class I would be the same as the value of butterfat used in manufactured products. Thus, it would make little difference as to the class of products in which butterfat is utilized. The returns to producers from the butterfat would be the same. There was no evidence that butterfat not needed for Class I purposes cannot be disposed of at the butterfat values now established under the two orders for the surplus classes of milk.

If, nevertheless, the producers' proposal were to be adopted, this would result in an inappropriate increase in the value of skim milk used in Class I products. The butterfat test of Class I milk in the two markets is less than 3.5 percent, the test for which the Class I price is announced. Thus, a decrease in the value of the butterfat component of milk increases the value of the skim milk component, assuming no change in the total price. There is no justification for an increase in skim milk values. In fact, certain handlers opposed any such increase because of competition for sales of low-fat Class I products with handlers in other markets where the higher butterfat differential is used.

If producer returns could be increased by lowering the Class I butterfat differential, while simultaneously adjusting skim milk values to maintain their present level, it would be desirable, of course, to change the butterfat differential. Whether producer returns would be increased would depend upon whether the butterfat content of Class I products would be increased proportionately more than the decrease in the butterfat differential. If a 5-percent decrease in the butterfat differential would result in a 10-percent increase in the butterfat content of such products, for example, assuming that the Class I butterfat value was higher than the Class III butterfat value, an increase in producer returns would result. There are a number of research studies which reveal information about the price elasticity of demand for dairy products.[4] None of these indicates that a price decrease of a given percentage will result in a consumption increase of a greater percentage. Therefore, it does not appear that producers' incomes could be increased by reducing the Class I butterfat differential except only as returns are increased from an increase in skim milk values if that were allowed.

5. *Location adjustments to the Class I and producer prices.* Location adjustment provisions similar to those of the present Wichita order should be adopted for the merged order. Because of the consolidation and expansion of the Wichita and Southwest Kansas marketing areas, however, several basing points should be used.

Under the Wichita order no location differential applies at plants located less than 70 miles from the courthouse in Wichita. For plants 70 to 80 miles from such point, a location differential of 12 cents per hundredweight applies, and for greater distances an additional adjustment of 1.5 cents for each additional 10 miles. Under the Southwest Kansas order no adjustment applies at plants located less than 100 miles from the Dodge City Courthouse. For the 100–110-mile zone the applicable adjustment is 7.5 cents, and for greater distances an additional adjustment of 1.5 cents for each additional 10 miles applies.

There is no reason to depart from the use of the present Wichita rates or the zone arrangement. Enlargement of the marketing area and the use of zone prices at points within the area make desirable the designation of the following basing points: Wichita, Pratt, Garden City, and Hays, all in Kansas. Use of these points will adjust prices at plants with reference to the marketing area on the basis of distance from cities at which there are area Class I distributing plants. The cooperative associations proposed that Dodge City and McPherson also be basing points. The use of Garden City and Pratt would make the use of Dodge City as a basing point inconsequential. The use of Wichita and Hays would make the use of McPherson as a basing point inappropriate. Measuring distances from Wichita and Hays to plants located to the north and east of the present Wichita marketing area will better maintain the present alignment of prices at such plants with those of Wichita handlers. Thus, Dodge City and McPherson are not incorporated as basing points in the proposed order provisions.

For the purposes of location adjustment milk diverted to nonpool plants should be priced at the location of the pool plant from which diverted. Both of the present orders so provide.

Cooperative associations agreed with this provision if the nonpool plant was located in the marketing area, but pro-

[4] Official notice is taken of the following publications: "Demand and Price Analysis," Frederick V. Waugh, U.S.D.A. Technical Bulletin 1316, November 1964. "The Demand and Price Structure for Dairy Products," Anthony S. Rojko, U.S.D.A. Technical Bulletin 1168, May 1957. "Consumption of Milk and Cream in the New York City Market and Northern New Jersey," Leland Spencer and Ida A. Parker, Cornell University Experiment Station Bulletin 965, July 1961. "Consumer Use of Dairy Products in Portland, Maine," H. Alan Luke, Maine Experiment Station Bulletin 477, November 1949. "Effect of Changes in Income and Price on Milk Consumption," George K. Brinegar, Storrs Experiment Station Bulletin 280, July 1951. "Dairy Marketing," Stewart Johnson, University of Connecticut monthly mimeographed report, February 1954 and 1960. "Milk Distribution Systems in Ohio," G. H. Mitchell, D. W. Ware, and E. F. Baumer, Ohio Research Bulletin 855, June 1960. "Changing Patterns of Milk Consumption in Memphis, Tennessee," Philip B. Dwoskin, James A. Bayton, and William S. Hoofnagle, U.S.D.A. Marketing Research Report No. 69, June 1954.

posed that such diverted milk be priced at the location of the nonpool plant if such plant was located outside the marketing area. The proposal was apparently made as a result of some unusual circumstances regarding the diversion of milk to distant plants.

Cooperatives own and operate the primary manufacturing plants where excess supplies of milk are processed. Normally and historically milk in excess of the market's needs is processed at these facilities located in the marketing area. These plants are located in Zone I of the marketing area. One association diverts to its plant in Zone I the milk of producers located in Zone II who normally supply pool plants in that area. Such producers incur hauling costs to the nonpool plant equal to or in excess of those incurred in delivery to pool plants. Thus the blend price should not be reduced in this situation. The continued pricing of milk diverted to nonpool plants at the pool plant from which diverted will best serve the needs of the market under present circumstances.

6. *Take out-pay back plan of distributing returns to producers.* Twenty-cents per hundredweight on producer milk during each of the months of April through June should be set aside for payment to producers during the months of September through November.

For a number of years the present Wichita order provided for a 12-month base-excess plan. The base forming months were August through November. This plan was terminated effective June 1, 1961. The Southwest Kansas order had a take out-pay back plan for several years. The months of April through June were the months of "take-out" and August through November were the months of "pay-back". This plan was terminated April 1, 1962.

Termination of these plans occurred because they overstimulated milk production during the months of August through November with the consequence that total production during this period tended to be greater than necessary to supply these markets' fluid needs.

During the past 2 years (1964–65), however, a seasonal production pattern, contrary to the market's needs for fluid milk products, has occurred. For example, the effect of the base plan in the Wichita order continued through 1963. For several years the average production per day per producer for each of the months of July through December remained relatively constant. In 1963 this 6-month average daily production was 1,127 pounds compared to a daily average production per producer of 986 pounds during the spring months. The April–June average during 1964–65 increased to 1,132 and 1,208 pounds per day. The 6-month average (July–December) during 1964–65 decreased to 1,061 and 1,074 pounds per day.

The pattern of production per producer in the Southwest Kansas order does not show as sharp and as distinct a change after termination of the take out-pay back plan as that cited for the Wichita market. Spring production, however, has increased and fall production has decreased in comparison to earlier years. The seasonal incentive plan was terminated nearly a year later than the one in the Wichita order and the production pattern change occurs only in 1965. The daily average April–June 1965 production per producer was 1,428 pounds and that for the July–December period was 1,174 pounds.

It was proposed that 20 cents per hundredweight be deducted from the uniform price to producers during each of the months of April, May, and June. The "pay-back" months would be September, October, and November. This is the plan adopted herein.

The 3 months of April through June are consistently the "flush months" and should be the months of "take-out." The rate of deduction of 20 cents per hundredweight from the uniform price was proposed. Such a rate should provide a seasonality in the uniform price of approximately 45 cents per hundredweight that would not otherwise occur. It is evident that producers have in the past responded to a moderate incentive to change their seasonal production pattern and the recommended rate should be adequate for the present.

The "pay-back" months of September through November, when the money previously deducted is divided into three equal parts and thus added to each of these months, should encourage producers to again increase production to meet current demands of fluid milk products. These are the months in both markets when there is a distinct increase in demand as compared to the rest of the year. Therefore incentive payments to producers during these months should be sufficient to encourage producers to meet the present demand situation in the combined and enlarged Wichita order.

The cooperative associations proposed that the market administrator pay out of the producer-settlement fund directly to handlers (including cooperative associations) in three equal amounts for each of the months of September through November the moneys deducted during the previous April through June period. It is recommended, however, that such funds be included, in three equal parts, when computing the uniform prices for the three months of September through November.

More than 95 percent of the producers are members of the two proponent cooperative associations. Thus cooperative associations, as they now do, can distribute returns to producers in such manner and at such rate as their boards of directors so direct. To adopt the plan proposed by cooperative associations, however, would require handlers receiving milk from producers not members of a cooperative association to either issue separate checks for the "pay-back" amounts involved or compute a uniform price including the "pay-back" funds. Under the circumstances it is concluded that all interests, producers' and handlers', may best be served by having the market administrator compute a uniform price for each of the months of September through November by adding in three equal parts to each month the funds deducted, during the previous April–June period. Such money withheld during these 3 months would be placed in the producer-settlement fund for disbursement as herein provided.

7. *Miscellaneous administrative and conforming changes.* Revised definitions of producer, producer milk and handler continue the present provisions of the Wichita order permitting a cooperative association to be a handler of bulk tank milk. These provisions as well as other sections, however, specify the division of responsibility for reporting and accounting for milk between a cooperative association acting as a handler of bulk tank milk and handlers as operators of pool distributing plants. The definitions of "Department" and "Chicago butter price" are added for simplicity and order clarity.

Both orders now provide for a cooperative association to be a handler of bulk tank milk of its producer members. Cooperative associations have been providing notice to the market administrator and to operators of pool plants with respect to their being a bulk tank handler of their member producer's milk. Since it is necessary that handlers and the market administrator be notified of such action to provide orderly marketing and accounting procedures, such a procedure is herein provided for in the order.

Handlers are now responsible for reporting the receipt of bulk milk from cooperatives. Classification of such milk is by agreement (subject to specified limitations) and payment to cooperative associations is at class prices. The cooperative associations in turn pay to or draw from the producer-settlement fund the difference between the value of such milk at class prices and its value at the uniform producer price. Under these provisions, when an audit of the handler's records results in a change of classification the market administrator must adjust the difference in value with the cooperatives which in turn must adjust differences with the handlers. To avoid this rather cumbersome procedure, it is provided that the responsibility for classification of such milk is that of the operator of the pool plant receiving the milk. The milk is assigned to the plant operator's utilization as producer milk of such plant. The value of the milk is included in the plant operator's net pool obligation at class prices and he is required to pay the applicable uniform price to the cooperative association for such milk. The plant operator is also responsible for paying the administrative assessment applicable to such milk. These procedures provide for specific accountability on the part of cooperative associations and the operators of pool plants. With operators of pool plants responsible for equalization with the marketwide pool, classification and auditing procedures are simplified in the administration of the order. These provisions should be adopted to provide clear cut and orderly procedures in the administration of the order.

Milk for which a cooperative association is the responsible handler and which is not delivered to another handler's pool plant remains the responsibility of the association in all respects—classifica-

tion, accounting, and payment. Such milk could be that diverted for the account of the association, or shrinkage of bulk tank milk on which the basis of settlement with the pool plant operator was not at farm weights.

Certain dates with respect to announcement of prices, payments to various funds and to producers, and handler reports should be adopted as proposed. To enable the market administrator to better coordinate reporting dates with receipt of information regarding utilization of intermarket movements of milk, the announcement of the uniform price to producers should be made on or before the 12th of the month following the month for which the price of producer milk is computed. This date will enable changing the present date of the 7th of the month to the 8th when handler reports of receipts and utilization are due. Likewise payments due producers from handlers should be made by the second working day following the 12th day rather than the 11th as at present. Payments, as proposed by proponents, to the producer-settlement, marketing service, and administrative expense funds should be made by the 13th of the month. No objections were raised to these dates and they are appropriate administratively.

Interest should be charged a handler on overdue accounts due the producer-settlement, marketing service, and administrative expense funds. The rate should be one-half of 1 percent starting with the 1st day of the month following the date after such obligation is due and increased a like amount on the 1st day of each succeeding month until such obligation is paid. Remittances should be considered to be received when postmarked. The record does not disclose whether any handlers have been delinquent in payments to the market administrator. It is essential, however, that payments of amounts due the market administrator be made promptly. It is only reasonable, in equity to all, that any handler that is delinquent in payments pay an interest charge at a rate in accord with normal business practices. The rate herein specified is such a rate and encourages payments by handlers to the market administrator on or before the specified due dates.

A marketing service deduction of 6 cents per hundredweight is now provided in each order. It was proposed this rate be continued. It is so provided herein. The present number of producers not members of a cooperative association are few and will not materially increase as a result of expanding the marketing area. The present rate of deduction, with the small number of producers involved, has produced adequate funds to check farm weights and tests and to furnish market information. It should be noted that both the present and proposed orders provide that the Secretary may prescribe a lesser rate should the present rate produce more money than needed for the intended purposes.

The present rate of deduction for expense of administration should be 4 cents per hundredweight, or such lesser amount as prescribed by the Secretary. This is the rate in the present Wichita order and 1 cent less than in the present Southwest Kansas order. The lesser rate should be adequate for the combined and expanded new order. The assessment should apply to each handler's receipts of producer milk, including his own production and receipts from a cooperative association in its capacity as a handler of bulk tank milk and other source milk allocated to Class I milk. These are the provisions of the present orders and should continue.

The adoption of various proposals necessitates certain changes in the specified order provisions. In addition, changes in other provisions are required to integrate the specific changes into a complete order while providing uniformity and clarity of provisions.

### Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

### General Findings

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

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

### Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

### Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Wichita, Kans., Marketing Area," and "Order Amending the Order Regulating the the Handling of Milk in the Wichita, Kans., Marketing Area," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

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

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

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

The month of May 1966 is hereby determined to be the representative period for the conduct of such referendum.

Kenneth M. Fell is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (30 F.R. 15412), such referendum to be completed on or before the 30th day from the date this decision is issued.

Signed at Washington, D.C., on August 10, 1966.

George L. Mehren,
*Assistant Secretary.*

## *Order[1] Amending the Order Regulating the Handling of Milk in the Wichita, Kans., Marketing Area*

### Definitions

Sec.
1073.1 Act.
1073.2 Secretary.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Sec.
1073.3 Department.
1073.4 Person.
1073.5 Cooperative association.
1073.6 Wichita, Kans., marketing area.
1073.7 Producer.
1073.8 Handler.
1073.9 Producer-handler.
1073.10 Distributing plant.
1073.11 Supply plant.
1073.12 Pool plant.
1073.13 Nonpool plant.
1073.14 Producer milk.
1073.15 Other source milk.
1073.16 Fluid milk product.
1073.17 Route disposition.
1073.18 Chicago butter price.

MARKET ADMINISTRATOR

1073.20 Designation.
1073.21 Powers.
1073.22 Duties.

RECORDS, REPORTS AND FACILITIES

1073.30 Reports of receipts and utilization.
1073.31 Payroll reports.
1073.32 Other reports.
1073.33 Records and facilities.
1073.34 Retention of records.

CLASSIFICATION

1073.40 Skim milk and butterfat to be classified.
1073.41 Classes of utilization.
1073.42 Assignment of shrinkage.
1073.43 Responsibility of handlers and reclassification of milk.
1073.44 Transfers.
1073.45 Computation of skim milk and butterfat in each class.
1073.46 Allocation of skim milk and butterfat classified.

MINIMUM PRICES

1073.50 Basic formula price.
1073.51 Class prices.
1073.52 Handler butterfat differentials.
1073.53 Location differentials to handlers.
1073.54 Use of equivalent prices.

APPLICATION OF PROVISIONS

1073.60 Producer-handlers.
1073.61 Plants subject to other Federal orders.
1073.62 Obligations of handler operating a partially regulated distributing plant.

DETERMINATION OF UNIFORM PRICE TO PRODUCERS

1073.70 Computation of the net pool obligation of each pool handler.
1073.71 Computation of uniform prices.
1073.72 Notification of handlers.
1073.73 Overdue accounts.

PAYMENTS

1073.80 Time and method of payment.
1073.81 Butterfat differentials to producers.
1073.82 Location differentials to producers and on nonpool milk.
1073.83 Producer-settlement fund.
1073.84 Payments to the producer-settlement fund.
1073.85 Payments out of the producer-settlement fund.
1073.86 Adjustment of errors in payments.
1073.87 Marketing services.
1073.88 Expense of administration.
1073.89 Termination of obligation.

MISCELLANEOUS PROVISIONS

1073.90 Effective time.
1073.91 Suspension or termination.
1073.92 Continuing power and duty of the market administrator.
1073.93 Liquidation after suspension or termination.
1073.94 Agents.
1073.95 Separability of provisions.

AUTHORITY: The provisions of this Part 1073 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1073.0 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 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 Wichita, Kansas, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

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

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

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

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

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to:

(a) Producer milk (including that pursuant to § 1073.14(a)(3)) and such handler's own production;

(b) Other source milk allocated to Class I milk pursuant to § 1073.46(a) (4) and (8) and the corresponding steps of § 1073.46(b); and

(c) Class I milk disposed of from a partially regulated distributing plant with route disposition in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

*Order relative to handling.* It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Wichita, Kans., 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:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on June 29, 1966, and published in the FEDERAL REGISTER on July 6, 1966 (31 F.R. 9218; F.R. Doc. 66–7313) shall be and are the terms and provisions of this order, and are set forth in full herein subject to the following revisions:

1. The language of § 1073.44(e)(2) is revised;
2. The language of § 1073.46(a)(5) is revised;
3. An additional sentence is added at the end of § 1073.50;
4. In § 1073.51(b), "basic formula" is changed to "Class III milk"; and
5. In § 1073.71(e) the introductory text preceding subparagraph (1) is revised.

DEFINITIONS

**§ 1073.1 Act.**

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

**§ 1073.2 Secretary.**

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

**§ 1073.3 Department.**

"Department" means the U.S. Department of Agriculture.

**§ 1073.4 Person.**

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

**§ 1073.5 Cooperative association.**

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

**§ 1073.6 Wichita, Kans., marketing area.**

"Wichita, Kans., marketing area" hereinafter called the marketing area, means all the territory within the counties enumerated below, all within the State of Kansas, together with all territory within the boundaries so designated which is occupied by government (municipal, State or Federal) reservations or installations:

ZONE I

| | |
|---|---|
| Barber. | Marion. |
| Barton. | McPherson. |
| Butler. | Pawnee. |
| Comanche. | Pratt. |
| Cowley. | Reno. |
| Edwards. | Rice. |
| Ellis. | Rush. |
| Harper. | Russell. |
| Harvey. | Sedgwick. |
| Kingman. | Stafford. |
| Kiowa. | Sumner. |

ZONE II

| | |
|---|---|
| Clark. | Lane. |
| Finney. | Meade. |
| Ford. | Morton. |
| Gove. | Ness. |
| Grant. | Scott. |
| Gray. | Seward. |
| Greeley. | Stanton. |
| Hamilton. | Stevens. |
| Haskell. | Trego. |
| Hodgeman. | Wichita. |
| Kearny. | |

**§ 1073.7 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 Grade A inspection requirements of a duly constituted health authority and whose milk is:

(a) Received at a pool plant; or

(b) Diverted as producer milk pursuant to § 1073.14.

**§ 1073.8 Handler.**

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any person who operates a partially regulated distributing plant;

(c) Any cooperative association with respect to milk of its member producers which is diverted from a pool plant to a nonpool plant for the account of such association;

(d) A cooperative association with respect to milk of its member producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it wishes to be the handler for the milk. In this case, the milk is received from producers by the cooperative association at the location of the plant to which it is delivered; and

(e) A producer-handler, or any person who operates an other order plant described in § 1073.61.

**§ 1073.9 Producer-handler.**

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets the qualifications specified in paragraphs (a) and (b) of this section:

(a) Receipts of fluid milk products at his plant are solely milk of his own production, from pool plants of other handlers, and packaged fluid milk products from other order plants; and

(b) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging and distribution of the milk are the personal enterprise and the personal risk of such person.

**§ 1073.10 Distributing plant.**

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which during the month route disposition is made in the marketing area.

**§ 1073.11 Supply plant.**

"Supply plant" means a plant from which fluid milk products, acceptable to an appropriate health authority for distribution under a Grade A label, are shipped during the month to and physically received at a distributing plant.

**§ 1073.12 Pool plant.**

"Pool plant" means:

(a) Any distributing plant, other than that of a producer-handler or one described in § 1073.61, which:

(1) Disposes of through route disposition fluid milk products in an amount equal to 25 percent or more during the months of March through July and 35 percent during all other months of such plant's total receipts of Grade A milk direct from dairy farmers, supply plants and cooperative associations in their capacity as a handler pursuant to § 1073.8(d) and has route disposition in the marketing area in an amount equal to 10 percent or more of such receipts. In any case in which the entire quantity of fluid milk products disposed of in packages in a particular size and form is received in such packages from other plants, all such disposition shall be credited to the plant from which such packages were received and shall be deducted from the appropriate disposition of the receiving plant; or

(2) Qualified as a pool plant in the immediately preceding month on the basis of the performance standards described in subparagraph (1) of this paragraph;

(b) Any supply plant from which during the month 50 percent or more of the Grade A milk received from dairy farmers and cooperative associations in their capacity as a handler pursuant to § 1073.8(d) is shipped to a plant(s) described in paragraph (a) of this section. Any supply plant which has shipped to a plant(s) described in paragraph (a) of this section the required percentages of its receipts during each of the months of August through November shall be designated a pool plant in each of the following months of December through July unless the plant operator requests the market administrator in writing that such plant not be a pool plant. Such nonpool plant status shall be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments; and

(c) Any plant which is operated by a cooperative association and 60 percent or more of the milk delivered during the current month by producers who are members of such association is delivered directly or is transferred by the association to pool plants as described in paragraphs (a) and (b) of this section, unless such a plant qualifies for the month as a "pool plant" under another order issued pursuant to the Act by delivering 50 percent or more of its Grade A receipts from dairy farmers to plants which qualified as "pool plants" under such other order.

**§ 1073.13 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 which has route disposition of fluid milk products labeled Grade A in consumer-type packages or dispenser units in the marketing area during the month; and

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is neither an other order plant nor a producer-handler plant.

**§ 1073.14 Producer milk.**

"Producer milk" shall be that skim milk and butterfat for each handler's account in the following milk from producers:

(a) With respect to the operations of a pool plant:

(1) Received directly from such producers;

(2) Diverted by the operator of such pool plant to a nonpool plant, subject to the condition of paragraph (c) of this section; and

(3) Which is received at such pool plant from a cooperative association in its capacity as a handler pursuant to § 1073.8(d), for all purposes other than those specified in paragraph (b)(2)(i) of this section;

(b) With respect to receipts by a cooperative association in addition to those pursuant to paragraph (a) of this section:

(1) For which such cooperative association is the handler pursuant to § 1073.8(c), subject to the condition of paragraph (c) of this section; and

(2) For which the cooperative association is the handler pursuant to § 1073.8(d) to the following extent:

(i) For purposes of reporting pursuant to §§ 1073.30(c) and 1073.31(a) and making payments to producers pursuant to § 1073.80(a); and

(ii) For all purposes, with respect to any such milk which is not delivered to the pool plant of another handler; and

(c) For the purposes of location adjustments pursuant to §§ 1073.53 and 1073.82, milk diverted shall be priced at the location of the pool plant from which diverted.

§ 1073.15 Other source milk.

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

(a) Receipts of fluid milk products during the month except:

(1) Fluid milk products received from pool plants; and

(2) Producer milk; and

(b) Products, other than fluid milk products, cottage cheese curd and cottage cheese, from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month and any disappearance of nonfluid milk products not otherwise accounted for.

§ 1073.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, concentrated milk disposed of for fluid consumption other than in hermetically sealed metal or glass containers, buttermilk, flavored milk, yogurt, milk drinks (plain or flavored) "modified or fortified," including "dietary milk products" and reconstituted milk or skim milk, sour cream and sour cream products labeled Grade A, cream or any mixture in fluid form of milk or skim milk and cream (except frozen or aerated cream, ice cream or frozen dessert mixes, eggnog and sterilized products packaged in hermetically sealed containers).

§ 1073.17 Route disposition.

"Route disposition" means any delivery of a fluid milk product from a distributing plant to a retail or wholesale outlet (including any delivery by a vendor, from a plant store or through a vending machine) except any delivery of a fluid milk product to any milk processing plant or to commercial food establishments pursuant to § 1073.41(c)(4).

§ 1073.18 Chicago butter price.

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

MARKET ADMINISTRATOR

§ 1073.20 Designation.

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

§ 1073.21 Powers.

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

(a) To administer its terms and provisions;

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

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

(d) To recommend to the Secretary amendments thereto.

§ 1073.22 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 upon which he enters upon his duties execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in the 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 funds provided by § 1073.88 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 1073.87) 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 surrender the same to his successor or to such other person as the Secretary may designate;

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

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

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

(1) Made reports pursuant to §§ 1073.30 through 1073.32; or

(2) Made payments pursuant to §§ 1073.80 through 1073.88;

(i) 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 the prices determined for each month as follows:

(1) On or before the 5th day of each month the minimum price for Class I milk computed pursuant to § 1073.51(a) and the Class I butterfat differential pursuant to § 1073.52(a), both for the current month; and the minimum prices for Class II and Class III milk computed pursuant to § 1073.51 (b) and (c) and the Class II and Class III butterfat differentials pursuant to § 1073.52 (b) and (c), all for the previous month;

(2) On or before the 12th day of each month the uniform price computed pursuant to § 1073.71 and the butterfat differential computed pursuant to § 1073.81, both for the previous month;

(j) Prepare and make available for the benefit of producers, consumers, and handlers such general statistics and such information concerning the operations hereof as are appropriate to the purpose and functioning of this part and which do not reveal confidential information;

(k) On or before the 13th day of each month report to each cooperative association, which so requests, the percentage utilization of milk received from producers or from a cooperative association in its capacity as a handler pursuant to § 1073.8(d) in each class by each handler who in the previous month received milk from members of such cooperative association;

(l) Whenever required for purpose of allocating receipts from other order plants pursuant to § 1073.46(a)(9) and the corresponding step of § 1073.46(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 fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1073.46 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 fluid milk products to an other order plant, the classification to which the skim milk and butterfat in such fluid milk products were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

RECORDS, REPORTS, AND FACILITIES

§ 1073.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, reports for such month shall be made to the market administrator in the detail and on forms prescribed by the market administrator:

(a) Each handler described in § 1073.8(a) shall report with respect to each of his pool plants as follows:

(1) Receipts of skim milk and butterfat in:

(i) Producer milk;

(ii) Fluid milk products received from other pool plants; and

(iii) Other source milk, with the identity of each source;

(2) Opening inventories of fluid milk products;

(3) The utilization or disposition of all quantities required to be reported, including separate statements of quantities:

(i) Of bulk fluid milk products on hand at the end of the month;

(ii) Of packaged fluid milk products on hand at the end of the month; and

(iii) Of route disposition of fluid milk products in the marketing area; and

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

(b) Each handler described in § 1073.8 (b) shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of those of producer milk; and

(c) Each cooperative association shall report with respect to milk for which it is a handler pursuant to § 1073.8 (c) and (d), as follows:

(1) Receipts of skim milk and butterfat in producer milk;

(2) Utilization of milk for which it is the handler pursuant to § 1073.8(c);

(3) The quantities delivered to each pool plant of another handler pursuant to § 1073.8(d); and

(4) Such other information as the market administrator may require.

**§ 1073.31 Payroll reports.**

On or before the 20th day after the end of the month each handler described in § 1073.8(a), for each of his pool plants, and each cooperative association with respect to milk for which it is the handler pursuant to § 1073.8 (c) and (d) shall submit to the market administrator the producer payroll and each handler making payments pursuant to § 1073.62 (a) his payroll for dairy farmers delivering Grade A milk, which shall show for each producer or dairy farmer:

(a) The name and address;

(b) The total pounds of milk received and the average butterfat content thereof;

(c) The total pounds of milk diverted and the location of the nonpool plant; and

(d) The price, amount and date of payment with the nature and amount of any deductions.

**§ 1073.32 Other reports.**

Each producer-handler and each handler exempt from regulation pursuant to § 1073.61 shall make reports to the market administrator at such time and in such manner as the market administrator may request.

**§ 1073.33 Records and facilities.**

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

(a) The receipts of producer milk and other source milk and the utilization of such receipts;

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

(c) Payments to producers and cooperative associations; and

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

**§ 1073.34 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

**§ 1073.40 Skim milk and butterfat to be classified.**

All skim milk and butterfat required to be reported pursuant to § 1073.30 shall be classified by the market administrator pursuant to the provisions of §§ 1073.41 through 1073.46. 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 of the water originally associated with such solids.

**§ 1073.41 Classes of utilization.**

Subject to the conditions set forth in §§ 1073.43 through 1073.46 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 the form of a fluid milk product (including those reconstituted) except:

(i) Any fluid milk product fortified with added solids shall be Class I milk in an amount equal only to the weight of an equal volume of a like unmodified product of the same butterfat content; and

(ii) Any fluid milk product classified pursuant to subparagraphs (2), (3), and (4) of paragraph (c) of this section;

(2) In inventory of fluid milk products in packaged form on hand at the end of the month; and

(3) Not specifically accounted for as Class II milk or as Class III milk;

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat used to produce or added to cottage cheese and cottage cheese curd, except as classified pursuant to subparagraphs (2) and (3) of paragraph (c) of this section; and

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

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

(2) In fluid milk products or cottage cheese disposed of for livestock feed;

(3) In fluid milk products or cottage cheese dumped after notification to and opportunity for verification as may be requested by the market administrator;

(4) Disposed of in fluid milk products in bulk form to any commercial food processing establishment for use in food products prepared for consumption off the premises;

(5) Used to produce frozen cream;

(6) In inventory of bulk fluid milk products on hand at the end of the month;

(7) In that portion of "fortified" fluid milk products not classified as Class I milk pursuant to paragraph (a)(1)(i) of this section;

(8) In shrinkage of skim milk and butterfat, respectively, assigned at each pool plant pursuant to § 1073.42(b)(1), but not to exceed the following:

(i) 2 percent of receipts of producer milk pursuant to § 1073.14(a) (1) and (2); plus

(ii) 1.5 percent of receipts of fluid milk products in bulk tank lots from other pool plants; plus

(iii) 1.5 percent of milk received from a cooperative association which is a handler for such milk pursuant to § 1073.8(d), except that if the handler operating the pool plant files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage shall be 2 percent; plus

(iv) 1.5 percent of receipts of fluid milk products in bulk tank lots from an other order plant, exclusive of the quantity for which Class III milk (or Class II milk) utilization was requested by the operator of such plant and the handler; plus

(v) 1.5 percent of receipts of fluid milk products in bulk tank lots from unregulated supply plants, exclusive of the quantity for which Class III milk (or Class II milk) utilization was requested by the handler; less

(vi) 1.5 percent of milk disposed of in bulk tank lots to other milk plants, except, in the case of milk diverted to a nonpool plant, if the operator of the plant to which the milk is diverted purchases such milk on the basis of farm weights, the applicable percentage shall be 2 percent;

(9) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1073.42(b)(2); and

(10) In shrinkage of skim milk and butterfat, respectively, resulting from milk for which a cooperative association is the handler pursuant to § 1073.8 (c) or (d) not being delivered to pool plants and nonpool plants, but not in excess of one-half percent of such receipts, exclusive of those for which farm weights are used as the basis of receipt at the plant to which delivered.

**§ 1073.42 Assignment of shrinkage.**

The market administrator shall allocate shrinkage over a handler's receipts at each pool plant as follows:

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

(b) If the pool plant has receipts of other source milk, shrinkage shall be prorated between:

(1) Skim milk and butterfat in amounts respectively equal to 50 times

the maximum amount that may be computed pursuant to § 1073.41(c)(8); and

(2) Skim milk and butterfat in other source milk in the form of fluid milk products exclusive of that specified in § 1073.41(c)(8).

**§ 1073.43 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) For the purposes of §§ 1073.41 through 1073.46, 1073.50 through 1073.54, and 1073.70 through 1073.72, milk delivered by a cooperative association in its capacity as a handler pursuant to § 1073.8(d) shall be classified and allocated as producer milk according to the use or disposition by the receiving handler and the value thereof at class prices shall be included in the receiving handler's net pool obligation pursuant to § 1073.70. For purposes of location adjustments pursuant to § 1073.53 and administrative expense pursuant to § 1073.88, such milk shall be treated as producer milk of the receiving handler; and

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

**§ 1073.44 Transfers.**

Skim milk or butterfat in the form of a fluid milk product shall be classified:

(a) At the utilization indicated by the operators of both plants in their reports pursuant to § 1073.30, otherwise as Class I milk, if transferred from a pool plant to another pool plant, 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 computations pursuant to § 1073.46(a)(9) and the corresponding step of § 1073.46(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1073.46(a)(4) and the corresponding step of § 1073.46(b), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I (then Class II) utilization to such other source milk; and

(3) If the handler transferring to the pool plant of another handler received during the month other source milk to be allocated pursuant to § 1073.46(a)(8) or (9) and the corresponding steps of § 1073.46(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I (or Class II) milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(b) As Class I milk, if transferred from a pool plant to a producer-handler;

(c) As Class I milk, if transferred or diverted to a nonpool plant that is neither an other order plant nor a producer-handler plant, located more than 250 miles, by the shortest highway distance as determined by the market administrator, from the nearest of the location adjustment points pursuant to § 1073.53(c), except that cream so transferred may be classified as Class III milk if prior notice is given to the market administrator and each container is labeled by the transferor as "Grade C" cream for manufacturing only;

(d) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant nor a producer-handler plant, located not more than 250 miles, by the shortest highway distance as determined by the market administrator, from the nearest of the location adjustment points pursuant to § 1073.53(c), 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 § 1073.30 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 or diverted shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any Class I milk utilization disposed of on routes in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of Grade A milk for such nonpool plant;

(ii) Any Class I milk utilization disposed of on routes in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(iii) Class I milk 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 milk 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 milk utilization is not so assigned to it, the skim milk and butterfat so transferred or diverted shall be classified as Class II milk to the extent of such uses at the plant and then as Class III milk;

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

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in Class I if allocated as a fluid milk product to Class I under the other order, in Class II if allocated to Class II under an order which provides three classes and in Class III if allocated to Class III under the other order or if allocated to Class II under an order which provides only two classes (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 or diversions in bulk form shall be classified as Class III milk to the extent of the Class III milk 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 milk subject to adjustment when such information is available;

(5) For purposes of this paragraph (e), if the transferee order provides for only two classes of utilization, milk allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and milk allocated to another class shall be classified as Class III milk; and

(6) If the form in which any fluid milk product 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 § 1073.41; and

(f) If any skim milk or butterfat is transferred to a second plant under paragraph (d) of this section the same conditions of audit, classification, and allocation shall apply.

**§ 1073.45 Computation of skim milk and butterfat in each class.**

(a) For each month the market administrator shall correct for mathematical and other obvious errors the reports of receipts and utilization submitted pursuant to § 1073.30 for each pool plant of each handler;

(b) If no fluid milk products to be assigned pursuant to § 1073.46(a)(8) or

(9) were received at any pool plant of the handler, allocation pursuant to § 1073.46 and computation of obligation pursuant to § 1073.70 shall be made separately for each pool plant of a handler operating two or more pool plants;

(c) Unless the conditions specified in paragraph (b) of this section apply, the market administrator will compute the pounds of skim milk and butterfat in each class at all pool plants of such handler, exclusive of any classification based upon movements between such plants, and allocation pursuant to § 1073.46 and computation of obligation pursuant to § 1073.70 shall be based upon the combined utilization so computed; and

(d) Producer milk for which a cooperative association is the responsible handler pursuant to § 1073.8 (c) or (d) shall be treated separately from the operations of any pool plant(s) operated by such cooperative association for the purposes of allocation pursuant to § 1073.46 and computation of obligation pursuant to § 1073.70.

**§ 1073.46 Allocation of skim milk and butterfat classified.**

After making the computations pursuant to § 1073.45, the market administrator shall determine the classification of producer milk for each handler (or pool plant, if applicable) as follows:

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

(1) Subtract from the total pounds of skim milk in Class III milk the pounds of skim milk classified as Class III milk pursuant to § 1073.41(c)(8);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants as follows:

(i) From Class 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) Except for the first month this order is effective, subtract from the remaining pounds of skim milk in Class I milk the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III milk, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products for which Grade A certification is not established, or which are from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II or III milk but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant:

(a) For which the handler requests Class III (or Class II) milk 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 other pool plants and receipts in bulk from other order plants; and

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

(6) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III milk, the pounds of skim milk in inventory of bulk fluid milk products (and for the first month the order is effective the pounds of fluid milk products in packaged form) on hand at the beginning of the month;

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

(8) 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 from unregulated supply plants which were not subtracted pursuant to subparagraph (5)(i) of this paragraph;

(9) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk 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 subparagraph (5)(ii) of this paragraph:

(i) In series beginning with Class III milk, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III milk utilization of skim milk announced for the month by the market administrator pursuant to § 1073.22(l) or the percentage that Class II and Class III milk utilization remaining is of the total remaining utilization of skim milk of the handler; and

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

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other handlers (or other pool plants, if applicable) according to the classification assigned pursuant to § 1073.44(a); and

(11) If the pounds of skim milk remaining in all 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 milk. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

MINIMUM PRICES

**§ 1073.50 Basic formula price.**

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the Department for the month, 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. However, for the purpose of computing the Class I milk price for each month from the effective date of this order through March 1967, the basic formula price shall not be less than $4.00.

**§ 1073.51 Class prices.**

Subject to the provisions of §§ 1073.52 and 1073.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I milk.* The price for Class I milk at plants located in Zone I shall be the basic formula price for the preceding month plus $1.60, subject to a supply-demand adjustment computed pursuant to subparagraphs (1) through (3) of this paragraph. Such price shall not be less than the Class I price for milk containing 3.5 percent butterfat for the same period pursuant to Federal Order No. 64 (Greater Kansas City) during each month of the period August through March and plus 10 cents for each of the months of April through July, nor more than the Greater Kansas City Class I price (3.5 percent butterfat content) plus 50 cents during each of the months of the period August through March and plus 60 cents for each of the months of April through July:

(1) Divide the total receipts of milk from producers in the second and third months preceding by the total volume of producer milk in Class I milk for the same months, multiply the result by 100, and round to the nearest whole number. The result shall be known as the "current utilization percentage";

(2) Compute a "net deviation percentage" as follows:

(i) If the current utilization percentage is neither less than the minimum standard utilization percentage specified below nor in excess of the maximum standard utilization percentage specified below, the net deviation percentage is zero;

(ii) Any amount by which the current utilization percentage is less than the minimum standard utilization percentage specified below is a "minus net deviation percentage"; and

(iii) Any amount by which the current utilization percentage exceeds the maximum standard utilization percentage specified below is a "plus net deviation percentage";

| Delivery period for which price applies | Delivery period used in computation | Percentages | |
|---|---|---|---|
| | | Minimum | Maximum |
| January | October-November | 119 | 129 |
| February | November-December | 126 | 136 |
| March | December-January | 129 | 139 |
| April | January-February | 130 | 140 |
| May | February-March | 131 | 141 |
| June | March-April | 132 | 142 |
| July | April-May | 141 | 151 |
| August | May-June | 145 | 155 |
| September | June-July | 139 | 149 |
| October | July-August | 135 | 145 |
| November | August-September | 124 | 134 |
| December | September-October | 116 | 126 |

(3) For a minus "net deviation percentage" the Class I price shall be increased and for a plus "net deviation percentage" the Class I price shall be decreased as follows:

(i) One-half cent times each such percentage point of net deviation; plus

(ii) One-half cent times the lesser of:

(*a*) Each such percentage point of net deviation; or

(*b*) Each percentage point of net deviation of like direction (plus or minus, with any net deviation percentage of opposite direction considered to be zero for purposes of computations of this subparagraph) computed pursuant to subparagraph (2) of this paragraph for the month immediately preceding; plus

(iii) One-half cent times the least of:

(*a*) Each such percentage point of net deviation;

(*b*) Each percentage point of net deviation of like direction computed pursuant to subparagraph (2) of this paragraph for the month immediately preceding; or

(*c*) Each percentage point of net deviation of like direction computed pursuant to subparagraph (2) of this paragraph for the second preceding month;

(iv) Less one-half cent, if necessary, to round down to the nearest whole cent.

(b) *Class II milk.* The price for Class II milk shall be the Class III milk price for the month plus 15 cents.

(c) *Class III milk.* The price for Class III milk shall be the basic formula price for the month, but not to exceed a price computed as follows:

(1) Multiply by 4.2 the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade AA (93-score) bulk creamery butter per pound at Chicago as reported for the month by the Department: *Provided,* That if no price is reported for Grade AA (93-score) butter, the highest of the prices reported for Grade A (92-score) butter for that day shall be used;

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

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 48 cents, and round to the nearest cent.

### § 1073.52 Handler butterfat differentials.

If the average butterfat test of Class I, Class II or Class III milk as calculated pursuant to § 1073.46 is more or less than 3.5 percent, there shall be added to, or subtracted from, as the case may be, the price for such class of utilization for each one-tenth of 1 percent that such average butterfat test is above or below 3.5 percent, a butterfat differential computed by multiplying the Chicago butter price by the applicable factor listed below, and rounding to the nearest one-tenth cent:

(a) *Class I milk.* Multiply such price for the preceding month by 0.120;

(b) *Class II milk.* Multiply such price for the current month by 0.115; and

(c) *Class III milk.* Multiply such price for the current month by 0.115.

### § 1073.53 Location differentials to handlers.

For milk received from producers or from a cooperative association pursuant to § 1073.8(d) at a pool plant and which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (d) of this section or for other source milk to which a location adjustment is applicable, the price at such pool plant when located:

(a) In Zone I of the marketing area, shall be that computed pursuant to § 1073.51(a);

(b) In Zone II of the marketing area, shall be 5 cents more than the Zone I price;

(c) Outside the marketing area, shall be the Class I price applicable at the nearest of the city halls in Garden City, Hays, Pratt, or Wichita, Kan., subject to a reduction of 12 cents if the distance to such city hall is 70 miles or more, but less than 80 miles, plus an additional 1.5 cents for each 10 miles or fraction thereof in excess of 79 miles (all distances to be by shortest hard-surfaced highway, as determined by the market administrator); and

(d) For purposes of calculating such location adjustments, transfers of fluid milk products between pool plants shall be assigned Class I milk disposition at the receiving plant, in excess of the sum of receipts at such plant from producers (including receipts from a cooperative association as a handler of bulk tank milk pursuant to § 1073.8(d)) and the pounds assigned as Class I milk to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to shipping plants priced at the same zone price, next to plants priced at the other zone price, and then in sequence beginning with the plant at which the least location adjustment credit would apply.

### § 1073.54 Use of equivalent prices.

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

## Application of Provisions

### § 1073.60 Producer-handlers.

Sections 1073.40 through 1073.46, 1073.50 through 1073.54, 1073.61, 1073.62, 1073.70 through 1073.72, and 1073.80 through 1073.89 shall not apply to a producer-handler.

### § 1073.61 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 which meets the pooling requirements of another Federal order and from which route disposition during the month in such other Federal order marketing area is greater 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 which meets the pooling requirements of another Federal order and from which route disposition during the month in this marketing area is greater than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(c) A supply plant meeting the requirements of § 1073.12(b) 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 December through July if such plant retains automatic pooling status under this part.

### § 1073.62 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 §§ 1073.30 and 1073.31 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 § 1073.70 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 III (or Class II) milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1073.70(g) and a credit in the amount specified in § 1073.84(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 §§ 1073.30 and 1073.31 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 § 1073.12(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; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(4) From the value of such milk at the Class I milk price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class III milk price).

DETERMINATION OF UNIFORM PRICE TO PRODUCERS

**§ 1073.70 Computation of the net pool obligation of each pool handler.**

The net pool obligation of each pool handler (at each pool plant, if applicable) 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 § 1073.46(c), by the applicable class prices (adjusted pursuant to §§ 1073.52 and 1073.53);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1073.46(a)(11) and the corresponding step of § 1073.46(b) by the applicable class prices;

(c) Add the amount obtained by multiplying the difference between the Class III milk price for the preceding month and the Class I milk price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1073.46(a)(6) and the corresponding step of § 1073.46(b);

(d) Add the amount obtained from multiplying the difference between the Class III milk price for the preceding month and the Class II milk price for the current month by the lesser of:

(1) The hundredweight of skim milk and butterfat subtracted from Class II milk pursuant to § 1073.46(a)(6) and the corresponding step of § 1073.46(b) for the current month; or

(2) The hundredweight of skim milk and butterfat remaining in Class III milk after the calculations pursuant to § 1073.46(a)(9) and the corresponding step of § 1073.46(b) for the preceding month, less the hundredweight used in computations pursuant to paragraph (c) of this section;

(e) Add an amount determined by multiplying the difference between the Class I 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 § 1073.46(a)(3) and the corresponding step of § 1073.46(b). If the Class I price for the current month is less than the Class I price for the preceding month the result shall be a minus amount;

(f) Add an amount equal to the difference between the value at the Class I milk price applicable at the pool plant and the value at the Class III milk price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1073.46(a)(4) and the corresponding step of § 1073.46(b); and

(g) Add an amount equal to the value at the Class I milk 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 milk pursuant to § 1073.46(a)(8) and the corresponding step of § 1073.46(b).

**§ 1073.71 Computation of uniform prices.**

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

(a) Combine into one total the values computed pursuant to § 1073.70 for all handlers who filed the reports prescribed by § 1073.30 for the month and who made the payments pursuant to §§ 1073.80 and 1073.84 for the preceding month;

(b) Deduct the amount of the plus differentials and add the amount of the minus differentials, which are applicable pursuant to § 1073.82;

(c) Subtract, if the average butterfat content of the milk specified in paragraph (e) of this section is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent, an amount computed by mutiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 1073.81 and multiplying the result by the total hundredweight of such milk;

(d) Add an amount equal to not less than 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 § 1073.70(g);

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(g) For the months specified in paragraphs (h) and (i) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (d) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (e)(2) of this section by the weighted average price;

(h) From the remainder subtract during each of the months of April, May, and June, an amount equal to 20 cents per hundredweight of the total amount of producer milk included in these computations. This amount shall be retained in the producer-settlement fund and disbursed according to the provisions of paragraph (i) of this section;

(i) Add during each of the months of September, October, and November, one-third of the total amount subtracted pursuant to paragraph (h) of this section;

(j) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(k) 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.

§ 1073.72 Notification of handlers.

On or before the 12th day of each month the market administrator shall notify each handler of:

(a) The quantity and value of his milk in each class computed pursuant to §§ 1073.46 and 1073.70 and the totals of such quantities and values;

(b) The uniform price computed pursuant to § 1073.71;

(c) The amount, if any, due such handler from the producer-settlement fund;

(d) The total amounts to be paid by such handler pursuant to §§ 1073.80 and 1073.84; and

(e) The amount to be paid by such handler pursuant to §§ 1073.87 and 1073.88.

§ 1073.73 Overdue accounts.

Any unpaid obligation of a handler pursuant to § 1073.84, § 1073.86(a), or § 1073.88 shall be increased one-half of 1 percent on the first day of the month following after the date such obligation is due and on the first day of each succeeding month until such obligation is paid. Any remittance received by the market administrator postmarked prior to the first of the month shall be considered to have been received when postmarked.

PAYMENTS

§ 1073.80 Time and method of payment.

Each handler shall make payment as follows:

(a) On or before the second working day following the 12th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the applicable uniform price computed pursuant to § 1073.71 for such producer's deliveries of milk, adjusted by the butterfat and location differentials computed pursuant to §§ 1073.81 and 1073.82, and less the amount of the payment made pursuant to paragraph (b) of this section. If by such date such handler has not received full payment pursuant to § 1073.85, he may reduce his total payments uniformly to all producers by not more than the amount of the reduction in payment by the market administrator. He shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator;

(b) On or before the 27th day of each month, to each producer:

(1) To whom payment is not made pursuant to paragraph (c) of this section; and

(2) Who is still delivering Grade A milk to such handler, a partial payment with respect to milk received from him during the first 15 days of such month computed at not less than 110 percent of the Class III price for 3.5 percent milk for the preceding month, without deduction for hauling;

(c) On or before the 14th day after the end of each month and on or before the 24th day of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section, to a cooperative association which so requests, for milk which it caused to be delivered to such handler from producers, and for which such association is determined by the market administrator to be authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producers. Such payments due on or before the 14th day after the end of the month shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 1073.31, and payments due on or before the 24th day of the month shall be accompanied by a statement of the amount of money for each producer; and

(d) Each handler who receives milk for which a cooperative association is the handler pursuant to § 1073.8(d), shall, on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) A partial payment for milk received during the first 15 days of the month at not less than the amount prescribed in paragraph (b)(2) of this section; and

(2) In making final settlement, the value of such milk at the applicable uniform price, less payment made pursuant to subparagraph (1) of this paragraph.

§ 1073.81 Butterfat differentials to producers.

In making payments pursuant to § 1073.80(a), the uniform prices per hundredweight shall be adjusted for each one-tenth of one percent that the average butterfat content is above or below 3.5 percent by a butterfat differential equal to the average of the butterfat differentials determined pursuant to § 1073.52 weighted by the pounds of butterfat in producer milk in each class, the result being rounded to the nearest one-tenth of a cent.

§ 1073.82 Location differentials to producers and on nonpool milk.

(a) For producer milk received at pool plants located outside Zone I, there shall be added or deducted, as the case may be, an adjustment for each such plant for all milk at the rates specified in § 1073.53 (b) and (c); and

(b) For purposes of computations pursuant to §§ 1073.84(b)(2) and 1073.85, the "weighted average price" shall be adjusted at the rates set forth in § 1073.53 (b) and (c), applicable at the location of the nonpool plant(s) from which the milk was received.

§ 1073.83 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 §§ 1073.62, 1073.84, and 1073.86, and out of which he shall make all payments to handlers pursuant to §§ 1073.85 and 1073.86. Immediately after computing the uniform prices for each month, the market administrator shall compute the amount by which each handler's net pool obligation is greater or less than the sum obtained by multiplying the hundredweight of milk of producers by the appropriate prices required to be paid producers by handlers pursuant to § 1073.80 and adding together the resulting amounts, and shall enter such amount on each handler's account as such handler's pool debit or credit, as the case may be, and render such handler a transcript of his account.

§ 1073.84 Payments to the producer-settlement fund.

On or before the 13th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the total amounts (for each pool plant, if applicable) specified in paragraph (a) of this section exceed the amounts specified in paragraph (b) of this section:

(a) The sum of:

(1) The total of the net pool obligation computed pursuant to § 1073.70 for such handler; and

(2) In the case of a cooperative association which is a handler, the minimum amounts due from other handlers pursuant to § 1073.80(d)(2), and

(b) The sum of:

(1) The value of such handler's producer milk at the applicable uniform prices specified in § 1073.80; and

(2) The value at the "weighted average" price(s) applicable at the location of the plant(s) from which received (not to be less than the value at the Class III milk price) with respect to other source milk for which a value is computed pursuant to § 1073.70(g).

§ 1073.85 Payments out of the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any (for each pool plant, if applicable), by which the amount computed pursuant to § 1073.84(b) exceeds the amount computed pursuant to § 1073.84(a). The market administrator shall offset any payment due any handler against payments due from such handler. If 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 necessary funds are available.

§ 1073.86 Adjustment of errors in payments.

(a) Whenever verification by the market administrator of reports or payments of any handler discloses error in payments to the producer-settlement fund made pursuant to § 1073.84, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days of such billing, make payment to the market administrator of the amount so billed;

(b) Whenever verification discloses that payment is due from the market

administrator to any handler pursuant to § 1073.85, the market administrator shall, within 5 days, make payment to such handler;

(c) Whenever verification by the market administrator of the payment by a handler to any producer discloses payment to such producer of an amount which is less than is required by this part, the handler shall make up such payment to the producer not later than the time of making payment to producers next following the disclosure; and

(d) Whenever verification by the market administrator of the payment by a handler to any producer discloses that solely through error in computation, payment to such producer was in an amount more than was required to be paid pursuant to § 1073.80, no handler shall be deemed to be in violation of § 1073.80 if he reduces his next payment to such producer following discovery of such error by not more than such overpayment.

### § 1073.87 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, from the payments made to each producer other than himself pursuant to § 1073.80(a) with respect to all milk of such producer received by such handler during the month and shall pay such deductions to the market administrator on or before the 14th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples and tests of milk received from, and to provide market information to such producers. The market administrator may contract with a cooperative association or cooperative associations for the furnishing of the whole or any part of such services; and

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make such deductions from the payments to be made directly to producers pursuant to § 1073.80(a) as are authorized by such producers, and on or before the 14th day after the end of each month, pay over such deductions to the association of which such producers are members. When requested by the cooperative association a statement shall be supplied the cooperative association showing for each producer for whom such deduction is made the amount of such deduction, the total delivery of milk, and, unless otherwise previously provided, the butterfat test.

### § 1073.88 Expense of administration.

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 14th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that pursuant to § 1073.14(a)(3)) and such handler's own production;

(b) Other source milk allocated to Class I milk pursuant to § 1073.46(a) (4) and (8) and the corresponding steps of § 1073.46(b); and

(c) Class I milk disposed of from a partially regulated distributing plant with route disposition in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

### § 1073.89 Termination of obligation.

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

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall 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 calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; 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 milk involved in the claim was received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or offset 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.

## Miscellaneous Provisions

### § 1073.90 Effective time.

The provisions of this part, or any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to § 1073.91.

### § 1073.91 Suspension or termination.

Any or all of the provisions of this part, or any amendment to this part, may be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary shall give and shall, in any event, terminate whenever the provisions of the Act cease to be in effect.

### § 1073.92 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all provisions of this part there are any obligations arising under this part, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate;

(b) The market administrator or such other person as the Secretary may designate, shall:

(1) Continue in such capacity until removed;

(2) From time to time account for all receipts and disbursements and when so directed by the Secretary deliver all funds on hand, together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct; and

(3) If so directed by the Secretary, execute assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

### § 1073.93 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the

amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

§ 1073.94 Agents.

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

§ 1073.95 Separability of provisions.

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

[F.R. Doc. 66-8858; Filed, Aug. 12, 1966; 8:50 a.m.]

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## [ 7 CFR Part 1101 ]

## MILK IN KNOXVILLE, TENN., MARKETING AREA

### Notice of Proposed Suspension of Certain Provision of Order

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), the suspension of a certain provision of the order regulating the handling of milk in the Knoxville, Tenn., marketing area is being considered for the period September 1966 through February 1967.

The provision proposed to be suspended is: In § 1101.12, the language, "(a) any day during the months of March through August, or (b) on not more than 10 days during the month in any of the other months of the year,". The provision relates to the 10-day limit on diverting the milk of a producer in each of the months of September through February.

Suspension of this provision was requested by the Knoxville Milk Producers Association. It contends that such action is necessary to facilitate the orderly and economical handling of excess milk supplies without causing a producer to lose his status as a producer under the order and to lose credit in the computation of his base for his milk deliveries during the September–February period. The Association requested that the suspension be effective until such time as a pending decision on changing the diversion limitations, which was proposed at a hearing held in April 1966, is made.

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension should file the same with the Hearing Clerk, Room 112–A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 3 days from the date of publication of this notice in the FEDERAL REGISTER. All documents filed should be 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)).

Signed at Washington, D.C., on August 9, 1966.

CLARENCE H. GIRARD,
*Deputy Administrator,*
*Regulatory Programs.*

[F.R. Doc. 66-8836; Filed, Aug. 12, 1966; 8:48 a.m.]

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## [ 7 CFR Part 1125 ]

[Docket No. AO 226–A14]

## MILK IN PUGET SOUND, WASH., MARKETING AREA

### Notice of Hearing on Proposed Amendments to Tentative 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 Banquet Hall, Norway Center (Norselander Restaurant), 300 Third Avenue West, Seattle, Wash. 98119, beginning at 10 a.m., on August 23, 1966, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Puget Sound, Wash., marketing area.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

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

Proposed jointly by Whatcom County Dairymen's Association, Lewis Pacific Dairymen's Association, Elma Milk Shippers Association, Puget Sound Jersey Milk Pool, Northwest Dairymen's Association, Washington State Dairymen's Federation, Washington State Farm Bureau, Cow Milkers' Association and Washington State Grange:

*Proposal No. 1.* A. Base Provisions.

1. Delete §§ 1125.17 and 1125.18 and substitute the following:

§ 1125.17 Base plan definitions.

(a) "Daily base" means a quantity of milk representing the historical level of production of a producer, expressed in pounds per day and computed pursuant to § 1125.60.

(b) "Adjusted daily base" means a quantity of milk representing the producer's assigned share of the Class I market and reserve, expressed in pounds per day and computed pursuant to § 1125.61 or § 1125.62.

(c) "Adjusted base milk" means milk delivered by a producer during the month which is not in excess of:

(1) His adjusted daily base multiplied by the number of days in such month, except that for a person who does not deliver throughout the entire month, his adjusted daily base shall be multiplied by the number of days of production delivered during the month; or

(2) For producers who have not been issued an adjusted daily base, a quantity determined by multiplying his deliveries of producer milk during the month by a percentage (rounded to the nearest whole percent) which is 25 percent of the most recent percentage computed pursuant to § 1125.61(a)(2) or § 1125.62(f).

(d) "Excess milk" means milk delivered by a producer in excess of adjusted base milk.

2. Delete §§ 1125.60 and 1125.61 and substitute the following five sections.

§ 1125.60 Computation of daily base.

Subject to the rules contained in § 1125.63, a daily base shall be determined for each person delivering producer milk on the first day of the month on which these provisions become effective and for each person who subsequently becomes a producer, as provided below:

(a) A person who has earned, or received by transfer, a daily base to be effective either February 1, 1965, or February 1, 1966, under the provisions of this paragraph effective in February 1965 and February 1966, the higher of those daily bases subject to the following conditions:

(1) Such a person shall not be issued a daily base if he failed to deliver producer milk for a period of more than 45 consecutive days subsequent to November 3, 1965;

(2) A person who received by transfer a daily base to be effective February 1, 1966, shall be considered as having also received the daily base of the transferor producer, if any, which was to be effective February 1, 1965; and

(3) A daily base to be effective February 1, 1965, may not be used if the holder of the daily base failed to deliver producer milk for a period of more than 45 consecutive days between December 1, 1964, and December 18, 1965;

(b) A person who held a designation as a producer-handler in the month prior to the date that this amendment becomes effective, the daily average of his own production for the months of August through December 1964 or August through December 1965 whichever is higher.

(c) A person who was not issued a daily base as described in paragraph (a) of this section but who meets all of the following conditions, the daily average of his deliveries of milk (non-Grade A and/or Grade A) to a regulated plant during the months of August through December 1965 computed as described in paragraph (e)(1) of this section:

(1) Was producing factory milk during all or a portion of August through December 1965;

(2) Was producing and delivering milk during a period of at least 120 days during the period in subparagraph (1) of this paragraph;

(3) Converted to Grade A between August 1, 1965, and the effective date of this provision;

(4) Did not discontinue the delivery of milk to a regulated plant for a period of more than 45 consecutive days subsequent to November 3, 1965; and

(5) Only the person who delivered factory milk during the stated period may be issued a daily base computed from those deliveries.

(d) A person who becomes a producer as a result of the plant to which he ships becoming a pool plant under the order as a result of an amendment to the order shall be issued a base as follows:

(1) On his deliveries of Grade A milk to that plant during August through December 1964 or during August through December 1965, whichever is higher, computed as if the person had been a producer under this order during that period and in determining that base the conditions specified in paragraph (a) (1), (2), and (3) of this section shall apply;

(2) Any person beginning deliveries to the plant after September 3, 1965, shall not be issued a base under this paragraph but shall be issued a base under the provisions of paragraph (e) of this section. Deliveries of Grade A milk by any such person to the plant in months prior to its becoming a pool plant shall be considered as producer milk for the purposes of paragraph (e) of this section.

(e) Any other person who is or becomes a producer and cannot be issued a base pursuant to paragraph (a), (b), (c), or (d) of this section shall be issued a daily base on a subsequent February 1 based upon his deliveries of producer milk during August–December periods beginning with the calendar year 1966, as provided below:

(1) On the first February 1 after delivering producer milk for at least 120 days during each of the two preceding periods of August through December, 50 percent of the average daily delivery of producer milk during the preceding months of August through December. The average daily delivery will be determined by dividing the total pounds of producer milk delivered to handlers during the period by the number of days production delivered, but not less than the number of days from the first date of delivery during the period to the end of the period;

(2) On the next February 1 after the February 1 in subparagraph (1) of this paragraph, 75 percent of the simple average of the average daily deliveries during the two preceding periods of August through December, computed as described in subparagraph (1) of this paragraph;

(3) On the second February 1 after the February 1 described in subparagraph (1) of this paragraph, the simple average of the average daily deliveries during the three preceding August–December periods computed as described in subparagraph (1) of this paragraph;

(4) In computing the daily bases pursuant to subparagraphs (1), (2), and (3) of this paragraph, the following conditions will apply:

(i) If the producer is degraded during any August–December period, the pounds delivered while degraded will not be counted as producer milk but the days degraded will be counted if they occur after the first date of delivery of Grade A milk during the period;

(ii) Any milk produced by the herd of a producer which is not received by a handler shall be used in the computation of the producer's daily base if the milk meets any of the following conditions and information establishing the amount of such milk, which was produced but not delivered, is filed with the market administrator in a manner satisfactory to him within 13 days after the close of the August–December period:

(*a*) Lost in tranport between the farm and the plant;

(*b*) Dumped at the farm because milk could not be picked up because of storm, road conditions, or other conditions beyond the control of the producer;

(*c*) Milk spoiled on the farm because of general weather or power conditions beyond the control of the producer. This shall not include spoilage due to producer's failure to maintain and operate equipment properly;

(*d*) Milk destroyed on the farm when the farm is quarantined by an appropriate authority because of disease in the herd;

(*e*) Milk condemned because of pesticide residues under conditions which would qualify for reimbursement for loss of market under Federal regulations, or after the expiration of such a Federal program if condemned by an appropriate health authority because of the presence of pesticides;

(*f*) Milk condemned by an appropriate health authority because of the presence of, or possible presence of, materials which would be injurious to human health, and which exist because of conditions beyond the control of the producer; and

(*g*) Milk produced by animals at fairs, exhibitions, or other public functions.

### § 1125.61 Computation of adjusted daily bases.

(a) Each person who is issued a daily base on the same date as in the prologue of § 1125.60 shall be issued an adjusted daily base as described in subparagraphs (1) through (3) of this paragraph.

(1) The total of the adjusted daily base to be issued to persons who were issued daily bases pursuant to § 1125.60 (a) and (c) shall be the average daily Class I dispositions by all handlers, except producer-handlers pursuant to § 1125.41(a) for the calendar year 1965, multiplied by 120 percent.

(2) The adjusted daily base for each person who was issued a daily base pursuant to § 1125.60 (a) and (c) shall be determined by multiplying his daily base by a percentage rounded to the third decimal place obtained by dividing the total of adjusted daily bases pursuant to subparagraph (1) of this paragraph by the sum of the daily bases issued to such producers.

(3) The adjusted daily base for each person who was issued a daily base pursuant to § 1125.60(b) shall be his average daily Class I dispositions of own production (Class I disposition less receipts from regulated plants) in his capacity as a producer-handler for the calendar year 1965.

(b) Each other person who subsequently becomes a producer between the effective date of this provision and the next February 1 and is issued a daily base pursuant to § 1125.60 (a) or (d), shall be issued an adjusted daily base computed by multiplying his daily base by the percentage used in paragraph (a) (2) of this section.

### § 1125.62 Reissuance of adjusted daily bases.

On each succeeding February 1 after the date used in the prologue of § 1125.60, an adjusted daily base for each producer shall be issued or reissued as described below:

(a) A person who is issued a daily base on February 1 pursuant to § 1125.60(e) (1), (2), or (3) shall be issued an adjusted daily base determined by multiplying his daily base by the most recent percentage computed, prior to that February 1, pursuant to § 1125.61(a) (2) or paragraph (f) of this section.

(b) The total of adjusted daily base to be reissued shall be the average daily Class I utilization by handlers and by producer-handlers (if a portion of the calendar year was prior to the effective date of this provision) for the preceding calendar year multiplied by 120 percent, subject to the conditions in paragraphs (d) and (e) of this section.

(c) Compute a sum of the adjusted daily bases held by producers on February 1, including those just issued pursuant to paragraph (a) of this section.

(d) If the sum of the adjusted daily bases pursuant to paragraph (c) of this section is less than the total adjusted daily base computed pursuant to paragraph (b) of this section by 1 percent or more:

(1) Adjusted daily bases held by all producers except those of persons whose average daily delivery during the preceding August–December period, after reflecting the conditions specified in § 1125.60(e) (4), is less than the adjusted daily base held by such person, shall be increased by a percentage determined in subparagraph (2) of this paragraph;

(2) Determine a percentage rounded to the third decimal place as follows:

(i) Subtract from the total adjusted daily bases pursuant to paragraphs (b) and (c) of this section, the adjusted daily bases excepted in subparagraph (1) of this paragraph;

(ii) Divide the resulting amount for paragraph (b) of this section by the resulting amount for paragraph (c) of this section and subtract 100 from the percentage obtained.

(e) If the sum of the adjusted daily bases pursuant to paragraph (c) of this section is 1 percent or more greater than the total adjusted daily base pursuant to

paragraph (b) of this section, the adjusted daily bases used to compute the sum in paragraph (c) of this section shall be reduced by a percentage rounded to the third decimal place computed by dividing the total adjusted daily base pursuant to paragraph (b) of this section by the sum of the adjusted daily bases pursuant to paragraph (c) of this section and subtracting 100.

(f) Any person to whom a daily base is subsequently issued pursuant to § 1125.60(d) shall be issued an adjusted daily base computed by multiplying his daily base by the percentage computed for the previous February 1 as follows:

(1) Determine the total adjusted daily bases held by all producers, except those holding daily bases issued pursuant to § 1125.60(b), after the adjustments prescribed in paragraphs (d) and (e) of this section have been made;

(2) Determine the sum of the daily bases held by the producers for whom a total of adjusted daily bases was determined in subparagraph (1) of this paragraph; and

(3) Divide the result obtained in subparagraph (1) of this paragraph by the sum obtained in subparagraph (2) of this paragraph and round to the third decimal place.

**§ 1125.63 Base rules.**

The following rules shall be observed in the determination of bases:

(a) A daily base or a portion of a daily base may be transferred from one person to another if the conditions listed below are met:

(1) A written notice must be given to the market administrator by the holder of the daily base on or before the last day of the month of transfer. This notice must contain the name of the person to whom the daily base is to be transferred, the effective date of the transfer, the amount of daily base to be transferred if less than the entire base held by the transferor, and must be signed by the transferor producer.

(2) It is established to the satisfaction of the market administrator that the conveyance of base is bona fide and not for the purpose of evading any provision of this order, and comes within the remaining provisions of this paragraph.

(3) A transfer may be made only to a producer (a person who is currently a producer on the market or who will become a producer under the terms of the order by the last day of the month of transfer).

(4) A transfer of daily base may not be made in amounts of less than 100 pounds, or the entire base, whichever is smaller.

(5) A transfer of a portion of a daily base shall be a partial transfer and shall be effective only on the first day of a month. A transfer where the transferee producer will combine the daily base received with daily base already held shall be considered a partial transfer.

(6) A transfer of a complete daily base of a producer to a person who does not already hold a daily base will be effective on the date of transfer of herd and farm, or on the date specified if no herd and farm is transferred.

(7) A person who has received daily base by transfer pursuant to subparagraph (5) or (6) of this paragraph within the preceding 12-month period may not further transfer all or a portion of his daily base except as permitted under the provisions of § 1125.64.

(8) A person who was issued daily base pursuant to the provisions of § 1125.64 or § 1125.60(e) may not transfer daily base to another person until 2 years after the daily base was acquired.

(b) A person who discontinues deliveries of producer milk for a period of 60 consecutive days shall forfeit any daily base or adjusted daily base held pursuant to the provisions of this order, except that a person going into military service may retain his daily base until 1 year after being released from active military duty.

(c) A producer who markets part of his production to a plant not regulated under Order No. 125 shall forfeit adjusted base milk, adjusted daily base, and daily base as provided below:

(1) A producer shall forfeit all adjusted base milk for days when any milk is marketed to a plant not regulated under Order No. 125;

(2) Effective the first day of the month following the month in which a producer markets part of his production to a plant not regulated under Order No. 125, a producer shall forfeit adjusted daily base in an amount determined by dividing the amount of adjusted base milk lost in the preceding month divided by the number of days in the month; and

(3) A producer shall forfeit a proportionate share of daily base in any month in which he forfeits adjusted daily base pursuant to subparagraph (2) of this paragraph.

(d) A person who is eligible to be issued a daily base pursuant to § 1125.60 (e) shall forfeit his right to be issued additional daily base under that section as of the date upon which he acquires daily base by transfer pursuant to paragraph (a) of this section.

(e) As soon as daily bases and adjusted daily bases are computed by the market administrator after the effective date of these provisions, and after February 1 of each year thereafter, notice of the amount of each producer's daily base and adjusted daily base shall be given by the market administrator to the producer, to the handler receiving such producer's milk, and to the cooperative association of which the producer is a member. Each handler, following receipt of such notice, shall promptly post in a conspicuous place in his plant a list or lists showing the daily base and adjusted daily base of each producer whose milk is received at such plant.

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

(g) Only producers as defined in § 1125.11 may be issued or receive by transfer a daily base computed pursuant to the provisions of § 1125.60, and only one quantity of adjusted base milk pursuant to § 1125.17(c) shall be allotted with respect to milk produced by one or more persons where the land, buildings, and equipment used, are jointly owned or operated.

(h) A producer who receives daily base by transfer shall be issued as adjusted daily base, or as additional adjusted daily base, a share of the transferor producer's adjusted daily base in the same proportion that the daily base transferred was of the total daily base held by the transferor producer, except if the daily base of the transferor producer was issued pursuant to § 1125.60(b). If the daily base of the transferor producer was issued pursuant to § 1125.60(b), the adjusted daily base issued to the transferee producer shall be determined by multiplying the daily base transferred by the most recent percentage computed pursuant to § 1125.61(a)(2) or § 1125.62(f). The remaining adjusted daily base held by a transferor producer whose daily base was issued pursuant to § 1125.60(b) shall be in the proportion to adjusted daily base held before the transfer that the remaining daily base was of the amount of daily base held prior to the transfer.

(i) If the percentage computed pursuant to § 1125.62(f) exceeds 100 percent, the daily bases issued pursuant to § 1125.60 shall be increased pro rata so that the total daily bases issued equals the total adjusted daily bases issued pursuant to § 1125.62. The percentage specified in § 1125.62(f) shall be 100 percent until recomputed the next February 1.

**§ 1125.64 Hardship cases.**

The requests of producers for relief from the provisions of §§ 1125.60 through 1125.63 because of alleged hardship shall be handled as provided below:

(a) Any producer may request a review of the following circumstances, directly affecting him:

(1) He was not issued a daily base pursuant to § 1125.60;

(2) The amount of his daily base which was issued pursuant to § 1125.60;

(3) His daily base is or is to be lost pursuant to § 1125.63(b);

(4) His daily base cannot be transferred to another person because of the provisions of § 1125.63(a)(7).

(b) The following guides shall be used in determining hardship cases:

(1) Any of the following conditions will be considered as justifying a request for alleviation of hardship:

(i) Any condition listed in § 1125.60(e)(4)(ii) (*a*) through (*f*);

(ii) The return from service of a son;

(iii) The return from service of a person who was called into the service before the effective date of these provisions; or

(iv) The loss of buildings, herds, or other facilities by fire, flood, storms, or other acts of God; and

(2) Any of the following conditions will be considered as justifying a request for alleviation of hardship when the pro-

ducer cannot transfer a base because of the provisions of § 1125.63(a)(7):

(i) Death or disability of the producer;

(ii) Entry into service of the producer or a son of the producer;

(iii) Decision to discontinue farming (except that this condition may not apply more than once during any 12-month period);

(iv) Loss of lease on farm; or

(v) Loss of buildings, herd, or other facilities by fire, flood, storm, or other acts of God; and

(3) None of the following conditions will be considered as justifying a request for alleviation of hardship:

(i) Breeding troubles;

(ii) Mastitis or similar herd diseases which do not require official quarantine;

(iii) A return of a son from college or loss of a son to college;

(iv) A farming unit which is not large enough to be economically sound; or

(v) Mechanical failure of farm tank or other farm equipment.

(c) The producer must file with the market administrator a request for review because of hardship, in writing, and must supply the following information:

(1) The condition which is to be reviewed;

(2) The amount of, or adjustment of, daily base requested;

(3) The date upon which such daily base or such adjustment should be effective;

(4) The reasons why the market administrator should approve such request; and

(5) An explanation of the basis upon which the amount of, or adjustment of, daily base requested is to be determined.

(d) The market administrator shall announce to all producers and interested parties at least once each month, by such means as he deems appropriate, the names of all persons requesting a review for hardship the amount of, or adjustment of, daily base requested, and the date and time when and the place at which an administrative hearing concerning such request will be held. Such hearings shall be open to all interested persons.

(e) The market administrator shall conduct the administrative hearing as follows:

(1) He shall review the request of the producer;

(2) The producer, or his representative, shall be permitted to provide additional data;

(3) The market administrator shall review any data gathered as the result of any investigation which he may have made;

(4) The market administrator will announce his decision, or the date upon which a decision will be announced.

(f) The market administrator shall review each request and the data developed at the hearing in the light of the legislative history of 608c(5)(b)(d) of the Act in regard to the provision for hardship cases and shall, if he finds that the conditions described meet the intent of Congress, issue to such person an amount of, or adjustment of, daily base which he determines will alleviate the hardship complained of and be in the interest of orderly marketing.

(g) The market administrator shall publish, at least once each month, the names of persons whose request for alleviation of hardship has been reviewed and the disposition of each request, including the amount of, or adjustment of, daily base, if any, issued, and the effective date.

(h) The market administrator shall maintain files of all requests for alleviation of hardship and his decision on those requests. These files shall be open to the inspection of any interested person during the regular office hours of the market administrator.

(i) The adjusted daily base or additional adjusted daily base, to be issued to a person who receives daily base or additional daily base pursuant to the provisions of this section, other than by transfer from another producer, shall be determined by multiplying the daily base issued pursuant to this section by the most recent percentages computed pursuant to § 1125.61(a)(2) or § 1125.62(f).

B. Eliminate the exemption from full regulation of handlers who currently hold designations as producer-handlers.

1. In § 1125.8, delete the words: "or the plant of a producer-handler".

2. Delete § 1125.9(b) and in § 1125.9 (c) and (d), delete the words "that is neither an other order plant nor a producer-handler plant" and substitute "other than an other order plant".

3. Delete § 1125.10(d).

4. Delete § 1125.11(c).

5. In § 1125.13(a), delete the following: "(including all receipts in fluid form from a producer-handler, or the plant of a producer-handler, as defined under this or any other Federal order)".

6. Delete § 1125.14.

7. Delete § 1125.30(b).

8. In § 1125.33 delete the reference to § 1125.14.

9. Delete § 1125.44(c)(2).

10. Delete § 1125.46(a)(3)(iii) and in § 1125.46(a)(3)(iv) delete the reference to § 1125.46(a)(3)(iii).

11. Delete § 1125.65 and substitute the following:

**§ 1125.65 Department of Institutions, State of Washington.**

Sections 1125.30, 1125.31, 1125.40 through 1125.46, 1125.50 through 1125.55, 1125.60 through 1125.64, 1125.70 through 1125.73, and 1125.80 through 1125.89 shall not apply to the Department of Institutions, State of Washington, in months when its receipts of milk for processing or distribution for fluid consumption are limited to milk of its own production, receipts from pool plants, and products used for fortification of fluid milk products, and distribution for fluid consumption is limited to State institutions. Receipts at pool plants from the Department of Institutions shall be considered as a receipt of other source milk from non-Grade A sources.

C. Revise the computation of the District 1 excess location adjustment.

The location adjustment applicable to excess milk received at District 1 plants shall be based upon the Class II location adjustment paid by handlers operating District 1 plants as follows:

1. Delete § 1125.71(c) and substitute the following:

(c) Deduct the lesser of:

(1) The amounts computed for all handlers pursuant to § 1125.54(c), or

(2) Twenty-five cents per hundredweight times the excess milk received at plants located in District 1, Kitsap, Mason, or Pierce counties.

2. Add the following section:

**§ 1125.73 Computation of location adjustment for excess milk.**

For each month the market administrator shall compute the location adjustment to be applicable to excess milk received at plants located in District 1 and the counties of Kitsap, Mason, or Pierce, as follows:

(a) Add to the amount subtracted pursuant to § 1125.71(c) the amount by which the value pursuant to this paragraph for the preceding month exceeded the value of the location adjustments pursuant to § 1125.81(a)(2) for that month;

(b) Divide the amount obtained in paragraph (a) of this section by the total hundredweight of excess milk received at plants located in District 1 and the counties of Kitsap, Mason, and Pierce, and subtract any fractional part of one cent. This result shall be known as the location adjustment for excess milk.

3. Delete § 1125.81(a)(2) and substitute the following:

(2) There shall be added to the uniform price for excess milk received from producers at plants located in District 1 and the counties of Kitsap, Mason, or Pierce, the amount per hundredweight computed pursuant to § 1125.73.

4. Add to § 1125.22(k)(2) after "§ 1125.72", the following: "the location adjustment for excess milk computed pursuant to § 1125.73,".

D. Revise the handling of outside milk.

Receipts of fluid milk products from unregulated supply plants and other order plants should be allocated to classes and appropriate charges made in the manner indicated below in order to protect the market for local producers as contemplated by the legislative history of Title I of the food and Agriculture Act of 1965.

1. Delete § 1125.22(m) and substitute the following:

(m) Whenever required for the purposes of allocating receipts from unregulated supply plants and other order plants pursuant to § 1125.46(a)(6) and (7) and the corresponding steps of § 1125.46(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk, butterfat, and total pounds, respectively, in producer milk of all handlers, and for the purposes of computing these percentages, all utilization by handlers pursuant to § 1125.41(a) shall be allocated to receipts of producer milk. Such estimate shall

be based on the most current available data and shall be final for such purposes.

2. Delete § 1125.46(a)(2).

3. Delete § 1125.46(a)(4).

4 Delete § 1125.56(a) (6) and (7) and the corresponding steps of § 1125.46(b) and substitute therefor the following:

(6) If the percentage of total pounds of producer milk utilized in Class I as estimated by the market administrator pursuant to § 1125.22(m) is less than 80 percent, subtract the receipts of skim milk from unregulated supply plants as provided in subdivision (i) of this subparagraph and if the percentage referred to above is 80 percent or more, subtract the receipts of skim milk from unregulated supply plants as provided in subdivision (ii) of this subparagraph:

(i) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants;

(ii) Subtract in the order specified below, from the pounds of skim milk remaining in each class, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants:

(*a*) From Class I, the lesser of the pounds available or the pounds determined by multiplying the pounds of such receipts by the percentage of estimated Class I utilization of skim milk in producer milk announced for the month by the market administrator pursuant to § 1125.22(m); and

(*b*) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the remaining pounds of skim milk;

(7) If the percentage of total pounds of producer milk utilized in Class I as estimated by the market administrator pursuant to § 1125.22(m) is less than 80 percent, subtract the receipts of skim milk from other order plants as provided in subdivision (i) of this subparagraph and if the percentage referred to above is 80 percent or more, subtract the receipts of skim milk from other order plants as provided in subdivision (ii) of this subparagraph:

(i) Subtract from the pounds of skim milk in each class, in series beginning with Class II, the pounds of skim milk in receipts of fluid milk products from other order plants;

(ii) Subtract, in the order specified below, from the pounds of skim milk remaining in each class, the pounds of skim milk in receipts of fluid milk products from other order plants:

(*a*) From Class I, the lesser of the pounds available or the pounds determined by multiplying the pounds of such receipts by the percentage of estimated Class I utilization of skim milk in producer milk announced for the month by the market administrator pursuant to § 1125.22(m); and

(*b*) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the remaining pounds of skim milk;

5. Delete § 1125.67 and substitute therefor the following:

**§ 1125.67 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 an amount calculated pursuant to paragraph (a) or (b) of this section:

(a) If the percentage of total pounds of producer milk utilized in Class I as estimated by the market administrator pursuant to § 1125.22(m) is less than 80 percent, 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.

(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.

(b) If the percentage of total pounds of producer milk utilized in Class I as estimated by the market administrator pursuant to § 1125.22(m) is 80 percent or more, an amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes within 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.

(3) Deduct the respective amounts of skim milk and butterfat determined by multiplying the amount remaining after subparagraph (2) of this paragraph by the percentages of skim milk and butterfat in producer milk estimated by the market administrator pursuant to § 1125.22(m) to have been utilized in Class I.

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) 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.

6. Add the following:

**§ 1125.68 Obligations of handler operating an other order plant with route dispositions in the marketing area.**

Each handler who operates an other order plant with route dispositions in the marketing area shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month, for months in which the percentage of total pounds of producer milk utilized in Class I as estimated by the market administrator pursuant to § 1125.22(m) is less than 80 percent, an amount computed as follows:

(a) Determine the respective amounts of skim milk and butterfat disposed of as Class I on routes within the marketing area.

(b) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the other order plant from pool plants.

(c) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(d) From the value of such milk at the Class I price applicable at the location of the other order plant, subtract its value at the Class II price.

7. Delete § 1125.70(d) and substitute therefor the following:

(d) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class II price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to:

(1) Section 1125.46(a)(3) and the corresponding step of § 1125.46(b);

(2) Section 1125.46(a)(6)(i) and the corresponding step of § 1125.46(b);

(3) Section 1125.46(a)(6)(ii)(*b*) and the corresponding step of § 1125.46(b); and

(4) Section 1125.46(a)(7)(i) and the corresponding step of § 1125.46(b).

8. Delete § 1125.70(e) and in § 1125.-22(j)(1)(ii) delete the reference to § 1125.70(e).

9. In § 1125.71(b) delete the following words "and on nonpool milk pursuant to § 1125.81(c)".

10. Delete § 1125.71(f) and substitute the following:

(f) Divide the resulting amount by the total hundredweight of producer milk; and

11. Delete § 1125.72(a) and substitute the following:

(a) From the net amount computed pursuant to § 1125.71 (a) through (e), subtract an amount computed by multiplying the hundredweight of excess milk by the Class II price for 3.5 percent milk: *Provided*, That if such result is greater than an amount computed by multiplying the hundredweight of adjusted base milk by the Class I price (for 3.5 percent milk) plus four cents, such amount in excess thereof shall be subtracted from the result obtained prior to this proviso;

12. In § 1125.72(c), change the references to "(a)(2)" to "(a)".

13. Delete § 1125.81(c) and in the heading of § 1125.81 the words "and on nonpool milk".

14. In § 1125.83, add after "§ 1125.67" the following: ", § 1125.68,".

15. Delete § 1125.84(b)(3), and in § 1125.22(j)(1)(iv) delete the reference to § 1125.84(b)(3).

16. Delete § 1125.22(j)(2) and substitute the following:

(2) On or before the 22d day after the end of each month, each handler whose obligation is computed pursuant to § 1125.67, of the amount due the producer-settlement fund, and the amount due pursuant to § 1125.88 from such handler;

17. Add the following as § 1125.22(j)(3):

(3) On or before the 22d day after the end of each month, each handler whose obligation is computed pursuant to § 1125.68, of any amount due the producer-settlement fund.

18. Delete § 1125.31(b).

19. In § 1125.66, add after "1125.34" the following: ", 1125.68".

E. Make the following other changes:

1. In the following sections, substitute the words "adjusted base milk" for the words "base milk" wherever they appear:

| | |
|---|---|
| 1125.22(j)(1)(iii) | 1125.72—Title and prologue |
| 1125.30(a)(3) | 1125.72(b) |
| 1125.31(a)(1) | 1125.80(a)(1) |
| 1125.35(a)(2) | 1125.81(a)(1) |
| 1125.71(b) | 1125.82 |

2. Add the following as § 1125.35(a)(7):

(7) The Class I and Class II prices for 3.5 percent milk, and the percentage of producer milk utilized in each class.

*Proposed by Whatcom County Farm Bureau, Dairy Committee:*

*Proposal No. 2.* The base of producers should be tied to sales, not to the dairyman's ability to produce.

*Proposal No. 3.* The blending of milk should be limited to 20 percent over Class I sales.

*Proposal No. 4.* All other milk should be in a separate pool.

*Proposed by Mr. Mike Martin:*

*Proposal No. 5.* Bases should include the production history in 1966, not in 1963 or 1964.

*Proposal No. 6.* Establish a base bank so that when there is an adequate supply of milk a base could be put in the bank for any reason or any length of time.

Proposed by Mr. Hugh McMurry:

*Proposal No. 7.* Delete the present base and excess plan from the order.

Proposed by Smith Brothers Farms, Inc.:

*Proposal No. 8.* The own-farm milk production of a handler would receive the same treatment under a Class I base plan as milk of a producer-handler.

Proposed by the Dairy Division, Consumer and Marketing Service:

*Proposal No. 9.* Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Nicholas L. Keyock, 16 West Harrison Street, Seattle, Wash. 98119, or 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 August 10, 1968.

CLARENCE H. GIRARD,
*Deputy Administrator,*
*Regulatory Programs.*

[F.R. Doc. 66–8859; Filed, Aug. 12, 1966; 8:50 a.m.]

# FEDERAL AVIATION AGENCY

## [ 14 CFR Part 39 ]

[Docket No. 7556]

## BRITISH AIRCRAFT CORPORATION MODEL BAC 1–11 200 AND 400 SERIES AIRPLANES

### Proposed Airworthiness Directive

The Federal Aviation Agency is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to British Aircraft Corp., Model BAC 1–11 200 and 400 Series airplanes. There have been broken Belleville washers in the nose undercarriage up/down lock jack on BAC 1–11 airplanes that could result in the failure of the jack to lock the landing gear down completely. Since this condition is likely to exist or develop in other airplanes of the same type design, the proposed AD would specify a service life limit for these washers on British Aircraft Corp., Model BAC 1–11 200 and 400 Series airplanes.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Agency, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20553. All communications received on or before September 12, 1966, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

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

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

BRITISH AIRCRAFT CORP. Applies to Model BAC 1–11 200 and 400 Series airplanes. Compliance required as indicated.

To prevent fatigue failures of the Belleville washer stack of the nose undercarriage up/down lock jack, P/N AB44A39 (200 series) and P/N AK44A39 (400 series), accomplish the following:

(a) For airplanes with Belleville washer stacks, P/N AB 44B67, with less than 2,300 landings on the effective date of this AD, remove stacks from service before the accumulation of 2,500 landings.

(b) For airplanes with Belleville washer stacks, P/N AB 44B67, with 2,300 or more landings on the effective date of this AD, remove stacks from service within the next 200 landings.

(c) For airplanes with Belleville washer stacks, P/N AB44–1791 (with BAC Modification PM 2437 washers) with less than 7,800 landings on the effective date of this AD, remove stacks from service before the accumulation of 8,000 landings.

(d) For airplanes with Belleville washer stacks, P/N AB44–1791 (with BAC Modification PM 2437 washers) with 7,800 or more landings on the effective date of this AD, remove stacks from service within the next 200 landings.

(e) For the purpose of complying with this AD, subject to acceptance by the assigned FAA maintenance inspector, the number of landings may be determined by dividing each airplane's hours' time in service by the operator's fleet average time from takeoff to landing for the airplane type.

(British Aircraft Corp. (B.A.C.), Ltd., Alert Service Bulletin No. 32–A–PM2437 pertains to this subject.)

Issued in Washington, D.C., on August 5, 1966.

EDWARD C. HODSON,
*Acting Director,*
*Flight Standards Service.*

[F.R. Doc. 66–8817; Filed, Aug. 12, 1966; 8:46 a.m.]

## [ 14 CFR Part 71 ]

[Airspace Docket No. 66–SW–39]

## TRANSITION AREA

### Proposed Designation

The Federal Aviation Agency is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate transition areas between Lake Charles, La., and Lufkin, Tex.; and between Lake Charles, La., and Shreveport, La., as follows:

KIRBYVILLE, TEX.

That airspace extending upward from 2,700 feet MSL within 5 miles each side of a line from Lake Charles, La., VORTAC to the Lufkin, Tex., VORTAC, via the intersection of the Lake Charles 305° radial (298° magnetic) and the Lufkin, VORTAC 125° radial (118° magnetic), excluding that portion within the Lake Charles and Lufkin transition areas.

HEMPHILL, TEX.

That airspace extending upward from 1,700 feet MSL within 5 miles each side of a line extending from Lake Charles RBN to the Shreveport, La., RBN via the intersection of the 335° bearing (328° magnetic) from the Lake Charles RBN and the 174° bearing (167° magnetic) from the Shreveport, La., RBN and that airspace 7 miles each side of this line extending from a point 58 miles NW of Lake Charles to a point 58 miles S of Shreveport, excluding that portion within the Lake Charles and Shreveport transition areas.

The proposed transition areas are required to provide controlled airspace for the movement of scheduled air carrier aircraft operating on approved off-airway routes.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Agency, Post Office Box 1689, Fort Worth, Tex. 76101. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER

will be considered before action is taken on the amendments. The proposals contained in this notice may be changed in the light of comments received.

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

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348).

Issued in Washington, D.C., on August 8, 1966.

H. B. HELSTROM,
*Chief, Airspace and Air Traffic Rules Division.*

[F.R. Doc. 66-8818; Filed, Aug. 12, 1966; 8:46 a.m.]

# INTERSTATE COMMERCE COMMISSION

[ 49 CFR Parts 95-97 ]

[Ex Parte No. 241]

## INVESTIGATION OF ADEQUACY OF RAILROAD FREIGHT CAR OWNERSHIP, CAR UTILIZATION, DISTRIBUTION, RULES, AND PRACTICES

### Notice of Proposed Rule Making

*Order.* At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D.C., on the 5th day of August A.D. 1966.

Upon consideration of the record in this proceeding and of the requests of several of the parties for postponement of the date for filing of reply statements beyond August 15, 1966; and good cause appearing for an extension of 60 days:

*It is ordered,* That subparagraphs numbered 6 and 7 in the fourth ordering paragraph of the order of July 29, 1964, as modified by the orders dated October 19, 1964, October 12, 1965, and February 14, 1966, be further modified to read as follows:

6. Prior to October 15, 1966, any party may file and serve replies to the initial statements.

7. Prior to November 12, 1966, any party may file and serve a request for oral hearing, together with justification therefor. Any reply thereto must be filed and served prior to November 26, 1966.

*It is further ordered,* That all other provisions of the aforesaid order of July 29, 1964, as modified, shall remain in full force and effect.

*And it is further ordered,* That a copy of this order be served upon those persons shown on the service list published with the order dated May 17, 1965; that a copy be posted in the office of the Secretary of this Commission, and that a copy be delivered to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

By the Commission, Division 3.

[SEAL] H. NEIL GARSON,
*Secretary.*

[F.R. Doc. 66-8849; Filed, Aug. 12, 1966; 8:49 a.m.]

# Notices

## DEPARTMENT OF COMMERCE

### Office of the Secretary

### WALLACE H. ADAMSON

### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the past 6 months:

A. Deletions: No change.
B. Additions: No change.

This statement is made as of July 30, 1966.

Dated: July 30, 1966.

W. H. ADAMSON.

[F.R. Doc. 66-8803; Filed, Aug. 12, 1966; 8:45 a.m.]

### Maritime Administration

### AMERICAN EXPORT ISBRANDTSEN LINES, INC.

### Notice of Application for Approval of Certain Cruises

Notice is hereby given that American Export Isbrandtsen Lines, Inc., acting pursuant to Public Law 87-45, has applied to the Maritime Administration for approval of the following listed cruises:

| Ship | 1967 Cruise dates | Itinerary |
|---|---|---|
| Atlantic | Nov. 28-30 | New York, Freeport (Bahamas), Port Everglades. |
| Do | Dec. 1-8 | Port Everglades, St. Thomas, San Juan, Port Everglades. |
| Do | Dec. 8-15 | Port Everglades, St. Thomas, San Juan, Port Everglades. |
| Do | Dec. 15-22 | Port Everglades, St. Thomas, San Juan, Port Everglades. |
| Do | Dec. 22-Jan. 4, 1968 | Port Everglades, Kingston, Curacao, Trinidad, Barbados, Martinique, St. Thomas, San Juan, Port Everglades. |
| Independence | Jan. 14-27 | New York, San Juan, St. Thomas, Martinique, Barbados, Trinidad, La Guaira, Curacao, New York. |
| Do | Jan. 27-30 | New York, Freeport (Bahamas), Port Everglades. |
| Do | Jan. 30-Feb. 10 | Port Everglades, San Juan, St. Thomas, Antigua, Guadeloupe, Martinique, Port Everglades, New York. |
| Do | Feb. 10-25 | New York, San Juan, St. Thomas, Antigua, Martinique, Grenada, Barbados, Trinidad, La Guaira, Aruba, New York. |
| Do | Oct. 16-25 | New York, St. Thomas, St. Croix, New York. |
| Do | Oct. 25-Nov. 9 | New York, San Juan, St. Thomas, Antigua, Martinique, Grenada, Barbados, Trinidad, La Guaira, Curacao, New York. |
| Constitution | Nov. 22-30 | New York, San Juan, St. Thomas, New York. |
| Do | Dec. 1-16 | New York, San Juan, St. Thomas, Antigua, Martinique, Grenada, Barbados, Trinidad, La Guaira, Aruba, New York. |
| Independence | Dec. 22-Jan. 5, 1968 | New York, Curacao, Trinidad, Barbados, Martinique, Guadeloupe, Antigua, San Juan, St. Thomas, New York. |

The foregoing cruises for the SS *Atlantic* are in addition to those 1967 cruises previously published in the FEDERAL REGISTER May 26, 1966 (31 F.R. 7593) and approved by the Maritime Subsidy Board July 19, 1966.

Any person, firm or corporation having any interest, within the meaning of Public Law 87-45, in the foregoing who desires to offer data, views, or arguments should submit the same in writing, in triplicate, to the Secretary, Maritime Subsidy Board, Washington, D.C. 20235, by close of business on August 29, 1966.

In the event an opportunity to present oral argument is also desired, specific reason for such request should be included. The Maritime Subsidy Board will consider these comments and views and take such action with respect thereto as in its discretion it deems warranted.

Dated: August 10, 1966.

By Order of the Maritime Subsidy Board.

JAMES S. DAWSON, Jr.
*Secretary.*

[F.R. Doc. 66-8902; Filed, Aug. 12, 1966; 10:14 a.m.]

## CIVIL AERONAUTICS BOARD

[Docket No. 15483]

### KOREAN AIRLINES, INC.

### Notice of Postponement of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled proceeding now assigned to be held August 16, 1966, is postponed to August 19, 1966, at 10 a.m. e.d.s.t., in Room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before the undersigned.

Dated at Washington, D.C., August 9, 1966.

[SEAL] JOSEPH L. FITZMAURICE,
*Hearing Examiner.*

[F.R. Doc. 66-8847; Filed, Aug. 12, 1966; 8:49 a.m.]

[Docket No. 16111; Order No. E-24057]

### AIR TRAFFIC CONFERENCE OF AMERICA

### Order Deferring Action Regarding Travel Agents

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 9th day of August 1966.

By Order E-23754, adopted May 31, 1966, the Board approved pursuant to section 412 of the Federal Aviation Act of 1958, as amended (the Act), an agreement among the members of the Air Traffic Conference (ATC) which establishes rules under which the sales agents of ATC members may station a representative on the premises of a commercial customer (i.e., "in-plant") for the purpose of selling passenger air transportation. Such approval was made subject to the condition that "commissions payable for sales made at in-plant offices shall be the same as for sales made at other authorized agency locations: *And provided further*, That the approval herein shall not extend to the provisions of the agreement concerning customer indemnification of agents and the special bond rules."

On June 24, 1966, the members of ATC filed under section 412 of the Act a new "In-Plant Location Resolution" (Agreement CAB 5044-A117), which is quoted in the appendix hereto.[1a]

The salient features of the revised proposal (new agreement), as described by ATC, are as follows:

A 7-percent commission on domestic family plan travel sold by any agent.[1b]

Retention of the provisions which would, for the first time, authorize in-plant locations operated by agents, at the commission level of 3 percent-not-to-exceed-$1 for point-to-point tickets, 7 percent for family plan tickets, and 10 percent for air tours, involving domestic air travel.

A provision which insures review of the entire matter at the spring 1967 conference meeting, at which time there should be available experienced data

[1a] Filed as part of the original document.
[1b] It is to be emphasized that this provision is applicable to sales made at in-plant as well as at all other agency locations.

with the new family plan and in-plant commissions, as well as data developed in the current joint ATC/Travel Agents merchandising and cost-feasibility studies.

Deletion of the provision with respect to in-plant bond/indemnity requirements, which the Board found objectionable * * *.

Upon consideration of the instant resolution, the Board has decided to defer action and to allow comments on the proposal for the reasons herein discussed.

The carriers have proposed the 3 percent-not-to-exceed-$1 commission rate on in-plant sales and also a 7-percent level on the sale of family plan tickets by any agent and a 10-percent level on air tours sold at in-plant locations involving domestic air travel. These 7 and 10 percent commission proposals appear to be steps in the right direction. Further, since for balance-of-payments reasons, we desire to encourage domestic travel, we think the incentives for travel agency activities in the sale of domestic transportation should be at least as favorable as those which exist for the sale of international air transportation.[2] Thus another appropriate action—pending completion of the joint ATC/Travel Agents merchandising and cost feasibility studies—appears to be the payment of the same commission (7 percent to domestic agents selling "Discover America" excursion fare service which is designed to promote personal travel in the United States.[3] We are desirous of receiving comments on this and any other proposal designed to stimulate the sale of domestic air transportation by travel agents.

As noted above, the new agreement retains a commission rate of 3 percent, or a maximum of $1, for in-plant sales of individual tickets for point-to-point travel. Although we recognize that the new proposal permits additional opportunities for an agent to earn commissions on in-plant sales (i.e., on air tours and family plan sales) the program does represent a reduction from the 5 percent commission level authorized by the Board in Order E–23754. Obviously there are cost savings to an agent in the operation of an in-plant office over those realized in maintenance of other sales offices; however, the amount of such savings is not apparent from the data now before the Board. Therefore, we seek economic justification from all parties.

In our previous order we noted that the forthcoming survey of services performed by agents should serve to shed more light on the relative importance of the various activities conducted by an agent; that such information would tend to place the different commission rates in their proper perspective; and that pending the outcome of the survey it was appropriate to equalize commission rates at both in-plant offices and regular sales offices. It may be, in view of the action taken by the carriers, that for in-plant sales during the interim the 3 percent-$1 formula may be appropriate, or the Board may approve a compromise level between 3 and 5 percent. We expect all interested persons to focus upon this matter in their comments. Additionally it would be helpful if the carriers and travel agents indicate the dollar results of the commission changes proposed in the subject resolution. In this connection interested persons should also submit comparable data related to a reduction from 5 percent to 3 percent-$1 or 4 percent on in-plant sales of point-to-point tickets and the 7 percent commission on "Discover America" sales.

*Accordingly, it is ordered,*

1. That action on Agreement CAB 5044–A117 be and it hereby is deferred; and

2. That all interested persons be and they hereby are accorded 30 days in which to file comments in response to this order: *Provided,* That such comments shall be submitted in triplicate to the Board's Docket Section.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] MABEL MCCART,
*Acting Secretary.*

[F.R. Doc. 66–8848; Filed, Aug. 12, 1966; 8:49 a.m.]

[2] Order E–22553, adopted Aug. 17, 1965.

[3] It is our understanding that a foreign travel agent selling such an excursion-fare service would receive a 7-percent commission under present rules.

# DEPARTMENT OF JUSTICE

## Office of the Attorney General

### MADISON PARISH, LA.

### Certifications of the Attorney General Pursuant to Section 6 of the Voting Rights Act of 1965

In accordance with section 6 of the Voting Rights Act of 1965, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the 15th amendment to the Constitution of the United States in Madison Parish, La. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made on August 6, 1965, under section 4(b) of the Voting Rights Act of 1965 and published in the FEDERAL REGISTER on August 7, 1965 (30 F.R. 9897).

NICHOLAS DEB. KATZENBACH,
*Attorney General of the United States.*

AUGUST 12, 1966.

[F.R. Doc. 66–8926; Filed, Aug. 12, 1966; 11:58 a.m.]

# DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

[Docket No. S–364]

### VERNON LEO JAMISON

### Notice of Loan Application

Vernon Leo Jamison, 802 Fifth Street, Anacortes, Wash. 98221, has applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a used 44.4-foot registered length wood vessel to engage in the fishery for halibut, salmon, crab, albacore, and bottomfish.

Notice is hereby given pursuant to the provisions of Public Law 89–85 and Fisheries Loan Fund Procedures (50 CFR Part 250, as revised Aug. 11, 1965), that the above entitled application is being considered by the Bureau of Commercial Fisheries, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, Bureau of Commercial Fisheries, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operations of the vessel will or will not cause such economic hardship or injury.

RUSSELL I. NORRIS,
*Acting Director,*
*Bureau of Commercial Fisheries.*

AUGUST 10, 1966.

[F.R. Doc. 66–8839; Filed, Aug. 12, 1966; 8:48 a.m.]

# DEPARTMENT OF AGRICULTURE

## Office of the Secretary

### OKLAHOMA AND UTAH

### 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 Oklahoma and Utah natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

OKLAHOMA

| | |
|---|---|
| Atoka. | Le Flore. |
| Beaver. | Logan. |
| Bryan. | Love. |
| Caddo. | Major. |
| Canadian. | Nowata. |
| Carter. | Okfuskee. |
| Cherokee. | Oklahoma. |
| Coal. | Pottawatomie. |
| Comanche. | Roger Mills. |
| Delaware. | Seminole. |
| Dewey. | Sequoyah. |
| Garvin. | Stephens. |
| Jefferson. | Wagoner. |
| Kingfisher. | Washita. |
| Latimer. | Woods. |

UTAH

Sanpete.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after June 30, 1967, 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 9th day of August 1966.

ORVILLE L. FREEMAN,
*Secretary.*

[F.R. Doc. 66-8837; Filed, Aug. 12, 1966; 8:48 a.m.]

# FEDERAL MARITIME COMMISSION

## AMERICAN MAIL LINE, LTD., ET AL.

### Notice of Agreement Filed for Approval

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 609; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

American Mail Line, Ltd., American President Lines, Ltd., and Pacific Far East Line, Inc.

Notice of agreement filed for approval by:

Mr. George D. Wick, Jr., Secretary and Assistant General Counsel, American President Lines, 601 California Street, San Francisco, Calif. 94108.

Agreement 8485-C-3 modifies Agreement 8485-C among American Mail Line, Ltd., American President Lines Ltd., and Pacific Far East Line, Inc., under which there has been established an independent corporation, Consolidated Marine, Ltd., for the performance of husbanding services for vessels of the member lines. The purpose of the modification is to enlarge the functions of Consolidated Marine, Ltd., to include the furnishing of a joint purchasing service and the performance of joint data processing services under the terms of a standard contract to be executed by each of the individual lines and the corporation, Consolidated Marine, Ltd.

Dated: August 9, 1966.

By order of the Federal Maritime Commission.

THOMAS LISI,
*Secretary.*

[F.R. Doc. 66-8855; Filed, Aug. 12, 1966; 8:49 a.m.]

# FEDERAL POWER COMMISSION

[Docket Nos. G-2661, etc.]

## BURLINGTON BANK & TRUST CO. ET AL.

### Findings and Order

AUGUST 4, 1966.

Findings and order after statutory hearing issuing certificates of public convenience and necessity, canceling docket numbers, amending certificates, permitting and approving abandonment of service, terminating certificates, substituting respondent, making successors co-respondents, redesignating proceedings, requiring filing of agreement and undertaking, accepting agreement and undertaking for filing, accepting trust agreement for filing, and accepting related rate schedules and supplements for filing.

Each of the applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce, for permission and approval to abandon service, or a petition to amend an existing certificate authorization, all as more fully described in the respective applications and petitions (and any supplements or amendments thereto) which are on file with the Commission.

The Applicants herein have filed related FPC Gas Rate Schedules and propose to initiate or abandon, add or delete natural gas service in interstate commerce as indicated by the tabulation herein. All sales certificated herein are either equal to or below the ceiling prices established by the Commission's Statement of General Policy 61-1, as amended, or involve sales for which permanent certificates have been previously issued; except that initial sales from the Permian Basin area of Texas and New Mexico are authorized to be made at or below the applicable area base rates and under the conditions prescribed in Opinion Nos. 468 and 468-A.

Petroleum Corporation of Texas, Applicant in Docket No. G-8156, proposes to continue the sale of natural gas heretofore authorized in said docket and made pursuant to Shell Oil Co., FPC Gas Rate Schedule No. 127. The presently effective rate under said rate schedule is in effect subject to refund in Docket No. RI65-477. Applicant has requested to be substituted as respondent in said proceeding and has filed an agreement and undertaking to assure the refund of any amounts collected in excess of the amount determined to be just and reasonable in said proceeding. Inasmuch as several increases in rate proposed by Shell have been suspended and made effective subject to refund in Docket No. RI65-477, Applicant will be made a co-respondent in said proceeding with respect to sales pursuant to the contract heretofore designated as Shell's FPC Gas Rate Schedule No. 127 and redesignated as Applicant's FPC Gas Rate Schedule No. 21; the proceeding will be redesignated; and the agreement and undertaking will be accepted for filing with respect to sales made pursuant to Applicant's FPC Gas Rate Schedule No. 21.

C. G. Campbell, Applicant in Docket No. CI66-104, proposes to continue in part the sale of natural gas heretofore authorized in Docket No. G-14518 and made pursuant to E. G. Rodman (Operator), et al., FPC Gas Rate Schedule No. 1. The contract comprising said rate schedule will also be accepted for filing as Applicant's rate schedule. The presently effective rate under said rate schedule is in effect subject to refund in Docket No. G-19994.[1] Therefore, Applicant will be made a co-respondent in said proceeding with respect to sales from the assigned acreage, the proceeding will be redesignated accordingly, and Applicant will be required to file an agreement and undertaking to assure the refund of any amounts collected by him in excess of the amount determined to be just and reasonable in said proceeding.

John E. Huff, Applicant in Docket No. CI66-1236, proposes to continue in part the sale of natural gas heretofore authorized in Docket No. G-7214 and made pursuant to Standard Oil Company of Texas, a division of Chevron Oil Co., FPC Gas Rate Schedule No. 2. The contract comprising said rate schedule is in effect subject to refund in Docket No. RI66-151.[2] Prior increased rates have been collected by Standard Oil for locked-in periods subject to refund in Docket Nos. G-14072,[3] G-16676,[3] G-19773,[3] RI61-162,[3] RI62-172,[3] RI63-431,[3] RI64-515,[3] and RI65-329.[3] On May 31, 1966, Applicant filed a motion in Docket No. RI66-151 requesting that the then suspended change in rate be made effective. On July 11, 1966, Applicant filed a trust agreement[4] to assure the refund of any amounts collected by him in excess of the amount determined to be just and reasonable in the aforementioned rate proceedings. Therefore, Applicant will be made a co-respondent in said proceedings with respect to sales made by him from the assigned acreage, the proceedings will be redesignated and the trust agreement will be accepted for filing. Applicant shall charge and collect 15.8 cents per Mcf for gas sold from March 7, 1966,

[1] Consolidated with the original proceeding in Docket No. AR61-1, et al.

[2] By order issued Nov. 5, 1965, in Docket No. RI66-149, et al., the proposed increase in rate was suspended in Docket No. RI66-151 until Apr. 18, 1966. Pursuant to a motion filed June 20, 1966, by Standard Oil the proposed increase was made effective as of the latter date by notice issued July 20, 1966, in Docket No. RI66-277, et al.

[3] Consolidated with Docket No. AR64-2, et al.

[4] The trust agreement contains the certificate docket designation "CI66-1236" but should be designated as having been filed in all of those proceedings in which increased rates have been collected by Standard Oil subject to refund, i.e., Docket Nos. G-14072, G-16676, G-19773, RI61-162, RI62-172, RI63-431, RI64-515, RI65-329, and RI66-151, and will be so construed. The term "proceeding" used in the trust agreement shall be construed to refer to the aforementioned rate proceedings.

the date of transfer of the producing properties, through May 30, 1966; and effective as of May 31, 1966,[5] the date of filing of Applicant's motion to make the increased rate effective subject to refund in Docket No. RI66–151, Applicant shall charge and collect the rate of 16.0 cents per Mcf.

After due notice, notices of intervention by The Public Service Commission of the State of New York were filed in Docket Nos. G–4579 and CI66–376, in the matter of the applications filed May 23, 1966, and November 4, 1965, respectively, in said dockets. The notices of intervention have been withdrawn and no other petitions to intervene, notices of intervention, or protests to the granting of any of the respective applications or petitions in this order have been received.

At a hearing held on July 28, 1966, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications, amendments and exhibits thereto, submitted in support of the respective authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Each Applicant herein is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission or will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and will, therefore, be a "natural-gas company" within the meaning of said Act upon the commencement of the service under the respective authorizations granted hereinafter.

(2) The sales of natural gas hereinbefore described, as more fully described in the respective applications, amendments and/or supplements herein, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales by the respective Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(3) The sales of nautral gas by the respective Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and certificates therefore should be issued as hereinafter ordered and conditioned.

(4) The respective Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Docket Nos. CI66–1103 and CI66–1104 should be canceled and that the applications filed therein should be processed as petitions to amend the certificates issued in Docket Nos. CI62–252 and CI62–907, respectively, by permitting the successor in interest to continue the services heretofore authorized.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate authorizations heretofore issued by the Commission in Docket Nos. G–2661, G–4579, G–5073, G–7193, G–8156, G–12108, G–13335, G–14520, G–16436, CI60–259, CI61–1627, CI62–252, CI62–907, CI62–1184, CI63–1139, CI64–167, CI64–647, CI64–1063, CI65–2, CI65–628, CI65–1199, CI66–129, CI66–148, CI66–357, CI66–559, and CI66–912 should be amended as hereinafter ordered and conditioned.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificates issued in the following dockets should be amended to reflect the deletion of acreage where new certificates are issued herein or existing certificates are amended herein to authorize service from the subject acreage:

| *Amend to delete acreage* | *New certificate and/or amendment to add acreage* |
|---|---|
| G–7214 | CI66–1236 |
| G–9837 | CI66–1022 |
| G–14518 | CI66–104 |
| G–19458 | CI66–1242 |
| G–8663 | CI66–1029 |
| CI63–20 | CI62–1184 |

(8) The sales of natural gas proposed to be abandoned by the respective Applicants, as hereinbefore described, all as more fully described in the tabulation herein and in the respective applications, are subject to the requirements of subsection (b) of section 7 of the Natural Gas Act, and such abandonments should be permitted and approved as hereinafter ordered.

(9) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificates of public convenience and necessity heretofore issued to the respective Applicants herein relating to the abandonments hereinafter permitted and approved should be terminated.

(10) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Petroleum Corporation of Texas should be a correspondent in the proceeding pending in Docket No. RI65–477, that said proceeding should be redesignated accordingly, and that the agreement and undertaking submitted by Petroleum Corporation of Texas in said proceeding should be accepted for filing.

(11) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that C. G. Campbell should be a co-respondent in the proceeding pending in Docket No. G–19994, that said proceeding should be redesignated accordingly and that C. G. Campbell should be required to file an agreement and undertaking.

(12) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that John E. Huff should be a co-respondent in the proceeding pending in Docket Nos. G–14072, G–16676, G–19773, RI61–162, RI62–172, RI63–431, RI64–515, RI65–329, and RI66–151; that said proceedings should be redesignated accordingly; and that the trust agreement submitted by John E. Huff in said proceedings should be accepted for filing.

(13) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the respective related rate schedules and supplements as designated or redesignated in the tabulation herein should be accepted for filing as hereinafter ordered.

The Commission orders:

(A) Certificates of public convenience and necessity are issued upon the terms and conditions of this order, authorizing the sales by the respective Applicants herein of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sales, all as hereinbefore described and as more fully described in the respective applications, amendments, supplements, and exhibits in this proceeding.

(B) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as Applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the respective Applicants. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificates aforesaid for service to the particular customers involved imply approval of all of the terms of the respective contracts particularly as to the cessation of service upon termination of said contracts, as provided by section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(D) The grant of the certificates issued herein on all applications filed after April 15, 1965, is upon the condition that no increase in rate which would exceed the ceiling prescribed for the given area by paragraph (d) of the Commission's

[5] The trust agreement refers to a "notice of the Secretary" issued May 31, 1966, making the increased rate effective subject to refund. The reference should be to the instant order and will be so construed.

Statement of General Policy 61–1, as amended, shall be filed prior to the applicable dates as indicated by footnotes 13 and 34 in the attached tabulation.

(E) The initial rates for sales authorized in Docket Nos. CI66–738 and CI66–1047 shall be the applicable base area rates prescribed in Opinion No. 468, as modified by Opinion No. 468–A, as adjusted for quality, or the contract rates, whichever are lower; and no increases in rate in excess of said initial rates shall be filed before January 1, 1968.

(F) If the quality of the gas delivered by Applicants in Docket Nos. CI66–738 and CI66–1047 deviates at any time from the quality standards set forth in Opinion No. 468, as modified by Opinion No. 468–A, so as to require a downward adjustment of the existing rate, a notice of change in rate shall be filed pursuant to the provisions of section 4 of the Natural Gas Act: *Provided, however,* That adjustments reflecting changes in Btu content of the gas shall be computed by the applicable formula and charged without the filing of notices of changes in rate.

(G) Applicant in Docket No. CI66–104 shall submit a supplement to its FPC Gas Rate Schedule No. 2 to reflect any reduction necessary to bring the rate into conformity with the applicable base area rate prescribed in Opinion No. 468, as modified by Opinion No. 468–A, within 30 days from the date of this order. In view of the stay of the effectiveness of certain of the requirements of Opinion Nos. 468 and 468–A, any filing, if acceptable, will be accepted for informational purposes only.

(H) Applicant in Docket No. CI66–104 shall file a refund report as required by paragraph (I) of Opinion No. 468.

(I) Within 45 days from the date of this order Applicants in Docket Nos. G–14520, CI66–104, and CI66–636 shall file rate schedule quality statements in the form prescribed in Opinion No. 468–A. Applicants in Docket Nos. CI66–738 and CI66–1047 shall file rate schedule quality statements within 45 days from the date of this order if deliveries have commenced or within 90 days from the date of this order if deliveries have not commenced.

(J) Any rate collected on or after September 1, 1965, by Applicant in Docket No. CI66–636 in excess of the applicable area rates set forth in paragraphs (A) and (B) of Opinion No. 468, as modified by Opinion No. 468–A, shall be subject to refund under the conditions prescribed in paragraph (D) of Opinion No. 468.

(K) The certificate issued herein in Docket No. CI61–222 is subject to the conditions set forth in paragraphs (G) and (H) of the order accompanying Opinion No. 390 and 390–A (29 FPC 1175).

(L) Certificates are issued herein to Applicants in Docket Nos. CI66–927, CI66–949, CI66–1071, CI66–1088, and CI66–1164 authorizing the continuance of the related sales which were initiated without prior Commission authorization.

(M) A certificate is issued herein in Docket No. CI66–930, authorizing the continuance of sales, contingent upon Applicant's submittal of a short form rate schedule filing pursuant to § 154.92 (c) of the Commission's regulations.

(N) The certificate issued herein in Docket No. CI66–1218 involving the sale of gas by Philadelphia Oil Co. to its parent, Equitable Gas Co., determines the rate which legally may be paid by the buyer to the seller, but is without prejudice to any action which the Commission may take in any future rate proceeding involving either company.

(O) A certificate is issued herein to Sun Oil Co in Docket No. CI66–376, authorizing Applicant to continue the sale of natural gas previously covered by the operator's certificate, Humble Oil & Refining Co. in Docket No. CI60–259.

(P) The certificate heretofore issued in Docket No. CI60–259 is amended by deleting therefrom authorization to sell gas from the interest of Sun Oil Co.

(Q) The certificates heretofore issued in Docket Nos. G–4579, G–5073, G–7193, G–12108, G–13335, G–16436, CI62–1184, CI63–1139, CI64–647, CI64–1063, CI65–2, CI65–1199, CI66–129, CI66–148, CI66–357, CI66–559, and CI66–912 are amended by adding thereto or deleting therefrom authorization to sell natural gas to the same purchasers and in the same areas as covered by the original authorizations, pursuant to the rate schedule supplements as indicated in the tabulation herein.

(R) The authorization granted in Docket Nos. G–5073, G–12108, CI63–1139, and CI64–1063, in paragraph (Q) above, does not relieve Applicants therein from any refund obligations in the related rate suspension proceedings in Docket Nos. RI65–509, RI60–58, RI65–295, and RI65–454, respectively.

(S) The certificates heretofore issued in the following dockets are amended to reflect the deletion of acreage where new certificates are issued herein or existing certificates are amended herein to authorize service from the subject acreage:

| *Amend to delete acreage* | *New certificate and/or amendment to add acreage* |
|---|---|
| G–7214 | CI66–1236 |
| G–9837 | CI66–1022 |
| G–14518 | CI66–104 |
| G–19458 | CI66–1242 |
| G–8663 | CI66–1029 |
| CI63–20 | CI62–1184 |

(T) The certificate heretofore issued in Docket No. CI64–167 is amended to reflect N. V. Duncan Drilling Co. as Operator in lieu of Magness Petroleum Co., of the properties involved.

(U) The certificate heretofore issued in Docket No. CI65–628 is amended by permitting Applicant to continue the service heretofore rendered by the co-owner who was previously covered under Applicant's certificate in said docket and the related rate schedule is redesignated as Potash Co. of America.

(V) Docket Nos. CI66–1103 and CI66–1104 are canceled.

(W) The certificates heretofore issued in Docket Nos. G–2661, G–8156, G–14520, CI61–1627, CI62–252, and CI62–907 are amended by changing the certificate holders to the respective successors in interest as indicated in the tabulation herein.

(X) Permission for and approval of the abandonment of service by the respective Applicants, as hereinbefore described, all as more fully described in the tabulation herein and in the respective applications are granted.

(Y) The certificates heretofore issued in Docket Nos. G–3247, G–7000, G–10845, G–10848, and CI63–348 are terminated.

(Z) Petroleum Corporation of Texas shall be a co-respondent in the proceeding pending in Docket No. RI65–477, said proceeding is redesignated accordingly,[6] and the agreement and undertaking submitted by Petroleum Corporation of Texas in said proceeding is accepted for filing with respect to sales made pursuant to its FPC Gas Rate Schedule No. 21.

(AA) Petroleum Corporation of Texas shall comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, and the agreement and undertaking submitted by Petroleum Corporation of Texas in said proceeding shall remain in full force and effect until discharged by the Commission.

(BB) C. G. Campbell shall be a co-respondent in the proceeding pending in Docket No. G–19994 and said proceeding is redesignated accordingly.[7]

(CC) Within 30 days from the issuance of this order C. G. Campbell shall execute, in the form set out below, and shall file with the Secretary of the Commission an acceptable agreement and undertaking in Docket No. G–19994 to assure the refund of any amounts collected by him, together with interest at the rate of 7 percent per annum, in excess of the amount determined to be just and reasonable in said proceeding. Unless notified to the contrary by the Secretary of the Commission within 30 days from the date of submission, such agreement and undertaking shall be deemed to have been accepted for filing.

(DD) C. G. Campbell shall comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, and the agreement and undertaking filed by him in Docket No. G–19994 shall remain in full force and effect until discharged by the Commission.

(EE) John E. Huff shall be a co-respondent in the proceedings pending in Docket Nos. G–14072, G–16676, G–19773, RI61–162, RI62–172, RI63–431, RI64–515, RI65–329, and RI66–151; said proceedings are redesignated accordingly; [8] and the trust agreement submitted by John E. Huff in said proceedings is accepted for filing.

(FF) John E. Huff shall charge and collect 15.8 cents per Mcf at 14.65 p.s.i.a. for gas sold pursuant to his FPC Gas Rate Schedule No. 1 from March 7, 1966, through May 30, 1966, and 16.0 cents per Mcf at 14.65 p.s.i.a. for gas sold pursuant to said rate schedule on May 31, 1966, and thereafter.

[6] Shell Oil Co. and Petroleum Corporation of Texas.

[7] E. G. Rodman (Operator), et al., and C. G. Campbell.

[8] Standard Oil Company of Texas, a Division of Chevron Oil Co. and John E. Huff.

(GG) John E. Huff shall comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, and the trust agreement filed by him in Docket Nos. G–14072, G–16676, G–19773, RI61–162, RI62–172, RI63–431, RI64–515, RI65–329, and RI66–151 shall remain in full force and effect until discharged by the Commission.

(HH) The respective related rate schedules and supplements as indicated in the tabulation herein are accepted for filing; further, the rate schedules relating to the successions herein are redesignated and accepted, subject to the applicable Commission regulations under the Natural Gas Act to be effective on the dates as indicated in the tabulation herein.

By the Commission.

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

| Docket No. and date filed | Applicant | Purchaser, field, and location | FPC rate schedule to be accepted | | |
|---|---|---|---|---|---|
| | | | Description and date of document | No. | Supp. |
| G–2661<br>E 5–16–66 | Burlington Bank & Trust Co., Trustee (successor to H. E. Trovillo). | Colorado Interstate Gas Co., Hugoton Field, Kearny County, Kans. | H. E. Trovillo, FPC GRS No. 1. | 1 | |
| | | | Supplement Nos. 1–3 | 1 | 1–3 |
| | | | Notice of succession 5–12–66. | | |
| | | | Effective date: 4–15–66 | | |
| G–4579<br>D 5–23–66 | Cities Service Oil Co. (partial abandonment). | Colorado Interstate Gas Co., Keyes Field, Cimarron County, Okla. | Partial release 4– –66 [1] [2] | 91 | 21 |
| G–5073<br>D 5–23–66 | Shell Oil Co. (partial abandonment). | do | Notice of partial cancellation 5–20–66. [2] [3] | [4] 85 | 6 |
| G–7193<br>D 6–11–64 | Union Oil Co. of California (formerly The Pure Oil Co.) (partial abandonment). | Humble Gas Transmission Co., Carthage Point Field, Adams County, Miss. | notice of partial cancellation 6–9–64. [2] [5] | 105 | 12 |
| G–8156<br>E 5–9–66 | Petroleum Corp. of Texas (successor to Shell Oil Co.). | United Gas Pipe Line Co., North McFadden Field, Victoria County, Tex. | Shell Oil Co., FPC GRS No. 127. | 21 | |
| | | | Supplement Nos. 1–14 | 21 | 1–14 |
| | | | Notice of succession 5–5–66. | | |
| | | | Assignment 3–29–66 [6] | 21 | 15 |
| | | | Effective date: 4–1–66 | | |
| G–12108<br>D 4–11–66 | Petroleum, Inc. (Operator), et al. (partial abandonment). | Cities Service Gas Co., Elwood Field, Barber County, Kans. | Part. cancellation 4–8–66. [2] [9] | [10] 4 | 11 |
| G–13335<br>D 3–31–66 | Mobil Oil Corp. (formerly Socony Mobil Oil Co., Inc.). | Arkansas Louisiana Gas Co., Colquitt Field, Claiborne Parish, La. | Amendment 11–25–64 [2] [11] | 291 | 8 |
| G–14520<br>E 6–17–65 | C. G. Campbell (Operator), et al. (successor to E. G. Rodman (Operator), et al.). | El Paso Natural Gas Co., Drinkard Field, Lea County, N. Mex. | E. G. Rodman (Operator), et al., FPC GRS No. 3. | 1 | |
| | | | Supplement No. 1 | 1 | 1 |
| | | | Notice of succession 6–4–65. | | |
| | | | Assignment 9–30–64 [12] | 1 | 2 |
| | | | Effective date: 10–1–64 | | |
| G–16436<br>C 1–6–66 [13] | Sunset International Petroleum Corp. | Natural Gas Pipeline Co. of America, acreage in Wise County, Tex. | Amendatory agreement 8–26–65. | 22 | 9 |
| | | | Amendatory agreement 1–26–66. [14] | 22 | 10 |

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession

See footnotes at end of table.

| Docket No. and date filed | Applicant | Purchaser, field, and location | FPC rate schedule to be accepted | | |
|---|---|---|---|---|---|
| | | | Description and date of document | No. | Supp. |
| CI61–222 [15]<br>A 8–12–60<br>E 3–30–66 [16] | H. F. Sears [17] (successor to Sunset International Petroleum Corp.). | El Paso Natural Gas Co., acreage in Ochiltree County, Tex. | Sunset International Petroleum Corp., FPC GRS No. 13. | 17 | |
| | | | Supplement Nos. 1–9 | 17 | 1–9 |
| | | | Notice of succession 3–25–66. | | |
| | | | Release of Lease 9–2–65. [18] [19] | 17 | 10 |
| | | | Release of Lease 9–2–65. [18] [19] | 17 | 11 |
| | | | Lease 9–24–65 [20] [21] | 17 | 12 |
| | | | Lease 9–24–65 [20] [21] | 17 | 13 |
| CI61–1627<br>E 5–5–66 | Oil Producers, Inc. (successor to A. G. Hill). | Equitable Gas Co., Collins Settlement District, Lewis County, W. Va. | A. G. Hill, FPC GRS No. 2. | 1 | |
| | | | Notice of succession 3–31–66. | | |
| | | | Assignment 10–27–65 | 1 | 1 |
| | | | Effective date: 9–1–65 | | |
| F CI62–1184<br>(CI63–20)<br>C 5–4–66 | Sinclair Oil & Gas Co. (Operator), et al. | Arkansas Louisiana Gas Co., Alfred Parker Unit, Latimer County, Okla. | Letter agreement 3–23–66. [22] [23] | 251 | 9 |
| CI63–20<br>D 9–10–65 | Humble Oil & Refining Co. | Arkansas Louisiana Gas Co., Arkoma Area, Latimer County, Okla. | Assignment 8–18–65 [2] [24] | 337 | 21 |
| CI63–1139<br>D 5–16–66 | Harper Oil Co. (Operator), et al. (partial abandonment). | Arkansas Louisiana Gas Co., North Drummond Area, Garfield County, Okla. | Notice of cancellation 5–11–66. [1] [2] | [25] 32 | 6 |
| CI64–167<br>E 3–4–66 [26] | N. V. Duncan Drilling Co. (Operator), et al. (successor to Magness Petroleum Co. (Operator), et al.) | Arkansas Louisiana Gas Co., Northeast Ames Field, Major County, Okla. | Magness Petroleum Co. (Operator), et al., FPC GRS No. 1. | 3 | |
| | | | Supplement No. 1 | 3 | 1 |
| | | | Notice of succession 4–7–66. [27] | | |
| | | | Effective date: 1–28–66 | | |
| CI64–647<br>C 5–26–66 [13] | George L. Yaste, d.b.a. Oil States Sales Co. | Equitable Gas Co., Union District, Ritchie County, W. Va. | Letter Agreement 9–21–65. | 12 | 5 |
| | | | Letter Agreement 2–4–66. [23] | 12 | 6 |
| CI64–1063<br>D 5–19–66 | Tenneco Oil Co. (partial abandonment). | Cities Service Gas Co., Northeast Clyde Field, Grant County, Okla. | Letter agreement 9–3–65. [2] [9] | [28] 107 | 3 |
| CI65–2<br>D 4–11–66 | Arkla Exploration Co., et al. (partial abandonment). | Arkansas Louisiana Gas Co., McCurtain Area, Haskell County, Okla. | Amendment 2–23–66 [1] [2] | 20 | 6 |
| CI65–628<br>E 3–25–66 [29] | Potash Co. of America | Natural Gas Pipeline Co. of America, Indian Basin Area, Eddy County, N. Mex. | Assignment 1–24–66 [30] | 1 | 2 |
| | | | Effective date: 3–1–66 | | |
| CI65–1199<br>C 5–2–66 [13] | Continental Oil Co | Montana-Dakota Utilities Co., Alkali Creek Field, Fremont County, Wyo. | Supplemental agreement 4–22–66. [23] | 298 | 2 |
| A CI66–104<br>(G–14518)<br>F 7–26–65 | C. G. Campbell (successor to E. G. Rodman (operator), et al.) | El Paso Natural Gas Co., Drinkard and Jalmat Fields, Lea County, N. Mex. | Contract 4–30–49 [31] | 2 | |
| | | | Supplemental agreement 7–10–51. | 2 | 1 |
| | | | Letter 1–15–53 [32] | 2 | 2 |
| | | | Letter 1–15–58 [32] | 2 | 3 |
| | | | Supplemental agreement 10–26–59. [33] | 2 | 4 |
| | | | Assignment 9–30–64 [12] | 2 | 5 |
| | | | Effective date: 10–1–64 | | |
| CI66–129<br>C 5–31–66 [13] | Joseph E. Seagram & Sons, Inc., d.b.a. Texas Pacific Oil Co. | El Paso Natural Gas Co., Basin Dakota Field, San Juan County, N. Mex. | Supplemental agreement 5–25–66. [23] | 86 | 4 |

| Docket No. and date filed | Applicant | Purchaser, field, and location | FPC rate schedule to be accepted | | |
|---|---|---|---|---|---|
| | | | Description and date of document | No. | Supp. |
| CI66-148 C 5-23-66 [34] | Texaco Inc. (Operator), et al. | Lone Star Gas Co. East Hewitt Field, Carter County, Okla. | Amendatory agreement 3-2-66.[33] | 357 | 1 |
| CI66-357 C 5-31-66 [13] | American Petrofina Co. of Texas. | El Paso Natural Gas Co., acreage in San Juan County, N. Mex. | Supplemental agreement 2-21-66.[23] | 46 | 1 |
| CI66-376 A 11-4-65 [34] [35] (CI60-259) | Sun Oil Co. (Gulf Coast Division). | Trunkline Gas Co., Bayou Sale Field, St. Mary Parish, La. | Contract 6-22-65 [2] | 201 | |
| CI66-559 C 5-27-66 [13] | Phillips Petroleum Co. | Panhandle Eastern Pipe Line Co., McQuiddy Ranch Area, Hemphill County, Tex. | Amendment 2-4-66 [23] | 418 | 1 |
| CI66-636 A 1-20-66. | Cities Service Oil Co. (successor to Landmark Oil, Inc.[36]). | El Paso Natural Gas Co., Merchant Unit, Reagan County, Tex. | Contract 3-31-54 [37] | 210 | |
| | | | Letter agreement 7-6-54. | 210 | 1 |
| | | | Supplemental agreement 10-26-59. | 210 | 2 |
| | | | Supplemental agreement 8-10-60. | 210 | 3 |
| | | | Supplemental agreement 10-7-60.[38] | 210 | 4 |
| | | | Supplemental agreement 12-5-60.[39] | 210 | 5 |
| | | | Assignment 9-4-64 [40] | 210 | 6 |
| | | | Effective date: 7-1-64 | | |
| | | | Supplemental agreement 11-1-65.[41] | 210 | 7 |
| | | | Effective date: 11-1-65 | | |
| CI66-738 A 2-15-66 [13] | Union Oil Co. of California.[42] | Northern Natural Gas Co., Dennison Field, Sutton County, Tex. | Contract 12-10-65 | 164 | |
| | | | Supplemental agreement 12-10-65. | 164 | 1 |
| CI66-894 A 3-25-66 [13] | Mobil Oil Corp. (formerly Socony Mobil Oil Co. Inc.). | Panhandle Eastern Pipe Line Co., Panhandle Field, Moore County, Tex. | Contract 1-28-66 [23] | 385 | |
| CI66-912 C 5-16-66 [13] | Banquete Gas Co., a Division of Crestmont Oil & Gas Co. | United Gas Pipe Line Co., Odem Field, San Patricio County, Tex. | ([23] [43]) | 3 [43a] | |
| CI66-927 A 3-30-66 [13] [44] | G. B. Langford and D. W. Cox, agents for C. & L. Fuel Co. | Carnegie Natural Gas Co., Clay District, Ritchie County, W. Va. | Contract 11-15-57 [23] | 1 | |
| CI66-930 A 4-4-66 [45] | Golden Oil Co. | Pennsylvania Gas Co., Sheffield Township, Warren County, Pa. | Letter 6-10-66 [46] | | |
| CI66-949 A 4-6-66 [13] [44] | Paul Brisbin, et al. d.b.a. Arcadia Oil & Gas Co. | Carnegie Natural Gas Co., Union District, Ritchie County, W. Va. | Contract 10-29-56 [23] | 3 | |
| CI66-1010 A 4-20-66 [13] | L. W. Prunty | do | Contract 4-22-59 [23] | 5 | |
| A CI66-1022 (G-9837) F 4-25-66 6-15-66 [47] | John A. Egan (Operator), et al. (successor to E. B. Germany d.b.a. E. B. Germany & Sons (Operator), et al.). | El Paso Natural Gas Co., acreage in Rio Arriba County, N.Mex. | Contract 9-8-55 [48] | 6 | |
| | | | Letter agreement 7-5-60.[49] | 6 | 1 |
| | | | Assignment 1-7-66 [50] | 6 | 2 |
| | | | Assignment 4-11-66 [23] [51] | 6 | 3 |

See footnotes at end of table.

| Docket No. and date filed | Applicant | Purchaser, field, and location | FPC rate schedule to be accepted | | |
|---|---|---|---|---|---|
| | | | Description and date of document | No. | Supp. |
| A CI66-1029 (G-8663) F 4-25-66 | Champlin Petroleum Co. | Tennessee Gas Pipeline Co., a division of Tenneco Inc.[7] Beaurline Field, Hidalgo County, Tex. | Contract 2-3-55 [52] | 97 | |
| | | | Letter agreement 1-31-55. | 97 | 1 |
| | | | Letter agreement 2-4-55. | 97 | 2 |
| | | | Letter agreement 6-22-55. | 97 | 3 |
| | | | Letter agreement 10-6-58. | 97 | 4 |
| | | | Amendment 11-7-58 [53] | 97 | 5 |
| | | | Letter agreement 4-16-59. | 97 | 6 |
| | | | Letter agreement. 3-10-60. | 97 | 7 |
| | | | Letter agreement. 4-15-64. | 97 | 8 |
| | | | Amendment 3-1-65 [54] | 97 | 9 |
| | | | Assignment 2-1-66 [55] | 97 | 10 |
| | | | Assignment 2-1-66 [56] | 97 | 11 |
| | | | Effective date: 2-1-66 | | |
| | | | Assignment 2-24-66 [56] | 97 | 12 |
| | | | Effective date: 2-24-66 | | |
| CI66-1047 A 4-29-66 [13] | Aztec Oil & Gas Co.[57] | El Paso Natural Gas Co., Eumont Gas Pool, Lea County, N.Mex. | Contract 2-4-66 | 21 | |
| CI66-1071 A 5-2-66 [13] [44] | J. B. Jackson d.b.a. Jackson Pipe Line Construction Co. | Carnegie Natural Gas Co., Center District, Gilmer County, W. Va. | Contract 6-2-62 [58] | 2 | |
| | | | Assignment 10-1-62.[23] [59] | | |
| CI66-1075 A 5-4-66 [13] | W. C. McBride, Inc. | Mountain Fuel Supply Co., Nitchie Gulch Area, Sweetwater County, Wyo. | Contract 3-3-66 [60] | 25 | |
| | | | Contract 8-12-63 [61] | 25 | 1 |
| | | | Supplemental agreement 12-13-63.[62] | 25 | 2 |
| CI66-1088 A 5-4-66 [45] | Sherman Steele | Kentucky West Virginia Gas Co., Island Creek Field, Pike County, Ky. | Contract 1-12-44 [63] | 2 | |
| | | | Letter agreement 8-22-50.[64] | 2 | 1 |
| CI66-1090 A 5-9-66 [13] | Perry R. Bass, Inc. (Operator), et al. | Banquete Gas Co., a division of Crestmont Oil & Gas Co., Odem Field, San Patricio County, Tex. | Contract 4-25-66 | 14 | |
| | | | Recording supplement 4-24-66.[23] | 14 | 1 |
| CI66-1103 E (CI62-252) A 5-5-66 [65] | Oil Producers, Inc. (successor to A. G. Hill). | Equitable Gas Co., Courthouse District, Lewis County, W. Va. | A. G. Hill, FPC GRS No. 5. | 2 | |
| | | | Notice of succession 3-31-66. | | |
| | | | Assignment 10-27-65 | 2 | 1 |
| | | | Effective date: 9-1-65 | | |
| CI66-1104 E (CI62-907) A 5-5-66 [65] | do | Consolidated Gas Supply Corp., Collins Settlement District, Lewis County, W. Va. | A. G. Hill, FPC GRS No. 6. | 3 | |
| | | | Supplement Nos. 1-4 | 3 | 1-4 |
| | | | Notice of succession 3-31-66. | | |
| | | | Assignment 10-27-65 | 3 | 5 |
| | | | Effective date: 9-1-65 | | |
| CI66-1112 A 5-12-66 [13] | Perry R. Bass, Inc. (Operator), et al. | Banquete Gas Co., a division of Crestmont Oil & Gas Co., acreage in Wharton County, Tex. | Contract 4-25-66 | 15 | |
| | | | Letter agreement 6-9-66. [23] [66] | 15 | 1 |
| CI66-1151 (CI63-348) B 5-16-66 | The Gerhig Co. of Arkansas (Operator), et al. | Rio Sabine, Inc., Simpson Lake Field, Caddo Parish, La. | Notice of cancellation 5-9-66.[1] [2] | 1 | 1 |
| CI66-1156 A 5-23-66 [34] | W. J. Fellers (Operator), et al. | Cities Service Gas Co., North Nye Field, Beaver County, Okla. | Ratification 12-30-65 [67] | 6 | |
| | | | Contract 9-3-63 | 6 | 1 |
| CI66-1157 A 5-23-66 [34] | Cleary Petroleum, Inc. (Operator), et al. | do | Contract 12-30-65 [68] | 19 | |
| | | | Letter agreement 2-16-66. | 19 | 1 |
| CI66-1164 A 5-16-66 [45] | J. A. Schill, et al. | United Natural Gas Co., Knox and Paint Townships, Clarion County, Pa. | Contract 8-10-28 | 1 | |

| Docket No. and date filed | Applicant | Purchaser, field, and location | FPC rate schedule to be accepted | | |
|---|---|---|---|---|---|
| | | | Description and date of document | No. | Supp. |
| CI66-1172 A 5-26-66 [13] | Lock 3 Oil, Coal & Dock Co., et al. | Consolidated Gas Supply Corp., Warren District, Upshur County, W. Va. | Contract 12-27-65 [23] | 2 | |
| CI66-1173 A 5-26-66 [13] | Allegheny Land & Mineral Co. | Consolidated Gas Supply Corp., McClellan District, Doddridge County, W. Va. | Contract 12-23-65<br>Letter agreement 3-30-66. [23] [69] | 9<br>9 | <br>1 |
| CI66-1174 A 5-26-66 [13] | Rex Drilling Co., et al. | Consolidated Gas Supply Corp., Grant District, Doddridge County, W. Va. | Contract 12-21-65 [23] | 1 | |
| CI66-1175 A 5-26-66 [13] | C. L. Kingsbury, et al. | Consolidated Gas Supply Corp., Washington District, Calhoun County, W. Va. | Contract 1-11-66 [23] | 10 | |
| CI66-1176 A 5-26-66 [13] | Petroleum Resources, Inc. | Consolidated Gas Supply Corp., Collins Settlement District, Lewis County, W. Va. | Contract 12-15-65 [23] | 8 | |
| CI66-1177 A 5-26-66 [13] | John J. McDonnell | Consolidated Gas Supply Corp., Union and Murphy Districts, Ritchie County, W. Va. | Contract 1-26-66 [23] | 1 | |
| CI66-1178 A 5-26-66 [13] | Glen W. Roberts | Consolidated Gas Supply Corp., Lee District, Calhoun County, W. Va. | Contract 2-23-66 [23] | 2 | |
| CI66-1179 A 5-26-66 [13] | Bush & Williams, et al. | Consolidated Gas Supply Corp., Troy District, Gilmer County, W. Va. | Contract 12-14-65 [23] | 3 | |
| CI66-1180 A 5-26-66 [13] | M. D. Carey, et al. d.b.a. Carey Oil Co., et al. | Consolidated Gas Supply Corp., Grant District, Doddridge County, W. Va. | Contract 12-8-65 [23] | 6 | |
| CI66-1181 A 5-26-66 [13] | Clarence Powell, agent for Market Oil & Gas Co. | Consolidated Gas Supply Corp., New Milton District, Doddridge County, W. Va. | Contract 2-21-66 [23] | 8 | |
| CI66-1182 A 5-26-66 [13] | Don W. Hardman, agent for Drilco Oil Productions. | Consolidated Gas Supply Corp., Murphy District, Ritchie County, W. Va. | Contract 4-4-66 [23] | 22 | |
| CI66-1183 A 5-26-66 [13] | Hays & Co., agent for D. A. Dorward, et al. | Consolidated Gas Supply Corp., Lee District, Calhoun County, W. Va. | Contract 2-8-66 [23] | 253 | |
| CI66-1184 A 5-26-66 [13] | Gibson Oil Co., et al., First National Bank of Quincy, agent. | Consolidated Gas Supply Corp., Grant District, Ritchie County, W. Va. | Contract 1-14-66 [23] | 1 | |
| CI66-1185 A 5-26-66 [13] | David E. Barr, agent for Bud Kelly Heirs No. 1. | Consolidated Gas Supply Corp., Sherman District, Calhoun County, W. Va. | Contract 12-17-65 [23] | 1 | |
| CI66-1186 A 5-26-66 [13] | Robert W. Adams | Consolidated Gas Supply Corp., Clear Fork District, Mingo County, W. Va. | Contract 1-4-66 [23] | 2 | |
| CI66-1187 A 5-26-66 [13] | George W. Miller, et al. | Consolidated Gas Supply Corp., DeKalb District, Gilmer County, W. Va. | Contract 1-20-66 [23] | 41 | |
| CI66-1188 A 5-26-66 [13] | Geosonic Corp., agent for Earl W. Pierson, et al. | Consolidated Gas Supply Corp., Salt Lick District, Braxton County, W. Va. | Contract 1-24-66 [23] | 2 | |
| CI66-1189 A 5-26-66 [13] | MacTay Investment Co., Inc., et al. | Consolidated Gas Supply Corp., Skin Creek District, Lewis County, W. Va. | Contract 12-8-65 [23] | 3 | |
| CI66-1190 A 5-26-66 [13] | Sunset International Petroleum Corp., et al. | Consolidated Gas Supply Corp., Warren District, Upshur County, W. Va. | Contract 1-13-66<br>Letter 4-15-66 [23] [69] | 46<br>46 | <br>1 |
| CI66-1191 A 5-26-66 [13] | Joe Stydahar, et al., d.b.a. Stydahar Oil & Gas Co., et al. | Consolidated Gas Supply Corp., Elk District, Barbour County, W. Va. | Contract 12-7-65 [23] | 1 | |
| CI66-1192 A 5-26-66 [13] | Willard E. Ferrell, et al., d.b.a. Skookum Development Co. | Consolidated Gas Supply Corp., Union District, Ritchie County, W. Va. | Contract 12-15-65 [23] | 15 | |
| CI66-1193 A 5-26-66 [13] | L. J. Nicholson, et al., d.b.a. Golden Well No. 1. | Consolidated Gas Supply Corp., Greenbrier District, Doddridge County, W. Va. | Contract 1-11-66 [23] | 1 | |
| CI66-1194 A 5-26-66 [13] | O. A. Newbrough, et al. | Consolidated Gas Supply Corp., Murphy District, Ritchie County, W. Va. | Contract 1-11-66 [23] | 2 | |
| CI66-1195 A 5-26-66 [13] | B. L. Burge, et al. d.b.a. Burge & Dunbar Drilling Co. et al. | do | Contract 12-8-65 [23] | 4 | |
| CI66-1196 A 5-26-66 [13] | J & J Enterprises, Inc. | Consolidated Gas Supply Corp. Warren District, Upshur County, W. Va. | Contract 12-28-65 [23] | 4 | |
| CI66-1197 A 5-26-66 [13] | C. O. Bower, et al. d.b.a. Bower-Longfellow, et al. | Consolidated Gas Supply Corp., Murphy District, Ritchie County, W. Va. | Contract 12-27-65 [23] | 2 | |
| CI66-1198 A 5-26-66 [13] | Hays & Co., agent for Crump Oil Co. | Consolidated Gas Supply Corp. Union District, Barbour County, W. Va. | Contract 12-17-65<br>Letter 3-30-66 [23] [69] | 254<br>254 | <br>1 |
| CI66-1199 A 5-26-66 [13] | Mann Drilling Co., et al. | Consolidated Gas Supply Corp., Central District, Doddridge County, W. Va. | Contract 12-14-65 [23] | 1 | |
| CI66-1200 A 5-26-66 [13] | J & J Enterprises, Inc. | Consolidated Gas Supply Corp. Union District, Barbour County, W. Va. | Contract 1-4-66 [23] | 5 | |
| CI66-1201 A 5-26-66 [13] | E. B. Clark d.b.a. E. B. Clark Drilling Co., et al. | Consolidated Gas Supply Corp., Glenville District, Gilmer County, W. Va. | Contract 1-18-66 [23] | 2 | |
| CI66-1202 A 5-26-66 [13] | Hays & Co., agent for Delta Petroleum Co., et al., by James M. Ryan. | Consolidated Gas Supply Corp., Center District, Gilmer County, W. Va. | Contract 1-6-66 [23] | 256 | |
| CI66-1203 A 5-26-66 [13] | Winnie Fae Morris, et al. | Consolidated Gas Supply Corp., Murphy District, Ritchie County, W. Va. | Contract 3-15-66 [23] | 7 | |
| CI66-1204 A 5-26-66 [13] | Cumberland Gas Co. | Consolidated Gas Supply Corp., Union and Pleasant Districts, Clay County, W. Va. | Contract 1-11-66 [23] | 8 | |
| CI66-1205 A 5-26-66 [13] | Lewis E. Smith | Consolidated Gas Supply Corp., Lee District, Calhoun County, W. Va. | Contract 12-27-65 [23] | 1 | |
| CI66-1206 A 5-26-66 [13] | E. B. Clark d.b.a. E. B. Clark Drilling Co., et al. | Consolidated Gas Supply Corp., Glenville District, Gilmer County, W. Va. | Contract 1-24-66 [24] | 3 | |
| CI66-1213 A 5-31-66 [13] | J. Gregory Merrion (Operator), et al. | El Paso Natural Gas Co., Undesignated Chacra and South Blanco Pictured Cliffs Fields, Rio Arriba County, N. Mex. | Contract 5-6-66 [23] | 4 | |

See footnotes at end of table.

| Docket No. and date filed | Applicant | Purchaser, field, and location | FPC rate schedule to be accepted | | |
|---|---|---|---|---|---|
| | | | Description and date of document | No. | Supp. |
| CI66-1214 (G-18045) B 5-31-66 | Mabee Petroleum Corp., et al. (successor to J. E. Mabee Co.). | Michigan Wisconsin Pipe Line Co., Laverne Field, Harper County, Okla. | Notice of cancellation 5-27-66.[2] [9] | [70] 1 | 1 |
| CI66-1215 A 5-31-66 [13] | Joseph E. Seagram & Sons, Inc., d.b.a. Texas Pacific Oil Co. | Natural Gas Pipeline Co. of America, North Farnsworth Area, Ochiltree County, Tex. | Contract 3-1-66 [23] | 88 | |
| CI66-1216 A 5-31-66 [13] | Harper-Smith and Associates, Inc. | Lone Star Gathering Co., Belitz Field, De Witt County, Tex. | Contract 4-13-66 [23] | 3 | |
| CI66-1218 A 5-27-66 [13] | Philadelphia Oil Co | Equitable Gas Co.: A. E. Batton Lease, DeKalb District, Gilmer County, W. Va. | Contract 11-5-62 [23] | 7 | |
| | | Peters-Moffett Lease, Glenville District, Gilmer County, W. Va. | Contract 1-15-63 [23] | 8 | |
| | | W. J. Hickman Lease, Cove District, Doddridge County, W. Va. | Contract 8-2-65 [23] | 9 | |
| | | F. L. Lodge Lease, Cove District, Doddridge County, W. Va. | Contract 9-8-65 [23] | 10 | |
| CI66-1222 (G-3247) B 6-2-66 | Ralph A. Johnston and Estate of William G. Johnston. | Natural Gas Pipeline Co. of America, Fairbanks Area, Harris County, Tex. | Notice of cancellation 5-31-66.[2] [9] | 1 | 3 |
| CI66-1223 A 5-31-66 [13] | Francis Friestad, et al | Equitable Gas Co., Glenville District, Gilmer County, W. Va. | Contract 5-10-66 [23] | 11 | |
| CI66-1225 A 5-31-66 | A. C. Radford, Trustee | Kentucky-West Virginia Gas Co., Brushy Fork of Blaine Creek, Lawrence County, Ky. | Contract 5-17-66 [23] | 7 | |
| CI66-1226 (G-10848) B 6-2-66 | Gulf Oil Corp | Cities Service Gas Co., Rhodes Field, Barber County, Kans. | Notice of cancellation 6-1-66.[2] [9] | 53 | 4 |
| CI66-1234 A 6-6-66 [34] | Sinclair Oil & Gas Co | Panhandle Eastern Pipe Line Co., South Bishop Field, Ellis County, Okla. | Contract 4-19-66 [23] | 352 | |
| CI66-1235 A 6-7-66 [34] | An-Son Corp. (Operator), et al. | Northern Natural Gas Co., Northeast Holland Field, Beaver County, Okla. | Contract 3-2-66 [23] | 16 | |
| A CI66-1236 (G-7214) F 5-31-66 | John E. Huff (successor to Standard Oil Co. of Texas, a division of Chevron Oil Co.). | Texas Eastern Transmission Corp., Adams Ranch Field, Jasper County, Tex. | Contract 7-1-50 [71] | 1 | |
| | | | Letter agreement 7-24-57.[72] | 1 | 1 |
| | | | Letter agreement 8-22-57. | 1 | 2 |
| | | | Amendment 9-24-62 [73] | 1 | 3 |
| | | | Notice of change 5-27-66.[74] | 1 | 4 |
| | | | Assignment 2-18-66 [75] | 1 | 5 |
| | | | Effective date: 3-7-66 | | |
| CI66-1237 (G-7000) B 6-6-66 | Estate of F. Julius Fohs, et al. | Texas Eastern Transmission Corp., South Range Field, Karnes and Goliad Counties, Tex. | Notice of cancellation 6-3-66.[2] [9] | 2 | 6 |
| CI66-1238 A 6-6-66 [13] | Bowers Drilling Co., Inc. | Cities Service Gas Co., I. L. S. Pool, Barber, County, Kans. | Contract 5-17-66 [23] | 8 | |
| CI66-1239 A 6-6-66 [13] | Banquete Gas Co., a division of Crestmont Oil & Gas Co. | United Gas Pipe Line Co., Wildcat Field, Wharton County, Tex. | Contract 5-31-66 [76] | 5 | |
| | | | Letter agreement 6-20-66.[23] [77] | 5 | 1 |
| A CI66-1242 (G-19458) F 5-27-66 | Payne Producing Co | United Gas Pipe Line Co., West Calallen Field, Nueces County, Tex. | Ratification 5-26-66 | 1 | |
| | | | Contract 8-11-59 [78] | 1 | 1 |
| | | | Assignment 1-1-66 [79] | 1 | 2 |
| | | | Effective date: 1-1-66 | | |
| CI66-1245 A 6-6-66 [13] | W. A. Moncrief (Operator), et al. | Arkansas Louisiana Gas Co., Excelsior Field, Marion County, Tex. | Contract 5-9-66 [80] | 3 | |
| | | | Contract 4-7-66 | 3 | 1 |
| | | | Letter agreement 3-8-66. | 3 | 2 |
| | | | Letter agreement 4-7-66. | 3 | 3 |

See footnotes at end of table.

[1] Production of gas no longer economically feasible.
[2] Effective date: Date of this order.
[3] High rates of water production forced abandonment. The well was recompleted in another zone and buyer is unable to justify connecting the new supply to its system.
[4] Rate of 17.0 cents effective subject to refund in Docket No. RI65-509. Last clean rate was 15.0 cents.
[5] Cancels Union Oil Co. of California FPC GRS No. 105 insofar as it pertains to the acreage assigned to H. C. Calkins.
[6] Conveys Shell's interest to Petroleum Corp. of Texas.
[7] Formerly Tennessee Gas Transmission Co.
[8] Omitted.
[9] Source of gas depleted.
[10] Rate of 13.0 cents effective subject to refund in Docket No. RI60-58.
[11] Partial assignment of acreage to Phillips Petroleum Co. Phillips states by letter dated May 6, 1966, that the acreage is nonproductive and has been released.
[12] Transfers interest from E. G. Rodman to C. G. Campbell.
[13] Jan. 1, 1968, moratorium date pursuant to Commission's Statement of General Policy 61-1, as amended.
[14] Replaces unilateral agreement filed Jan. 1, 1966. Deletes indefinite pricing provisions related to the Aug. 26, 1965 amendatory agreement (Supp. No. 9).
[15] Temporary certificate originally issued to Nichols Petroleum, Ltd., partnership.
[16] Application for certificate filed by Applicant to continue service previously rendered by Sunset who received temporary authorization to continue service previously rendered by Nichols Petroleum Ltd., partnership.
[17] By letter filed June 2, 1966, Applicant advised willingness to accept a permanent certificate conditioned similarly to the certificates issued under Opinion Nos. 390 and 390-A.
[18] Sunset International Petroleum Corp., et al., releases subject acreage to land owners.
[19] Covers S/2 of Sec. 71, Blk 13, T&NO RR. Survey and N/2 of Sec. 71, Blk 13, T&NO RR. Survey, respectively.
[20] Land owners let subject acreage to Applicant.
[21] Covers E/2 of Sec. 71, Blk 13, T&NO RR. Survey and W/2 of Sec. 71, Blk 13, T&NO RR. Survey, respectively.
[22] Attached thereto is an assignment dated Aug. 18, 1965, which transferred the acreage from Humble Oil & Refining Co. to Sinclair; the supplement supersedes and cancels the May 24, 1962, Humble contract, on file as Humble's FPC GRS No. 337, insofar as it applies to the assigned acreage and dedicates such acreage to Sinclair's contract dated Mar. 15, 1962 (Sinclair's FPC GRS No. 251).
[23] Effective date: Date of initial delivery (Applicant should advise the Commission as to such date).
[24] Assigns certain acreage to Sinclair Oil & Gas Co. Sinclair filed in CI62-1184 to cover this acreage.
[25] Rate of 16.8 cents effective subject to refund in Docket No. RI65-295.
[26] Amendment to the certificate filed to reflect change in Operator.
[27] Applicant succeeded predecessor as Operator with no change in the working interest of the property involved. Applicant became the Operator of the Bruce Unit on June 27, 1965, and the Gammon Unit on Jan. 28, 1966.
[28] Rate of 14.0 cents effective subject to refund in Docket No. RI65-454.
[29] Amendment to the certificate to reflect acquisition of "et al." party's (Cummings') interest. Potash has acquired the interest of Cummings which was previously covered under Applicant's certificate in said docket.
[30] Conveys interest from Cummings ("et al." party) to Potash.
[31] Between E. G. Rodman, seller and El Paso, buyer; on file as E. G. Rodman FPC GRS No. 1.
[32] Letter from buyer advising seller that he is entitled to an increase in rate under the favored nation provisions of the basic contract.
[33] Deletes favored nation clauses from basic contract (Apr. 30, 1949).
[34] July 1, 1967, moratorium date pursuant to Commission's Statement of General Policy 61-1, as amended.
[35] Sun Oil Co. is filing to cover its own interest which service is currently being rendered under Humble's certificate in Docket No. CI60-259 and Humble Oil & Refining Co. FPC GRS No. 281.
[36] Predecessor made no certificate or rate filing.
[37] Between Cosden Petroleum Corp. and El Paso.
[38] Instrument whereby Warren Scarborough, Trustee acquired signatory status to contract of Mar. 31, 1954.
[39] Instrument whereby Lloyd R. French acquired signatory status to contract of Mar. 31, 1954.
[40] From Landmark Oil, Inc., to Cities Service (Landmark had acquired interest from Scarborough and French).
[41] Between Cities Service and El Paso (agreement whereby Cities Service adopts terms of Mar. 31, 1954, contract with regard to a portion of the acreage involved).
[42] By letter filed June 20, 1966, Applicant advised willingness to accept a permanent certificate containing conditions similar to those imposed by Opinion No. 468, as modified by Opinion No. 468-A.
[43] Covers gas produced by Perry R. Bass, Inc. (Operator), et al., who has filed for authorization in Docket No. CI66-1090.

[42a] Related rate schedule on file; only billing statement submitted.
[43] Sale being rendered without prior authorization.
[44] This is a June 7, 1954, sale.
[45] Contains information required by section 154.92(c).
[46] Amendment to the application filed to reflect a total initial rate of 12.0 cents in lieu of 12.0495 cents.
[47] Contract between E. B. Germany & Sons, et al. and El Paso Natural Gas Co.
[48] Changes provision for determining specific gravity and gasoline content from 3- to 6-month intervals.
[49] E. B. Germany, et al. assigns a leasehold interest to Intermountain Petroleum Corp. (nonproductive acreage).
[50] Intermountain Petroleum assigns an undivided one-half interest in operating rights to John A. Egan (nonproductive acreage).
[51] Basic contract between Sunray DX Oil Co., as seller, and Tennessee Gas Transmission Co., as buyer; on file as Sunray DX Oil Co. FPC GRS No. 72.
[52] Amends price provisions to reflect new price escalations.
[53] Provides for a price of 15.0 cents per Mcf.
[54] Conveys interest in certain acreage from Claire Benz-Stoddard Falkin, et al., to Champlin Petroleum Co.
[55] Conveys interest in certain acreage from Sunray DX Oil Co. to Champlin Petroleum Co.
[56] By letter filed June 6, 1966, Applicant advised willingness to accept a permanent certificate containing conditions similar to those imposed by Opinion No. 468, as modified by Opinion No. 468-A.
[57] Between John B. Jackson and Carnegie Natural Gas Co.
[58] Conveys certain interest from John B. Jackson to Jackson Pipe Line Construction Co.
[59] Adopts price, term, etc., provisions of contract of American Metal Climax, Inc., dated Aug. 12, 1963.
[60] Contract between American Metal Climax, Inc., and Mountain Fuel Supply Co.
[61] Revises delivery point and quality provisions.
[62] Contract between E. C. Ware and Kentucky West Virginia Gas Co.
[63] Provides for service by Sherman Steele from Susie Brewer Lease (acquired from E. C. Ware, May 31, 1950).
[64] Applications in Docket Nos. CI66-1103 and CI66-1104 will be treated as petitions to amend the certificates issued in Docket Nos. CI62-252 and CI62-907, respectively, and Docket Nos. CI66-1103 and CI66-1104 will be canceled.
[65] Depth limitation to 7,200 feet (amendment filed June 23, 1966).
[67] Ratifies contract between Cleary Petroleum, Inc., et al., seller, and Cities Service, buyer, dated Sept. 3, 1963.
[68] Provides for gathering, dehydrating, compressing, and delivering gas for W. J. Fellers (Operator), et al. (Docket No. CI66-1156 and FPC GRS No. 6).
[69] Adds acreage.
[70] Rate schedule in name of J. E. Mabee Co.
[71] Basic contract between Standard Oil Co. of Texas, as seller and Texas Eastern, as buyer; on file as Standard Oil Co. of Texas, a division of Chevron Oil Co. FPC GRS No. 2.
[72] Amends price escalation provisions.
[73] Deletes favored nation pricing provisions from basic contract.
[74] Provides for a price of 16.0 cents per Mcf.
[75] Transfers properties from Standard Oil Co. of Texas, a division of Chevron Oil Co. to John E. Huff.
[76] Covers gas produced by Perry R. Bass, Inc. (Operator), et al. (Docket No. CI66-1112).
[77] Depth limitation to 7,200 feet (amendment filed June 27, 1966).
[78] Basic contract between W. M. Bevly, et al., as seller and United Gas Pipe Line Co., buyer; on file as W. M. Bevly, et al., FPC GRS No. 4.
[79] Transfers properties from W. M. Bevly, et al., to Payne Producing Co.
[80] Adopts terms of contract dated Apr. 7, 1966 (Supp. No. 1).

[F.R. Doc. 66-8712; Filed, Aug. 12, 1966; 8:45 a.m.]

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[Docket No. RP67-5]

## COLORADO INTERSTATE GAS CO.

### Notice of Proposed Change in Rates

AUGUST 9, 1966.

Take notice that on August 1, 1966, Colorado-Interstate Gas Co. (Colorado Interstate) tendered a proposal to revise its Rate Schedule H-1, as proposed in its application for the certificate of convenience and necessity in Docket No. CP66-316 granted by Commission order issued June 13, 1966.

The rate filing revises Rate Schedule H-1 so as to effect changes in the availability, applicability and character of service clauses, and the rate level provisions. Among other things, the filing (1) provides for variations in delivery volumes within the range of from 70 to 130 percent of the average daily contract quantity in the months of April through October and a range of from 70 to 100 percent thereof in the months of November through March; and (2) a change in the charges from $55,746 per month, plus 14.33 cents per Mcf delivered during the month, to a monthly demand charge of $0.93 per Mcf per month and a commodity charge of 18.50 cents per Mcf.

Comments may be filed with the Commission on or before August 24, 1966.

JOSEPH H. GUTRIDE,
*Secretary.*

[F.R. Doc. 66-8820; Filed, Aug. 12, 1966; 8:46 a.m.]

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[Docket No. CP67-24]

## FLORIDA GAS TRANSMISSION CO.

### Notice of Application

AUGUST 9, 1966.

Take notice that on August 3, 1966, Florida Gas Transmission Co. (Applicant), Post Office Box 44, Winter Park, Fla. 32790, filed in Docket No. CP67-24 an application pursuant to section 7(c) of the Natural Gas Act, as implemented by § 157.7(c) of the regulations under the Act, for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks authorization to construct during the 12-month period following appropriate Commission authorization and operate certain minor gas sales and transportation facilities, including taps, valves, meters, and service lines, for the purpose of enabling Applicant to make various minor sales to customers along its system.

Applicant states that no direct industrial sales will be made pursuant to the authorization requested and that deliveries to any one purchaser through the proposed facilities will not exceed 100,000 Mcf annually and will not be used for boiler fuel purposes as defined by the Commission.

Applicant further states that the minimum price per Mcf for the proposed sales is 35 cents.

The total estimated cost of construction is $47,000, which cost will be financed by internally generated funds.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before September 6, 1966.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

JOSEPH H. GUTRIDE,
*Secretary.*

[F.R. Doc. 66-8821; Filed, Aug. 12, 1966; 8:46 a.m.]

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## GULF STATES UTILITIES CO.

### Notice of Application

AUGUST 8, 1966.

Take notice that on July 29, 1966, the Gulf States Utilities Co. (Applicant) filed an application with the Federal Power Commission pursuant to section 203 of the Federal Power Act seeking authority to acquire a certain 69 kv. electric transmission line from the city of Caldwell, Tex. (City).

Applicant is incorporated under the laws of the State of Texas and is qualified to do business in the State of Louisiana with its principal place of business office at Beaumont, Tex., and is engaged principally in the business of generating, distributing and selling electric energy in southeastern Texas and south-central Louisiana.

The electric transmission facilities to be acquired comprise a 69 kv. electric transmission line located in Brazos and Burleson Counties, Tex., approximately 22.6 miles in length. The line is being and has been used for the transmission of electric power to the City at a terminal pole within the City and for the sale of electric power at wholesale to the City. Applicant will use the line for the same purpose. The Applicant proposes to pay a cash consideration of $80,000 for the transmission facilities. The book cost

and the original cost of the facilities is estimated at $143,850.83.

According to the Applicant the transaction will enable it to serve the power requirements of the City as contracted for by the Applicant and the transaction will also enable it to firm up its existing distribution facilities in the Caldwell, Tex., area.

Any person desiring to be heard or to make any protest with reference to the application should on or before August 25, 1966, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and is available for public inspection.

JOSEPH H. GUTRIDE,
*Secretary.*

[F.R. Doc. 66-8822; Filed, Aug. 12, 1966; 8:46 a.m.]

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[Docket No. E-7305]

## IOWA ELECTRIC LIGHT & POWER CO.

### Notice of Application

AUGUST 8, 1966.

Take notice that on August 3, 1966, the Iowa Electric Light & Power Co. (Applicant) filed an application pursuant to section 204 of the Federal Power Act with the Federal Power Commission seeking authority to issue and sell at competitive bidding $15 million principal amount of first mortgage bonds and to issue and sell through private negotiations 100,000 shares of its cumulative preferred stock, par value, $50 per share.

Applicant is incorporated under the laws of the State of Iowa and is authorized to do business in the States of Iowa, Minnesota, Colorado, and Nebraska with its principal place of business office at Cedar Rapids, Iowa. Applicant is engaged primarily in the generation, transmission and sale at retail of electric energy in 51 counties in the State of Iowa.

The bonds which are to mature September 1, 1966, will be issued as of September 1, 1966, under the Applicant's indenture of mortgage and deed of trust, dated August 1, 1940, as heretofore amended and supplemented by 31 supplemental indentures and as to be further supplemented by a 32d supplemental indenture to be dated September 1, 1966, between the Applicant and the First National Bank of Chicago, as trustee. The rate of interest to be paid by the Applicant will be determined by competitive bidding in accordance with the Commission's regulations under the Federal Power Act.

The Applicant proposes to issue the 100,000 shares of its cumulative preferred stock, par value of $50 per share on or about September 13, 1966, against payment therefor in cash at a price not less than par value thereof plus dividends accrued from July 1, 1966. The stock will rank on a parity with the Applicant's existing outstanding classes of cumulative preferred stock. The Applicant proposes to have the dividend rate, redemption prices, and the amount payable in event of voluntary liquidation determined by negotiation between the Applicant and the person or persons offering the best price for the stock. The Applicant has accordingly applied for exemption by the Commission from the competitive bidding requirements of §34.1a (b) and (c) of the Commission's regulations under the Federal Power Act.

According to the Applicant the purposes for which the bonds and the preferred stock are to be issued include the construction, completion, extension, and improvement of facilities and the replacement of short-term borrowings from commercial banks aggregating $9.9 million as of June 30, 1966. The construction program for which funds are to be issued include the expenditure of $11.9 million in 1966 for construction work on Applicant's 140-megawatt unit being installed at the Prairie Creek site in Cedar Rapids, $2 million for transmission line facilities and $8.3 million for substations.

Any person desiring to be heard or to make any protest with reference to the application should on or before August 26, 1966, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and available for public inspection.

JOSEPH H. GUTRIDE,
*Secretary.*

[F.R. Doc. 66-8823; Filed, Aug. 12, 1966; 8:47 a.m.]

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[Docket No. E-7245]

## ILLINOIS POWER CO.

### Order Amending Prior Order Providing for Investigation and Hearing; Granting Motions in Part and Denying Motions in Part

AUGUST 8, 1966.

On September 16, 1965, the Commission issued an order herein directing an investigation and hearing as to the lawfulness of the rates and charges of Illinois Power Co. (Illinois Power) for wholesale electric service to the villages of Fithian, Ladd, Ogden, Oglesby, and Sawyerville, Ill., Cedar Point Light & Water Co., and Central Illinois Electric & Gas Co. (CIE&G). On October 25, 1965, Illinois Power filed a motion and answer thereto, denying that the company's rates and charges to the seven aforenamed customers are subject to this Commission's jurisdiction under the Federal Power Act. It requested, in the alternative, that this proceeding be terminated, that the question of lawfulness of the rates and charges to Illinois Power's seven wholesale purchasers be deferred pending a final Commission decision as to the company's claims that this Commission lacks jurisdiction over its wholesale rates and charges, or that there be a separation of the hearing in this proceeding into jurisdictional and rate issues.

On April 12, 1966, Illinois Power filed an amended motion and answer in which it requests additionally that this proceeding be terminated with respect to the rates and charges for service to Sawyerville and CIE&G.

This order denies Illinois Power's motions insofar as they seek termination of this proceeding as to its service to CIE&G and a prior determination of the jurisdictional issue or separation of the jurisdictional and rate issues, and grants Illinois Power's motion to terminate this proceeding regarding its wholesale rate to Sawyerville. Additionally, this order requires Illinois Power to furnish cost and revenue data using 1965 rather than 1964 as the test year; and sets a date for the prehearing conference to be held herein.

Illinois Power's request that the Commission vacate its order of September 16, 1965, for lack of jurisdiction is premised largely upon factual allegations that should be established at a hearing. Moreover, notwithstanding Illinois Power's claims that a small part of its total system revenues are derived from wholesales, prior determination of the jurisdictional issue would result in considerable delay of any rate relief to the wholesale customers concerned in the event that the company's rates and charges are found to be unlawful. Therefore, we believe that all issues in this proceeding should be tried concurrently.

Since the Commission's initial order herein, Illinois Power's direct sale to CIE&G (Illinois Power's Rate Schedule FPC No. 31) has been replaced by an interchange arrangement among Illinois Power, CIE&G, and the Commonwealth Edison Co. (Illinois Power's Rate Schedule FPC No. 34).[1] Therefore, the hearing in this proceeding should include as an issue the question of the lawfulness of Illinois Power's Rate Schedule FPC No. 34. In addition, the Commission by order issued July 15, 1966, Illinois Power Co., Docket No. E-7282, approved, pursuant to section 203 of the Federal Power Act, the acquisition and merger of the Sawyerville electric system with its own facilities by Illinois Power. Accordingly, Illinois Power's rates to Sawyerville no longer should be subject to our order of investigation and hearing.

To permit the use of the most recent cost of service data (complete 1965 test year costs were not available at the time of our initial order) we shall modify our order of September 16, 1965, to require the company to furnish such data reflecting 1965 costs of rendering service to the six wholesale purchasers remaining. Additionally, we shall set a specific date for a prehearing conference to facilitate an orderly scheduling of service of testimony and disposition of other prehearing matters.

The Commission further finds: It is necessary and appropriate for purposes of the Federal Power Act, particularly

[1] Also designated as CIE&G's Rate Schedule FPC No. 2 and Commonwealth Edison Co.'s Rate Schedule FPC No. 8.

sections 205, 206, 208, 301, 307, 308, and 309 thereof, that the Commission's order for investigation and hearing issued September 16, 1965, be amended so as to exclude from the scope of the hearing ordered therein the question of the lawfulness of Illinois Power's rate schedule for wholesale service to Sawyerville and to include the issue of the lawfulness of Illinois Power's Rate Schedule FPC No. 34, require Illinois Power to submit cost of service data reflecting 1965 test year costs, and set a definite date for a prehearing conference in this proceeding.

The Commission orders:

(A) Paragraph (A) of the Commission's order issued September 16, 1965, is hereby amended to exclude from the scope of the hearing ordered therein the issue of the lawfulness of Illinois Power's rate schedule for wholesale electric service to Sawyerville and include the issue of the lawfulness of Illinois Power's Rate Schedule FPC No. 34.

(B) Paragraph (E) of the Commission's order issued September 16, 1965, is hereby amended to require Illinois Power, within 45 days from the date hereof, to submit a special report setting out cost and revenue data using 1965 as the test year, showing Illinois Power's costs of rendering service to each of the six purchasers remaining subject to the Commission's aforesaid hearing order.

(C) A prehearing conference shall be held before a presiding examiner at 10 a.m., e.d.s.t., on October 4, 1966, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C. 20426, for purposes as specified in the Commission's rules of practice and procedure.

By the Commission.

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

[F.R. Doc. 66-8824; Filed, Aug. 12, 1966; 8:47 a.m.]

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[Docket No. E-7303]

## NORTHERN INDIANA PUBLIC SERVICE CO.

### Notice of Application

AUGUST 8, 1966.

Take notice that on July 29, 1966 Northern Indiana Public Service Co. (Applicant) filed an application with the Federal Power Commission seeking authorization under section 203 of the Federal Power Act to acquire various electric utility facilities located within the Kingsbury Ordnance Plant, La Porte County, Ind., from the U.S. Government acting by and through the General Services Administration (GSA).

Applicant is incorporated under the laws of the State of Indiana and authorized to do business in that state with its principal place of business office at Hammond, Ind., and is engaged in the generation, transmission and distribution of electric energy in 21 counties in northern Indiana.

The facilities to be acquired comprise the electric distribution system built by the Government during World War II to supply electric energy to the various defense facilities within the Kingsbury Ordnance Plant in La Porte County, Ind. Much of the land formerly used and occupied by the Government for its ordnance plant has been sold to Kingsbury Industrial & Development Corp. At the time of the purchase by Applicant of the distribution system, the Government was not rendering any electric service in this area. However, the Kingsbury Corp. has been purchasing electric energy at wholesale from Applicant and, with the consent of the General Services Administration, the Applicant has been using the distribution system to supply energy to the industrial customers within the ordnance plant area. Applicant proposes to operate such facilities as part of its interconnected system. The consideration for this purchase by the Applicant is $100,000, as provided in the offer to purchase submitted by applicant on October 15, 1965, and accepted by the General Services Administration on October 22, 1965. The consideration was arrived at by negotiations between the Applicant and the General Services Administration. Records pertaining to the original cost of the facilities to be acquired was not available from the General Services Administration.

Any person desiring to be heard or to make any protest with reference to the application should on or before August 25, 1966, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and is available for public inspection.

JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 66-8825; Filed, Aug. 12, 1966; 8:47 a.m.]

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[Docket No. CP67-20]

## TEXAS GAS PIPE LINE CORP.

### Notice of Application

AUGUST 5, 1966.

Take notice that on July 27, 1966, Texas Gas Pipe Line Corp. (Applicant), 3000 Richmond Avenue, Houston, Tex. 77001, filed in Docket No. CP67-20 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the delivery of gas to Transcontinental Gas Pipe Line Corp. (Transco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to construct 7.6 miles of 8⅝-inch pipeline from the Opelousas Plant, located in the Opelousas Field, to Transco's pipeline in the Washington Field in St. Landry Parish, La. Applicant states that the purpose of the proposed construction is to provide an additional point of delivery by Applicant to Transco in order for Applicant to supply its full contractual obligation under its Tariff.

The total estimated cost of Applicant's proposed construction is $284,426, which will be financed from funds on hand.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before September 6, 1966.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 66-8826; Filed, Aug. 12, 1966; 8:47 a.m.]

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[Project 1889, 2485]

## WESTERN MASSACHUSETTS ELECTRIC CO. ET AL.

### Order Consolidating Proceedings, Fixing Hearing, and Prescribing Procedure

AUGUST 9, 1966.

Western Massachusetts Electric Co., Project No. 1889; the Connecticut Light & Power Co., the Hartford Electric Light Co., Western Massachusetts Electric Co., Project No. 2485.

On January 14, 1966, the Connecticut Light & Power Co., the Hartford Electric Light Co., and the Western Massachusetts Electric Co. filed a joint application for a license for the proposed Northfield Mountain pumped storage development on the Connecticut River in Franklin County, Mass. On the same day, the Western Massachusetts Electric Co., licensee for the Turners Falls hydroelectric development, Project No. 1889, filed an application to amend its license to raise the reservoir operating level by 5.4 feet. The purpose of the proposed alteration of Project No. 1889 is to permit its use as the lower pool of the pumped storage project.

By orders issued on June 17 and July 18, 1966, the Commission permitted various parties to intervene in the above-designated proceedings. Certain interveners requested a hearing. Motions for a hearing in both proceedings were filed

by the Connecticut Municipal Electric & Gas Association and jointly by the Municipal Electric Association of Massachusetts, city of Chicopee, town of Shrewsbury, and town of Wakefield, Mass. A motion for a hearing in the proceeding respecting Project No. 1889 was filed by Robert B. Shearer, a landowner who states that alteration of the project would adversely affect his lands.

The Commission finds: It is appropriate and in the public interest in carrying out the provisions of the Federal Power Act that the above-designated proceedings be consolidated and set for public hearing.

The Commission orders:

(A) The proceeding on application for a license for the proposed Project No. 2485 and the proceeding on application for amendment of the license for constructed Project No. 1889 are hereby consolidated for purposes of hearing.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act, particularly sections 4(e), 10(a), and 308 thereof, and the Commission's rules of practice and procedure, a public hearing shall be held on November 1, 1966, at 10 a.m. in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., respecting the matters involved and the issues presented in the consolidated proceedings.

(C) The following procedure is prescribed for the consolidated proceedings:

(1) A prehearing conference shall be held on August 18, 1966, at 10 a.m., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., for the purposes specified in § 1.18 (b) of the Commission's rules of practice and procedure, and particularly for clarification of the issues to be considered in the hearing.

(2) The Applicants shall file by September 19, 1966, an original and 10 copies of all direct testimony, including qualifications of the witnesses, and exhibits to be presented in Applicant's direct case.

(3) All other parties, including the Commission staff, shall file by October 14, 1966, an original and 10 copies of all testimony and exhibits including qualifications of witnesses.

(4) All motions to strike shall be filed by October 21, 1966, with replies to such motions to be filed by October 28, 1966.

(5) All of the testimony, except exhibits, shall be in question and answer form.

(6) No exhibits, except those of which official notice may properly be taken shall contain narrative material other than brief explanatory hearings and footnotes.

(7) Any party submitting more than one exhibit shall enclose a cover sheet listing the title of each exhibit in the sequence they are to be marked for identification.

(8) The Presiding Examiner will specify the order of cross-examination and time to be permitted for preparation of rebuttal evidence.

(D) The Commission's rules of practice and procedure shall apply in this proceeding except to the extent that they are modified or supplemented herein.

By the Commission.

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

[F.R. Doc. 66-8827; Filed, Aug. 12, 1966; 8:47 a.m.]

# GENERAL SERVICES ADMINISTRATION

[Wildlife Order 76]

## CREEDE NATIONAL FISH HATCHERY, COLORADO

### Transfer of Property to State of Colorado

Pursuant to section 2 of Public Law 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By letter from the General Services Administration, Denver Regional Office, dated July 22, 1966, the property comprising 21.73 acres and seven buildings, identified as the Creede National Fish Hatchery, Creede, Colo., and more particularly described in said letter has been transferred by deed effective July 19, 1966, to the State of Colorado.

2. The above identified property was transferred to the State of Colorado for the use and benefit of the Game, Fish, and Parks Commission for wildlife conservation purposes in accordance with the provisions of section 1 of said Public Law 537 (16 U.S.C. 667b).

Dated: August 4, 1966.

CURTIS A. ROOS,
*Acting Assistant Commissioner for Property Disposal, Property Management and Disposal Service.*

[F.R. Doc. 66-8819; Filed, Aug. 12, 1966; 8:46 a.m.]

# SECURITIES AND EXCHANGE COMMISSION

[File No. 1-3421]

## CONTINENTAL VENDING MACHINE CORP.

### Order Suspending Trading

AUGUST 9, 1966.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, 10 cents par value of Continental Vending Machine Corp., and the 6 percent convertible subordinated debentures due September 1, 1976, otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

*It is ordered*, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period August 10, 1966, through August 19, 1966, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 66-8842; Filed, Aug. 12, 1966; 8:48 a.m.]

[812-1761]

## CORROON & REYNOLDS CORP.

### Order Granting Leave To Adduce Additional Evidence and Notice of Hearing on Enlarged Issues

AUGUST 8, 1966.

Corroon & Reynolds Corp. ("Applicant"), 92 William Street, New York, N.Y. 10038, has moved for leave to adduce additional evidence in connection with an application heretofore filed by it under section 3(b)(2) of the Investment Company Act of 1940 ("Act") for an order declaring that it is not an investment company. Following a hearing on that application, proposed findings and briefs were filed and the Commission heard oral argument. The motion was filed subsequently and states that significant events occurred which are material to the determination of applicant's status under the Act.

The motion recites that in May 1966 applicant acquired all of the stock of Relex Corp. ("Relex") in exchange for a large block of stock of Reliance Insurance Co. of Philadelphia ("Reliance"), and that as of July 1, 1966, applicant acquired for about $1 million with cash obtained from the sale of a portion of its investment securities the C. R. Black, Jr., Corp. and two other companies ("Black Companies") which have been engaged exclusively in the insurance brokerage business. Applicant asserts that by reason of these transactions 91.7 percent of the value of the investment securities of it and its wholly owned subsidiary as of July 5, 1966 consisted of Reliance stock. It claims that it is therefore exempt from the Act by virtue of the section 3(c)(8) automatic exemption for companies 90 percent of the value of whose investment securities are issued by a single issuer of certain types including an insurance company. It further claims that it is not an investment company under section 3(a)(3) because its "investment securities" within the meaning of section 3(a), which excludes securities issued by majority-owned subsidiaries which are not investment companies, do not represent over 40 percent of the value of its total assets. Underlying such claim is the contention that Relex is excluded from the definition of "investment company" under section 3(c)(8) because its assets consist entirely of Reliance securities and that Relex's securities owned by applicant are therefore not "investment securities" under section 3(a). Applicant contends that its acquisition of the

Black Companies provides further support for its application under section 3(b)(2) in that among other things additional employees are now engaged exclusively in insurance brokerage or related activities and applicant's gross income from brokerage commissions will be more than doubled.

The Division of Corporate Regulation in response suggested that the record be reopened for the limited purpose of permitting applicant to show that it qualifies for a section 3(c)(8) exemption, provided that applicant requests the withdrawal of its section 3(b)(2) application. It asserts that the evidence proposed to be offered by applicant concerning the acquisition of the Black Companies is not material in view of the evidence already in the record with respect to applicant's assets, net income and employees.

After due consideration of the motion and response thereto, the Commission determined that the record should be reopened for the purpose of taking the additional evidence referred to in the motion, and that the motion be treated as an amendment to the application previously filed under section 3(b)(2) so as to include sections 3(c)(8) and 3(a)(3). Such evidence appeared to be material to the issues raised under those sections and when received would be considered.

*It is ordered*, Therefore, that the record herein be reopened and that a hearing on the application as amended under sections 3(b)(2), 3(a)(3), and 3(c)(8) of the Investment Company Act of 1940 be held on September 8, 1966 at 10 a.m. in the offices of the Securities and Exchange Commission, 500 North Capital Street NW., Washington, D.C. At such time the Hearing Room Clerk will advise as to the room in which such hearing will be held. Any person desiring to be heard or otherwise wishing to participate in this proceeding is directed to file with the Secretary of the Commission his application as provided by Rule 9(c) of the Commission's rules of practice, on or before the date provided in the rule, setting forth any issues of law or fact which he desires to controvert or any additional issues which he deems raised by this order and notice or by such application.

*It is further ordered*, That the officer of the Commission designated by it to preside at said hearing is hereby authorized to exercise all the powers granted to the Commission under sections 41 and 42(b) of the Investment Company Act of 1940 and to a hearing officer under the Commission's rules of practice.

*It is further ordered*, That the Secretary of the Commission shall give notice of the aforesaid hearing by mailing a copy of this order and notice by registered mail to Corroon & Reynolds Corp., and that notice to all other persons be given by publication of this order and notice in the FEDERAL REGISTER, and that a general release of this Commission in respect of this order and notice be distributed to the press and mailed to persons on the mailing list for releases.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 66-8843; Filed, Aug. 12, 1966; 8:48 a.m.]

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[File No. 7-2585]

## CUMMINGS ENGINE CO., INC.

### Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

AUGUST 9, 1966.

In the matter of application of the Boston Stock Exchange for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchanges: Cummings Engine Co., Inc., File 7-2585.

Upon receipt of a request, on or before August 25, 1966, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 66-8844; Filed, Aug. 12, 1966; 8:48 a.m.]

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[812-1985]

## SECOND DIVERSIFICATION FUND, INC.

### Notice of Application for Order of Exemption

AUGUST 8, 1966.

Notice is hereby given that Second Diversification Fund, Inc. ("Applicant"), 111 Devonshire Street, Boston, Mass. 02109, an open-end, diversified registered investment company, has filed an application pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") for an order of the Commission exempting Applicant from compliance with the provisions of section 14(a) of the Act. Section 14(a) of the Act provides that no registered investment company shall make a public offering of securities of which it is the issuer unless it has a net worth of at least $100,000. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

Applicant has filed a registration statement under the Securities Act of 1933 for 299,999 shares of common stock, $1 par value, to be offered to investors in exchange for securities included in a list set forth in the prospectus. Applicant is intended as an investment vehicle for investors who wish to exchange securities they presently hold for shares of the Applicant in a simultaneous exchange on a tax-free basis. The minimum deposit to be accepted from any investor is to be securities having a market value of $25,000 and the exchange will not be consummated unless the aggregate market value of the securities exchanged (determined as of the end of the solicitation period) is at least $30 million. In the event that such value is not then realized, the deposited securities will be returned to investors without charge to them.

Notice is further given that any interested person may, not later than August 22, 1966, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 66-8845; Filed, Aug. 12, 1966; 8:48 a.m.]

# DEPARTMENT OF LABOR

## Wage and Hour Division

### CERTIFICATES AUTHORIZING EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM RATES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), and Administrative Order No. 579 (28 F.R. 11524) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the act. For each certificate, the effective and expiration dates, number or proportion of learners, and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations; such conditions in certificates not issued under the supplemental industry regulations are as indicated.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.20 to 522.25, as amended).

The following normal labor turnover certificates authorize ten percent of the total number of factory production workers except as otherwise indicated.

Bastian Manufacturing Corp., Bastian, Va.; effective 8-2-66 to 8-1-67 (men's and boys' shirts).

Blue Ribbon Sportswear Co., Inc., 516 Depot Street, Shelbyville, Tenn.; effective 8-1-66 to 7-31-67; 10 learners (dungarees).

Brookside Industries, Inc., Reidsville, N.C.; effective 8-12-66 to 8-11-67 (men's shirts).

Clayburne Manufacturing Co., Inc., Post Office Box 666, Clayton, Ga.; effective 8-5-66 to 8-4-67 (men's shirts).

Cowden-Ohio Co., 701 North Main Street, Beaver Dam, Ky.; effective 7-26-66 to 7-25-67 (dungarees).

Dickson Manufacturing Co., Plant No. 1, Dickson, Tenn.; effective 8-8-66 to 8-7-67 (men's work shirts).

Du-Rite Sportswear Co., 123 North Main Avenue, Scranton, Pa.; effective 7-28-66 to 7-27-67; 5 learners (boys' outerwear coats).

Edinburg Manufacturing Co., Wardensville, W. Va.; effective 7-26-66 to 7-25-67; 5 learners (girls' shirts).

Garan, Inc., Clinton Division, Clinton, Ky.; effective 8-9-66 to 8-8-67 (men's and boys' shirts).

Glenn Clothing Manufacturing Co., Inc., Clintwood, Va.; effective 7-25-66 to 7-24-67 (boys' trousers).

Iva Manufacturing Co., Inc., Box 148, Iva, S.C.; effective 7-26-66 to 7-25-67. Learners may not be employed at special minimum wage rates in the manufacture of skirts (ladies' blouses).

F. Jacobson & Sons, Inc., Middlesboro, Ky.; effective 7-27-66 to 7-26-67 (men's dress shirts).

Allan Merrill Manufacturing Co., 316 West Lake Street, Chisholm, Minn.; effective 8-14-66 to 8-13-67 (men's and boys' outerwear jackets and car coats).

Modelrite Dress Co., 201 Chestnut Street, Dunmore, Pa.; effective 7-28-66 to 7-27-67; 5 learners (women's dresses).

Plantersville Sportswear, Inc., Plantersville, Miss.; effective 8-5-66 to 8-4-67 (men's slacks and shorts).

Salant & Salant, Inc., Post Office Box 446, Marked Tree, Ark.; effective 8-5-66 to 8-4-67 (children's pants).

Selmer Manufacturing Co., Highway 45 South, Box 190, Selmer, Tenn.; effective 8-12-66 to 8-11-67 (men's dress shirts).

Henry I. Siegel Co., Inc., Dickson, Tenn.; effective 8-1-66 to 7-31-67 (men's, boys', ladies', and girls' pants).

Henry I. Siegel Co., Inc., Hohenwald, Tenn.; effective 8-3-66 to 8-2-67 (men's and boys' pants).

Sportswear Unlimited, Inc., Box 148, Iva, S.C.; effective 7-25-66 to 7-24-67 (ladies' blouses and dresses).

Toni Sportswear, Inc., 801 East Broad Street, Tamaqua, Pa.; effective 8-1-66 to 7-31-67; 10 learners (women's and misses' slacks, shorts, and pedal pushers).

Wildwood Clothing Co., Inc., 112 East Schellenger Avenue, Wildwood, N.J.; effective 8-1-66 to 7-31-67; 10 learners (men's pants and ladies' sportswear).

The following plant expansion certificates were issued authorizing the number of learners indicated.

Cowden-Ohio Co., 701 North Main Street, Beaver Dam, Ky.; effective 7-26-66 to 1-25-67; 50 learners (dungarees).

Cowden-Greenville Co., 419 North Main Street, Greenville, Ky.; effective 7-31-66 to 1-30-67; 50 learners (work clothes).

The Eastern Isle Manufacturing Corp., Richlands, Va.; effective 7-29-66 to 1-28-67; 40 learners (ladies' pajamas and gowns).

Reidbord Bros. Co., Wilson Lane, Elkins, W. Va.; effective 7-28-66 to 1-27-67; 50 learners (men's and boys' trousers).

Glove Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.60 to 522.65, as amended).

Indianapolis Glove Co., Inc., Houlka, Miss.; effective 7-30-66 to 7-29-67; 10 percent of the total number of machine stitchers for normal labor turnover purposes (work gloves).

Wells Lamont Corp., Post Office Box 638, Hugo, Okla.; effective 7-29-66 to 7-28-67; 10 percent of the total number of machine stitchers for normal labor turnover purposes (work gloves).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.40 to 522.43, as amended).

Virginia Maid Hosiery Mills, Inc., and Acme Hosiery Dye Works, Inc., Pulaski, Va.; effective 8-8-66 to 8-7-67; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless and full-fashioned).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.30 to 522.35, as amended).

Hazlehurst Manufacturing Co., Vidalia Division, Vidalia, Ga.; effective 7-30-66 to 7-29-67; 5 percent of the total number of factory production workers for normal labor turnover purposes (ladies' knitted underwear).

Junior Form Lingerie Corp., Atkinson Way, Boswell, Pa.; effective 8-2-66 to 8-1-67; 5 percent of the total number of factory production workers for normal labor turnover purposes (ladies' slips).

Regulations Applicable to the Employment of Learners (29 CFR 522.1 to 522.9, as amended).

The following learner certificate was issued in Puerto Rico to the company hereinafter named. The effective and expiration dates, learner rate, occupation, learning period, and the number of learners authorized to be employed, are indicated.

Isabella Segunda Corp., Apartado 398, Vieques, P.R.; effective 6-13-66 to 12-12-66; 93 learners for plant expansion purposes in the occupation of sewing machine operating, for a learning period of 320 hours at the rate of 75 cents an hour (shirts).

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within 15 days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in 29 CFR Part 528.

Signed at Washington, D.C., this 5th day of August 1966.

ROBERT G. GRONEWALD,
*Authorized Representative of the Administrator.*

[F.R. Doc. 66-8834; Filed, Aug. 12, 1966; 8:48 a.m.]

# TARIFF COMMISSION

[TC Publication 184; APTA-W-3]

### CERTAIN WORKERS OF FRAM CORP.

#### Report to Automotive Agreement Adjustment Assistance Board

AUGUST 10, 1966.

The Tariff Commission today reported to the Automotive Agreement Adjustment Assistance Board the results of its investigation No. APTA-W-3, conducted under section 302(e) of the Automotive Products Trade Act of 1965. The Commission's report contains information for use by the Board, which determines the eligibility of the workers concerned to apply for adjustment assistance. The workers in this case were employed in the Birmingham, Ala., plant of the Fram Corp.

Virtually none of the Commission's report can be made public since nearly all of the data it contains were received in confidence. The sections of the report that can be made public are reproduced below. In addition to the material printed below, the report contains extensive information concerning changes in employment at the Birmingham plant and the factors causing those changes.

*Introduction.* In accordance with section 302(e) of the Automotive Products Trade Act of 1965 (79 Stat. 1016), the U.S. Tariff Commission herein reports the results of investigation No. APTA-W-3, which was ordered in response to a request from the Automotive Assistance Committee of the Automotive Agreement Adjustment Assistance Board. The Committee's request re-

sulted from a petition for adjustment assistance filed with the Board on June 16, 1966, by the International Association of Bridge, Structural & Ornamental Iron Workers, on behalf of Shopmen's Local No. 539, a group of workers employed by the Fram Corp. in Birmingham, Ala.

The petition alleged that 28 workers were unemployed and that 87 other workers were threatened with unemployment because of the phasing out of production of carburetor air filters at the Birmingham plant of the Fram Corp., and the transfer of its production of air filters to Canada. The petition further alleged, in effect, that the operation of the United States-Canadian automotive agreement was the primary factor causing the unemployment and the threat thereof.

The Commission instituted the investigation upon receipt of the Committee's request on June 21, 1966. Public notice of the institution of the investigation was given by publication in the FEDERAL REGISTER (31 F.R. 9036) on June 30, 1966. Neither the petitioners nor any other party requested a public hearing, and none was held.

The information reported herein was obtained from the Commission's files, the union local concerned, the Fram Corp., and the Department of Industrial Relations of the Alabama State Employment Service, and by field work by members of the Commission's staff. The Commission subpenaed certain information from the Fram Corp.

*Description of the automotive product concerned.* A carburetor air filter or cleaner assembly[1] consists of a filtering element enclosed in a cylindrical metal housing (generally called a silencer). The air filter cleans the air drawn into the carburetor; the metal housing, in addition to holding the filter element in place, absorbs or muffles some of the sounds generated by the carburetor's intake of air. Nearly all motor vehicle engines except those of racing cars have air filters, although the specifications vary from one engine to another. The housing for both types is manufactured of light-gage metal stampings.

Air filters are of two types—the dry type and the oil-bath type. The filter element for the dry type is designed for replacement at regular intervals; that for the oil-bath type is designed for permanent installation but must be serviced at regular intervals. The dry type is used predominantly on automobiles and light trucks, whereas the oil-bath type is used almost entirely on trucks, buses, and other heavy automotive equipment.

*The Fram Corp.'s carburetor-air-filter operations.* The Fram Corp. produces a wide variety of filtration equipment, automotive and aerospace equipment, and light manufactures for industrial uses. Net sales by the corporation in 1965 amounted to almost $60 million.

* * * * *

*Statistical data pertinent to determination under sections 302(b) (2) and (3).* The Tariff Commission obtained data representative of U.S. production, imports from Canada, and exports to Canada, and Canadian production of carburetor air filters for use as original equipment in the assembly of motor vehicles (Table 2 in App. A). These data indicate that U.S. production of air filters in recent months has about equaled that in the corresponding months of the 1964 model year * * *.

The data presented in Table 2 were compiled by the Commission from information furnished by the major United States and Canadian motor vehicle producers[1] on their use of air filters in the assembly of motor vehicles; they were asked to distinguish between the air filters obtained in the United States and those obtained in Canada. The data were reported on a quantity basis. Several companies found it necessary to submit estimated data. No satisfactory indication of the degree of error embodied in the estimates is available.

* * * * *

TABLE 2.—U.S. PRODUCTION, IMPORTS FROM CANADA AND EXPORTS TO CANADA AND CANADIAN PRODUCTION OF AIR FILTERS FOR USE AS ORIGINAL EQUIPMENT IN THE ASSEMBLY OF MOTOR VEHICLES, MODEL YEARS 1962–66,[1] AND BY MONTHS, MARCH–JUNE 1964 AND MARCH–JUNE 1966

[In thousands of units]

| | U.S. production | U.S. imports from Canada | U.S. exports to Canada | Canadian production |
|---|---|---|---|---|
| Model year:[1] | | | | |
| 1962 | 7,293 | | | |
| 1963 | 8,075 | | | |
| 1964 | 8,806 | | | |
| 1965 | 9,748 | | | |
| 1966 | 9,348 | | | |
| March–June 1964: | | | | |
| March | 809 | (2) | (2) | (2) |
| April | 877 | | | |
| May | 814 | | | |
| June | 869 | | | |
| March–June 1966: | | | | |
| March | 978 | | | |
| April | 853 | | | |
| May | 840 | | | |
| June | 863 | | | |

[1] The model year begins about Aug. 1 of the year preceding that shown, and ends about July 31 of the year shown.

[2] Publication of data might reveal the operations of individual concerns.

SOURCE: Compiled by the U.S. Tariff Commission from data supplied by motor vehicle producers.

NOTE.—The data reported by several companies were estimated. No indication of the probable error is available.

By direction of the Commission.

[SEAL] DONN N. BENT,
*Secretary.*

[F.R. Doc. 66–8840; Filed, Aug. 12, 1966; 8:48 a.m.]

# INTERSTATE COMMERCE COMMISSION

[Section 5a Application 23; Amdt. 6]

## MIDDLE ATLANTIC CONFERENCE

### Notice of Application for Approval of Agreement Amendment

AUGUST 10, 1966.

The Commission is in receipt of a section 5a application in the above-entitled proceeding for approval of an amendment to the agreement therein approved.

Filed July 21, 1966, by: T. B. Alfriend, J. F. Rose, attorneys in fact, Post Office Box 10213, Washington, D.C. 20018.

The amendment involves: (1) Change in Article II to amend qualifications and representation on the Board of Directors, (2) dues schedule, in the event of merger or consolidation of member carriers, (3) combine Middle Atlantic General Rate Committee with Middle Atlantic-New England Rate Committee into a single committee and enlarge membership thereon, (4) change in membership composition of New York Short-Haul General Rate Committee.

The application may be inspected at the office of the Commission in Washington, D.C.

Any interested person desiring to protest and participate in this proceeding shall notify the Commission in writing within 20 days from the date of this notice. As provided by the general rules of practice of the Commission, persons other than applicants should fully disclose their interest, and the position they intend to take with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved without public hearing.

[SEAL] H. NEIL GARSON,
*Secretary.*

[F.R. Doc. 66–8850; Filed, Aug. 12, 1966; 8:49 a.m.]

[Section 5a Application 34; Amdt. 3]

## MIDDLEWEST MOTOR FREIGHT BUREAU

### Notice of Application for Approval of Agreement Amendment

AUGUST 10, 1966.

The Commission is in receipt of a section 5a application in the above-entitled proceeding for approval of an amendment to the agreement therein approved.

Filed July 21, 1966, by: J. D. Lawson, attorney in fact, Post Office Drawer 647, Kansas City, Mo. 64141.

The amendment involves: A change in Article XXIV to clarify the right of appeal from action on a proposal before the Standing Rate Committee; Article XXIX to redefine geographical area of the southwestern territory rates are published.

The application may be inspected at the office of the Commission in Washington, D.C.

Any interested person desiring to protest and participate in this proceeding shall notify the Commission in writing within 20 days from the date of this notice. As provided by the general rules of practice of the Commission, persons other than applicants should fully disclose their interest, and the position they intend to take with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved without public hearing.

[SEAL] H. NEIL GARSON,
*Secretary.*

[F.R. Doc. 66–8851; Filed, Aug. 12, 1966; 8:49 a.m.]

[1] For convenience, a carburetor-air-filter assembly will generally be referred to in this report as an air filter.

[1] United States and Canadian companies that produce only a relatively small number of motor vehicles were not requested to supply information; data respecting the use of air filters by these companies could not affect the trends shown by the compiled data to a meaningful extent.

## FOURTH SECTION APPLICATIONS FOR RELIEF

AUGUST 10, 1966.

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. 40671—*Glycols from Beach, Tex.* Filed by Southwestern Freight Bureau, agent (No. B-8879), for interested rail carriers. Rates on ethylene and other glycols, in tank carloads, from and to Beach, Tex., on the one hand, from and to points in Alabama, Illinois, North Carolina, and Tennessee, on the other.

Grounds for relief—Market competition.

Tariff—Supplement 381 to Southwestern Freight Bureau, agent, tariff ICC 4064.

FSA No. 40672—*Chlorine to Foley, Fla.* Filed by Southwestern Freight Bureau, agent (No. B-8880), for interested rail carriers. Rates on chlorine, in tank carloads, from Lake Charles and Plaquemine, La., also Corpus Christi, Tex., to Foley, Fla.

Grounds for relief—Market competition.

Tariffs—Supplements 26 and 135 to Southwestern Freight Bureau, agent, tariffs ICC 4668 and 4534, respectively.

FSA No. 40673—*Fresh meats and packinghouse products to southern territory.* Filed by Illinois Freight Association, agent (No. 314), for interested rail carriers. Rates on fresh meats and packinghouse products, in carloads, from Galt, Monmouth, and Rochelle, Ill., to points in Florida, also Tifton, Ga.

Grounds for relief—Carrier competition.

Tariff—Supplement 15 to Illinois Freight Association, agent, tariff ICC 1036.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 66-8852; Filed, Aug. 12, 1966; 8:49 a.m.]

[Notice 232]

## MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 10, 1966.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules in Ex Parte No. MC 67 (49 CFR Part 240), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protest must be served on the applicant, or its authorized representative, if any, and the protest must certify that such service has been made. The protest must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined, at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 108207 (Sub-No. 205 TA), filed August 8, 1966. Applicant: FROZEN FOOD EXPRESS, Post Office Box 5888, 318 Cadiz Street, Dallas, Tex. 75222. Applicant's representative: J. B. Ham (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cheese spreads and dips*, from Fort Worth, Tex., to Louisville, Ky., for 180 days. Supporting shipper: Lyle Searcey Brokerage Co., Room 109, 318 Cadiz Street, Dallas, Tex. 75207. Send protests to: E. K. Willis, Jr., District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 513 Thomas Building, 1314 Wood Street, Dallas, Tex. 75202.

No. MC 113828 (Sub-No. 115 TA), filed August 8, 1966. Applicant: O'BOYLE TANK LINES, INCORPORATED, 4848 Cordell Avenue NW., Washington, D.C. 20014. Applicant's representative: John F. Grimm (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lubricating oil*, in bulk, in tank vehicle, from Marcus Hook, Pa., to points in Georgia and South Carolina, for 150 days. Supporting shipper: Sun Oil Co., 1608 Walnut Street, Philadelphia, Pa. 19103, Attention: Newell L. Williams. Send protests to: Robert D. Caldwell, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, Room 1220, 12th and Constitution Avenue NW., Washington, D.C. 20423.

No. MC 117898 (Sub-No. 12 TA), filed August 8, 1966. Applicant: WILLIAM EARNHARDT, doing business as EARNHARDT TRANSPORT, Post Office Box 376, 205 East Council Street, Salisbury, N.C. 28144. Applicant's representative: Alfred E. Carter (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fabricated miscellaneous metal products, structural steel, steel joists, and metal deck*, on flatbed equipment, from Pittsburgh, Pa., Wheeling, W. Va., St. Louis, Mo., Columbia, Cayce, Congaree, and Dixiania, S.C., Canton, Ohio, and Rock Island, Ill., to points in Michigan, Wisconsin, Illinois, Ohio, Indiana, Kentucky, Virginia, Pennsylvania, New York, New Jersey, Maryland, District of Columbia, North Carolina, South Carolina, Alabama, Florida, Tennessee, and Georgia, for 180 days. Supporting shipper: Plowden & Roberts, Inc., Post Office Box 633, Columbia, S.C. 29202. Send protests to: Jack K. Huff, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce, 327 North Tryon, Room 206, Charlotte, N.C. 28202.

No. MC 128493 TA, filed August 8, 1966. Applicant: JAROLD J. ROGERS, 4019½ Eighth Avenue, Rock Island, Ill. Applicant's representative: Robert T. Lawley, 306-308 Reisch Building, Springfield, Ill. 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Face and common brick, brick and clay products*, for account of Hydraulic Press Brick Co., from Shale City, Ill., to points in Benton, Buchanan, Black Hawk, Clinton, Cedar, Clayton, Dubuque, Delaware, Des Moines, Fayette, Henry, Iowa, Jones, Jefferson, Johnson, Jackson, Keokuk, Lee, Louisa, Lynn, Muscatine, Scott, Van Buren, and Washington Counties, Iowa, for 180 days. Supporting shipper: Hydraulic Press Brick Co., 3100 North Knoxville Avenue, Peoria, Ill. 61603. Send protests to: Raymond E. Mauk, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 1086, U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Ill. 60604.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 66-8853; Filed, Aug. 12, 1966; 8:49 a.m.]

[Notice 1398]

## MOTOR CARRIER TRANSFER PROCEEDINGS

AUGUST 10, 1966.

Application filed for temporary authority under section 210(a)(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 179:

No. MC-FC-69040. By application filed August 8, 1966, BARR & MILES, INC., 1146 Hickory Street, Chicago, Ill. 60622, seeks temporary authority to lease the operating rights of LAWRENCE A. McCARTHY, doing business as GROTE CARTAGE CO., 1455 North Magnolia Street, Chicago, Ill., under section 210 a(b). The transfer to BARR & MILES, INC., of the operating rights of LAWRENCE A. McCARTHY, doing business as GROTE CARTAGE CO., is presently pending.

No. MC-FC-69041. By application filed July 27, 1966, HAROLD D. KAHN, 95 Montrose Street, Newton Center, Mass., seeks temporary authority to lease the operating rights of TORO BROS. TRUCKING OF MASS., INC., 460 Main Street, East Haven, Conn., under section 210a(b). The transfer to HAROLD D. KAHN, of the operating rights of TORO BROS. TRUCKING OF MASS., INC., is presently pending.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 66-8854; Filed, Aug. 12, 1966; 8:49 a.m.]

# CUMULATIVE LIST OF PARTS AFFECTED—AUGUST

**The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during August.**

## 3 CFR

Page

PROCLAMATION:
3734 ... 10411
EXECUTIVE ORDERS:
July 10, 1919 (revoked in part by PLO 4073) ... 10796
1919½ (revoked in part by PLO 4066) ... 10530
2216 (revoked in part by PLO 4066) ... 10530
3676 (revoked in part by PLO 4066) ... 10530
6276 (revoked in part by PLOs 4064 and 4065) ... 10530
6583 (revoked in part by PLO 4064) ... 10530
7856 (provisionally superseded by EO 11295) ... 10603
8820 (provisionally superseded by EO 11295) ... 10603
10621 (amended by EO 11294) ... 10601
10970 (superseded by EO 11294) ... 10601
11230 (amended by EO 11294) ... 10601
11248 (amended by EO 11293) ... 10507
11157 (amended by EO 11292) ... 10447
11292 ... 10447
11293 ... 10507
11294 ... 10601
11295 ... 10603
11296 ... 10663
11297 ... 10765

## 5 CFR

213 ... 10413, 10665
531 ... 10567
550 ... 10567

## 7 CFR

5 ... 10767
301 ... 10509
409 ... 10355
722 ... 10568
728 ... 10356, 10449
751 ... 10461
815 ... 10665
906 ... 10461
908 ... 10570, 10767
910 ... 10413, 10570, 10767
922 ... 10733
923 ... 10611
924 ... 10665
925 ... 10462
926 ... 10571
931 ... 10510
948 ... 10463
987 ... 10611, 10768
991 ... 10768
993 ... 10611, 10612
1001 ... 10414
1015 ... 10414
1031 ... 10464
1205 ... 10510
1408 ... 10733
1421 ... 10464
1425 ... 10514
1446 ... 10634
PROPOSED RULES:
51 ... 10577
52 ... 10471
717 ... 10691
729 ... 10471
946 ... 10368

## 7 CFR—Continued

Page

PROPOSED RULES—Continued
948 ... 10747
980 ... 10368
987 ... 10692
991 ... 10532
994 ... 10747
Ch. XI ... 10532
1031 ... 10369
1061 ... 10800
1068 ... 10615
1064 ... 10800
1099 ... 10692
1073 ... 10825
1074 ... 10825
1101 ... 10847
1125 ... 10847
1128 ... 10371

## 8 CFR

204 ... 10530
212 ... 10355, 10413
214 ... 10607

## 9 CFR

307 ... 10414
327 ... 10666

## 10 CFR

20 ... 10514
71 ... 10414

## 12 CFR

208 ... 10356

## 13 CFR

101 ... 10466
105 ... 10633

## 14 CFR

39 ... 10357, 10466, 10467, 10631, 10769
71 ... 10414, 10467, 10515, 10516, 10571, 10572, 10631, 10666, 10769–10772.
73 ... 10517, 10631, 10772
75 ... 10666
91 ... 10517
95 ... 10631
97 ... 10518, 10734
121 ... 10612
127 ... 10612
145 ... 10612
288 ... 10467
161 ... 10772
225 ... 10357
PROPOSED RULES:
39 ... 10852
61 ... 10415, 10475, 10536
71 ... 10417–10420, 10536–10538, 10580, 10643, 10693–10697, 10852.
73 ... 10421, 10581, 10695, 10696
75 ... 10697
91 ... 10538
159 ... 10476

## 15 CFR

371 ... 10634
374 ... 10635
382 ... 10635
399 ... 10636

## 16 CFR

Page

15 ... 10357, 10358, 10572, 10733
45 ... 10667
192 ... 10667
PROPOSED RULES:
303 ... 10581

## 17 CFR

201 ... 10573
231 ... 10667

## 18 CFR

201 ... 10605
204 ... 10605
205 ... 10606
PROPOSED RULES:
131 ... 10582

## 19 CFR

1 ... 10668
3 ... 10358

## 21 CFR

53 ... 10676
120 ... 10574
121 ... 10574, 10575, 10606, 10744, 10745
144 ... 10744
148h ... 10358
PROPOSED RULES:
17 ... 10415
18 ... 10415
19 ... 10415
20 ... 10415
25 ... 10415
31 ... 10415

## 22 CFR

133 ... 10575

## 25 CFR

221 ... 10742

## 26 CFR

1 ... 10468, 10691
PROPOSED RULES:
1 ... 10394, 10643, 10691
48 ... 10615

## 28 CFR

42 ... 10388

## 29 CFR

PROPOSED RULES:
60 ... 10580
1207 ... 10697

## 30 CFR

27 ... 10607

## 31 CFR

10 ... 10773

## 32 CFR

237 ... 10677
238 ... 10681
536 ... 10637, 10639, 10687
537 ... 10640
920 ... 10779

**32A CFR** — Page

BDSA (Ch. VI):
M–11A ... 10788, 10789
NSA (Ch. XVIII):
AGE–6 ... 10640

**33 CFR**
3 ... 10359
135 ... 10359
144 ... 10612
206 ... 10360, 10668

**38 CFR**
0 ... 10687

**39 CFR**
21 ... 10359
24 ... 10359
PROPOSED RULES:
114 ... 10470
122 ... 10470

**41 CFR**
5–1 ... 10528
19–1 ... 10789
19–2 ... 10792
19–3 ... 10793
19–6 ... 10794

**41 CFR—Continued** — Page
19–15 ... 10794
19–16 ... 10794

**42 CFR**
58 ... 10414

**43 CFR**
4 ... 10468
6 ... 10796
PUBLIC LAND ORDERS:
1462 (revoked by PLO 4074) ... 10796
4052 (corrected) ... 10687
4064 ... 10530
4065 ... 10530
4066 ... 10530
4067 ... 10531
4068 ... 10531
4069 ... 10640
4070 ... 10641
4071 ... 10687
4072 ... 10688
4073 ... 10796
4074 ... 10796
PROPOSED RULES:
5430 ... 10415

**45 CFR** — Page
144 ... 10575
202 ... 10576
801 ... 10468, 10576, 10799

**46 CFR**
221 ... 10642
308 ... 10468

**47 CFR**
21 ... 10360
73 ... 10362, 10364, 10365, 10367
74 ... 10742
PROPOSED RULES:
73 ... 10583

**49 CFR**
77 ... 10531
187 ... 10469
193 ... 10469
PROPOSED RULES:
95–97 ... 10853
170 ... 10643

**50 CFR**
32 ... 10576, 10641, 10688–10690, 10797–10799
33 ... 10743, 10797–10799