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(Part II begins on page 5875)

Agencies in this issue—

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How To Find U.S. Statutes and United States Code Citations

[Revised Edition—1965]

This pamphlet contains typical legal references which require further citing. The official published volumes in which the citations may be found are shown alongside each reference—with suggestions as to the logical sequence to follow in using them. Additional finding aids, some especially useful in citing current legislation, also have been included. Examples are furnished at pertinent points and a list of references, with descriptions, is carried at the end.

This revised edition contains illustrations of principal finding aids and reflects the changes made in the new master table of statutes set out in the 1964 edition of the United States Code.

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Title 3—THE PRESIDENT

Executive Order 11342

THE QUETICO-SUPERIOR COMMITTEE

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. *Establishment of the Committee.* There is hereby established a committee which shall be known as the Quetico-Superior Committee (hereinafter referred to as the Committee).

SEC. 2. *Composition of the Committee.* The Committee shall be composed of the following members:

(a) A Chairman who shall be appointed by the President.

(b) Two other members who shall be appointed by the President.

(c) One member who shall be designated by the Secretary of Agriculture from among the personnel of the Department of Agriculture.

(d) One member who shall be designated by the Secretary of the Interior from among the personnel of the Department of the Interior.

SEC. 3. *Functions of the Committee.* (a) The Committee shall promote the protection of the primitive quality of the Quetico-Superior canoe country, which lies in the Rainy River and Pigeon River drainages along the International Boundary between Canada in the province of Ontario and the United States in the State of Minnesota.

(b) In carrying out the provisions of subsection (a) of this section, the Committee shall advise and consult with the appropriate executive departments and agencies of the Government of the United States and of the State of Minnesota, and shall from time to time make such recommendations as it deems proper.

SEC. 4. *Terms; compensation.* (a) The members of the Committee first appointed pursuant to sections 2(a) and 2(b) of this order shall be appointed for terms expiring four years from the date of this order and their successors shall be appointed for terms of four years, except that any vacancy occurring prior to the expiration of a term shall be filled for the unexpired balance of the term.

(b) Members designated under sections 2(c) and 2(d) of this order shall serve during the pleasure of the Secretary of Agriculture and the Secretary of the Interior, respectively.

(c) No compensation shall be paid to appointive members of the Committee by the United States by reason of this order. No additional compensation shall be paid to designated members of the Committee by reason of this order.

SEC. 5. *Transition.* The Committee may carry forward any uncompleted business, and succeed to any records and property, of the Quetico-Superior Committee provided for in Executive Order No. 6783 of June 30, 1934, as amended and supplemented.

SEC. 6. *Prior orders.* The Executive orders listed as follows are hereby superseded:

Executive Order No. 6783 of June 30, 1934
Executive Order No. 7921 of June 30, 1938
Executive Order No. 9213 of August 4, 1942
Executive Order No. 9741 of June 25, 1946
Executive Order No. 9890 of September 6, 1947
Executive Order No. 10134 of June 28, 1950
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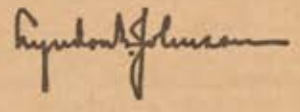

THE WHITE HOUSE,
April 10, 1967.

[F.R. Doc. 67-4050; Filed, Apr. 10, 1967; 4:07 p.m.]

Rules and Regulations

Title 7—AGRICULTURE

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

[Valencia Orange Reg. 194, Amdt. 1]

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

Limitation of Handling

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 recommendation 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 amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553 (1966)) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Valencia oranges grown in Arizona and designated part of California.

Order, as amended. The provision in paragraph (b)(1) (i) and (iii) of § 908.494 (Valencia Orange Reg. 194, 32 F.R. 5461) are hereby amended to read as follows:

§ 908.494 Valencia Orange Regulation.

* * * * *

(b) *Order.* (1) * * *

(i) District 1: Unlimited movement;

* * * * *

(iii) District 3: Unlimited movement;

* * * * *

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

Dated: April 7, 1967.

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

[F.R. Doc. 67-4014; Filed, Apr. 11, 1967; 8:49 a.m.]

[Lemon Reg. 261, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

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 amendment until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553 (1966)) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of lemons grown in California and Arizona.

Order, as amended. The provisions in paragraph (b)(1) (i) and (ii) of § 910.561 (Lemon Regulation 261, 32 F.R. 5495) are hereby amended to read as follows:

§ 910.561 Lemon Regulation 261.

* * * * *

(b) *Order.* (1) * * *

(i) District 1: 5,580 cartons;

(ii) District 2: 236,220 cartons;

* * * * *

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

Dated: April 6, 1967.

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

[F.R. Doc. 67-3985; Filed, Apr. 11, 1967; 8:47 a.m.]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regs., 1967 Crop Rice Supplement]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1967 Crop Rice Loan and Purchase Program

The General Regulations Governing Price Support for the 1964 and Subsequent Crops (Revision 1) (31 F.R. 5941) and the 1966 and Subsequent Corps Rice Supplement (31 F.R. 8346) which contain regulations of a general nature with respect to price support operations are further supplemented for the 1967 crop of rice as follows:

Sec.
1421.2780 Purpose.
1421.2781 Availability.
1421.2782 Maturity of loans.
1421.2783 Support rates.

AUTHORITY: The provisions of this subpart issued under sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 401, 62 Stat. 1051, as amended, 1054, sec. 302, 72 Stat. 988; 15 U.S.C. 714c, 7 U.S.C. 1421, 1441.

§ 1421.2780 Purpose.

This subpart contains additional program provisions which, together with the applicable provisions of the regulations specified in § 1421.2760 of the 1966 and Subsequent Crop Rice Supplement, and any amendments thereto, apply to loans and purchases for the 1967 crop rice.

§ 1421.2781 Availability.

(a) *Loans.* Producers must request a loan on 1967 crop eligible rice on or before March 31, 1968.

(b) *Purchases.* Producers desiring to offer eligible rice not under loan for purchase must notify the ASCS county office on or before April 30, 1968, of their intent to sell.

§ 1421.2782 Maturity of loans.

Unless demand is made earlier loans on rice will mature on April 30, 1968.

§ 1421.2783 Support rates.

The loan rate for rice placed under a loan other than a loan on rice stored commingled in an approved warehouse, shall be the applicable basic support rate specified in paragraph (a) of this section adjusted as provided in paragraphs (c) and (d) of this section. The support rate for loans on rice stored commingled in an approved warehouse and for settlement of all loans and purchases shall be the applicable basic support rate specified in paragraph (a) of this section, adjusted in accordance with the

provisions of this section and §§ 1421.2770 and 1421.72 and adjusted by such other discounts not specified in this subpart as may be established by CCC to reflect the value of the rice acquired by CCC.

(a) *Basic rates.* The basic support rate per 100 pounds of rice shall be computed as follows: Multiply the yield (in pounds per hundredweight) of head rice by the applicable value factor for head rice (as shown in the table below according to class or variety) and round the result to the nearest hundredth. Similarly, multiply the difference between the total yield and the head rice yield (in pounds per hundredweight) by the applicable value factor for broken rice and round the result to the nearest hundredth. Add the results (as rounded) of these two computations to obtain the basic loan or purchase rate per 100 pounds of rice and express such rate in dollars and cents.

VALUE FACTORS FOR HEAD AND BROKEN RICE[1]

Group	Rough rice class or variety	Head rice	Broken rice
		Cents per pound	
I	Patna (except Belle Patna, and Century Patna) and Rexora (except Rexark).	8.93	3.81
II	Bluebelle, Blue Bonnet, Belle Patna, Vegold, Nira, and Rexark.	8.33	3.81
III	Century Patna, Toro, Fortuna, Rex Nira, and Edith.	7.33	3.81
IV	Blue Rose (including Improved Blue Rose, Greater Blue Rose, Kamrose, and Arkrose), Calrose, Gulfrose, Northrose, Lacrosse, Magnolia, Nato, Nova, Zenith (including Gold Zenith and Golden Rose), Prelude, Lady Wright, and Saturn.	6.83	3.81
V	Pearl, Early Prolific, Calady and other varieties.	6.78	3.81

[1] These value factors may be changed. Such changes, if any, will be made by an amendment to this section issued shortly after Aug. 1, 1967.

(b) *Premium.* The basic support rate determined under paragraph (a) of this section shall be adjusted by the following premium:

	Cents per 100 pounds
Grade U.S. No. 1	10

(c) *Discounts.* The basic support rate determined under paragraph (a) of this section shall be adjusted by the following discount:

	Cents per 100 pounds
Grade U.S. No. 3	15
Grade U.S. No. 4	30
Grade U.S. No. 5	50

(d) *Location differentials.* For rice produced in the areas specified below discounts for location (to adjust for transportation costs of moving the rice to an area where competitive milling facilities are available) shall be applied to the basic support rate determined under paragraph (a) of this section and shall be in addition to any adjustment under paragraph (b) or (c) of this section: *Provided, however,* That if such rice is transported and stored in a rice producing area where no location differential is applicable, no discount for location shall be applied.

DIFFERENTIAL TABLE

Area	*Discount per 100 pounds*
State of Florida	$0.96
States of North Carolina and South Carolina	.92
Imperial County, Calif., and adjacent counties in Arizona and California	.97
Counties of Holt, Lewis, Lincoln, Marion, Pike, and St. Charles in Missouri and Adams in Illinois	.62
Counties of Lafayette, Little River, and Miller in Arkansas; Bowie in Texas; McCurtain in Oklahoma and Bossier Parish in Louisiana	.255

Effective upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on April 5, 1967.

H.D. GODFREY,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 67-3987; Filed, Apr. 11, 1967; 8:47 a.m.]

Title 12—BANKS AND BANKING

Chapter V—Federal Home Loan Bank Board

[No. 20,544]

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 531—STATEMENTS OF POLICY

Interest Rates on Advances

APRIL 10, 1967.

Resolved that the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of amending § 531.9 of the regulations for the Federal Home Loan Bank System (12 CFR 531.9) to decrease the minimum interest rate on advances made or outstanding on and after April 1, 1967, hereby revises paragraph (e) of § 531.9 of the regulations for the Federal Home Loan Bank System (12 CFR Part 531.9) to read as follows:

§ 531.9 Interest rates on advances.

* * * * *

(e) Interest shall be collected by such banks on all advances made or outstanding on and after April 1, 1967, at a rate not less than 5½ percent per annum.

* * * * *

(Sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1437. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

Resolved further that, the Board hereby finds that notice and public procedure on said amendment are contrary to the public interest under the provisions of § 508.12 of the general regulations of the Federal Home Loan Bank Board (12 CFR 508.12) and 5 U.S.C. 555.3(b) since such notice and public procedure would prevent the action from becoming effective as promptly as necessary in the public interest, would unreasonably interfere with necessary actions of the Board and would otherwise serve no useful purpose and, for the same reasons, the Board hereby finds that postponement of the effective date under the provisions of § 508.14 of the general regulations of the Federal Home Loan Bank Board (12 CFR 508.14) and 5 U.S.C. 555.3(d) is contrary to the public interest and the Board hereby provides that the aforesaid amendment shall be effective upon publication in the FEDERAL REGISTER.

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 67-4098; Filed, Apr. 11, 1967; 10:55 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 67-WE-11-AD; Amdt. 39-395]

PART 39—AIRWORTHINESS DIRECTIVES

Lockheed Models 188A and 188C Airplanes

An airworthiness directive was made effective April 5, 1967 (32 F.R. 5545) as to all known operators of Lockheed Models 188A and 188C airplanes. The directive required certain fuselage inspections, including X-ray inspection of the fuselage main frame forgings above the floor line. Since that date the FAA has received reports showing the unreliability of the X-ray inspection. As a result, an amendment to the airworthiness directive was adopted, and made effective immediately, by telegram, to all known operators, on the ground that immediate corrective action was required. Notice and public procedure thereon was impractical and contrary to the public interest. Therefore, good cause existed for making the directive effective immediately. These conditions still exist and the airworthiness directive is hereby published in the FEDERAL REGISTER as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

In view of the foregoing, and pursuant to the authority delegated to me by the Administrator, Amendment 39-383 is hereby amended by srtiking out the words "X-ray or" in paragraph (c), and by striking out the words "Part IV" in paragraph (h) and inserting the words "Parts III and IV" in place thereof.

This amendment is effective immediately and is made under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423).

Issued in Washington, D.C., on April 6, 1967.

C. W. WALKER,
Director, Flight Standards Service.

[F.R. Doc. 67-3979; Filed, Apr. 11, 1967; 8:47 a.m.]

[Airspace Docket No. 66-WA-9]

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

PART 75—ESTABLISHMENT OF JET ROUTES

Alteration of Federal Airway and Jet Routes

The purpose of these amendments to Part 71 and 75 of the Federal Aviation Regulations is to realign VOR Federal airway No. 39, Jet Route Nos. 55 and 582 from Presque Isle, Maine, to Mont Joli, Quebec, Canada.

The Canadian Department of Transport has advised that a VOR en route navigation aid will be commissioned in the vicinity of Mont Joli, Quebec, and requests that the VOR airway and Jet Routes from Presque Isle be designated via this new facility. Accordingly, action is taken herein to accommodate this realignment.

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

In consideration of the foregoing, Parts 71 and 75 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., June 22, 1967, as hereinafter set forth.

1. In § 71.123 (32 F.R. 2009) V-39 is amended by deleting "12 AGL INT of Presque Isle 356° radial and the United States-Canadian border." and substituting "12 AGL Mont Joli, Quebec, Canada, excluding the portion within Canada." therefor.

2. Section 75.100 (32 F.R. 2341) is amended as follows:

a. In Jet Route No. 55 all after "Presque Isle, Maine;" is deleted and "to Mont Joli, Quebec, Canada, excluding the portion within Canada." is substituted therefor.

b. In Jet Route No. 582 all after "From Presque Isle, Maine," is deleted and "to Mont Joli, Quebec, Canada, excluding the portion within Canada." is substituted therefor.

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

Issued in Washington, D.C., on April 5, 1967.

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

[F.R. Doc. 67-3980; Filed, Apr. 11, 1967; 8:47 a.m.]

[Airspace Docket No. 67-CE-35]

PART 75—ESTABLISHMENT OF JET ROUTES

Alteration of Jet Advisory Areas

The purpose of these amendments to Part 75 of the Federal Aviation Regulations is to change portions of the jet advisory areas associated with J-107 and J-515 from radar jet advisory areas to nonradar jet advisory areas.

J-107 jet advisory area is presently designated as follows: Radar jet advisory area from the positive control area boundary NE of Dickinson, N. Dak., to 26 nautical miles NE of Pembina, N. Dak.; nonradar jet advisory area from 81 nautical miles NE of Pembina to 93 nautical miles NE of Pembina. J-515 jet advisory area is presently designated as follows: radar jet advisory area from 14 nautical miles S of Pembina, N. Dak., to the United States/Canadian border; nonradar jet advisory area from Fargo, N. Dak., to 14 nautical miles S of Pembina.

It has been determined that radar jet advisory service cannot effectively or efficiently be provided on J-107 from 14 nautical miles southwest of Pembina to the United States/Canadian border, nor on J-515 from 14 nautical miles south of Pembina to the United States/Canadian border. Therefore, action is taken herein to designate these portions of J-107 and J-515 as nonradar jet advisory areas.

The fact that radar jet advisory service cannot be provided in the vicinity of Pembina is a technical determination made after consideration of all relevant factors including radar site locations, system communication capabilities, and safety to air traffic. It appears that safety is derrogated to a significant extent by the present arrangement therefore alteration of these radar jet advisory areas to nonradar jet advisory areas is required in the interest of safety. Notice and public procedure hereon is therefore unnecessary, and for that reason, the amendment may become effective without regard to the 30-day period preceding effectiveness.

In consideration of the foregoing, § 75.200 (32 F.R. 2355) of Part 75 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., April 27, 1967, as hereinafter set forth.

1. The text of Jet Route No. J-107 Jet Advisory Area is amended to read as follows:

Radar: From the positive control area boundary NE of Dickinson, N. Dak., to 14 nautical miles SW of Pembina, N. Dak.

Nonradar: From 14 nautical miles SW of Pembina, N. Dak., to 26 nautical miles NE of Pembina; from 81 nautical miles NE of Pembina to 93 nautical miles NE of Pembina.

2. The text of Jet Route No. 515 Jet Advisory Area is amended to read as follows:

Nonradar: From Fargo, N. Dak., to the United States/Canadian border.

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

Issued in Washington, D.C., on April 5, 1967.

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

[F.R. Doc. 67-3981; Filed, Apr. 11, 1967; 8:47 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 727—AGRICULTURE INDUSTRY IN PUERTO RICO

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208), and by means of Administrative Order No. 597 (32 F.R. 2953), the Secretary of Labor appointed and convened Industry Committee No. MC7-B for the Agriculture Industry in Puerto Rico, referred to it the question of the minimum wage rate or rates to be paid under section 6(c) of the Act to employees in the industry, and gave notice of a hearing to be held by the committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the committee has filed with the Administrator of the Wage and Hour and Public Contracts Divisions of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 6(c)(3) and section 8 of the Act, Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and General Order No. 45-A of the Secretary of Labor (15 F.R. 3290), the recommendations of Industry Committee No. NC7-B are hereby published in this order. Title 29 CFR Chapter V is hereby amended effective April 28, 1967, by adding a new Part 727 as set forth below.

A new Part 727 is established, reading as follows:

Sec.
727.1 Definition.
727.2 Wage rates.
727.3 Notices.

AUTHORITY: The provisions of this Part 727 issued under secs. 6, 8, 52 Stat. 1062, 1064, as amended; 29 U.S.C. 206, 208. Interpret or apply secs. 5, 6, 52 Stat. 1062, as amended; 29 U.S.C. 205, 206.

§ 727.1 Definition.

The agriculture industry in Puerto Rico, to which this Part shall apply, is defined as follows: Farming in all its branches, including the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including the preparation for market, delivery to storage or to market or to the carriers for transportation to market; processing, handling, packing, storing, compressing, pasturizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or making cheese or butter or other dairy products; the operation of a country elevator, including such an establishment which sells products and services used in the operation of a farm; the ginning of cotton for market; and the transportation and preparation for transportation of fruits and vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing: *Provided, however,* That the agriculture industry shall not include any activities, included in the definition of the food and related products industry in Puerto Rico (Part 673 of this chapter), the sugar manufacturing in-

dustry in Puerto Rico (Part 689 of this chapter), the tobacco industry in Puerto Rico (Part 657 of this chapter), and the communications, utilities, and transportation industry in Puerto Rico (Part 671 of this chapter): *Provided, further,* That the industry shall not include any activity to which the Fair Labor Standards Act of 1938 would have applied prior to the Fair Labor Standards Amendments of 1966.

§ 727.2 Wage rates.

Wages at rates not less than those prescribed in this section shall be paid under section 6(c) of the Fair Labor Standards Act of 1938 by every employer to each of his employees who in any workweek is engaged in an activity in the agriculture industry in Puerto Rico, which was brought within the purview of section 6 of the Act by the Fair Labor Standards Amendments of 1966.

(a) *Sugar cane classification.* (1) The minimum wage for this classification is $0.55 an hour for the period ending January 31, 1968, and $0.57 an hour thereafter.

(2) This classification is defined as all work in the agriculture industry in Puerto Rico in the preparation of the soil, the planting and cultivating of sugar cane (all work related to the growing and maturing of the crop), the harvesting of sugar cane (cutting, piling, loading, transloading, and all transportation by or for the account of the grower to the point at which title to the sugar cane passes to others), and any other work related to the production and delivery of sugar cane by the grower performed on a farm as an incident to or in conjunction with the farming operations of the grower.

(b) *Coffee classification.* (1) The minimum wage for this classification is $0.50 an hour.

(2) This classification is defined as all work in the agriculture industry in Puerto Rico in the planting, replanting and cultivating of coffee trees (including the preparation of the soil), the harvesting of coffee, the removal of the pulp from the coffee bean, the washing, drying, hulling and packing of the bean, and the conditioning of shade trees cultivated in connection therewith.

(c) *Tobacco classification.* (1) The minimum wage for this classification is $0.45 an hour for the period ending January 31, 1968, and $0.47 an hour thereafter.

(2) This classification is defined as all work in the agriculture industry in Puerto Rico in the preparation of the soil, the planting, transplanting, cultivating, harvesting, sowing, drying, packing, preparation, and delivery of tobacco.

(d) *Dairy farms classification.* (1) The minimum wage for this classification is $0.55 an hour for the period ending January 31, 1968, and $0.57 an hour thereafter.

(2) This classification is defined as all work in the agriculture industry in Puerto Rico in the production, handling, packing, bottling, and storage of milk, and in the breeding of cattle for the production of milk.

(e) *Cattle classification.* (1) The minimum wage for this classification is $0.50 an hour.

(2) This classification is defined as all work in the agriculture industry in Puerto Rico in the breeding and raising of cattle for meat.

(f) *Pineapple classification.* (1) The minimum wage for this classification is $0.57 an hour for the period ending January 31, 1968, and $0.59 an hour thereafter.

(2) This classification is defined as all work in the agriculture industry in Puerto Rico in the sowing, cultivation, harvesting, packing, sale, and delivery of pineapple to a warehouse or market.

(g) *Tomatoes and peppers classification.* (1) The minimum wage for this classification is $0.55 an hour for the period ending January 31, 1968, and $0.57 an hour thereafter.

(2) This classification is defined as all work in the agriculture industry in Puerto Rico in the planting, cultivating, harvesting and marketing of tomatoes and peppers.

(h) *Aviculture classification.* (1) The minimum wage for this classification is $0.55 an hour for the period ending January 31, 1968, and $0.57 an hour thereafter.

(2) This classification is defined as all work in the agriculture industry in Puerto Rico in the rearing and care of poultry for the production of meat or eggs, and for the production and rearing of baby chicks, game cocks, or any other birds.

(i) *Floriculture classification.* (1) The minimum wage for this classification is $0.53 an hour for the period ending January 31, 1968, and $0.55 an hour thereafter.

(2) This classification is defined as all work in the agriculture industry in Puerto Rico in the sowing, cultivation and production of flowers, and plants, trees, and grass used for ornamental purposes.

(j) *Other agricultural activities classification.* (1) The minimum wage for this classification is $0.45 an hour for the period ending January 31, 1968, and $0.47 an hour thereafter.

(2) This classification is defined as all work in the agriculture industry in Puerto Rico other than work included in any other classification of this industry.

§ 727.3 Notices.

Every employer subject to the provisions of § 727.2 shall post in a conspicuous place in each department of his establishment where employees subject to the provisions of § 727.2 are working such notices of this part as shall be prescribed from time to time by the Administrator of the Wage and Hour and Public Contracts Divisions of the U.S. Department of Labor and shall give such other notice as the Administrator may prescribe.

Signed at Washington, D.C., this 7th day of April 1967.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 67-4017; Filed, Apr. 11, 1967; 8:50 a.m.]

Title 23—HIGHWAYS AND VEHICLES

Chapter II—Vehicle and Highway Safety

[Docket No. 14; Amdt. 215-3]

PART 215—RULE MAKING; INITIAL SAFETY STANDARDS

Procedure on Reconsideration; Judicial Review

This amendment adds to the procedural rules governing the adoption of the Initial Motor Vehicle Safety Standards rules applicable to petitions for reconsideration and to judicial review of Initial Standards.

This amendment is issued under the authority of sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. secs. 1392 and 1407); and the delegation of authority of April 6, 1967.

Since this amendment constitutes a procedural regulation, notice and public procedure thereon are not required, and the regulation may be made effective immediately.

In consideration of the foregoing, 23 CFR Part 215 is amended, effective April 7, 1967, as set forth below.

Issued in Washington, D.C., on April 7, 1967.

LOWELL K. BRIDWELL,
Federal Highway Administrator.

Part 215 of Title 23 of the Code of Federal Regulations is amended by adding at the end thereof the following new sections:

§ 215.19 Proceedings on reconsideration generally; parties; consolidation.

The Federal Highway Administrator (hereinafter referred to as the Administrator) may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. In the event he determines so to reconsider any standard, he may issue a final decision on reconsideration without further proceedings, or he may provide such opportunity to submit comment or evidence as he deems appropriate. The Administrator may utilize the procedures provided in § 215.21 or § 215.23, or he may provide for such other or different rules of procedure as shall, in his judgment, best tend to promote the expeditious and orderly disposition of the issues raised by the petition. In all proceedings on reconsideration, the petitioner and the Administrator are the parties. Two or more petitions relating to the same standard

may be consolidated for purposes of proceedings on reconsideration.

§ 215.21 Proceeding on oral hearing.

The Administrator may provide for an oral hearing on a petition for reconsideration.

(a) *Designation and powers of presiding officer.* A hearing held under this section shall be conducted by a presiding officer designated by the Administrator. The presiding officer may exercise the hearing powers listed in 5 U.S.C. 556(c) (formerly section 7(b) of the Administrative Procedure Act). In addition, he may examine witnesses, rule upon the order of the proceedings and the admissibility of testimony and evidence, and take all other actions and make all other rulings which, in his judgment, will provide for the expeditious and orderly conduct of the hearing. The presiding officer shall not be required to apply judicial rules of evidence.

(b) *Prehearing conference.* The presiding officer may set the matter for a prehearing conference at such time and place as he shall direct. The purpose of the conference shall be to define and simplify the issues as to which evidence is to be taken; to secure admissions or stipulations of fact and of the genuineness of documents; to consider the nature, extent, and order of the evidence to be adduced; and generally to make arrangements for the conduct of the hearing. He may direct the parties to exchange statements as to the issues to be heard, exhibits, statements of testimony (including expert opinion), or other evidence or statements, or replies thereto, in advance of, at, or following the prehearing conference. The presiding officer shall issue an order following the prehearing conference which shall control the subsequent course of the proceeding, subject to amendment by the presiding officer.

(c) *Conduct of hearings.* (1) The hearing shall commence at the time and place directed by the presiding officer, and may be continued by the presiding officer from day to day or adjourned to a later time or date or to a different place without notice other than the announcement thereof at the hearing.

(2) All parties shall be given reasonable opportunity to submit relevant factual evidence. The presiding officer may admit in evidence affidavits as to relevant facts. Without limiting his right to make any ruling with respect to the conduct of the proceeding, the presiding officer may exclude evidence he finds to be cumulative, redundant or relating only to a fact or issue as to which he finds there not to be any substantial controversy, and may limit the number of witnesses to be permitted to testify with respect to any issue.

(3) A transcript of the testimony shall be kept. All exhibits received in evidence shall be numbered and made a part of the record. Any party desiring a copy of the transcript of the testimony or of any written exhibit or brief shall be entitled thereto upon written application and payment of the costs thereof. Any party may, by motion addressed to the presiding officer made within 5 days after the date of the availability of the transcript to him, move to correct the transcript in any respect he believes it to be inaccurate.

(d) *Decisions.* (1) If the presiding officer has been directed to make initial findings of fact, or an initial decision, or both, he may fix, upon conclusion of the hearing, a time for filing briefs which may contain proposed findings of fact and conclusions, and argument. In his discretion he may hear oral argument.

(2) If the officer has been so directed, he shall certify the entire record of the hearing to the Administrator. The Administrator may fix a time for filing briefs which may contain proposed findings of fact and conclusions, and argument; may hear oral argument; and make findings of fact and the final decision, or, if he deems it appropriate, issue tentative findings of fact or a tentative decision, or both.

(3) Within such times as may be fixed in initial or tentative findings of fact or an initial or tentative decision, the parties may file exceptions thereto and their briefs on the exceptions. The Administrator may also decide to review initial findings of fact or an initial decision on his own initiative, and may fix a time for briefs or oral argument, or both, in an appropriate order.

(4) The Administrator shall issue findings of fact and a final decision. He shall rule upon each exception.

(5) Any initial, tentative or final findings of fact or decision shall be based exclusively on the record made in the proceeding on reconsideration and the prior record with respect to the standard under reconsideration.

§ 215.23 Proceeding upon written evidence.

The Administrator may provide for a proceeding upon reconsideration in which the parties may introduce written statements and evidence. In such case, he may direct the parties to serve and file statements, evidence and exhibits in support of their positions, including, but not limited to, the statements, evidence, and exhibits described in § 215.21 (b); may order a conference for the purposes described in § 215.21(b), insofar as applicable to a proceeding upon written evidence; and may designate a presiding officer with the authority set forth in § 215.21 (a) and (b), insofar as applicable to a proceeding upon written evidence. The provisions of § 215.21 (d) shall apply to a proceeding under this section.

§ 215.25 Ancillary matters.

(a) Unless the Administrator or the presiding officer provides otherwise, any document filed in a proceeding under § 215.21 or § 215.23 must, at the same time, be served on all parties or their attorneys, personally or by registered or certified mail.

(b) All documents to be filed in a proceeding on reconsideration shall be filed at such place and in such numbers as the Administrator or presiding officer shall direct.

§ 215.27 [Reserved]

§ 215.29 Certified copies.

The Administrator shall furnish, upon request and payment of the costs thereof, certified copies of proceedings under § 215.19 et seq. as required by section 105(b) of the Act.

§ 215.31 Judicial review.

(a) The Administrator is designated and authorized to receive service of a petition for judicial review filed under section 105(a)(1) of the Act, and to perform the functions required by section 105(a)(1) of the Act and the rules of the court with respect to certification of the record on which the order under review is based.

(b) A hearing to receive additional evidence under section 105(a)(2) of the Act shall be governed by the applicable provisions of § 215.19 et seq. except as the court may direct otherwise.

[F.R. Doc. 67-4013; Filed, Apr. 11, 1967; 8:50 a.m.]

Title 31—MONEY AND FINANCE: TREASURY

Chapter V—Office of Foreign Assets Control, Department of the Treasury

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

Importations of and Dealings in Certain Merchandise

Section 500.204, appendix, item (101) is being amended to add to the list therein of commodities from specified countries, "dried eggs from Argentina."

As amended, item (101) shall read as follows:

(101) *Quotas for imports of certain commodities from other countries.* Under certain limited circumstances, quotas have been established for the importation of certain commodities under annual limitations set by the amount determined as currently available for export.

Licenses are issued for:

Cotton manufactures from Poland, Czechoslovakia, and Hungary.
Dried eggs from Argentina, Poland, and South Africa.
Feathers, Asiatic, from Japan, and Malaysia.
Firecrackers from Macao.
Lotus seeds from Thailand.
Lychees from Mexico.
Mung beans from Peru, Thailand.
Silk, raw and waste from Bulgaria.
Tung oil from Malawi.
Vegetables, fresh, Chinese type, from Mexico.
Walnuts from India, Pakistan, Rumania, and Yugoslavia.

Section 500.204, appendix, item (105) is being amended to add the words "and the U.S.S.R." following the words "from Eastern Europe," wherever they appear.

As amended, item (105) reads as follows:

(105) *Physical examination.* The Office of Foreign Assets Control is satisfied that certain types of merchandise subject to § 500.204 can be reliably determined by physical examination not to be of Communist Chinese, North Korean, or North Viet-Namese

origin. Licenses to import these types of merchandise are issued subject to physical examination at the time of entry. Examples are:

Bristles, hog, not dyed, from Japan and Iran.
Camel hair from Outer Mongolia.
Cashmere.
Cassia from Indonesia and Sabah, Malaysia.
Chinaware from Eastern Europe and the U.S.S.R.
Earthenware from Eastern Europe and the U.S.S.R.
Embroidered articles, peasant-type, from Eastern Europe and the U.S.S.R.
Hair, human, from India, Iran, and Pakistan.
Rugs, grass, from Spain and Portugal.
Straw manufactures from Eastern Europe and the U.S.S.R.
Wood articles from Eastern Europe and the U.S.S.R.

[SEAL] MARGARET W. SCHWARTZ,
Director,
Office of Foreign Assets Control.

[F.R. Doc. 67-4000; Filed, Apr. 11, 1967; 8:48 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 203—BRIDGE REGULATIONS

PART 204—DANGER ZONE REGULATIONS

Cow Bayou, Tex., and Pacific Ocean, California

1. Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499), § 203.245 is hereby amended with respect to paragraph (j) subparagraph (27), deleting reference to the Texas Highway Department bridge at Orangefield, Tex., effective on publication in the FEDERAL REGISTER, since the drawbridge has been replaced by a fixed bridge, as follows:

§ 203.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of drawtenders is not required.

* * * * *

(j) *Waterways discharging into Gulf of Mexico west of Mississippi River.*

* * * * *

(27) Cow Bayou, Tex.; Orange County highway bridge on Round Bunch Road and Texas Highway Department bridge at Bridge City. At least 6 hours' advance notice required.

* * * * *

[Regs., Mar. 27, 1967, 1507-32 (Cow Bayou, Tex.)-ENGCW-ON] (Sec. 5, 28 Stat. 362; 33 U.S.C. 499)

2. Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 3), § 204.201a, paragraph (b)(1), is hereby amended governing the use and navigation of a danger zone in the Pacific Ocean near Point Mugu, Calif., effective 30 days after publication in the FEDERAL REGISTER, as follows:

§ 204.201a Pacific Ocean in the vicinity of Point Mugu, Calif.; naval small arms firing range.

* * * * *

(b) *The regulations.* (1) Range firing will normally take place between 6 a.m. and 6 p.m., Thursday through Monday, and between 6 a.m. and 11:30 p.m., Tuesday and Wednesday of each week. Within the above periods, firing will be conducted as determined by the Commanding Officer, U.S. Naval Construction Battalion Center, Port Hueneme, Calif.

* * * * *

[Regs., Mar. 27, 1967, 1507-32 (Pacific Ocean, California)-ENGCW-ON] (Sec. 7, 40 Stat. 266; 33 U.S.C. 3)

KENNETH G. WICKHAM,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 67-3955; Filed, Apr. 11, 1967; 8:45 a.m.]

PART 208—FLOOD CONTROL REGULATIONS

Boysen Dam and Reservoir, Bighorn River, Fremont County, Wyo.

Pursuant to the applicable provisions of sections 7 and 9 of the Act of Congress approved December 22, 1944 (58 Stat. 890, 891; 33 U.S.C. 709) the following regulations are hereby prescribed to govern the use of storage capacity for flood control purposes in Boysen Reservoir on Bighorn River, Fremont County, Wyo., and the operation of Boysen Dam for flood control purposes.

§ 208.40 Boysen Dam and Reservoir, Bighorn River, Fremont County, Wyo.

The Bureau of Reclamation, Department of the Interior, represented by the Regional Director in charge of the locality, hereinafter referred to as the Regional Director, shall operate Boysen Dam and Reservoir in the interest of flood control as follows:

(a) The exclusive flood control storage capacity of the reservoir (which initially amounts to 150,000 acre-feet, between elevations 4,725 and 4,732) and during the flood season, February 1 to July 31, that portion of the joint use storage capacity (which initially amounts in whole to 150,000 acre-feet between elevations 4,717 and 4,725) which is determined, as described in detail in paragraph (c) of this section, to have flood control as its current paramount purpose shall be operated with total releases (from the powerplant, gated bypass pipes and under the spillway gates) restricted for maximum flood protection downstream from the dam on the Bighorn, Yellowstone, and Missouri Rivers, in the following manner:

(1) Local flood control: (i) When the Bighorn River is frozen or partially frozen between the dam and Greybull, Wyo., restrict releases to a maximum of 3,000 cubic feet per second.

(ii) When the Bighorn River is free of ice and the Boysen pool is below elevation 4,725, restrict releases to a maximum of 15,000 cubic feet per second.

(iii) When the Bighorn River is free of ice and the Boysen pool is between elevations 4,725 and 4,732, restrict releases to a maximum of 20,000 cubic feet per second.

(2) Coordination with flood conditions and other projects: The above-stated conditions for operation for local flood control will be modified as may be necessary for optimum coordination of the flood control operation of the reservoir with existing and potential flood conditions on the Bighorn, Yellowstone, and Missouri Rivers and with the operation of other reservoirs or flood protection works on these streams.

(3) In no circumstances will water be allowed to overtop the spillway gates.

(b) Whenever necessary in the interest of flood control the Department of the Army, represented by the District Engineer in charge of the locality, hereinafter referred to as the District Engineer, will issue instructions to the Regional Director for coordination of the flood control operation of the reservoir, either for storage or evacuation purposes, with flood conditions and with the operation of other reservoirs or other flood protection projects within the Bighorn, Yellowstone, or Missouri River basins; and the District Engineer shall also issue special directions, if desirable, on the basis of flood conditions at the time, to the Regional Director for temporary modification of such instructions. Oral instructions from the District Engineer to the Regional Director shall be confirmed in writing under date of the day issued.

(c) Storage space in the joint use storage capacity in Boysen Reservoir shall be kept available for flood control purposes, February 1–July 31, inclusive, in accordance with the Flood Control Storage Reservation Diagram currently in force, except when storage of flood water is necessary as prescribed in paragraph (a) of this section. Any flood water temporarily stored in either the exclusive flood control storage space or in that portion of the joint use storage space which currently has flood control as its current paramount purpose shall be released as rapidly as can be safely accomplished without causing downstream flows to exceed the criteria prescribed in paragraph (a) of this section. The Flood Control Storage Reservation Diagram in force as of the promulgation of this section is that dated March 14, 1967, file GM 16-3/1 and is on file in the Office of the Chief of Engineers, Department of the Army, Washington, D.C., and in the Office of the Commissioner of Reclamation, Washington, D.C. Revisions of the Flood Control Storage Reservation Diagram may be developed from time to time as necessary by the Corps of Engineers and the Bureau of Reclamation. Each such revision shall be effective upon the date specified in

the approval thereof by the Chief of Engineers and the Commissioner of Reclamation and from that date until replaced shall be the Flood Control Storage Reservation Diagram currently in force for the purposes of this section. Copies of the Flood Control Storage Reservation Diagram currently in force shall be kept on file in and may be obtained from the Office of the District Engineer, Corps of Engineers, and the Regional Director, Bureau of Reclamation, in charge of the locality.

(d) The discharge characteristics of the outlet tunnel and the spillway (having a combined capacity of 20,000 cubic feet per second with reservoir level at elevation 4,721.5) shall be maintained in accordance with the as constructed drawings (Bureau of Reclamation Drawings No. 285-D-662 (revised Apr. 8, 1958), No. 285-D-894 (dated Mar. 21, 1951), and No. 285-D-895 (dated Mar. 21, 1951)).

(e) Proposed schedules of irrigation releases and storage changes, if available, and current operating data shall be provided to the District Engineer by the Regional Director. These data shall be tabulated daily and furnished periodically as required and shall include such items as: Reservoir elevation, reservoir storage, inflow, discharge, and pertinent available hydrologic data.

(f) Whenever the reservoir level rises to elevation 4,717 or whenever flood discharges appear imminent, the Regional Director shall report at once to the District Engineer by telephone, telegraph, or radio, and as requested thereafter until the reservoir level falls to elevation 4,717 or below, and flood discharges cease.

(g) Nothing in this section shall be construed to require that releases shall be made at rates or in a manner inconsistent with requirements for protecting the dam and reservoir from major damage, or inconsistent with the safe routing of the spillway design flood.

(h) All elevations stated in this section are at the Boysen Dam and are referred to a datum giving 4,700.00 as the elevation of the spillway crest.

[Regs., Mar. 14, 1967, ENGCW-EY] (Secs. 7 and 9, 58 Stat. 890, 891; 33 U.S.C. 709)

KENNETH G. WICKHAM,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 67-3956; Filed, Apr. 11, 1967; 8:45 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 33—SPORT FISHING

Lake Ilo National Wildlife Refuge, N. Dak.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NORTH DAKOTA

LAKE ILO NATIONAL WILDLIFE REFUGE

Sport fishing on the Lake Ilo National Wildlife Refuge, N. Dak., is permitted only on the area designated by signs as open to fishing. This open area comprising 400 acres is delineated on maps available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis, Minn. 55408. Sport fishing shall be in accordance with all applicable State regulations and subject to the following special conditions.

(1) The open season for sport fishing on the refuge extends from May 6, 1967, through September 15, 1967, daylight hours only.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Part 33, and are effective through September 15, 1967.

HOMER L. BRADLEY,
Refuge Manager, Lake Ilo National Wildlife Refuge, Dunn Center, N. Dak.

APRIL 5, 1967.

[F.R. Doc. 67-4000; Filed, Apr. 11, 1967; 8:49 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 50—Division of Public Contracts, Department of Labor

PART 50-204—SAFETY AND HEALTH STANDARDS FOR FEDERAL SUPPLY CONTRACTS

Radiation Safety and Health Standards; Application in New Hampshire and Alabama

On September 21, 1966, and September 30, 1966, notices were published in the FEDERAL REGISTER (31 F.R. 12483; 31 F.R. 12794) proposing to make determinations that the programs of the States of New Hampshire and Alabama, respectively, for the control of radiation sources are compatible with the requirements of 41 CFR Part 50-204. The notices also proposed to add the States of New Hampshire and Alabama to the list of States set forth in 41 CFR 50-204.320(c) (1) and (2) (31 F.R. 1075). Interested persons were invited to file statements of data, views, or arguments in regard to the proposals. None were received. I have decided to and do hereby determine that the programs of the States of New Hampshire and Alabama for the control of radiation sources are compatible with the requirements of 41 CFR Part 50-204.

Accordingly, pursuant to authority in sections 1 and 4 of the Walsh-Healey Public Contracts Act (41 U.S.C. 35 and 38), I hereby amend 41 CFR Part 50-204 by adding the States of Alabama and New Hampshire to the list of States set forth in 41 CFR 50-204.320(c) (1) and (2).

This amendment shall become effective 30 days following the date of publication in the FEDERAL REGISTER.

(Secs. 1, 4, 49 Stat. 2036, 2038; 41 U.S.C. 35, 38)

Signed at Washington, D.C., this 5th day of April, 1967.

W. WILLARD WIRTZ,
Secretary of Labor.

[F.R. Doc. 67-3975; Filed, Apr. 11, 1967; 8:46 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 4179]

[Oregon 713]

OREGON

Partial Revocation of Reclamation Withdrawal

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

1. The departmental orders of December 14, 1926, and March 18, 1929, withdrawing lands for the Vale Project, are hereby revoked so far as they affect the following described lands:

WILLAMETTE MERIDIAN

T. 19 S., R. 43 E.,
Sec. 20 NW¼, SE¼SW¼, SW¼SE¼;
Sec. 29, NW¼NE¼, NE¼NW¼.
T. 17 S., R. 44 E.,
Sec. 2, SW¼;
Sec. 20, SW¼SW¼.

The areas described aggregate approximately 520 acres in Malheur County.

The lands in T. 19 S., R. 43 E., are located about 14 miles southwest of Vale, Oregon, in the vicinity of Little Valley, and the lands in T. 17 S., R. 44 E., are about 10 miles northwest of Vale, Oregon, in the Willow Creek drainage. Vegetative cover is sagebrush, cheat grass, native shrubs, and forbs.

2. At 10 a.m. on May 12, 1967, the lands shall be open to 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 May 12, 1967, 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 United States mining laws at 10 a.m. on May 12, 1967. They have been open to applications and offers under the mineral leasing laws.

The State of Oregon has waived the preference right of application granted to certain States by R.S. 2276, as amended (43 U.S.C. 852).

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

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

APRIL 6, 1967.

[F.R. Doc. 67-3965; Filed, Apr. 11, 1967; 8:45 a.m.]

[Public Land Order 4180]

[Oregon 1146]

OREGON

Partial Revocation of Reclamation Project Withdrawal

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

1. The departmental order of December 14, 1926, withdrawing lands for the Vale Project, is hereby revoked so far as it affects the following described land:

WILLAMETTE MERIDIAN

T. 19 S., R. 43 E.,
Sec. 6, W½SE¼.

The area described contains approximately 80 acres in Malheur County.

The land is located about about 13 miles west of Vale, Oreg. Vegetative cover is sagebrush, cheat grass and other native shrubs, grasses, and forbs.

2. At 10 a.m. on May 12, 1967, 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 requirements of applicable law. All valid applications received at or prior to 10 a.m. on May 12, 1967, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The land will be open to location under the United States mining laws at 10 a.m. on May 12, 1967. It has been open to applications and offers under the mineral leasing laws.

The State of Oregon has waived the preference right of application granted to certain States by R.S. 2276, as amended (43 U.S.C. 852).

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

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

APRIL 6, 1967.

[F.R. Doc. 67-3966; Filed, Apr. 11, 1967; 8:46 a.m.]

[Public Land Order 4181]

[Oregon 712]

OREGON

Partial Revocation of Reclamation Project Withdrawal

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

1. The departmental orders of March 17, 1916, November 5, 1919, and March 28, 1925, withdrawing lands for the Owyhee Project, are hereby revoked so far as they affect the following described lands:

WILLAMETTE MERIDIAN

T. 22 S., R. 45 E.,
Sec. 3, lot 13;
Sec. 4, lots 8 and 9.
T. 17 S., R. 46 E.,
Sec. 23, SW¼SW¼.

The areas described aggregate 75.99 acres in Malheur County.

The lands are near Ontario, Oreg. Vegetative cover is sagebrush, cheat grass, native shrubs, and forbs.

2. At 10 a.m. on May 12, 1967, the lands shall be open to 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 May 12, 1967, 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 May 12, 1967. They have been open to applications and offers under the mineral leasing laws.

The State of Oregon has waived the preference right of application granted to certain States by R.S. 2276, as amended (43 U.S.C. 852).

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

HARRY ANDERSON,
Assistant Secretary of the Interior.

APRIL 6, 1967.

[F.R. Doc. 67-3967; Filed, Apr. 11, 1967; 8:46 a.m.]

[Public Land Order 4182]

[Idaho 015332]

IDAHO

Powersite Restoration No. 616 Partial Revocation of Powersite 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 December 19, 1910, creating Powersite Reserve No. 168 is hereby revoked so far as it affects the following-described lands:

BOISE MERIDIAN

T. 12 N., R. 2 W.,
Sec. 19, lots 2, 3, and 4, and E½SW¼.
T. 11 N., R. 3 W.,
Sec. 2, lots 1, 2, 3, and 4, S½N½, and SW¼;
Sec. 3, lots 1 and 2, S½NE¼, and SE¼.
T. 12 N., R. 3 W.,
Sec. 23, SE¼SE¼;
Sec. 24, S½NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SW¼SE¼;
Sec. 25, E½NE¼, W½, and E½SE¼;
Sec. 26, E½NE¼, and SE¼SE¼;
Sec. 35, NE¼, E½SW¼, and SE¼.

The areas described aggregate 2,335.83 acres in Washington County, of which 513.24 acres are vacant public lands. The remaining lands are either patented or in withdrawals for other purposes.

2. At 10 a.m. on May 12, 1967, the public lands not otherwise withdrawn shall be open to 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 May 12, 1967, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The lands have been open to applications and offers under the mineral leasing laws, and to location under the U.S. mining laws.

The State of Idaho has waived its preference rights under R.S. 2276, as amended (43 U.S.C. 852) and under section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818), as amended.

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

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

APRIL 6, 1967.

[F.R. Doc. 67-3968; Filed, Apr. 11, 1967; 8:46 a.m.]

[Public Land Order 4183]

[Oregon 182]

OREGON

Revocation of Air Navigation Site Withdrawal

By virtue of the authority contained in section 4 of the act of May 24, 1928 (45 Stat. 729; 49 U.S.C. 214), it is ordered as follows:

1. The departmental order of July 15, 1929, as modified by the order of the Bureau of Land Maagement of October 28, 1949, withdrawing the following described land as Air Navigation Site Withdrawal No. 31, is hereby revoked:

WILLAMETTE MERIDIAN

T. 36 S., R. 5 W.,
Sec. 9, SW¼SW¼NW¼SE¼.

The area described contains 2.5 acres in Josephine County.

2. At 10 a.m. on May 12, 1967, the land shall be open to such forms of disposition as may by law be made of revested

Oregon and California Railroad grant land.

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

APRIL 6, 1967.

[F.R. Doc. 67-3969; Filed, Apr. 11, 1967; 8:46 a.m.]

[Public Land Order 4184]

[Anchorage 067495]

ALASKA

Exclusion of Land From National Forest

By virtue of the authority vested in the President by section 1 of the act of June 4, 1897 (30 Stat. 34, 36; 16 U.S.C. 473), and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

The following described tract of land in Alaska, occupied as a homesite, is hereby excluded from the Chugach National Forest and restored, subject to valid existing rights, for purchase as a homesite under section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U.S.C. 461), as amended:

Homesite No. 187, Murcheson Creek Group, Lot 2, U.S. Survey 4609, 0.44 acre.

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

APRIL 6, 1967.

[F.R. Doc. 67-3970; Filed, Apr. 11, 1967; 8:46 a.m.]

[Public Land Order 4185]

[Oregon 017362]

OREGON

Withdrawal for National Forest Recreation Area

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

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

WILLAMETTE NATIONAL FOREST

WILLAMETTE MERIDIAN

Breitenbush Hot Springs Recreation Area

T. 9 S., R. 7 E.,
Sec. 19, unsurveyed, S½NE¼NE¼, NE¼SW¼NE¼, S½SW¼NE¼, SE¼NE¼, SE¼SE¼NW¼, NE¼NE¼SW¼, N½NW¼SE¼;
Sec. 20, S½NE¼NW¼, NW¼NW¼, N½SW¼NW¼, SE¼NW¼, NE¼SE¼, E½SE¼SE¼;
Sec. 21, unsurveyed, S½NW¼NW¼, SW¼NW¼, W½NE¼SW¼, NW¼SW¼, N½SW¼SW¼, SW¼SW¼SW¼, N½SE¼SW¼.

The areas described aggregate approximately 480 acres in Marion County.

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

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

APRIL 6, 1967.

[F.R. Doc. 67-3971; Filed, Apr. 11, 1967; 8:46 a.m.]

[Public Land Order 4186]

[Oregon 990]

OREGON

Partial Revocation of Reclamation Project Withdrawal

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

The departmental order of August 16, 1905, withdrawing lands for the Umatilla Project, is hereby revoked so far as it affects the following described lands:

WILLAMETTE MERIDIAN

T. 5 N., R. 29 E.,
Sec. 31, NW¼NE¼, N½SW¼NE¼, SW¼SW¼NE¼, W½NW¼SE¼.

The areas described aggregate approximately 90 acres in Umatilla County. The lands are in allowed entries.

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

APRIL 6, 1967.

[F.R. Doc. 67-3972; Filed, Apr. 11, 1967; 8:46 a.m.]

[Public Land Order 4187]

[New Mexico 1182]

NEW MEXICO

Addition to National Forest

By virtue of the authority contained in the act of July 9, 1962 (76 Stat. 140; 43 U.S.C. 315g–1), it is ordered as follows:

Subject to existing valid rights, the following described lands, acquired in an exchange made pursuant to section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315g), as amended, are hereby added to and made a part of the Lincoln National Forest and hereafter shall be subject to all laws and regulations applicable to said national forest:

NEW MEXICO PRINCIPAL MERIDIAN

T. 18 S., R. 11 E.,
Sec. 8, E½SW¼, and N½SE¼;
Sec. 21, N½SE¼ and SW¼SE¼;
Sec. 27, W½SE¼ and SE ¼SE¼;
Sec. 34, NE¼NE¼.

The areas described aggregate approximately 440 acres in Otero County.

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

APRIL 6, 1967.

[F.R. Doc. 67-3973; Filed, Apr. 11, 1967; 8:46 a.m.]

[Public Land Order 4188]

[Fairbanks 034799]

ALASKA

Withdrawal for Administrative Site Revocation of Executive Order No. 5384

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

1. Subject to valid existing rights, the following described public lands, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), and reserved for an administrative site:

FORT YUKON

U.S. Survey 2760 B, Block 21: Lots 1 to 4, inclusive.

The areas described aggregate 0.96 acre.

2. Executive Order No. 5384 of June 27, 1930, reserving a tract of land, described by metes and bounds, now described as U.S. Survey 2263, containing 0.32 acre, for use of the Alaska Game Commission, is hereby revoked. The land is State owned.

3. The withdrawal made by paragraph 1 of this order does not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

APRIL 6, 1967.

[F.R. Doc. 67-3974; Filed, Apr. 11, 1967; 8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 601]

CONFERENCE AND PRACTICE REQUIREMENTS

Notice of Proposed Rule Making

Correction

In F.R. Doc. 67-3290 appearing in the issue for Wednesday, March 29, 1967, at page 5278, make the following changes:

1. In the undesignated paragraph following § 601.502(c)(1)(iv), line 9, the word "any" should read "an".

2. In § 601.503(c), line 13, the word following "accountant" should read "evidence".

3. In § 601.505(c)(2)(ii), page 5283, column 1, line 10, the word "of" should read "or".

4. In § 601.506(b)(1), last sentence, the word "well" should read "will".

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 991]

HOPS OF DOMESTIC PRODUCTION

Handling

Notice is hereby given of a proposal, unanimously recommended by the Hop Administrative Committee. The proposal would extend to each producer, for the 1968 crop, permission to retain his allotment base without making a bona fide effort to produce the annual allotment referable thereto; prescribe a reasonable time whereby transfers of allotment bases are to be completed in order to have an annual allotment granted thereunder for the ensuing marketing year; prescribe that to qualify for an annual allotment each producer transferring all or part of his allotment base and each producer acquiring additional allotment bases by transfer, shall submit to the Committee the allotment base certificates theretofore issued to the producer by the Committee; and prescribe reporting requirements. The authorization for the proposals would be pursuant to §§ 991.38, 991.46, and 991.60 of Marketing Order No. 991 (7 CFR Part 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).

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposal should file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than April 19, 1967. 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)).

The proposal is as follows:

§ 991.138a Waiver of requirement as to production of annual allotment—1968 crop.

Pursuant to § 991.38(a)(5), the requirements therein for a producer to make a bona fide effort to produce the annual allotment referable to his allotment base is waived for the 1968 crop for all producers.

§ 991.146 Transfer of allotment bases.

(a) Whenever a producer transfers all or part of this allotment base to another person, the annual allotment referable to such transferred base shall be issued to the transferee for the 1967-68 marketing year only if such transfer is made prior to the issuance of an annual allotment to the transferor or prior to May 1, 1967, whichever is earlier, and for the 1968-69 and subsequent marketing years such date shall be April 1.

(b) Whenever a transfer is made of an allotment base, in whole or in part, to another person, or a producer acquires an additional allotment base, no annual allotment on such transfer or acquisition shall be issued by the Committee until both the transferring and the acquiring producer surrender their allotment base certificates for such adjustment and reissuance as is indicated by the transfer. The reissued certificates shall show the original allotment base plus or minus, as appropriate, the adjustment.

§ 991.160 Reports.

(a) Each handler shall, with respect to each lot of hops acquired from a producer, file a report with the Committee on HAC Form No. 1, not later than the close of the next business day following such acquisition, showing (1) date of acquisition, (2) name of the producer, (3) name of handler, (4) grower number and lot number, (5) inspection certificate number, (6) handler lot identification number, (7) variety of the hops, and (8) number of bales acquired, including the gross and net weights of such bales. The handler shall cause the report to be signed by the producer, or his agent, and shall also be signed by the handler, or his agent, and shall be accompanied by the applicable weight certificate showing the weight of each bale of hops acquired.

(b) Each handler shall, at the time he acquires hops from a producer, record on the back of such producer's annual allotment certificate the date, name of handler, the number and net weight of the bales of hops acquired, and the cumulative weight.

(c) Each producer-handler not delivering his reserve hops by the closing date for pooling, shall report to the Committee, within 5 business days after the closing date of such pool, the quantity, quality, variety, and location of such reserve hops held by him and such other information as is requested by the Committee.

Dated: April 7, 1967.

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

[F.R. Doc. 67-4015; Filed, Apr. 11, 1967; 8:50 a.m.]

[7 CFR Part 1125]

[Docket No. AO 226-A14]

MILK IN PUGET SOUND, WASH., MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et. seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Puget Sound, Wash., marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 15th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Seattle, Wash., on August 23-27, 1966, pursuant to notice thereof which was issued August 10, 1966 (31 F.R. 10847).

The material issues on the record of the hearing relate to:

1. The adoption of a Class I base plan;

2. Determination of Class I bases for existing producers and new producers;

3. Incorporation of producer-handlers in the Class I Base Plan.

4. Base rules with respect to:

(a) Transfers,

(b) Forfeitures,

(c) Antidumping provisions,

(d) General rules.

5. Provision for hardship and inequities.

6. Payments on other source milk:

7. Miscellaneous provisions.

(a) Revision of excess milk location differential at District 1 pool plants; and

(b) Continuing provisions in event of lack of approval or expiration of authority.

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. *The adoption of a Class I base plan.* Producers supplying plants regulated by the Puget Sound order should be given opportunity to decide whether returns from the sale of their milk will be apportioned among producers through a Class I base plan.

Returns to Puget Sound producers have since the effective date of the order (1951) been distributed through a "seasonal" base plan. Under this plan each producer establishes a "base" by the average of his deliveries (120 days or more) during the months of August through December of each year. For the following 12 months beginning with February he is paid a base milk price for deliveries not in excess of his base and a lower (excess) price for deliveries in excess of his base. Producers entering the market without a base are paid the base milk price for a specified portion of their current deliveries (varied seasonally from 45 to 70 percent).

The proportion of base milk used in Class I has steadily declined from a high of 86.6 percent in 1952 to 49.1 percent in 1965. While the total volume of Class I use increased 25.7 percent from 1952 to 1965, deliveries of base milk increased 121.4 percent, almost five times as rapidly. An increasing proportion of the base milk delivered by producers has been used for manufactured dairy products and valued at the Class II price. As a consequence the price for base milk has steadily declined relative to the Class I price. In 1952, the base price averaged 23 cents per hundredweight less than the Class I price; in 1965 it averaged 88 cents less.

Producers claim that under the present system, a producer can only maintain his relative share of the higher priced Class I sales of the market by maintaining or increasing his base each year; that as a consequence a "race for base" has developed in which an individual producer must produce increasing quantities of milk for Class II use in order to protect his share of income from Class I milk.

Amendments to the Agricultural Marketing Agreement Act by Public Law 89-321 (Food and Agriculture Act of 1965), effective only through December 1969, are designed to remove the necessity for dairymen to produce surplus milk in order to preserve their individual participation in the markets for milk for fluid consumption. Under these amendments, base forming periods need not be limited to 1 year, marketings during such periods may be adjusted to reflect sales in any use classification or classifications, and producers holding bases so adjusted will not have their history of production and marketing adversely affected for the computation of future bases if they reduce their production. Incorporation of these provisions in an order must be separately approved by producers in a referendum in which each individual producer shall have one vote. Disapproval of such order provisions does not affect other terms of the order.

Producers in the Puget Sound market formed a Class I base plan committee which developed proposed provisions designed to operate under the new authority. The committee was composed of representatives of cooperative associations, general farm organizations and nonmember producers. In developing its proposal it held producer meetings to determine producer sentiment concerning the plan generally and specific provisions to be included in it. Detailed findings concerning the principal elements of this proposal are contained elsewhere in the decision. We are here concerned only with whether or not any such provisions should be adopted for the Puget Sound order if approved by producers in accordance with the terms of the statute. A statutory objective of the authority for use of Class I base plan is that such a plan "seeks to reduce surplus milk production and stabilize the income of dairy farmers in * * * Federal milk order areas by removing the necessity for dairymen to produce surplus milk in order to preserve their individual participation in the markets for milk for fluid consumption" (Conference Report No. 1123, on Food and Agriculture Act of 1965, Oct. 6, 1965).

The substantial quantity of producer milk in excess of the Class I needs of the Puget Sound market appears to be the type of situation which Congress believed could be remedied by effectuation of a Class I Base Plan. Under it each producer is given a more definite basis for making a choice as to whether he will produce milk that he knows will return him the Class II or manufacturing milk price. There was conflicting testimony in the record concerning the need for substantial surplus in the market before use of a Class I base plan could be authorized. The question of authority need not be determined, however, to find that the plan can be expected to have the greatest effect in markets with substantial surplus such as now prevails in the Puget Sound market.

It is concluded that the plan hereinafter set forth should be submitted to Puget Sound producers for their approval.

2. *Determination of Class I bases for producers*—(a) *Determination of Class I base.* For purposes of this decision "production history base" means a daily quantity of milk delivered by a producer during a representative period which is used as such producer's production history: "Class I base" means a production history base modified in relation to Class I sales in the market so as to represent the producer's daily share of the Class I market plus appropriate reserves. It represents the maximum daily quantity of milk for which the producer may receive the base milk price.

(1) *For existing producers.* Each producer delivering milk in the month immediately preceding the effective date of the plan who delivered milk 120 days or more during August–December 1966 will have a production history base computed at the highest of such producer's daily average production in each of the August–December periods of 1964, 1965, or 1966 during which the producer delivered producer milk under the order on 120 days or more.

The production history bases so established as of the effective date of the Class I base plan shall be adjusted uniformly so that their total will equal 120 percent of the average daily Class I disposition of pool milk by regulated handlers during the calendar year 1966. Deliveries within the Class I bases so computed will be those for which existing producers may receive a base price; deliveries in excess thereof (in daily average per month) will be paid for at the excess milk price.

Neither the production history base nor the Class I base should be subject to adjustment for either changes in production of the producer or for changes in the volume of Class I sales of the market.

The Puget Sound Class I Base Plan Committee proposed in the notice of hearing, and advocated at the hearing, a plan wherein production history bases and Class I bases of existing producers would be determined from the higher of such producers' bases effective February 1, 1965, or February 1, 1966, adjusted to equal 1965 daily average Class I sales for the market. This plan was developed early in 1966 with expectation that order amendment might be possible before new bases were formed in August–December 1966, or 1966 daily average Class I sales were available for use. Under this proposal, production history bases would be frozen at the level first determined; "Class I bases", however, would be adjusted annually to the level of the daily average Class I sales of the preceding year. In making this adjustment it was proposed to include in the computation production history bases for "new" producers based on their deliveries of milk in August–December periods different from those used to establish the production history bases of existing producers.

The August–December periods from which production history bases will be computed are the periods of each year under which producers establish annual bases under present order provisions. They are accepted in the market as the period of year that may be considered representative of a producer's production capacity. Use of the highest average daily delivery of the August–December periods of 1964, 1965, or 1966 will eliminate many claims for hardship based upon events of a single year. Use

of the 1966 August–December period will avoid necessity for special provisions for producers of "factory milk" forced to convert to Grade A production without opportunity to make deliveries in either August–December 1964 or 1965. In each of the past 2 years 45 or 46 new producers have entered the market. Since September 1965, the last month in which a new producer could have entered the market and have been issued a base effective February 1966, 27 new producers had entered the market through June 1966. Use of the 1966 August–December period will provide the maximum number of existing producers with opportunity to have production history bases determined at their average daily deliveries in an August–December period. The requirement that a producer shall have delivered 120 days or more in this period of 1966 and be delivering at the effective date of the Class I base plan will restrict issuance of Class I bases to producers with recent production history who are currently serving the market. Only those who have entered the market since September 3, 1966, will not have had opportunity to make such bases under the proposed provisions.

It is concluded elsewhere in this decision that producers without a history of production on the market as of the effective date of the Class I base plan shall participate in the benefits of Class I sales of the market only as there are increased Class I sales. Since the statute authorizing a Class I base plan provides that any increase in Class I sales should first be assigned to such producers (and to the alleviation of hardship and inequity among producers) any such increase must be reserved for this purpose and accordingly is not available for assignment to existing producers as proposed by the committee. Existing producers will, however, benefit through an increase in their base and excess price from any increase in Class I sales greater than that needed to satisfy the prior claims of new producers and hardship cases. While it would be feasible to adjust the Class I bases of existing producers for any decrease in sales, this is not considered necessary for the limited period for which the Class I base plans are authorized.

The principal controversy at the hearing with respect to computations of Class I bases was with reference to the inclusion of a reserve of 20 percent over the daily average Class I sales volume. A number of individual producers wanted Class I bases established without any reserve so that the base price would be the Class I price unless there was a decrease in sales. There are fluctuations in both supplies and sales, so that if bases contained no provision for reserve there inevitably would be days in which excess milk would have to be used for Class I purposes. If Class I base holders are to be given the prior claim provided herein on Class I sales assigned to producer milk, they should be expected to deliver milk in accordance with the daily needs of the market for Class I use. The only way this can be encouraged is by the inclusion of some reasonable reserve in adjusting bases to Class I sales. The 20 precent proposed is a reasonable amount for this purpose. The provisions for prior assignment of actual Class I sales are such as to make allowance for the reserve so included, so that it does not interfere with assignment of any sales increases to new producers and hardship cases.

The "freezing" of the history of production of each existing producer, and the Class I base computed from such history and 1966 average Class I sales of the market provides little opportunity for such producers to further adjust their production to changing needs of the market. Producers proposed that history of production should be frozen at a level determined by deliveries prior to the effective date of a Class I base plan: The elimination of the periodic adjustment to Class I sales is apparently required in providing prior claims to any increased sales for "new" producers who would thus never have an opportunity to develop a history of deliveries in a representative period the same as that used for existing producers and for "hardship cases." In view of the limited period for which the plan may be effective under present legislative authority, it is concluded that rigidities involved in the frozen production history and "Class I" bases will not be so serious as to require the plan to contain opportunity for existing producers to have both production history bases and Class I bases redetermined periodically, subject to the statutory provision that reduction of deliveries would not adversely affect the history of production used for computing such future bases.

In addition to producers supplying plants presently regulated, provision should be made for computing bases for dairymen supplying a plant that hereafter becomes a pool plant fully regulated by the order, if they delivered Grade A milk to such plant in the August–December period in 1966.

If a plant has regularly received Grade A milk from dairy farms without regulation of the Puget Sound order, it has evidently done so to supply Class I outlets outside the marketing area. To achieve pool plant status such a plant must now dispose of specified percentages of its Grade A receipts on routes in the marketing area or to other pool plants. It is to be expected that when such a plant becomes a pool plant, it will add Class I sales to the pool proportionate to its receipts of Grade A milk in prior periods when it operated as a nonpool plant.

It is appropriate therefore that those dairymen who supplied Grade A milk to such plant in the periods which determine the daily bases of existing producers should have production history bases computed from such deliveries if they are supplying the plant when it becomes a pool plant. The production history bases so computed should be adjusted to Class I base by the percentage used in adjusting the daily bases of existing producers.

The proponents proposed that this procedure be applicable only if the plant became a pool plant by amendment of the order. For the reasons stated above it should apply whenever a plant not now regulated becomes a pool plant.

(2) *For "new" producers.* A producer who did not deliver milk for at least 120 days in August–December of 1966, or who begins deliveries of milk after the effective date of the Class I base provisions (a "new" producer) will not establish either a production history base or a Class I base. Instead such a producer will share in Class I sales of the market only if such sales during the month exceed those of the comparable month of 1966. The extent to which any such "new" producer may share with other such producers in any increased Class I sales will be determined by his deliveries during the current month and the amount of increased Class I sales in comparison with total new producer deliveries and adjustment to existing producers to alleviate hardship.

The Puget Sound Class I Base Plan Committee proposed that producers for whom production history bases and Class I bases could not be computed as for existing producers should develop a base history by their deliveries in four successive August–December periods. Until the February following 120 days deliveries in each of two such periods, they proposed that the producer be paid on a portion of his current month's deliveries equal to one-fourth of the percentage used in adjusting daily bases of existing producers. Thereafter, the "new" producer would have a daily base in successive years, equal to 50, 75, and 100 percent of his average daily deliveries in these base-making periods.

The production history bases so established for new producers as of February 1 of each year would have first been adjusted by the percentage applied to such bases of existing producers the preceding year. The total of Class I bases would then have been adjusted to 120 percent of daily average Class I utilization in the preceding year, if such total varied from such utilization by more than 1 percent. By treating the bases (or partial bases) established for new producers equally with old producers, increases in Class I utilization from the preceding year would first be assigned to such bases before any assignment to bases of existing producers; new producers would receive Class I bases determined from their bases or partial bases the same as old producers whether or not any increase in Class I utilization had occurred.

The principal testimony in opposition to the proposals for new producers related to the period of time required for a new producer to establish a "100 percent" base, and the opportunity for a new producer to establish any base higher than the 1,450 pound present average base of existing producers. Some witnesses thought the provisions required to establish 100 percent base too restrictive, and other witnesses believed new producers should be limited to bases no higher than the average of old producers.

It is extremely doubtful, however, if the 1965 amendments to the Act provide for the diverse representative periods for

establishing production history presented by the proposals of the Base Plan Committee for existing producers and for new producers to be used at the same time for apportioning the value of milk among producers. The Act apparently provides that, as of any given time, only a single representative period should apply.

The proposal that the only representative period to be used for existing producers be prior to the effective date of the plan means that producers entering the market thereafter can have no history of production in the same period as other producers and thus cannot develop bases. Proponents' testimony at the hearing recognizes the desirability of provisions whereby producers entering the market after adoption of the plan should have opportunity to establish bases on the market determined from their demonstrated ability to supply the market, as contained in their proposals. When, however, the question arose that this might possibly be accomplished only through some modification of their proposals with respect to producers presently supplying the market, the proponents insisted that bases of existing producers remain frozen at the preexisting level. They feared that if existing producers had opportunity to increase their production history, a new production race might result even though each such producer could under the statute maintain his prior history without producing milk at the excess price.

It appears that the only provisions that can be made for producers without base history prior to institution of the plan without also changing provisions for existing producer base contrary to the expressed wishes of the proponents is through the prior assignment of increased sales and forfeited bases. The Act provides that "any increase in class one base resulting from enlarged or increased consumption and any class one base forfeited or surrendered shall first be made available to new producers * * *". A reasonable conclusion is that a new producer is one without a history of production in a representative period provided in the order for which deliveries of producers generally are used in computation of bases. If such most recent period is one prior to adoption of the plan, producers entering the market subsequently will remain new producers so long as the plan is in effect. Under such a provision, such producers will not have any bases representing an assigned share of Class I utilization of the market so long as the plan is in operation.

Under this system the average price realized by new producers (and likewise by existing producers for milk for which "hardship adjustments" may apply) will depend each month entirely upon (1) the extent to which Class I sales increase and (2) the volumes of milk delivered by such producers. Unless Class I sales increases are fairly substantial, there will be opportunity for relatively few new producers to have returns equal to those they might expect under the committee proposal; on the other hand, substantial Class I sales increases might provide opportunity for more new producers to receive returns equal to or greater than under the committee proposal. The relative returns to new producers will be influenced to a much greater degree by the volume of deliveries of all new producers as well as by the extent of Class I sales increase, than would have been the case under the committee proposal. It is of course impossible to predict the course of either of these variables.

A comparison of Class I sales each month with those of the corresponding month of 1966 will provide a reliable means of prompt identification of increased Class I sales which may be assigned to new producers and hardship adjustment that month. Daily average sales in the calendar year 1966 are used in computing the Class I bases of existing producers. A month-to-month comparison will, however, reflect more accurately increases in Class I sales without distortion through the normal seasonal pattern of sales.

The increased sales, if any, determined from this comparison should be converted to a total quantity of milk for which the new producers involved may be paid the same price as other producers are paid for their base milk. This is a price to which location adjustments set forth in the order may be applied. Because 1966 daily average sales were increased by 20 percent in determining Class I bases of existing producers, any amount by which the current month sales exceed those of the same month of 1966 should be increased by the same factor. Forfeiture or surrender of Class I base may be measured on a monthly basis by comparison of the total of adjusted daily bases converted to a monthly total with the actual deliveries of base milk by producers with Class I bases.

The total of the quantities computed for increased sales and bases forfeited or surrendered represents base milk (monthly quantity) for which new producers (and hardship adjustment) may be paid at the same base price as existing producers are paid. This quantity should be prorated among new producers and producers receiving hardship adjustments on the basis of the monthly deliveries of new producers, and deliveries in excess of base milk which are within the adjustment provided for hardship cases.

Any sales not assignable to new producers under these provisions will serve to increase the base milk price up to, but not to exceed, the Class I price. Any values in addition will accrue to the excess milk price. Such provisions are now in the order under the present base plan and will appropriately distribute the values involved.

3. *Incorporation of producer-handlers in the Class I base plan.* Producer-handlers now supplying the market should have Class I bases computed on a basis which will provide for each producer-handler approximately his present level of sales without any substantial equalization with other producer-handlers or producers supplying fully regulated handlers. With bases so established producer-handlers should become fully regulated handlers, and their milk should be pooled under the order.

Producer-handlers, who process and distribute in the marketing area milk of their own production, are exempt from payment provisions of the order. As a condition for such exemption, control of production, processing and distribution facilities, and limitation of sources of milk not of own production are required to maintain producer-handler status for those whose disposition exceeds 110 pounds daily average.

It was proposed that the producer-handler exemption be deleted for all such persons with daily average disposition of more than 110 pounds daily, but that persons now holding producer-handler designation be given preferential treatment in the computation of Class I bases. The proposal would result in the Class I base of each producer-handler equaling his 1965 daily average Class I disposition of milk of his own production. As a group, the Class I bases of producer-handlers under this proposal would approximate 85 percent of their history of production as compared with approximately 53 percent for producers.

Counsel for an association of Puget Sound producer-handlers moved to exclude from the hearing any consideration that would relate to a change in the status of producer-handlers under the order. It was contended that section 104 of the Food and Agriculture Act of 1965 (Public Law 89-321) precluded any such change. Section 104 states that "The legal status of producer-handlers of milk under the provisions of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, shall be the same subsequent to the adoption of the amendments made by this title as it was prior thereto." Section 104 did not purport to change the previous law but merely reaffirmed it. The language is specifically directed to reaffirming legal status under the statute, rather than under the provisions of any order that has been issued under authority of the statute. The Congress rejected an amendment which would have specifically denied authority for regulation of producer-handlers. Thus, producer-handlers who were potentially subject to regulation under the statute prior to the 1965 amendment remain potentially subject to regulation thereafter. The motion to exclude from the hearing consideration of regulation of producer-handlers is therefore denied.

Producer-handlers have each year since 1962 distributed 5 percent or more of the total Class I sales within the Puget Sound marketing area. In 1962 producer-handler disposition was 5 percent of the total; this percentage increased each year through 1965 when it was 7.55 percent. For the first 6 months of 1966 producer-handlers distributed 7.02 percent of all Class I milk disposed of in the marketing area.

The production of producer-handlers has been a substantially smaller percentage of total production than the relationship of their sales to total sales. For 1965 their production was 3.83 per-

cent of the total and for the first 6 months of 1966 it was 3.69. Producer-handlers disposed of about 85 percent of their production as Class I milk in 1965. This percentage has ranged from 83 to 87 percent since 1960. Meanwhile, 43.9 percent of the milk delivered by producers to regulated handlers was classified as Class I in 1965, and this percentage had declined each year since 1960 when it was 50.77.

The number of producer-handlers increased from about 22 in 1959 and 1960 to 43 in 1965, but dropped to 38 in early 1966. In July 1966 there were 39 producer-handlers operating in the market.

Proponents of regulation contended that producer-handler sales were currently a more disruptive factor than in 1965 even though a slightly smaller percentage of total sales in the market than formerly. Most producer-handlers had made no change in resale prices of their milk at a time in which the Class I prices paid by regulated handlers had increased. While the order Class I price increased 83 cents per hundredweight from $4.87 in April 1965 to $5.70 in August 1966, the actual increase to handlers was 50 cents per hundredweight due to elimination of premium pricing (except for a 10-cent service charge) in the market as order prices advanced.

It was also claimed that an increase from 1964 to 1965 in the amount that the order Class I prices exceeded the uniform price for base milk represented an increase in competitive advantage of producer-handler milk over milk priced and pooled under the order. For 1964 this difference was 83 cents, for 1965, 88 cents. For July 1966, however, the difference was only 76 cents. The decrease for July may be attributed to increased Class I sales of pool milk and to change in the Class II price of the order through amendment.

Basically, however, the proponents maintain that incorporation of producer-handlers in the Class I base plan of the order is a necessary complement of such a plan. Producers maintain that if each producer is to have his returns for Class I milk limited to what is essentially his present share of the market, each producer-handler should likewise be limited to the Class I sales that he has made of his own production as his share of the market. They claim that their proposal represents a means whereby producer-handlers may each retain the benefits of their present (1965 average in their proposal) sales, but would not be permitted to increase Class I sales of their own production without recompense to the pool.

It is estimated that the Class I base of existing producers may approximate 53 percent of their 1966 bases under present provisions. These Class I bases will not be subject to adjustment for either future production history or changes in Class I sales of the market. Not all present producers will find their Class I bases equal to their production resources. If present producer-handlers, representing about 2 percent of the total dairymen supplying the market, are free to increase their production and Class I sales, there will be substantial incentive for present producers to seek to become producer-handlers.

In addition, no provision is made for computing Class I bases for new producers. Such producers must either acquire Class I base from existing producers, or depend upon sharing any increase in Class I sales with other new producers and existing producers qualifying for "hardship" adjustment. If new producer-handlers may enter the market without limit beyond the Class I sales they may make of their own production, it may be expected that this avenue of entrance will attract a substantial share of the dairymen hereafter seeking to enter the Puget Sound market.

Under all these circumstances it is concluded that present producer-handlers should be incorporated into the Class I base plan in such manner that they will each retain approximately the same position as they have presently achieved in the market, but will be limited as are producers in expanding their share of the market from their own production. As is concluded with respect to the Class I bases of producers, the highest of the daily average August–December production of 1964, 1965 or 1966 should determine the production history of each producer-handler. Likewise, daily average sales of his own production in 1966 should be used for adjusting production history base to the Class I base.

The Base Committee proposal was that each producer-handler's Class I base should be restricted to his actual daily average sales of milk of his own production in 1965. The Class I bases of existing producers, on the other hand, include a reserve factor of 20 percent over 1966 sales of pool milk. The effect of computing Class I bases in this manner and pooling sales of producer-handlers and other handlers to compute a common base price for milk delivered under such bases would result in requiring some payment to the pool by producer-handlers even when sales of each producer-handler and of other handlers were at the 1965 daily average level.

To the extent that his production history base exceeds his daily average sales of his own production in 1966 by any amount up to 20 percent of such daily average sales, each producer-handler's Class I base should include a reserve similar to that provided in computation of producers' Class I bases. The Class I base should not, however, exceed the production history base. This will decrease or eliminate any payments into the pool by producer-handlers whose Class I sales are not in excess of their 1966 daily average.

Under such provision the present exemptions of producer-handlers from pricing and pooling should be eliminated. The present producer-handler could pool his 1966 daily average sales with no equalization payment if his base production allowed incorporation of a 20-percent reserve in his Class I base, or with a nominal payment if his production was less than his Class I sales plus 20 percent; for sales in excess of his 1966 daily average sales, he would pay the difference between the Class I and Class II prices, if he used his own milk, or he could buy Class I milk from the pool; if his sales dropped below his 1966 average, he could draw from the pool the difference between the Class II price and the base price on the amount of such decrease in sales.

The method used for computation of bases for present producer-handlers should not apply to the own farm production of handlers operating pool plants. One such handler with substantial own farm production proposed that such production history should receive the same treatment as the production of producer-handlers. As indicated above the computation of bases for producers and producer-handlers is intended to preserve for each the respective shares of the Class I market for which they presently receive the return. Own farm production of handlers fully regulated presently shares the market equally with other producers and should retain this position.

4. *Base rules.* It is necessary that the order specify conditions under which bases may be transferred from one producer to another, under which bases will be forfeited, and other conditions required for administration of the Class I base program.

(a) *Transfers.* Class I bases should be transferable in whole and partially in amounts of not less than 100 pounds under conditions that will insure that such bases will be held at all times by bona fide producers. Such transferability will be in the best interest of the public, existing producers and prospective new producers.

The Base Plan Committee proposed that base be transferable only to persons who were producers or become producers within the month of transfer, in minimum amounts of 100 pounds daily (production history) base (unless transferor's daily base was less than 100 pounds). They proposed that producers who had received base by transfer within 1 year be barred from making a further transfer except as they qualify under specified hardship conditions. Producers acquiring base under hardship provisions and new producers would have been ineligible to transfer base for a period of 2 years after it was acquired; new producers could no longer increase their base through deliveries if they acquired base by transfer. Written notice to the market administrator would be required with data sufficient to determine the bona fide nature of the transfer under the limitations proposed.

Proponents maintain that failure to provide relatively free transfer of base would tend to obstruct and delay changes toward more efficient organization of dairy farms and more economical production of milk. They point out that a phenomenal period of production adjustment is now occurring in which the size of production unit is a basic consideration in adopting new techniques for greater efficiency, and that this situation may be expected to continue.

They claim that this situation makes transferability of bases in the interest of the public to provide opportunities for more economical production of milk; in the interest of existing producers because of their immediate concern in adjustment of size of production units, and as a means whereby retirement of marginal producers and expansion of others to more efficient units might be facilitated. The opportunity for new producers to acquire base by transfer instead of by earning it over a period of time as they proposed, was represented as an alternative accommodation to those who may wish to produce only base milk from the start.

The obstructions and delays to economic changes which base transfers might alleviate arise because producer bases are fixed on past history that cannot be changed to accommodate changes needed for more efficient operation. The more difficult it is for existing producers to change production history, or for new producers to establish such history, the greater the difficulty in responding to opportunities for change in size of production units to achieve efficiency.

Transferable bases may become an asset of value, which could be a windfall to existing producers who may wish to decrease production or cease entirely. Likewise the cost of acquiring base by transfer could become a capital cost to producers, either old or new, receiving it, which would tend to offset the economies in production that might result from change in size of production unit.

Despite these considerations, it is concluded that, in association with a Class I base plan such as herein provided, transferability of bases will be in the best interest of the public, existing producers and prospective producers. Under the plan provided existing producer Class I bases are frozen at the levels first computed, and no new producer Class I bases can be computed from future deliveries of milk to the market. There is thus substantial need for another method whereby adjustment of size of production units may be facilitated.

The proposals of the Base Plan Committee with respect to transfers of bases computed for existing producers provide safeguards to insure that bases will be held by bona fide producers. Transfers may be made only to a person who currently is a producer or who becomes a producer within the month of transfer. Producers who have received base by transfer are not eligible to make further transfers within a 12-month period except under circumstances which a Base Committee finds would otherwise result in substantial hardship to such producer. Producers who are issued hardship adjustment because deliveries in the base period were not representative may not transfer base for a 2-year period.

With respect to the production history bases and Class I bases computed for producer-handlers, provision should be made that transfer of a Class I base in its entirety may be made to a successor in interest who will operate both the production and plant facilities of the producer-handler. Transfer of base under other circumstances should involve adjustment of production history base to Class I base by the percentage used for this purpose in computation of the Class I bases of regular producers. Present producer-handlers will thus retain bases computed to preserve their individual share of the market so long as they continue production or a successor in interest operates the production and plant facilities. For transfers to other producers, or other producer-handlers, the Class I base available for transfer, either in whole or in part, by a producer-handler should be the same amount of Class I base as would have been computed for a producer from identical production history.

The Base Plan Committee had proposed that both production history base and Class I base be transferred. Under the plan herein provided production history base serves only for computation of the Class I base which is not thereafter recomputed. Transfer of production history base would serve no purpose under these provisions. It is provided that the producer transferring Class I base shall have his production history reduced in an equivalent amount.

(b) *Forfeitures.* Two circumstances were proposed as a reason for forfeiture of base, failure to deliver producer milk, and delivery of excess milk to other markets.

Failure to deliver. It should be provided that a base holder who discontinues delivery of producer milk for a period of 60 consecutive days shall forfeit Class I base. An exception should be provided with respect to base holders entering the military service, who should be able to retain their bases until 1 year after being released from active duty.

The order presently requires forfeiture of base after 45 consecutive days of nondelivery of producer (Grade A) milk. Under the present plan, producers without a base are paid for substantial proportions (45 to 70 percent depending upon the month) of their current deliveries as base milk, and can reestablish a base in the next August–December period. Producers holding a base should be producers supplying the market currently. A reasonable period of nondelivery should be provided before forfeiture becomes effective to allow for emergency situations such as temporary degrading, quarantines, or loss of barns, etc. In view of the inability to reestablish a base under the Class I base plan proposed, forfeiture should not occur until after 60 consecutive days of nondelivery. Any justifiable reason for nondelivery of Grade A milk beyond this period may be recognized by a Producers' Base Committee through extension of the date of which forfeiture will occur.

Military duty represents a cause for nondelivery for which a producer should not be required to forfeit his base until 1 year after his return from service.

(c) *Antidumping provisions.* Provision should be made for reduction of the quantity of milk for which a producer is paid the base price if milk is sold to another fluid market.

The Act states that "In the case of any producer who during any accounting period delivers a portion of his milk to persons not fully regulated by the order, provision may be made for reducing the allocation of, or payments to be received by, any such producer * * * to compensate for any marketings of milk to such other persons for such period or periods as necessary to insure equitable participation in marketings among all producers".

The evident purpose of this provision is to discourage a producer selling base milk under a Class I base plan and who thus enjoys all the benefits of participation in one market from supplying his excess to another market for fluid use at a blend price or at some other price above the excess price of his own market. The injury would be to producers in the other market whose prices are diluted with or undercut by the producer's excess milk.

It was proposed that under any circumstances in which deliveries were made to plants other than Puget Sound pool plants, a producer should forfeit all base milk for the days on which such deliveries were made and that this forfeiture should permanently affect the Class I base of such producer.

The objective of this provision can be achieved if forfeiture of base occurs only with respect to deliveries to nonpool plants that engage in distribution of fluid milk products to wholesale or retail outlets or in supplying fluid milk products to plants so engaged. Forfeiture equal to the producer's adjusted base for days of delivery to such plants is appropriate as an administratively feasible quantity related to the producer's participation in the Puget Sound market. Such forfeiture, however, should be only for the month in which deliveries are made or in which it is first established that they had been made. Permanent forfeiture is not required to provide protection against dumping.

In order that substantial inequities may not occur under this provision in cases in which producers may not be aware that their milk deliveries are available for fluid use of unregulated plants, provision should be made that upon written application of the producer, the forfeiture may be rescinded or adjusted upon review by a Producer Base Committee.

(d) *General rules.* Certain general base rules should be established for the administration of the Class I base plan.

Provisions comparable to the notification rules concerning bases under the current order are incorporated in the amended order. These provide that the market administrator, will as soon as possible after computation, notify the producer, the handler receiving such producer's milk and the cooperative association of which the producer is a member, of the amount of each producer's daily base and Class I base. Following receipt of such notice, each handler must post, in a conspicuous place in his plant, a list showing the daily

base and Class I base of each producer whose milk is received at the plant.

Only one quantity of base milk should apply where the land, buildings and other production resources are owned or operated jointly. Only one base will be recognized with respect to each farm. This will assist in maintaining the integrity of the plan by lessening the means available by which bases might be manipulated.

5. *Provisions for alleviation of hardship and inequity.* Administrative guidelines should be established for review of hardship claims and the alleviation of hardship and inequities to producers under the Class I base plan.

The 1965 amendments to the Act state briefly that "Any increase in class one base resulting from enlarged or increased consumption and any producer class one bases forfeited or surrendered shall first be made available to new producers and to the alleviation of hardship and inequity among producers".

The Class I Base Plan Committee proposed that any hardship among producers be alleviated whether or not additional Class I sales are available. The Committee proposed certain rules for determining hardship, that full publicity be accorded such cases, and that open hearing be held, which with other information would be used in determining the hardship adjustment. The market administrator, as agent of the Secretary, would be the deciding official in such cases.

Certain provisions are included in the order to define those circumstances in which a producer may apply for relief. A producer may apply for adjustment or alleviation of hardship or inequity if he has not received a Class I base; his production history base is not representative of his level of milk production in the base period because of loss of buildings, herd, or other facilities by fire, flood, or storms; official quarantine, or military service; he is subject to loss of base for failure to deliver or for delivery to other markets; or is limited in his opportunity to transfer base.

Hardship should be considered as any circumstance which was out of the control of a producer including military service obligations. However, conditions over which a producer could have exerted control through prudent precaution should not be cause for hardship adjustment of base. These conditions would include, for example, inability to obtain adequate labor, or equipment failure during the representative base period.

There are limitations on the transfer of base for which producers may apply for relief under certain conditions that may involve inequity. Such inequities might result from these limitations in case of death, disability, military service, sale of production unit, retirement, loss of lease, or other calamity affecting production facilities.

The producer must be responsible for filing a request for review of any hardship condition or inequity affecting him. This would be a written request to the market administrator to review a claimed hardship or inequity stating the conditions that caused such alleged hardship or inequity, the extent of relief or adjustment requested, the basis upon which the amount of adjustment requested was determined, the reasons why the relief or adjustment should be granted.

The market administrator shall establish one or more "Producer Base Committees" consisting of five producers each to be appointed by him. Each committee shall review the requests for relief from hardship or inequity referred to it by the market administrator in a meeting in which the recording secretary shall be the market administrator or his designated representative. Recommendations on each request must be endorsed by at least three of such committee members to represent the action of the committee.

The committee shall either reject the request or indicate the nature and extent of relief granted with respect to requests involving Class I base not issued to a producer, loss or potential loss of Class I base due to deliveries to a nonpool plant for fluid uses or discontinued deliveries, or inability to transfer base. With respect to requests claiming that production history base is not representative of milk production in the base period because of loss of buildings, herds, or other facilities by fire, flood, or storms, official quarantine, or military service, the committee shall either reject the request or provide a daily quantity of "hardship" adjustment milk. Such daily hardship adjustment milk, when delivered in excess of the producer's base, shall be included with deliveries of new producers in the computation of base milk to which increase in Class I sales may be assigned. As pointed out earlier, inadequate labor, or equipment failure will not be considered justification for issuance of a quantity of "hardship" adjustment milk.

Producer Base Committee recommendations to deny any request shall be final upon notification of the producer, subject only to appeal by such producer to the Director, Dairy Division. Recommendations of the committee to grant a request, in whole or in part, shall be transmitted to the Director, Dairy Division, and shall become final unless vetoed by the Director within 15 days after transmitted.

The market administrator is authorized to reimburse committee members for necessary travel and subsistence expenses incurred in carrying out their duties as committee members. Reimbursement to committee members shall be from monies collected under the administrative expense fund for the administration of the order.

6. *Payments on other source milk.* No change should be made in the provisions of the present order which relate to the obligations imposed on (1) unregulated milk distributed in this marketing area or received at a pool plant from a plant not regulated by any Federal order, and (2) milk distributed in this marketing area by a plant under another Federal order or received at a pool plant from a plant regulated under another Federal order.

The present order provisions relating to other source milk are designed to remove any competitive advantage handlers using other source milk in Class I may have over handlers using producer milk for such sales, thereby assuring equity among handlers in the sale of milk in the regulated market. Generally speaking, this objective is considered to be achieved by classified pricing and interorder alignment of Class I prices with respect to milk priced under other Federal orders. With respect to unregulated milk, a combination of allocation sequence, payments at the difference between the Class I and uniform price, and opportunity to demonstrate that dairy farmers have been paid for all their milk at the equivalent of order prices based on class utilization are provided.

The proposals to revise the treatment of other source milk were designed to reserve for Puget Sound producers the returns from all Class I sales in the marketing area (and elsewhere if by Puget Sound pool plants) as long as such sales did not exceed 80 percent of milk from producers. This would be accomplished by requiring a payment on all nonpool milk used in Class I at the difference between the Class I and Class II prices.

The present order provisions relating to other source milk payments were incorporated in the order August 1, 1964. The Supreme Court of the United States on June 4, 1962, issued a decision in the case of Lehigh Valley Cooperative Farms, Inc., et al., versus United States et al., which invalidated certain applications of the "compensatory payment" provisions of the New York-New Jersey milk order. Subsequently, on the basis of hearing in January 1963, revised provisions substantially uniform in all orders were developed to replace former provisions which might have been considered parallel to those invalidated under the New York-New Jersey order.

Other source milk, whether from unregulated plants or from other order plants, has not been a competitive factor in the Puget Sound market. There has been no route distribution of fluid milk products from such plants at least since 1951, the earliest period for which data are in the record. While some nonpool milk eligible for fluid use has been received at pool plants, there is no evidence in the record that any of such milk has been assigned to Class I use. Receipts of such milk have been less in 1963 and subsequent years than in 1961 and 1962. During the period January 1963 through July 1964, no payments were applicable with respect to any other source milk.

The adoption of a Class I base plan as the method of distributing among producers the value of pool milk used by regulated handlers in no way affects the competitive balance between costs of pool milk and nonpool milk. There is no reason to expect that other source milk will enter the market to any greater degree than has previously been the case. It is therefore concluded that no change should be made on the basis of this record in the provisions applicable to such milk.

7. *Miscellaneous provisions*—(a) *Revision of excess milk location differential.* The location adjustment to producers applicable to excess milk at plants in District 1, Kitsap, Mason, or Pierce Counties should be revised.

The order now provides that handlers with plants in District 1 or in these counties using producer milk in such products as ice cream and cottage cheese pay an additional 25 cents per hundredweight for the milk. A corresponding provision increases the excess price on producer milk delivered to such plants by 25 cents more than the price for excess milk received at other plant locations.

When this provision was first incorporated in the order the amounts of producer milk used in such products as ice cream and cottage cheese at District 1 plants was about equal to the amounts of excess milk received at such plants. However, the use of milk in such premium outlets has increased over the years while the receipts of excess milk at these plants have declined. Thus, handlers have paid more monies into the equalization fund on the premium uses than that required to cover the 25 cents per hundredweight location differential on excess milk. The remaining monies have been added to the base milk price paid to all producers.

The proposed Class I base plan will reduce the quantity of base milk assigned to producers. This can easily result in the delivery of a greater quantity of excess milk to handlers' plants in District 1, Kitsap, Mason, or Pierce Counties than the quantity of milk on which such handlers pay the 25 cents differential. This would require that the price for base milk delivered by producers be reduced by an amount necessary to fully cover the plus 25 cents location differential for excess milk at these plants. Reduction of the base milk price of all producers to provide the necessary funds to pay producers of excess milk the 25 cents differential at such plants would tend to destroy the effectiveness of the proposed base plan and would not be in the best interests of all producers on the market.

Handlers operating District 1, Kitsap, Mason, or Pierce County plants will continue to pay into the equalization fund the 25 cents per hundredweight differential on milk used in the higher-valued manufactured product uses. Such monies should be prorated to excess milk delivered to these plants to the extent they are available, but not to exceed the 25 cents per hundredweight maximum. If at any time more monies are available than needed to pay the additional 25 cents for such excess milk, the overage will be added to values used in computing the price for base milk.

(b) *Continuation of present base and excess plan.* The base and excess plan under the present order should continue in the event of producer rejection of the proposed Class I base plan or if the authority for it expires while it is in effect after its incorporation in the present order.

The Class I Base Plan Committee considered whether to retain the present base and excess plan or depend upon a blend pricing system for distributing producer returns for milk in each month if the Class I base plan failed of approval. The Committee proposed retention of the base and excess plan in that event.

The present base and excess plan has reduced the seasonal fluctuation of milk production in relation to fluid needs of the market, although there is some indication that it has contributed to a total increase of producer receipts at plants under the order. However, prior to any revocation of the base and excess plan under this order opportunity should be given for further consideration of such action at a public hearing.

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 order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order amending the order. The following order amending the order as amended regulating the handling of milk in the Puget Sound, Wash., marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

From the effective date of this amendment through December 31, 1969, the following provisions are substituted for specified order provisions as indicated below:

Class I base plan provisions. 1. In § 1125.8 the introductory text is substituted for the present introductory text as follows:

§ 1125.8 Pool plant.

"Pool plant" means any plant, other than an other order plant, approved by a health authority having jurisdiction in the marketing area for receiving, processing, or packaging of milk qualified for distribution as Grade A milk, which meets the conditions of paragraph (a) or (b) of this section:

* * * * *

2. In § 1125.9 paragraph (b) is substituted for the present paragraph (b) as follows:

§ 1125.9 Nonpool plant.

* * * * *

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order issued pursuant to the Act.

* * * * *

§ 1125.10 [Amended]

3. In § 1125.10, paragraph (d) is revoked.

4. In § 1125.11, paragraph (c) is substituted for the present paragraph (c) as follows:

§ 1125.11 Producer.

* * * * *

(c) Who is not a producer-handler, as defined in any order issued pursuant to the Act; and

* * * * *

5. In § 1125.13, the introductory text of paragraph (a) is substituted for the present introductory text as follows:

§ 1125.13 Other source milk.

* * * * *

(a) Receipts during the month of fluid milk products from any source (including all receipts in fluid form from a producer-handler or the plant of a producer-handler as defined under any other Federal order) except:

* * * * *

§ 1125.14 [Revoked]

6. Section 1125.14 is revoked.

7. Section 1125.110 is substituted for § 1125.17 as follows:

§ 1125.110 Production history base and Class I base.

(a) "Production history base" means a quantity of milk in pounds per day produced by a producer in a past period as computed pursuant to § 1125.120.

(b) "Class I base" means a quantity of milk in pounds per day as computed pursuant to § 1125.121 or § 1125.122 for which a producer may receive the base milk price.

8. Section 1125.111 is substituted for §1125.18 as follows:

§ 1125.111 Base milk and excess milk.

(a) "Base milk" means:

(1) Milk received from a producer which is not in excess of his Class I base times the number of days of production of producer milk during the month;

(2) Milk received from a producer for whom no Class I base is computed in the amount assigned pursuant to § 1125.122 (b)(1); and

(3) Milk received from a producer to whom a Class I base has been issued, in the amount assigned pursuant to § 1125.122(b)(2).

(b) "Excess milk" means milk received from a producer during the month that is in excess of base milk received from such producer during the month.

9. Section 1125.22(k)(2) is substituted for the present § 1125.22(k)(2), as follows:

§ 1125.22 Duties.

* * * * *

(k) * * *

(2) On or before the 13th day of each month, the weighted average and uniform prices computed pursuant to §§ 1125.71 and 1125.72, the location adjustment for excess milk computed pursuant to § 1125.81(a)(2), and the butterfat differential computed pursuant to § 1125.82, each applicable to milk received during the preceding month;

* * * * *

§ 1125.30 [Amended]

10. In § 1125.30, paragraph (b) is revoked.

§ 1125.33 [Amended]

11. In § 1125.33, the reference to § 1125.14 is deleted.

12. In § 1125.35(a), subparagraph (7) is added as follows:

§ 1125.35 Handler report to producers.

(a) * * *

(7) The Class I and Class II prices for 3.5 percent milk, and the marketwide percentage of producer milk utilized in each class during the month.

* * * * *

13. In § 1125.44, paragraph (c)(2) is substituted for the present paragraph (c)(2) as follows:

§ 1125.44 Interplant movements.

* * * * *

(c) * * *

(2) As Class I milk, if transferred or diverted to a producer-handler as defined in any order issued pursuant to the Act, or to the plant of such a producer-handler;

* * * * *

14. In § 1125.46, paragraph (a)(3)(iii) is substituted for the present (a)(3)(iii) as follows:

§ 1125.46 Allocation of skim milk and butterfat classified.

* * * * *

(a) * * *

(3) * * *

(iii) Receipts of fluid milk products from a producer-handler as defined under any other Federal order;

* * * * *

15. A new § 1125.125 is substituted for the present § 1125.65 as follows:

§ 1125.125 Department of Institutions, State of Washington.

Sections 1125.30, 1125.31, 1125.40 through 1125.46, 1125.50 through 1125.55, 1125.120 through 1125.124, 1125.70 through 1125.72, 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 treated as a receipt of other source milk from non-Grade A sources.

16. Section 1125.81(a)(2) is substituted for the present § 1125.81(a)(2) as follows:

§ 1125.81 Location adjustment to producers and on nonpool milk.

(a) * * *

(2) There shall be added to the uniform price for excess milk received from producers at plants located in District 1 or in the counties of Kitsap, Mason, or Pierce, a location adjustment not to exceed 25 cents per hundredweight, rounded to the nearest full cent, computed by dividing the amount computed pursuant to § 1125.54(c) by the total hundredweight of excess milk received at such plants.

* * * * *

17. Section 1125.120 is substituted for § 1125.60 as follows:

§ 1125.120 Computation of production history base.

The market administrator shall determine for producers and producer handlers production history bases computed as follows:

(a) For each producer delivering milk in the month immediately preceding the effective date of this section who also delivered milk on 120 days or more during the months of August through December 1966, such production history base shall be the highest of:

(1) The total pounds of producer milk delivered by such person to a handler on 120 days or more during the months of August 1966 through December 1966, inclusive, divided by the number of days from the date of his first delivery within such period to the end of such 5-month period;

(2) The amount similarly computed with respect to such person's deliveries during the months of August 1965 through December 1965, inclusive; or

(3) The amount similarly computed with respect to such person's deliveries during the months of August 1964 through December 1964, inclusive.

(b) For each person who held designation as a producer-handler in the month prior to the date this paragraph becomes effective and who held such designation for 120 days or more in the months of August through December 1966, the production history base shall be the daily average of his own production of milk for 120 days or more in the months of August through December 1964, August through December 1965, and August through December 1966, whichever is highest.

(c) Each person who becomes a producer as a result of a plant to which he delivers milk becoming a pool plant under the order pursuant to § 1125.8 shall have a production history base computed as though his deliveries of Grade A milk to such plant in the prior periods used for determining bases specified in paragraph (a) of this section had been deliveries of producer milk.

(d) With respect to computation of such bases the following rules shall apply:

(1) If a producer operated more than one farm at the same time during any specified August–December period, a separate computation shall be made with respect to producer milk delivered from each such farm for such period.

(2) Only one base shall be allotted with respect to milk produced by one or more persons where the land, buildings and equipment used are jointly owned or operated.

18. Section 1125.121 is substituted for § 1125.61 as follows:

§ 1125.121 Computation of Class I base for producers with production history bases.

(a) Each producer for whom a production history base pursuant to § 1125.120(a) may be computed shall be issued Class I base as follows:

(1) The total of the Class I bases to be issued to persons with production history bases pursuant to § 1125.120(a) shall be the average daily Class I dispositions pursuant to § 1125.41(a) of producer milk for the year of 1966, multiplied by 120 percent;

(2) The Class I base for each such person shall be determined by multiplying his production history base by a percentage rounded to the third decimal place obtained by dividing the total of Class I bases pursuant to subparagraph (1) of this paragraph by the sum of the production history bases issued to such producers.

(b) The Class I base for each person for whom a production history base is computed pursuant to § 1125.120(b) shall be the lesser of such production history base or 120 percent of his average daily Class I dispositions of milk of his own production (Class I disposition less receipts from pool plants) for the year of 1966.

(c) The Class I base of each person for whom a production history base is determined pursuant to § 1125.120(c)

shall be his production history base multiplied by the percentage specified in paragraph (a) (2) of this section.

19. A new § 1125.122 is added to read as follows:

§ 1125.122 Computation of base milk for new producer and hardship cases.

For each month a quantity of base milk shall be computed for each producer who was not issued a production history base pursuant to § 1125.120 and a quantity of additional base milk shall be computed for each producer to whom a "hardship" adjustment has been issued as follows:

(a) Compute the sum of:

(1) 1.20 times the pounds by which producer milk classified as Class I for the month exceeds the Class I classification of producer milk and Class I disposition by producer-handlers of their own production in the corresponding month of 1966; and

(2) The pounds by which the current monthly total of Class I bases issued to producers and producer-handlers exceeds the total of base milk delivered in the month.

(b) Assign the resulting pounds, if any, as base milk pro rata to:

(1) The pounds of milk delivered during the month by each producer without a daily base; and

(2) The pounds of milk delivered by a producer to whom a hardship adjustment is issued, that are the lesser of:

(i) The pounds of such adjustment times the number of days production delivered in the month; or

(ii) The pounds by which total deliveries of milk in the month by such producer exceed base milk pursuant to § 1125.111(a).

20. Section 1125.123 is added as follows:

§ 1125.123 Base rules.

The following rules shall be observed in the determination of bases:

(a) A Class I base or a portion of a Class I base may be transferred from one person to another if the conditions listed below are met:

(1) The market administrator is notified in writing by the holder of the Class I base on or before the last day of the month of transfer of the name of the person to whom the Class I base is to be transferred, the effective date of the transfer and the amount of Class I base to be transferred if less than the entire Class I base held by the transferor;

(2) It is established to the satisfaction of the market administrator that the conveyance of such 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 Class I 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 Class I 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 Class I base received with Class I base already held shall be considered a partial transfer;

(6) A transfer of a complete Class I base of a producer to a person who does not already hold a Class I 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 Class I 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 Class I base except as permitted under the provisions of § 1125.124; and

(8) A person who was issued hardship adjustment pursuant to the provisions of § 1125.124 may not transfer Class I base to another person until 2 years after the hardship adjustment was issued.

(b) Effective for the first month during which it becomes known that a producer has delivered milk for fluid use other than as diverted producer milk to a plant not regulated under this Part 1125, which is engaged in distribution of fluid milk products to wholesale or retail outlets or in supplying fluid milk products to a plant so engaged, such producer shall have his base milk reduced by an amount equal to his Class I base for each day when any such deliveries were made to such nonpool plant.

(c) A person who discontinues deliveries of producer milk for a period of 60 consecutive days after a daily base is issued to him shall forfeit any daily base held pursuant to the provisions of this order, except that a person entering military service may retain his daily base until 1 year after being released from active military duty.

(d) As soon as production history bases and Class I bases are computed by the market administrator after the effective date of these provisions, notice of the amount of each producer's production history base and Class I 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 Class I base of each producer whose milk is received at such plant.

(e) Only one quantity of base milk pursuant to § 1125.111(a) shall be computed with respect to milk produced by one or more persons where the land, buildings and equipment used, are jointly owned or operated.

(f) A producer who transfers Class I base computed pursuant to § 1125.121 (a) or (c) shall have his production history base reduced in the same proportion that the Class I base transferred was of the total Class I base held by the transferor producer.

(g) With respect to transfers of Class I bases computed pursuant to § 1125.121 (b), the following shall apply:

(1) If the transfer is of the entire base to a successor in interest who will operate both the production and plant facilities of the transferor producer, the transferee producer will receive the transferee producer's Class I base; and

(2) If the transfer is of a partial base or to a producer other than one described in subparagraph (1) of this paragraph, the total Class I base available for transfer shall be determined by multiplying the production history base of the transferor by the percentage specified in § 1125.121(a)(2). The production history base of the transferor producer shall be reduced by an amount equal to the quotient obtained by dividing the Class I base transferred by such percentage.

§ 1125.124 Relief from hardship or inequity.

Requests of producers for relief from hardship or inequity arising under the provisions of § 1125.120 through § 1125.123 will be subject to the following:

(a) A producer may request review of the following circumstances because of alleged hardship or inequity:

(1) He was not issued a Class I base pursuant to § 1125.121;

(2) His production history base pursuant to § 1125.120 is alleged to not be representative of his level of milk production in the base period due to a loss of milk production beyond the control of the producer such as loss of buildings, herds, or other facilities by fire, flood, or storms, official quarantine, or military service of the producer or his son;

(3) Loss or potential loss of Class I base pursuant to § 1125.123 (b) or (c); and

(4) Inability to transfer base due to the provisions of § 1125.123(a) (7) or (8).

(b) The producer shall file with the market administrator a request in writing for review of hardship or inequity setting forth:

(1) Conditions that caused the alleged hardship or inequity;

(2) The extent of the relief or adjustment requested;

(3) The basis upon which the amount of adjustment requested was determined; and

(4) Reasons why the relief or adjustment should be granted.

(c) One or more Producer Base Committees shall be established and function as follows:

(1) Each Producer Base Committee shall consist of five producers appointed by the market administrator.

(2) Each committee shall review the requests for relief from hardship or inequity referred to it by the market administrator at a meeting in which the market administrator or his representative serves as recording secretary.

(3) Recommendations with respect to each such request shall be endorsed at the meeting by at least three committee members and shall:

(i) With respect to requests pursuant to paragraph (a) (1), (3), or (4) of this section, either reject such request or in-

dicate the nature and extent to which the producer shall be granted exception to the provisions involved.

(ii) With respect to requests pursuant to paragraph (a)(2) of this section, either reject the request or provide adjustment in the form of a daily quantity of "hardship" adjustment milk which when delivered in excess of such producer's Class I base, may be included in the computation of base milk pursuant to § 1125.122. In considering such requests the loss of milk production due to the following shall not be considered a basis for hardship adjustment:

(a) Loss of milk due to mechanical failure of farm tank or other farm equipment; and

(b) Inability to obtain adequate labor to maintain milk production, except that hardship adjustment may be granted in the case of a producer or the son of a producer who entered into military service directly from employment in milk production;

(4) Recommendation of the Producer Base Committee shall:

(i) If to deny the request, be final upon notification to the producer, subject only to appeal by the producer to the Director, Dairy Division; or

(ii) If to grant the request in whole or in part, be transmitted to the Director, Dairy Division, and shall become final unless vetoed by such Director within 15 days after transmittal.

(5) Committee members shall be reimbursed by the market administrator from the funds collected under § 1125.88 for necessary travel and subsistence expenses incurred in the performance of their duties as committee members.

Signed at Washington, D.C., on April 7, 1967.

CLARENCE H. GIRARD,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 67-3986; Filed, Apr. 11, 1967; 8:47 a.m.]

DEPARTMENT OF LABOR

Division of Public Contracts

[41 CFR Part 50-204]

RADIATION SAFETY AND HEALTH STANDARDS

Application in Nebraska

The State of Nebraska has recently entered into an agreement with the Atomic Energy Commission (31 F.R. 11948) pursuant to section 274(b) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b)). This agreement makes that State's program for control of radiation sources effective pursuant to 41 CFR 50-204.320(c)(1) (31 F.R. 1075) and eligible for a determination pursuant to 41 CFR 50-204.320(c)(2) that such program is currently compatible with the requirements of the Department of Labor's safety and health standards for Federal supply contracts (41 CFR Part 50-204).

This agreement brings into compliance with 41 CFR Part 50-204 any employer in Nebraska who possesses or uses source material, byproduct material, or special nuclear material, as defined in the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), and has registered such sources with the State of Nebraska, or is operating under a license issued by the State of Nebraska, and in accordance with the requirements of Nebraska's laws and regulations, insofar as his possession and use of such material is concerned, unless the Secretary of Labor after conference with the Atomic Energy Commission, shall determine that the State's program for control of these radiation sources is incompatible with the requirements of 41 CFR Part 50-204. No such determination has been made.

This agreement shall also be deemed to bring into compliance with 41 CFR Part 50-204 any employer who possesses or uses radiation sources other than source material, byproduct material, or special nuclear material, as defined in the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), insofar as his possession and use of such material is concerned, if he has registered such sources with the State of Nebraska, or is operating under a license issued by the State of Nebraska, and if his operation is entirely in accordance with the requirements of Nebraska's laws and regulations, if and when the State's program for control of these radiation sources is the subject of a currently effective determination by the Secretary of Labor that such program is compatible with the requirements of 41 CFR Part 50-204. I hereby propose to make such a determination.

I also propose to add the State of Nebraska to the list of States set forth in 41 CFR 50-204.320(c) (1) and (2) (31 F.R. 1075).

Interested persons may submit written data, views, or argument regarding this proposal by mailing them to the Director of the Bureau of Labor Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, D.C. 20212, within 30 days after this notice is published in the FEDERAL REGISTER.

(Secs. 1, 4, 49 Stat. 2036, 2038; 41 U.S.C. 35, 38; Sec. 7, 60 Stat. 241; 5 U.S.C. 1006)

Signed at Washington, D.C., this 5th day of April 1967.

W. WILLARD WIRTZ,
Secretary of Labor.

[F.R. Doc. 67-3976; Filed, Apr. 11, 1967; 8:47 a.m.]

[41 CFR Part 50-204]

RADIATION SAFETY AND HEALTH STANDARDS

Application in Washington

The State of Washington has recently entered into an agreement with the Atomic Energy Commission (31 F.R. 16375) pursuant to section 274(b) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b)). This agreement makes that State's program for control of radiation sources effective pursuant to 41 CFR 50-204.320(c)(1) (31 F.R. 1075) and eligible for a determination pursuant to 41 CFR 50-204.320(c)(2) that such program is currently compatible with the requirements of the Department of Labor's safety and health standards for Federal supply contracts (41 CFR Part 50-204).

This agreement brings into compliance with 41 CFR Part 50-204 any employer in Washington who possesses or uses source material, byproduct material, or special nuclear material, as defined in the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), and has registered such sources with the State of Washington, or is operating under a license issued by the State of Washington, and in accordance with the requirements of Washington's laws and regulations, insofar as his possession and use of such material is concerned, unless the Secretary of Labor after conference with the Atomic Energy Commission, shall determine that the State's program for control of these radiation sources is incompatible with the requirements of 41 CFR Part 50-204. No such determination has been made.

This agreement shall also be deemed to bring into compliance with 41 CFR Part 50-204 any employer who possesses or uses radiation sources other than source material, byproduct material, or special nuclear material, as defined in the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), insofar as his possession and use of such material is concerned, if he has registered such sources with the State of Washington, or is operating under a license issued by the State of Washington, and if his operation is entirely in accordance with the requirements of Washington's laws and regulations, if and when the State's program for control of these radiation sources is the subject of a currently effective determination by the Secretary of Labor that such program is compatible with the requirements of 41 CFR Part 50-204. I hereby propose to make such a determination.

I also propose to add the State of Washington to the list of States set forth in 41 CFR 50-204.320(c) (1) and (2) (31 F.R. 1075).

Interested persons may submit written data, views, or argument regarding this proposal by mailing them to the Director of the Bureau of Labor Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, D.C. 20212, within 30 days after this notice is published in the FEDERAL REGISTER.

(Secs. 1, 4, 49 Stat. 2036, 2038; 41 U.S.C. 35, 38; Sec. 7, 60 Stat. 241; 5 U.S.C. 1006)

Signed at Washington, D.C., this 5th day of April 1967.

W. WILLARD WIRTZ,
Secretary of Labor.

[F.R. Doc. 67-3977; Filed, Apr. 11, 1967; 8:47 a.m.]

FEDERAL RESERVE SYSTEM

[12 CFR Part 218]

[Reg. R]

PERMISSIBLE RELATIONSHIPS WITH DEALERS IN SECURITIES

Proposed Exceptions

The Board of Governors is considering amending § 218.2, which delineates permissible personnel relationships between banks that are members of the Federal Reserve System and dealers in securities.

That section exempts from the general prohibition of section 32 of the Banking Act of 1933 (12 U.S.C. 78) interlocking relationships between member banks and firms dealing only in certain types of obligations. The proposed amendment would add to such types of obligations "general obligations of any State or of any political subdivision thereof." The effect of the amendment would be to permit interlocking relationships between member banks and securities dealers that confine themselves to underwriting and dealing in securities which member banks themselves may lawfully underwrite.

The amended § 218.2 would read as follows:

§ 218.2 Exceptions.

Pursuant to the authority vested in it by section 32, the Board of Governors of the Federal Reserve System hereby grants permission for any officer, director, or employee of any member bank of the Federal Reserve System, unless otherwise prohibited, to be at the same time an officer, director, or employee of any corporation or unincorporated association, a partner or employee of any partnership, or an individual, engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of any stocks, bonds, or other similar securities, if so engaged only as to the following securities: Bonds, notes, certificates of indebtedness, and Treasury bills of the United States; obligations fully guaranteed both as to principal and interest by the United States; general obligations of Territories, dependencies, and insular possessions of the United States; obligations of Federal Intermediate Credit banks, Federal Land banks, Central Bank for Cooperatives, Federal Home Loan banks, the Federal National Mortgage Association, and the Tennessee Valley Authority; certificates of interest of the Commodity Credit Corporation; general obligations of any State or of any political subdivision thereof; and, subject to specifications contained in paragraph Seventh of section 5136, Revised Statutes (12 U.S.C. 24), obligations of the International Bank for Reconstruction and Development, and Inter-American Development Bank, the Asian Development Bank, local public agencies, public housing agencies, and obligations insured by the Federal Housing Administrator.

This notice is published pursuant to section 553(b), Title 5, United States Code, and section 1(b) of the rules of procedure of the Board of Governors of the Federal Reserve System (12 CFR 262.1(b)).

To aid in consideration of the foregoing matter by the Board, interested persons are invited to submit relevant data, views, or arguments. Such material may be sent directly to the Board or to any Federal Reserve Bank. All such material should be submitted in writing to be received by the Board not later than May 1, 1967.

Dated at Washington, D.C., this 6th day of April 1967.

By order of the Board of Governors.

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 67-3963; Filed, Apr. 11, 1967; 8:45 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Antidumping—ATS 643.3–c]

PLASTIC CONTAINERS FROM CANADA

Notice of Intent To Discontinue Investigation and of Tentative Determination That No Sales Exist Below Fair Value

APRIL 3, 1967.

Information was received on January 25, 1966, that plastic containers from Canada manufactured by Reliance Products, Ltd., Winnipeg, Canada, were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.). This information was the subject of an "Antidumping Proceeding Notice" which was published pursuant to § 14.6(d), Customs Regulations (19 CFR 14.6(d)), in the FEDERAL REGISTER of April 7, 1966, on page 5527 thereof.

On August 31, 1966, the Commissioner of Customs issued a withholding of appraisement notice with respect to such merchandise, which was published in the FEDERAL REGISTER dated September 7, 1966.

Two types of plastic containers were imported from Reliance Products, Ltd., industrial type and consumer type. Purchase price and adjusted home market price were found to be the appropriate basis of comparison for fair value purposes with regard to both types.

In calculating purchase price deductions were made for included freight duty and brokerage. As Canadian sales tax was included in the home market price of the consumer type containers but not in the export price, adjustment was made for this as required by statute.

In calculating adjusted home market price, deduction was made for included freight, and in the instance of all the industrial type containers, for a cost of guarantee, and for technical services. With regard to the 5-gallon industrial containers, savings in material and processing costs resulting from physical differences between the exported product and that sold for home consumption were also deducted. Adjustment was made for differences in commission as applicable.

Purchase price was found to be not lower than adjusted home market price with regard to all except 5-gallon industrial containers. The 5-gallon industrial containers represented the bulk of the imports of this type.

Promptly after being advised of the existing margins, as to these 5-gallon containers, the manufacturer revised its prices and gave assurances that there would be no future sales at less than fair value regardless of the disposition of this case. The complainant was advised of this and subsequently withdrew its complaint.

In view of the foregoing it appears that there are not, and are not likely to be, sales below fair value of plastic containers from Canada manufactured by Reliance Products, Ltd., Winnipeg, Canada.

Unless persuasive evidence or argument to the contrary is presented within 30 days, a determination will be made that there are not, and are not likely to be, sales below fair value.

Any such evidence or argument should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, D.C. 20226, in time to be received by his office not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

This notice is published pursuant to §§ 14.7(b)(9) and 14.8(a) of the Customs Regulations (19 CFR 14.7(b)(9) and 14.8(a)).

[SEAL] TRUE DAVIS,
Assistant Secretary of the Treasury.

[F.R. Doc. 67-3999; Filed, Apr. 11, 1967; 8:48 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA

Proposed Withdrawal and Reservation of Lands

APRIL 5, 1967.

The Bureau of Land Management has amended the listing of lands in its revised application for withdrawal, dated March 21, 1967, notice of which was published in the FEDERAL REGISTER on pages 4506–7, of the issue of March 24, 1967, in the following particulars:

Calistoga Geothermal Area. In T. 8 N., R. 7 W., the description "sec. 11" is amended to read "sec. 1."

Lassen Geothermal Area. The description "T. 30 N., R. 16 E.", is amended to read "T. 30 N., R. 6 E."

Wendel-Amedee Geothermal Area. The description "T. 29 N., R. 15 E., secs. 13, 14, 22 through 27, 36", is amended to include sec. 35.

The listing is amended to delete the description "T. 28½ N., R. 16 E., secs. 31 through 33."

Therefore, pursuant to the regulations contained in 43 CFR Subpart 2311, at 10 a.m. on May 10, 1967, the segregative effect of the revised application of March 21, 1967, will be terminated as to the following described lands:

MOUNT DIABLO MERIDIAN

T. 8 N., R. 7 W.,
Sec. 11.
T. 30 N., R. 16 E.,
Secs. 29 through 36.
T. 28½ N., R. 16 E.,
Secs. 31 through 33.

The segregative effect of the revised application as amended will take effect as to the following described lands upon notation of the appropriate records:

MOUNT DIABLO MERIDIAN

T. 8 N., R. 7 W.,
Sec. 1.
T. 30 N., R. 6 E.,
Secs. 29 through 36.
T. 29 N., R. 15 E.,
Sec. 35.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal of the lands described above, may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Washington, D.C. 20240.

The determination of the Secretary of the Interior on the amended application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

ROLLO E. CHANDLER,
Acting Assistant Director.

[F.R. Doc. 67-3964; Filed, Apr. 11, 1967; 8:45 a.m.]

FEDERAL POWER COMMISSION

[Docket No. RI67-331, etc.]

SUN OIL CO. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

MARCH 31, 1967.

The Respondents named herein have filed proposed increased rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth below.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

[1] Does not consolidate for hearing or dispose of the several matters herein.

The Commission orders: (A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before May 10, 1967.

By the Commission.

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

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI67-331	Sun Oil Co. (Southwest Division), 1608 Walnut St., Philadelphia, Pa. 19103, Attn.: Mr. Charles E. Webber.	91	12	Texas Eastern Transmission Corp., (Hidalgo Field, Hidalgo County, Tex.) (RR. District No. 4).	$180	3- 1-67	[1] 4-1-67	9-1-67	[2] 14.6	[3] [4] 15.6	
	Sun Oil Co., Post Office Box 2880, Dallas, Tex. 75221.	23	18	Texas Eastern Transmission Corp. (Carthage Field, Panola County, Tex.) (RR. District No. 6).	3,000	3- 1-67	[1] 4-1-67	9-1-67	[2] 14.6	[3] [4] 15.6	
RI67-332	Caroline Hunt Sands et al., 1401 Elm St., Dallas, Tex. 75202, Attn.: Donald K. Young, attorney.	2	5	United Gas Pipe Line Co. (Northwest Oberlin Area, Allen Parish, La.) (South Louisiana).	1,800	3- 1-67	[7] 4-1-67	9-1-67	[2] 22.375	[3] [4] [5] 22.875	RI64-36.
RI67-333	Gulf Oil Corp., Post Office Box 1589, Tulsa, Okla. 74102.	216	4	Lone Star Gas Co. (East Durant Field, Bryan County, Okla.) (Oklahoma "Other" Area).	500	2-27-67	[1] 4-1-67	9-1-67	[11] 15.0	[4] [12] 16.0	
	do	230	1	Arkansas Louisiana Gas Co. (South Marlow Field, Stephens County, Okla.) (Oklahoma "Other" Area).	60,000	2-27-67	[1] 4-1-67	9-1-67	[13] 15.0	[3] [4] [13] 16.0	
	do	255	3	Arkansas Louisiana Gas Co. (North Carter Field, Beckham County, Okla.) (Oklahoma "Other" Area).	500	2-27-67	[1] 4-1-67	9-1-67	[14] 15.0	[4] [13] 16.0	
	do	256	4	Arkansas Louisiana Gas Co. (Northwest Anthon Field, Custer County, Okla.) (Oklahoma "Other" Area).	53	2-27-67	[1] 4-1-67	9-1-67	[14] 15.0	[4] [13] 16.0	
RI67-334	Frederic C. and Ferris F. Hamilton, d.b.a. Hamilton Brothers, Ltd. (Operator) et al., 1517 Denver Club Bldg., Denver, Colo. 80202.	6	1	Cities Service Gas Co. (North Lovedale Field, Harper County, Okla.) (Panhandle Area).	5,164	3- 2-67	[7] 4- 2-67	9- 2-67	[13] 15.0	[4] [13] 16.0	
RI67-335	Ashland Oil & Refining Co., Post Office Box 18695, Oklahoma City, Okla. 73118.	81	7	Michigan Wisconsin Pipe Line Co. (Putnam and Southeast Dacoma Fields, Dewey and Wood Counties, Okla.) (Oklahoma "Other" Area) (Northeast Quinlan Field, Woodward County, Okla.) (Panhandle Area).	4,205 1,500	3- 2-67 3- 2-67	[1] 4- 2-67 [1] 4- 2-67	9- 2-67 9- 2-67	[15] [17] [18] 16.44 [15] [18] [20] 17.32	[4] [18] [19] 19.34 [4] [18] [19] [20] 19.32	
RI67-336	Champlin Petroleum Co., Post Office Box 9365, Fort Worth, Tex. 76107.	69	3	Panhandle Eastern Pipe Line Co. (Hugoton Field, Morton County, Kans.).	103	3- 3-67	[1] 5- 1-67	10- 1-67	13.0	[3] [4] 14.0	RI62-396.
RI67-337	Hurley Oil & Gas Co., et al., 400 Petroleum Bldg., Shreveport, La. 71101.	5	6	Texas Eastern Transmission Corp. (Greenwood-Waskom Field, Caddo Parish, La.) (North Louisiana).	1,384	3- 1-67	[1] 4- 1-67	9- 1-67	[21] [22] 15.5956	[3] [4] [21] 17.4417	

[1] The stated effective date is the effective date requested by Respondent.
[2] Periodic rate increase.
[3] Pressure base is 14.65 p.s.i.a.
[4] Settlement rate as approved by Commission order issued Dec. 20, 1963, in Docket Nos. G-13316 et al.
[5] Settlement rate as per second amendment to general policy statement No. 61-1 (Sun's settlement order for this rate schedule issued Dec. 20, 1963, in Docket No. G-13316 et al.).
[7] The stated effective date is the first day after expiration of the statutory notice.
[8] Pressure base is 15.025 p.s.i.a.
[9] Inclusive of 1.875 cents tax reimbursement.
[10] "Fractured" rate increase. Gulf is fracturing the contractually due rate of 17.9 cents per Mcf.
[11] Initial permanently certificated rate (initial contract rate is 16.8 cents).
[12] Subject to a downward B.t.u. adjustment.
[13] "Fractured" rate increase. Gulf is fracturing the contractually due rate of 18 cents.
[14] Initial permanently certificated rate (initial contract rate is 17 cents).
[15] Ashland is fracturing the initial contractual rate of 19.5 cents and filing base rates which equal the ceiling rates under the 10th amendment to general policy statement No. 61-1.
[16] For acreage in Dewey and Woods Counties, Okla. (Oklahoma "Other" Area).
[17] Includes base rate of 15 cents before increase and 17.9 cents base rate after increase, plus 1.44 cents upward B.t.u. adjustment (1,144 B.t.u. gas). Base rate subject to upward and downward B.t.u. adjustment.
[18] Initial permanently certificated rate (initial contract rate is 19.5 cents).
[19] For acreage in Woodward County, Okla. (Panhandle Area).
[20] Includes base rate of 17 cents before increase and 19 cents base rate after increase, plus 0.32 cent upward B.t.u. adjustment (1,032 B.t.u. gas). Base rate subject to upward and downward B.t.u. adjustment.
[21] Includes 1.75 cents tax reimbursement.
[22] Rate increase from 15.5956 cents to 15.8007 cents currently suspended in Docket No. G-16645.

Caroline Hunt Sands et al. (Sands), request waiver of the statutory notice to permit a retroactive effective date of March 24, 1966, for their proposed rate increase. Frederic C. and Ferris F. Hamilton, doing business as Hamilton Brothers, Ltd. (Operator), et al., (Hamilton) request an effective date of April 1, 1967, for their rate increase filing. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit earlier effective dates for Sands and Hamilton's rate filings and such requests are denied.

All of the producers' proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's statement of general policy No. 61-1, as amended (18 CFR, Ch. I, Pt. 2, sec. 2.56).

[F.R. Doc. 67-3909; Filed, Apr. 11, 1967; 8:45 a.m.]

[Docket No. RI67-338 etc.]

JOHN BRISBEN ET AL.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes To Become Effective Subject to Refund [1]

APRIL 4, 1967.

The Respondents named herein have filed proposed changes in rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth below.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act: *Provided, however,* That the supplements to the rate schedules filed by Respondents, as set forth herein, shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order Respondents shall each execute and file under its above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved. Unless Respondents are advised to the contrary within 15 days after the filing of their respective agreements and undertakings, such agreements and undertakings shall be deemed to have been accepted.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before May 17, 1967.

By the Commission.

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

[1] Does not consolidate for hearing or dispose of the several matters herein.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI67-338	John Brisben et al., c/o McKnight, Gasaway & McKnight, Post Office Box 1108, Enid, Okla. 73701.	1	2	Oklahoma Natural Gas Gathering Corp. [2] (Ringwood Area, West Cleo Springs Field, Major County, Okla.) (Oklahoma "Other" Area).	$110	3-6-67	[3] 3-6-67	[4] 3-7-67	11.0	[5] 12.0	
RI67-339	Pan American Petroleum Corp., Post Office Box 1410, Fort Worth, Tex. 76101.	[6] 428	2	Cities Service Gas Co. (Hugoton Field, Finney County, Kans.).	71	3-8-67	[4] 4-8-67	[4] 4-9-67	[6] 12.0	[6] 13.0	
RI67-340	Sunset International Petroleum Corp., 8920 Wilshire Blvd., Beverly Hills, Calif. 90211, Attn.: Jack W. Oney, Manager Land Department.	[6] 44	2	Valley Gas Transmission, Inc. (Tres-Encinos Field, Brooks County, Tex.) (R.R. District No. 4).	1,800	[7] 3-10-67	[4] 4-10-67	[4] 4-11-67	[6] 14.0	[6] 15.0	

[2] Oklahoma Natural Gas Gathering Corp. (ONG) classed as a pipeline company in its certificate (CI61-1408) for resale of the gas to Cities Service Gas Co. at an initial rate of 17 cents. ONG's related increase to 18.5 cents has been approved. However, ONG must flow through refunds made by its suppliers.
[3] The stated effective date is the date of filing.
[4] The suspension period is limited to 1 day.
[5] Periodic rate increase.
[6] Pressure base is 14.65 p.s.i.a.
[7] Contract dated after Sept. 28, 1960, the date of issuance of general policy statement No. 61-1.
[8] The stated effective date is the 1st day after expiration of the statutory notice.
[9] Subject to a downward B.t.u. adjustment.
[10] Amended by filing submitted Mar. 13, 1967.

Pan American Petroleum Corp. (Pan American) requests that its proposed rate increase be permitted to become effective on April 7, 1967. Sunset International Petroleum Corp. (Sunset) requests a retroactive effective date of February 21, 1967, for its rate increase filing. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit earlier effective dates for Pan American and Sunset's rate filings and such request are denied.

The contracts related to the rate filings proposed by Pan American and Sunset were executed subsequent to September 28, 1960, the date of issuance of the Commission's statement of general policy No. 61-1, as amended, and the proposed increased rates are above the applicable area ceilings for increased rates but below the initial service ceilings for the areas involved. We believe in this situation, the aforementioned producers' rate filings should be suspended for one day from the date of expiration of the statutory notice, April 8, 1967 (Pan American), and April 10, 1967 (Sunset).

John Brisben et al. (Brisben), proposes a periodic increase in rate from 11 cents to 12 cents per Mcf, amounting to $110 annually, for a wellhead sale of gas to Oklahoma Natural Gas Gathering Corp. (ONG) from the Ringwood Area, Major County, Okla. (Oklahoma "Other" Area). ONG gathers the gas and resells it, after processing, to Cities Service Gas Co. at a rate of 18.5 cents per Mcf.[11] Brisben's proposed rate exceeds the area increased rate ceiling of 11 cents per Mcf for the Oklahoma "Other" Area as announced in the Commission's statement of general policy No. 61-1, as amended. However, since ONG's related resale rate is in effect, we conclude that it would be in the public interest that the 30-day notice requirement provided in section 4(d) of the Natural Gas Act be waived and that Brisben's rate filing be suspended for one day from March 3, 1967, the date of filing.

[11] By order issued Nov. 3, 1966, in Docket No. RP66-19, an increase by ONG from 17 cents to 18.5 cents designed to compensate only for an increase in the cost of purchased gas was accepted for filing and allowed to become effective June 1, 1966, without obligation to refund, except that ONG is required to flow through any refunds received from its procedure-suppliers and to reduce its rates to reflect any rate reductions of such suppliers.

[F.R. Doc. 67-3960; Filed, Apr. 11, 1967; 8:45 a.m.]

[Docket No. RI67-341 etc.]

SHELL OIL CO. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

APRIL 4, 1967.

The Respondents named herein have filed proposed increased rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable,

[1] Does not consolidate for hearing or dispose of the several matters herein.

unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders: (A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before May 17, 1967.

By the Commission.

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

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI67-341	Shell Oil Co. (Operator) et al., 50 West 50th St., New York, N.Y. 10020.	261	7	Natural Gas Pipeline Co. of America (Bryans Mill Field, Cass County, Tex.) (R.R. District No. 6).	$942	3-8-67	[1] 4-8-67	9-8-67	[2] 16.56	[3] [4] 17.0	RI66-14.
RI67-342	Texaco, Inc., Post Office Box 52332, Houston, Tex. 77052.	103	[5] 2	Lone Star Gas Co. (Doyle Field, Stephens County, Okla.) (Oklahoma "Other" Area).	17,627	3-6-67	[6] 4-6-67	9-6-67	5.36	[4] [7] 16.50	

[1] The stated effective date is the effective date proposed by Respondent.
[2] "Fractured" rate increase. Shell is contractually due a rate of 19 cents per Mcf.
[3] Pressure base is 14.65 p.s.i.a.
[4] Subject to a downward B.t.u. adjustment.
[5] Unilateral rate increase. Contract dated Apr. 26, 1948, provided that either buyer or seller could cancel same upon 30-days prior written notice after 1 year term.
[6] Filing includes letter dated Feb. 7, 1967, advising buyer of Texaco's intent to cancel contract effective Mar. 15, 1967.

Shell and Texaco's proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's statement of general policy No. 61–1, as amended (18 CFR Ch. I, Pt. 2, sec. 2.56).

[F.R. Doc. 67–3961; Filed, Apr. 11, 1967; 8:45 a.m.]

[Docket No. AR67–1 etc.]

AREA RATE PROCEEDING ET AL.

Order Permitting Withdrawal of Suspended Rate Supplements and Terminating Proceeding

APRIL 4, 1967.

On September 29, 1958, Hurley Oil and Gas Co. (Hurley) tendered for filing a proposed rate increase from 15.5956 cents to 15.8007 cents per Mcf, designated as Supplement No. 4 and Supplement No. 1 to Supplement No. 4 to Hurley's FPC Gas Rate Schedule No. 5, for its jurisdictional sales of natural gas from the Greenwood-Waskom Field, Caddo Parish, La. (North Louisiana), to Texas Eastern Transmission Corp. The Commission suspended such increase until April 1, 1959, and thereafter until made effective pursuant to section 4(e) of the Natural Gas Act. The increased rate has not been made effective pursuant to section 4(e) of the Natural Gas Act and no monies have been collected subject to refund under the rate schedule involved.

Since the proposed rate in Docket No. G–16645 [1] has not been made effective pursuant to section 4(e) of the Natural Gas Act and no monies have been collected subject to refund under the rate schedule involved, we believe that it would be in the public interest to permit Hurley to withdraw its aforementioned rate supplements and to terminate the related suspension proceeding in Docket No. G–16645.

On March 1, 1967, Hurley tendered for filing a proposed rate increase under the rate schedule here involved, from 15.5956 cents to 17.4417 cents per Mcf, plus tax reimbursement. Such rate will supersede the rate filings in Docket No. G–16645. Separate action will be taken by the Commission on this new filing.

The Commission finds: Good cause exists for permitting the withdrawal of Supplement No. 4, and Supplement No. 1 to Supplement No. 4, to Hurley's FPC Gas Rate Schedule No. 5, and for terminating the related suspension proceeding in Docket No. G–16645.

The Commission orders:

(A) Supplement No. 4, and Supplement No. 1 to Supplement No. 4, to Hurley's FPC Gas Rate Schedule No. 5, are permitted to be withdrawn and the suspension proceeding in Docket No. G–16645 is terminated.

(B) The proceeding in Docket No. G–16645 is severed from Appendix B, Docket No. AR67–1 et al., Area Rate Proceeding et al. (Other Southwest Area) and is terminated.

By the Commission.

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

[F.R. Doc. 67–3957; Filed, Apr. 11, 1967; 8:45 a.m.]

[1] The proceeding in Docket No. G–16645 was consolidated with the Area Rate Proceeding et al. (Other Southwest Area), Docket No. AR67–1 et al., by the Commission's order issued Feb. 28, 1967.

[Docket No. G–513 etc.]

SOUTHERN UNION GAS CO. ET AL.

Order Granting Intervention, Establishing Procedure and Fixing a Date for Prehearing Conference

APRIL 4, 1967.

On October 12, 1965, Del Norte Natural Gas Co. (Del Norte) filed in Docket No. CP66–104 an application requesting an order of the Commission authorizing Del Norte to export natural gas from the United States to the Republic of Mexico (Mexico). In Docket No. CP66–106, filed the same day, Del Norte requested a permit authorizing the operation, maintenance and connection of facilities at the International Boundary between the United States and Mexico for the exportation of natural gas to Mexico. By these applications, Del Norte proposed to succeed to Southern Union Gas Co. (Southern Union) in the exportation and sale of natural gas which was authorized by the Commission on January 2, 1945, in Docket No. G–513.[1] Also on October 12, 1965, El Paso Natural Gas Co. (Gas Co.) and El Paso Gas Transportation Corp. (Transportation Corp.) filed in Docket No. CP66–105 a joint application for permission and approval to abandon the sale of natural gas to Southern Union and for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to Del Norte. As a result of this new arrangement Del Norte would continue to supply natural

[1] Southern Union filed an application to vacate the related Presidential Permit and Authorization for exportation of gas to Mexico.

gas to Juarez Gas Co., S.A. (Juarez Gas) in Ciudad Juarez, Chihuahua, Mexico, while also serving this area through a new distributor, Gas Natural de Juarez, S.A. (Juarez National).

Notice of these applications was issued on October 28, 1965 (30 F.R. 14022). Juarez Gas' petition to intervene in each docket was denied. On December 29, 1965, the Commission granted the requests made by Del Norte, Southern Union Gas Co., and Transportation Co. in Docket Nos. G-513, CP66-104, CP66-105, CP66-106. An application for rehearing and a stay by Juarez Gas was denied. However, Juarez Gas' petition for review to the U.S. Court of Appeals for the District of Columbia Circuit was granted and by order of March 14, 1967, the court remanded the case to the Commission to reopen the case for further proceedings which would afford Juarez Gas and all proper parties "the opportunity to develop a complete record on all issues bearing on the public interest and public convenience and necessity."

In light of the court's decision it is appropriate that we grant intervention to Juarez Gas and we shall do so.

In order to expedite the proceeding and to crystallize those matters upon which a hearing should be held we shall require each party to the proceeding to file a statement specifying issues in this case. Furthermore, we shall order that a prehearing conference be held thereafter to offer an opportunity to the parties to attempt to further limit the issues in this proceeding, to stipulate as to evidentiary matters, to resolve those issues which are capable of resolution on agreed evidence, and to use any other means possible to dispose of this proceeding in the most expeditious manner consistent with the requirements of due process and the Natural Gas Act. Following such conference, the Presiding Examiner shall set this matter for an early hearing and shall specify such other procedure as he deems necessary to promptly bring this matter to a proper conclusion.

The Commission finds:

(1) It is desirable to allow Juarez Gas Co., S.A. to intervene in these proceedings in order to show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

(2) The processing of this proceeding will be expedited by the filing of statements of proposed issues by the participants herein, and by the convening of a prehearing conference thereafter.

The Commission orders:

(A) Juarez Gas Co., S.A. is permitted to intervene in this proceeding subject to the rules and regulations of the Commission.

(B) The parties to the proceeding shall submit in writing on or before April 10, 1967, a statement specifying the issues which they believe have been raised by the above docketed applications. Said statement of issues shall be served on the other parties to the proceeding and the Commission staff in accordance with the Commission's rules.

(C) A prehearing conference shall be held on April 17, 1967, at 10 a.m., e.s.t., before a presiding examiner of the Commission, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., for the purpose of discussion and limitation of issues, stipulation as to facts, the possible resolution of issues by stipulation, and such other means as may be available to expedite the proceeding.

By the Commission.

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

[F.R. Doc. 67-3958; Filed, Apr. 11, 1967; 8:45 a.m.]

[Docket Nos. CP65-356, CP66-168]

TENNESSEE GAS PIPELINE CO. AND RED SNAPPER PIPE LINE CO.

Notice Fixing Oral Argument

APRIL 4, 1967.

The Commission has before it the Presiding Examiner's decision, the exceptions thereto, and the replies to such exceptions filed in the above-entitled proceedings. A motion for oral argument has been filed by Tennessee Gas Pipeline Co., a division of Tenneco, Inc.

Take notice that oral argument is scheduled to be heard by the Commission en banc commencing at 10 a.m., e.d.s.t, June 16, 1967, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C.

All parties desiring to participate in such oral argument shall notify the Secretary of the Commission in writing on or before May 15, 1967, of the amount of time desired for presentation of their respective oral arguments.

By direction of the Commission.

JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 67-3959; Filed, Apr. 11, 1967; 8:45 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-80]

COLORADO STATE UNIVERSITY

Notice of Issuance of Facility License Amendment

Please take notice that the Atomic Energy Commission has issued, effective as of the date of issuance, Amendment No. 6, set forth below, to Facility License No. R-26. The license, as previously amended, authorizes Colorado State University to operate its Model AGN-201, Serial No. 109, reactor on its campus in Fort Collins, Colo. This amendment incorporates technical specifications into the license as requested in the application for license amendment dated January 27, 1967.

Within fifteen (15) days from the date of publication of this notice in the FEDERAL REGISTER, the licensee may file a request for a hearing and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions to intervene shall be filed in accordance with the Commission's rules of practice, 10 CFR Part 2. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this amendment, see (1) the application for license amendment, (2) a related safety evaluation prepared by the Division of Reactor Licensing, and (3) the technical specifications, all of which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of items (2) and (3) above may be obtained at the Commission's Public Document Room, or upon request addressed to the Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 5th day of April 1967.

For the Atomic Energy Commission.

DONALD J. SKOVHOLT, *Assistant Director for Reactor Operations, Division of Reactor Licensing.*

[F.R. Doc. 67-3954; Filed, Apr. 11, 1967; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 17436]

ALLEGHENY AIRLINES ROUTE 97 INVESTIGATION

Notice of Change of Conference Room

Notice is hereby given that the prehearing conference in the above-entitled investigation now assigned to be held in Room 211 at 10 a.m. on April 25, 1967, is hereby reassigned to Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the undersigned examiner.

Dated at Washington, D.C., April 6, 1967.

[SEAL] MILTON H. SHAPIRO, *Hearing Examiner.*

[F.R. Doc. 67-3997; Filed, Apr. 11, 1967; 8:48 a.m.]

[Docket No. 15563 etc.]

SERVICE TO DOUGLAS, ARIZ.

Notice of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in the above-entitled matter is assigned to be heard on May 3, 1967, at 10 a.m., e.d.s.t., in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the Board.

Dated at Washington, D.C., April 6, 1967.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 67-3998; Filed, Apr. 11, 1967; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 17333; FCC 67M-571]

CALIFORNIA WATER AND TELEPHONE CO. ET AL.

Order Scheduling Hearing

In the matter of California Water and Telephone Co.; the Associated Bell Systems Cos.; the General Telephone System; and United Utilities, Inc., Cos.; Docket No. 17333; applicability of section 214 of the Communications Act with regard to tariffs for channel service for use by community antenna television systems:

It is ordered, This 6th day of April 1967 that Charles J. Frederick shall serve as Presiding Officer in the above-entitled proceeding; that the hearings therein shall be convened on May 8, 1967, at 10 a.m.; and that a prehearing conference shall be held on April 24, 1967, commencing at 9 a.m.: *And it is further ordered*, That all proceedings shall be held in the offices of the Commission, Washington, D.C.

Released: April 7, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-4002; Filed, Apr. 11, 1967; 8:48 a.m.]

[Docket Nos. 17336, 17337; FCC 67-406]

LOGAN BROADCASTING CO. AND UPPER BROADCASTING CO.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Logan Broadcasting Co., Logan, Ohio, Docket No. 17336, File No. BP-16820, requests: 1510 kc, 1 kw, 250 w (CH), Day, Class II; Leonard E. Walk, James H. Rich, Bernard M. Friedman, Thomas W. Fletcher, Robert L. Purcell, and Raymond E. Rohrer, doing business as Upper Broadcasting Co., Upper Arlington, Ohio, Docket No. 17337, File No. BP-17039, requests: 1510 kc, 250 w, Day, Class II; for construction permits.

1. The Commission has before it the above-captioned applications which are mutually exclusive in that simultaneous operation of the stations proposed would result in prohibited overlap of contours as defined by § 73.37 of the Commission's rules.

2. Examination of the application of Upper Broadcasting Co. indicates that the proposed 5 mv/m contour penetrates the geographic boundaries of Columbus, Ohio. Upper Arlington, the specified station location, has a population of 28,486 (1960 Census) while the population of Columbus is 471,316. Accordingly, pursuant to the Commission's policy statement on section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities,[1] a presumption arises that the proposal is intended to serve Columbus.

3. At the invitation of the Commission, Upper Broadcasting Co., on January 16, 1967, submitted an amendment containing data intended to rebut the aforementioned presumption. After a review of this material, we find that the applicant has failed to overcome the presumption of intent to serve the larger city and that appropriate issues must be included in hearing to further explore the matter.

4. Upper Broadcasting Co., in its financial proposal, estimates that construction and equipment costs ($32,300) and 1 year operating expenses ($60,000) will amount to $92,300. The applicant proposes to defray these expenses with deferred credit ($13,350) and with an $80,000 loan from Dynamic Broadcasting, Inc., a corporation owned by three of the partners in the applicant. The balance sheet of Dynamic accompanying the loan commitment does not show cash and other current assets sufficient to meet the commitment. It is also noted that the balance sheet is now almost 1½ years old, and for that reason cannot be assumed to accurately represent Dynamic's financial condition at present. Accordingly, a financial issue will be specified.

5. Applicant Upper Broadcasting Co., proposes an antenna site which appears to be located in the vicinity of structures which may cause reradiation. An issue will be specified to determine the suitability of the proposed antenna site.

6. Logan Broadcasting Co. is the licensee of Station WLGN-FM, Logan, Ohio. The basic construction permit application, File No. BPH-4578, was granted February 3, 1965. In constructing its AM station, Logan proposes to use the same land and buildings as the FM station and estimates that equipment costs ($21,336) and first year operating expenses ($6,000) will total $27,336. A letter dated November 10, 1964, from the Logan Federal Savings and Loan Association extending Logan Broadcasting a $50,000 line of credit is contained in Logan's FM application. However, the applicant has not stated whether all or any part of these funds are available to build the AM station, or for that matter, whether this plan of financing will be employed. Accordingly, it will be necessary for Logan to establish its financial qualifications in hearing.

7. Except for the issues specified below, the applicants are qualified to construct, own and operate the facilities proposed. However, in view of the foregoing, and because the applications are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues set forth below:

Accordingly, it is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive primary service from each of the proposed operations and the availability of other primary service to such areas and populations.

2. To determine whether the proposed operation of Upper Broadcasting Co. will realistically provide a local transmission facility for its specified station location or for another larger community, in the light of all the relevant evidence, including, but not necessarily limited to, the showing with respect to:

(a) The extent to which the specified station location has been ascertained by the applicant to have separate and distinct programing needs.

(b) The extent to which the needs of the specified station location are being met by existing standard broadcast stations.

(c) The extent to which the applicant's program proposal will meet the specific, unsatisfied programing needs of its specified station location.

(d) The extent to which the projected sources of the applicant's advertising revenues within its specified station location are adequate to support its proposal, as compared with its projected sources from all other areas.

3. To determine, in the event it is concluded pursuant to the foregoing issue (a) that the Upper Broadcasting Co. proposal will not realistically provide a local transmission service for its specified station location, whether such proposal meets all of the technical provisions of the rules for standard broadcast stations assigned to the most populous community for which it is determined that the proposal will realistically provide a local transmission service.

4. To determine, with respect to the application of Upper Broadcasting Co.:

(a) Whether Dynamic Broadcasting, Inc., has sufficient cash and/or liquid assets to meet its $80,000 loan commitment to the applicant.

(b) Whether, in the light of the evidence adduced pursuant to the above subissue, the applicant is financially qualified.

5. To determine whether the transmitter site proposed by Upper Broadcasting Co. is satisfactory with particular regard to any conditions that may exist in the vicinity of the antenna system which which would distort the proposed antenna radiation pattern.

6. To determine whether Logan Broadcasting Co. is financially qualified.

7. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

8. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

[1] 2 FCC 2d 190, 6 RR 1901.

It is further ordered, That, in the event of a grant of either of the proposals, the construction permit shall contain the following condition: Pending a final decision in Docket No. 14419 with respect to presunrise operation with daytime facilities, the present provisions of § 73.87 of the Commission's rules are not extended to this authorization, and such operation is precluded.

It is further ordered, That, in the event of a grant of the application of Logan Broadcasting Co., the construction permit shall also contain the following condition: Before program tests are authorized, the permittee shall submit sufficient field intensity measurement data to show that the radiation has been reduced to essentially 210 mv/m/kw, as proposed.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within twenty (20) days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such notice as required by § 1.594(g) of the rules.

Adopted: March 29, 1967.

Released: April 7, 1967.

FEDERAL COMMUNICATIONS COMMISSION,[3]
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-4003; Filed, Apr. 11, 1967; 8:49 a.m.]

[Docket Nos. 17336, 17337; FCC 67M-574]

LOGAN BROADCASTING CO. AND UPPER BROADCASTING CO.

Order Scheduling Hearing

In re applications of Logan Broadcasting Co., Logan, Ohio, Docket No. 17336, File No. BP-16820; Leonard E. Walk, James H. Rich, Bernard M. Friedman, Thomas W. Fletcher, Robert L. Purcell, and Raymond E. Rohrer, doing business as Upper Broadcasting Co., Upper Arlington, Ohio, Docket No. 17337, File No. BP-17039; for construction permits:

It is ordered, This 31st day of March 1967, that Thomas H. Donahue shall serve as Presiding Officer in the above-entitled proceeding; that the hearings therein shall be convened on May 29, 1967, at 10 a.m.; and that a prehearing conference shall be held on April 26, 1967, commencing at 9 a.m.: *And it is further ordered*, That all proceedings shall be held in the offices of the Commission, Washington, D.C.

Released: April 7, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-4004; Filed, Apr. 11, 1967; 8:49 a.m.]

[Docket No. 11081, etc.; FCC 67-416]

ORANGE NINE, INC., ET AL.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Orange Nine, Inc., Orlando, Fla., Docket No. 11081, File No. BPCT-1153; Mid-Florida Television Corp., Orlando, Fla., Docket No. 11083, File No. BPCT-1801; Central Nine Corp., Orlando, Fla., Docket No. 17339, File No. BPCT-3697; Howard A. Weiss, Orlando, Fla., Docket No. 17340, File No. BPCT-3736; Florida Heartland Television, Inc., Orlando, Fla., Docket No. 17341, File No. BPCT-3737; Comint Corp., Orlando, Fla., Docket No. 17342, File No. BPCT-3738; Florida 9 Broadcasting Co., Orlando, Fla., Docket No. 17343, File No. BPCT-3739; TV 9, Inc., Orlando, Fla., Docket No. 17344, File No. BPCT-3740; for construction permit for new television broadcast station.

1. The Commission has before it for consideration the above-captioned applications, each requesting a construction permit for a new television broadcast station to operate on Channel 9, Orlando, Fla. The applications are mutually exclusive in that operation by the applicants as proposed would result in mutually destructive interference.

2. Ordinarily, the Commission requires applicants for a new broadcast station to show the availability of sufficient funds to construct and operate the proposed station for 1 year. Where an applicant relies, in whole or in part, on advertising revenues to meet its costs of operation in the first year, the Commission requires that the applicant demonstrate the validity of its estimate of revenues by a comprehensive showing.[1] In the present case, however, each of the applicants (except Mid-Florida), seeks to replace a station which has an established record of advertising revenues stretching over a prolonged period of time; the availability of revenues is beyond dispute. For this reason, we do not believe that it is necessary to require the applicants to meet the requirements of the Ultravision decision. We will, therefore, apply our former standard which required an applicant to show that it had sufficient funds to construct and operate the proposed station for three months without revenues. Under this standard, we find all of the applicants financially qualified except as follows: [2]

a. In connection with the application of Central Nine Corp.:

(1) Based on information contained in the application, cash of approximately $1,154,000 will be required for the construction and operation of the proposed station.[3] To meet these requirements, the applicant relies upon existing capital of $10,000, stock subscriptions of $90,000, and loans totalling $2 million, for a total of $2,100,000. The applicant relies upon revenues for the remainder.

(2) It appears that the applicant has $9,482 available to it in existing capital and not more than $78,000 available in funds from financially qualified subscribers. No balance sheet or financial statement has been furnished by Mr. J. Rolfe Davis as required by section III, paragraph 4(d), FCC Form 301;[4] Mr. Grover C. Bryan has not shown that he has current and liquid assets (as defined in paragraph 4(d), section III, FCC Form 301) in excess of current liabilities to meet his commitment to the applicant; and Mr. Clarence A. Peterson's balance sheet or financial statement does not disclose the extent of his current liabilities. The letter from Barnett First National Bank, dated November 29, 1965, upon which the applicant relies to support the availability of a loan of $2 million does not set forth the terms or conditions upon which the loan is to be made, but states that "The terms, conditions and security for such loans shall be determined at the time of borrowing and shall be acceptable to us." Moreover, the total of $2 million is to include loans to individual stockholders and, by letter dated January 7, 1966, is to include also funds which may be required in connection with the proposed interim operation of a station on Channel 9. By letter dated February 25, 1966, the bank further qualified its commitment by requiring the joint and several endorsements of all stockholders, but the stockholders have not indicated their willingness to accept such contingent liability.

b. In connection with the application of Florida 9 Broadcasting Co.:

(1) Based on information contained in the application, cash of approximately $1,718,000 will be required for the acquisition of land ($20,000), the acquisition of equipment ($1,073,000), miscellaneous expenses ($300,000) and cost of operation ($325,000). To meet these cash requirements, the applicant relies upon the availability of stock subscriptions of $100,000 and a loan of $2 million from Citizens National Bank of Orlando, totaling $2,100,000.

(2) The applicant's balance sheet shows that $11,700 has been paid in on subscriptions, but no information has

[3] Commissioner Johnson absent.

[1] Ultravision Broadcasting Co., FCC 65-581, 5 RR 2d 343.

[2] Salter Broadcasting Co. (WBEL), FCC 67-225, released Feb. 21, 1967, Docket Nos. 17209-17219.

[3] Consisting of down payment for equipment ($326,250), curtails and interest ($70,959), down payment on land ($5,800), miscellaneous expenses ($420,000), cost of operation ($330,623). Total: $1,153,632.

[4] Persons who will furnish funds are required to submit balance sheets or financial statements although they may show the availability of bank loans in sufficient amount to meet their commitments to the applicant. Kansas State Network, Inc., FCC 66-977, 5 FCC 2d 572.

been furnished as to the identity of the subscribers who have made payments on their subscriptions nor the amounts thereof. Of the 14 subscribers, only Messrs. Ferran, Nixon, Jewett, and Bryant have shown that they have current and liquid assets (as defined in section III, paragraph 4(d), FCC Form 301) in excess of current liabilities in sufficient amount to meet their commitments. Their commitments total $23,000. If none of them has paid any part of his commitment, $23,000 can be considered to be available to the applicant from subscriptions receivable, but this amount must be reduced to the extent that any of them have paid in part of their subscriptions. Thus, it appears that not more than $34,700 may be available to the applicant from subscriptions.

(3) The letter from Citizens National Bank of Orlando contains no terms or conditions, but the loan is to be made "* * * on suitable collateral, terms and conditions to be arranged at the time of the closing." It cannot be determined, therefore, that such funds will be available to the applicant or, if so, upon what terms, conditions and collateral required. Moreover, the bank's letter (dated February 25, 1966) was written before extensive changes were made by the applicant (July 6, 1966) in its stockholders and their holdings.

c. In connection with the application of TV 9, Inc.:

Based on information contained in the application, cash of approximately $677,000 will be required for the construction and operation of the proposed station.[5] To meet these costs, the applicant relies upon the availability of existing capital of $15,000, stock subscriptions of $285,000, and a loan of $1,500,000 from Citizens National Bank of Orlando. Of the 15 subscribers who are to furnish funds, only Mr. Thompson K. Cassel has shown that he has sufficient current and liquid assets in excess of current liabilities to enable him to meet his commitment to the applicant ($33,000); the other subscribers have furnished letters from banks to enable them to meet their commitments, but none of them has furnished a balance sheet or financial statement as required by section III, paragraph 4(d), FCC Form 301 (see footnote 4, supra). The letter from Citizens National Bank contains no terms or conditions, but these are to be "* * * determined at the time of borrowing and shall be acceptable to us [the bank]."

3. Because of the location of the tower proposed by Orange Nine, Inc., relative to the location of various radio station towers, in the event of a grant of its application, such grant shall be subject to an AM proximity condition. Orange Nine has also requested Commission consent to the location of its proposed main studios at the proposed transmitter site outside the corporate limits of Orlando, pursuant to § 73.613(b) of the Commission's rules, but the applicant has not made the showing required by the rules. An issue will be specified, therefore, to determine whether good cause exists for locating the main studios outside the city limits of Orlando.

4. The transmitter proposed by Mid-Florida Television Corp. has not been type-accepted by the Commission. In the event of a grant of its application, therefore, such grant shall be subject to the condition that, prior to licensing, acceptable data shall be submitted for type-acceptance in accordance with the requirements of § 73.640 of the Commission's rules.

5. As originally filed, the application (BPCT-3736) of Howard A. Weiss specified the present facilities of Station WFTV, which is being operated on a temporary basis by Mid-Florida Television Corp. On April 13, 1966, Florida Heartland Television, Inc., filed a "Petition for Dismissal of Application" requesting dismissal of the Weiss application on the grounds that he had no reason to believe that these facilities would be available to him and that the application was not, therefore, substantially complete. Florida Heartland contended that the application specifying these facilities was not filed with reasonable assurance in good faith that the facilities would be available to it[6] and because the Commission had specified a "cutoff" date[7] within which all applications for permanent authority to operate on Channel 9 in Orlando must be substantially complete and tendered for filing, the Weiss application was fatally defective. On April 29, 1966, Weiss filed his opposition thereto and simultaneously filed an amendment to his application specifying a different site.[8] Weiss contends that the amended proposal moots the petitions requesting dismissal of his application.

6. We think that this is too important a matter to warrant dismissal of bona fide applications on technical grounds; the public interest lies in enabling us to make a choice among these applicants on the basis of merit, rather than by attrition. Charles W. Jobbins et al., FCC 64-743, 3 RR 2d 302. Moreover, since our rules provide an unlimited right to amend prior to designation for hearing, Weiss merely exercised his rights and perfected his application to the extent of eliminating this objection to it. This, too, is in the public interest. The various petitions to dismiss the Weiss application as well as the applications of Florida 9 Broadcasting Co. and TV 9, Inc., will be denied.

7. On March 14, 1966, one Harold E. Scott, purporting to be the chairman of a "Committee for Channel 9," wrote a letter to the Chairman of the Commission, with copies to all applicants, and enclosed a resolution and signature sheets containing signatures of citizens or Orlando. The letter urged the Commission to continue the stewardship of Mid-Florida in the operation of the Channel 9 station. This letter was attacked by the other applicants in this proceeding[9] as being an unlawful effort, inspired, encouraged and condoned by Mid-Florida, to unilaterally influence the Commission. The charge has been categorically denied by Mid-Florida, its denial being supported by affidavits. The Commission, by its Executive Director, responded to the complaint of Central Nine Corp., by letter to Welch and Morgan (counsel for Central 9 Corp.), dated March 21, 1966, in which it was stated that § 1.1223 of the Commission's rules proscribes ex parte communications on the part of interested persons; that Mr. Scott is not an "interested person" as that term is defined in § 1.1201(e) of the rules; and that the letter was served on all parties to the proceeding and it was not, therefore, a prohibited ex parte communication.

8. We have carefully considered the various pleadings filed in connection with this incident. There is no evidence that Mid-Florida solicited, inspired or participated in the preparation of the letter; the pleadings show that Mid-Florida exercised extreme care, upon the advice of counsel, in dealing with Mr. Scott and his proposal to write his letter. Mid-Florida does not deny its knowledge of Scott's intentions nor that Mid-Florida furnished him with the names and addresses of the other applicants and their counsel (a matter of public record) as well as the names of individual citizens who had expressed to Mid-Florida an interest in helping to retain WFTV on the air. The Scott letter was a presentation from a person not an "interested person" as that term is defined in § 1.1201(e) of the rules, and a copy of the letter was served on each of the applicants. Thus, it was not a prohibited ex parte presentation as defined by § 1.1201(g)(1) of the rules.

[5] Consisting of down payment for equipment ($90,797), curtails ($68,098), interest ($1,475), land ($20,000), buildings ($28,800), other items ($210,350), and costs of operation ($257,538), totaling $677,058.

[6] Citing Milam & Lansman, FCC 65R-20, 4 RR 2d 469.

[7] By order (FCC 65-1020, 1 FCC 2d 1377), the Commission, in WORZ, Inc., provided that new applications may be filed by Mar. 1, 1966, and that qualified parties who had previously filed applications could bring them up to date.

[8] In addition to the petition and opposition thereto, Florida Heartland filed a reply to the opposition on May 5, 1966. Comint Corporation filed, on May 6, 1966, a statement in support of the Florida Heartland petition and included the Florida 9 and TV 9, Inc., applications among those to be dismissed. On May 10, 1966, Mid-Florida filed a statement in support of the petition, indicating that it had no intention of making its facilities available to the other applicants in any event.

[9] The various letters and pleadings filed in connection with this incident are: (1) Letter dated Mar. 16, 1966, from counsel for Central Nine Corp.; (2) letter dated Mar. 21, 1966, from counsel for TV 9, Inc.; (3) response to (1) and (2) above, filed Mar. 29, 1966, by Mid-Florida; (4) comments, filed Apr. 4, 1966, by Central Nine Corp., in connection with (3) above; (5) statement, filed Apr. 7, 1966, by TV 9, Inc., in connection with (3) above; (6) reply, filed Apr. 13, 1966, by Mid-Florida to (4) and (5), above; (7) statement, filed Apr. 14, 1966, by Consolidated Nine, Inc., the corporation formed by and consisting of the applicants for permanent authority for the purpose of applying for an interim operation; and (8) reply, filed Apr. 20, 1966, by Mid-Florida, to (7) above.

While Scott's activities have been questioned by some of the parties, we believe that, when viewed in proper perspective, the incident is seen as an effort by well-meaning citizens to make their views known to the Commission. The pleadings contain nothing to warrant an opposite conclusion.

9. On August 15, 1966, Custom Electronics, Inc., permittee of Television Broadcast Station WPCT, Channel 31, Melbourne, Fla., filed in this proceeding a "Petition to Deny and Statement of Interest" urging that all of the above-captioned applications, except that of Orange Nine, Inc., be denied on the grounds that grant of any of them (including the applications BPCTI-7 and BPCT-3738 of Consolidated Nine, Inc., and Comint Corp. for interim authority) would have an adverse impact on development of UHF television broadcasting in the area. The applicants filed oppositions.[10] Custom alleges standing as a "party in interest" within the meaning of section 309(d) of the Communications Act of 1934, as amended, on the grounds that grant of any of the applications (save that of Orange Nine, Inc.) would cause petitioner economic injury because all of the applicants would compete for viewership and revenues in the same area as petitioner's station. We find that petitioner has standing. Federal Communications Commission v. Sanders Brothers Radio Station, 309 U.S. 470, 60 S. Ct. 693, 9 RR 2008. The petition, however, was not timely filed in accordance with the requirements of § 1.580(i) of the Commission's rules. Public notice of the acceptance for filing of the applications was given by the Commission on March 15, 1966. Custom alleges that its construction permit was not granted until June 3, 1966, and until that time it had no standing to file a petition to deny pursuant to section 309(d) of the Communications Act. We need not reach the question of whether Custom's petition, had it been filed within 30 days following grant of its construction permit, would have been timely filed because, in fact, Custom did not file its petition until several months later. The petition will, therefore, be dismissed, but we believe that a sufficient threshold showing has been made by the petitioner to warrant consideration as an informal objection filed pursuant to § 1.587 of the rules.

10. Custom alleges that, with the one exception, its predicted Grade B contour would be completely encompassed by the proposed Grade B contours of the Channel 9 applicants. The present operation of WFTV, petitioner alleges, would not overlap the UHF station's Grade B contour and there is, therefore, no objection to this operation. In view of the showing made by Custom, we believe that the question of whether a grant of any of the applications would adversely affect the ability of UHF stations in the area to compete effectively should be explored in the hearing. We believe that the most efficient way to accomplish this would be to specify a single issue applicable to all applicants. The burden of proof and the burden of proceeding with the introduction of evidence on the issue will be placed upon Custom.

11. Except as indicated by the issues specified below, the Commission finds that the applicants are qualified to construct, own and operate the proposed television broadcast station. The applications are, however, mutually exclusive in that operation by the applicants as proposed would result in mutually destructive interference. The Commission is, therefore, unable to make the statutory finding that grant of the applications would serve the public interest, convenience and necessity and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues set forth below.

Accordingly, it is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent order, upon the following issues:

1. In connection with the application of Orange Nine, Inc., to determine: Whether good cause exists for location of the main studios outside the corporate limits of Orlando, Fla., as proposed, and, if so, whether such location would be consistent with operation of the station in the public interest.

2. In connection with the application of Central Nine Corp., to determine:

(a) Whether J. Rolfe Davis, Grover C. Bryan, and Clarence A. Peterson have current and liquid assets (as defined in section III, paragraph 4(d), FCC Form 301) in excess of current liabilities in sufficient amount to meet their commitments to the applicant.

(b) The terms, conditions, and security required, if any, in connection with the proposed loan from Barnett First National Bank; whether the applicant and its principals can meet such terms and conditions; the extent to which funds from such loan will be available to the applicant as distinguished from the individual stockholders; and whether, in view of the evidence adduced, such loan will be available.

(c) Whether, in the light of the evidence adduced pursuant to the foregoing the applicant is financially qualified.

3. In connection with the application of Florida 9 Broadcasting Co., to determine:

(a) The identity of the subscribers who have paid in funds against their subscriptions and the amounts thereof and, in the light of such information, the total amount receivable from the subscriptions of Harry H. Ferran, Joseph J. Nixon, Eugene L. Jewett, and John J. Bryant.

(b) Whether the subscribers not enumerated in (a) above, have current and liquid assets (as defined in section III, paragraph 4(d), FCC Form 301) in excess of current liabilities in sufficient amount to meet their commitments to the applicant.

(c) Whether the proposed loan from Citizens National Bank of Orlando will be available to the applicant and, if so, the terms, conditions, and collateral required in connection therewith.

(d) Whether, in the light of the evidence adduced pursuant to the foregoing, the applicant is financially qualified.

4. In connection with the application of TV 9, Inc., to determine:

(a) With the exception of Thompson K. Cassel, the current liabilities of each of the subscribers and the extent to which funds in excess thereof will be available to them to meet their commitments to the applicant.

(b) Whether the proposed loan from Citizens National Bank of Orlando will be available to the applicant and, if so, the terms, conditions, and collateral required in connection therewith.

(c) Whether, in the light of the evidence adduced pursuant to the foregoing, the applicant is financially qualified.

5. To determine whether a grant of any of the applications would impair the ability of authorized and prospective UHF television broadcast stations in the area to compete effectively.

6. To determine which of the proposals would best serve the public interest.

7. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

It is further ordered, That the petition to deny and statement of interest filed herein by Custom Electronics, Inc., is dismissed, as untimely filed, but considered as an informal objection filed pursuant to § 1.587 of the Commission's rules, is granted to the extent indicated herein.

It is further ordered, That, upon the Commission's own motion Custom Electronics, Inc., is made a party respondent in this proceeding with respect to Issue 5 only.

It is further ordered, That the burden of proof and the burden of proceeding with the introduction of evidence with respect to Issue 5 is placed upon Custom Electronics, Inc.

It is further ordered, That the petitions filed herein requesting dismissal of the applications of Howard A. Weiss, Florida 9 Broadcasting Co., and TV 9, Inc., are denied.

It is further ordered, That the requests filed herein by Consolidated Nine, Inc., Central Nine Corp., and TV 9, Inc., to the extent that they request special issues in connection with the letter of Harold E. Scott, are denied.

It is further ordered, That, in the event of a grant of the application of Orange Nine, Inc., such grant shall be made subject to the following condition: That a skeleton proof shall be submitted on each station to prove that the directional patterns of Stations WKIS, WDBO, and WLOF have not been changed. Proofs shall consist of at least five field intensity measurements on each radial measured in connection with the original proofs of Stations WKIS, WDBO, and WLOF. Data shall include a tabulation of all pertinent meter indications and the measured fields at the monitor locations.

It is further ordered, That, in the event of a grant of the application of

[10] Oppositions were filed on Sept. 15, 1966, by Mid-Florida, Howard A Weiss, Central Nine Corp., Florida Heartland, Florida 9, TV 9, Inc., Comint and Consolidated Nine, Inc. Custom filed a reply on Sept. 27, 1967.

Mid-Florida Television Corp., such grant shall be subject to the following condition: That, prior to licensing, the permittee shall submit acceptable data for type-acceptance of its transmitter in accordance with the requirements of § 73.640 of the Commission's rules.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within twenty (20) days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: March 29, 1967.

Released: April 7, 1967.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-4005; Filed, Apr. 11, 1967; 8:49 a.m.]

[Docket No. 11081, etc.; FCC 67M-573]

ORANGE NINE, INC., ET AL.

Order Scheduling Hearing

In re applications of Orange Nine, Inc., Orlando, Fla., Docket No. 11081, File No. BPCT-1153; Mid-Florida Television Corp., Orlando, Fla., Docket No. 11083, File No. BPCT-1801; Central Nine Corp., Orlando, Fla., Docket No. 17339, File No. BPCT-3697; Howard A. Weiss, Orlando, Fla., Docket No. 17340, File No. BPCT-3736; Florida Heartland Television, Inc., Orlando, Fla., Docket No. 17341, File No. BPCT-3737; Comint Corp., Orlando, Fla., Docket No. 17342, File No. BPCT-3738; Florida 9 Broadcasting Co., Orlando, Fla., Docket No. 17343, File No. BPCT-3739; TV 9, Inc., Orlando, Fla., Docket No. 17344, File No. BPCT-3740; for construction permit for new television broadcast station (Channel 9):

It is ordered, This 31st day of March 1967, that Herbert Sharfman shall serve as Presiding Officer in the above-entitled proceeding; that the hearings therein shall be convened on June 15, 1967, at 10 a.m.; and that a prehearing conference shall be held on April 28, 1967, commencing at 10 a.m.: *And it is further ordered*, That all proceedings shall be held in the offices of the Commission, Washington, D.C.

[1] Commissioner Johnson absent.

Released: April 7, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-4006; Filed, Apr. 11, 1967; 8:49 a.m.]

[Docket Nos. 17209-17219; FCC 67M-567]

SALTER BROADCASTING CO. (WBEL) ET AL.

Order Continuing Further Prehearing Conference

In re applications of Salter Broadcasting Co. (WBEL), South Beloit, Ill., Docket No. 17209, File No. BMP-11646; Great River Broadcasting, Inc., St. Louis, Mo., Docket No. 17210, File No. BP-16749; Prudential Broadcasting Co., St. Louis, Mo., Docket No. 17211, File No. BP-16752; Six-Eighty-Eight Broadcasting Co., St. Louis, Mo., Docket No. 17212, File No. BP-16753; St. Louis Broadcasting Co., St. Louis, Mo., Docket No. 17213, File No. BP-16755; Victory Broadcasting Co., Inc., St. Louis, Mo., Docket No. 17214, File No. BP-16758; Home State Broadcasting Corp., St. Louis, Mo., Docket No. 17215, File No. BP-16759; KWK Broadcasting Corp., St. Louis, Mo., Docket No. 17216, File No. BP-16760; Archway Broadcasting Corp., St. Louis, Mo., Docket No. 17217, File No. BP-16761; Clermont Broadcasting Co., St. Louis, Mo., Docket No. 17218, File No. BP-16762; Missouri Broadcasting, Inc., St. Louis, Mo., Docket No. 17219, File No. BP-16763; for construction permits:

It is ordered, This 6th day of April 1967, by the Hearing Examiner on his own motion, that the further prehearing conference now scheduled for April 12, 1967, is continued without date.

Released: April 7, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-4007; Filed, Apr. 11, 1967; 8:49 a.m.]

FEDERAL RESERVE SYSTEM

SOUTHERN ARIZONA BANK AND TRUST CO.

Application for Exemption From Registration

Notice is hereby given that Southern Arizona Bank and Trust Co., Tucson, Ariz., a member State bank of the Federal Reserve System, has applied to the Board of Governors, pursuant to sections 12(h) and 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78l), for exemption from the registration requirements of section 12(g) of said Act.

In determining whether to grant such exemption, the Board is required by section 12(h) to consider whether, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the bank, income or assets of the bank, or otherwise, such action will be consistent with the public interest and the protection of investors.

Any interested person may, not later than 15 days after the publication of this notice in the FEDERAL REGISTER, (i) submit written comments and recommendations with respect to the application, (ii) request the holding of a hearing on the matter, stating the nature of his interest and the reason for such request, or (iii) request to be notified if the Board should order a hearing thereon. Such communication should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. At any time after the expiration of said 15 days, an order disposing of the application may be issued by the Board upon the basis of the information stated therein and other available information, unless an order for a hearing thereon shall have been issued.

Dated at Washington, D.C., this 3d day of April 1967.

By order of the Board of Governors.

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 67-3962; Filed, Apr. 11, 1967; 8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[70-4474]

CONNECTICUT LIGHT AND POWER CO.

Notice of Proposed Issue and Sale of First and Refunding Mortgage Bonds at Competitive Bidding

APRIL 6, 1967.

Notice is hereby given that the Connecticut Light and Power Co. ("CL&P"), Selden Street, Berlin, Conn. 06037, a public-utility subsidiary company of Northeast Utilities, a registered holding company, has filed an application with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a), 6(b), and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

CL&P proposes to issue and sell, subject to competitive bidding requirements of Rule 50 under the Act, $30 million principal amount of first and refunding mortgage bonds ____ percent, series S, due May 1, 1997. The interest rate of the bonds (which will be a multiple of one-eighth of 1 percent) and the price, exclusive of accrued interest, to be paid to CL&P (which will be not less than 99 percent nor more than 102¾ percent of

the principal amount thereof) will be determined by the competitive bidding. The bonds will be issued under the indenture of mortgage and deed of trust dated May 1, 1921, between CL&P and Bankers Trust Co., trustee, as heretofore supplemented and as to be further supplemented by a supplemental indenture to be dated as of May 1, 1967.

The application states that CL&P intends to use the proceeds from the sale of the series S bonds to reduce bank loans, estimated to be outstanding in the aggregate amount of $36,500,000, at the time of such sale. Such bank borrowings have been or will be incurred to finance, in part, CL&P's 1967 construction program and to supply funds for its investment in Connecticut Yankee Atomic Power Co. CL&P expects to issue and sell short-term notes to banks later in the year in the approximate amount of $30 million to finance the balance of its construction program. Such program is expected to require total expenditures of approximately $46,500,000.

The application further states that the issue and sale of the series S bonds is subject to the jurisdiction of the Connecticut Public Utilities Commission. A statement of fees and expenses incident to the issue and sale of the series S bonds will be filed by amendment.

Notice is further given that any interested person may, not later than May 8, 1967, request in writing that a hearing be held in respect of such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified should the Commission order a hearing in respect thereof. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicant at the above-stated address, and proof of service thereof (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 67-4010; Filed, Apr. 11, 1967; 8:49 a.m.]

[24C-2754]

INDUSTRIAL KINETICS, INC.

Order Permanently Suspending Regulation A Exemption

APRIL 6, 1967.

Industrial Kinetics, Inc. (issuer), 1972 Grand Avenue, St. Paul, Minn., a Minnesota corporation, incorporated February 21, 1961, having its principal and only office at 1972 Grand Avenue, St. Paul, Minn., filed with the Commission on April 6, 1966, a notification on Form 1-A and an offering circular relating to a proposed offering of 165,000 shares of $0.05 par value common stock and 16,500 shares of 5 percent preferred $10 par value noncumulative stock in units of 100 shares of common and 10 shares of preferred stock for a total price per unit of $120.75 and an aggregate offering price of $200,000 for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) and Regulation A promulgated thereunder.

The Commission, on January 16, 1967, temporarily suspended the Regulation A exemption pursuant to Rule 261 of the exemption.

At the request of issuer, a hearing was ordered to determine whether to vacate the temporary suspension or make it permanent. Thereafter the issuer submitted three alternative offers of settlement pursuant to Rule 8 of the Commission's rules of practice, one of which the Commission has determined to accept. In the offer of settlement accepted by the Commission, Industrial Kinetics, Inc., consents to the order temporarily suspending the exemption becoming permanent. The offer of settlement provides that such consent is limited to this proceeding and is given solely for purposes of settlement and without admitting any of the allegations contained in the order temporarily suspending the exemption.

It is ordered, On the basis of the temporary suspension order and the issuer's offer of settlement, that the Regulation A exemption with respect to the securities of Industrial Kinetics, Inc., be, and it hereby is, permanently suspended.

It is further ordered, That the hearing in this matter scheduled for April 10, 1967, be and it hereby is canceled.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 67-4011; Filed, Apr. 11, 1967; 8:49 a.m.]

[70-4475]

POTOMAC EDISON CO. ET AL.

Notice of Proposed Issue and Sale, and Acquisition of Common Stock

APRIL 6, 1967.

Notice is hereby given that the Potomac Edison Co. ("Potomac Edison"), 200 East Patrick Street, Frederick, Md., an electric utility company and a registered holding company, and its subsidiary companies, the Potomac Edison Co. of Pennsylvania ("PE-Pa."), the Potomac Edison Co. of Virginia ("PE-Va.") and the Potomac Edison Co. of West Virginia ("PE-W. Va."), have filed a joint application-declaration with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("Act"). Potomac Edison is a subsidiary company of Allegheny Power System, Inc., also a registered holding company. Applicants-declarants have designated sections 6, 7, 9, 10, and 12 of the Act and Rules 43 and 44 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the joint application-declaration, which is summarized below, for a complete statement of the proposed transactions.

PE-PA., PE-Va., and PE-W. Va. (hereinafter collectively referred to as the "Subsidiary Companies"), in order to provide funds for necessary property additions and improvements, will issue and sell, from time to time prior to December 31, 1967, to Potomac Edison shares of their authorized but unissued common stock, for a cash consideration equal to the aggregate par or stated value thereof, as follows:

Name of company	No. of shares	Cash consideration
PE-Pa.: Common stock, stated value $5 per share	180,000	$900,000
PE-Va.: Common stock, par value $100 per share	12,000	1,200,000
PE-W. Va.: Common stock, par value $100 per share	19,000	1,900,000

Potomac Edison owns all of the outstanding shares of the common stock of the Subsidiary Companies, and has pledged them under the indenture dated as of October 1, 1944, as supplemented, securing its first mortgage and collateral trust bonds. Potomac Edison will similarly pledge the shares of common stock proposed to be acquired.

The fees and expenses to be paid in connection with the issue, sale and acquisition of the shares of common stock of the Subsidiary Companies are estimated to total $670, including counsel fees of $300.

The joint application-declaration states that the Pennsylvania Public Utility Commission has jurisdiction over the issue of the common stock by PE-Pa; the State Corporation Commission of Virginia has jurisdiction over the issue and acquisition of the common stock of PE-Va.; and the Public Service Commission of West Virginia has asserted jurisdiction over the acquisition of all of the common stocks by Potomac Edison. The orders of these commissions, when issued, will be filed herein by amendment. No other State commission, or Federal commission, other than this Commission, has jurisdiction over said transactions.

Notice is further given that any interested person may, not later than May 5,

1967, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said joint application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed contemporaneously with the request. At any time after said date, the joint application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 67-4012; Filed, Apr. 11, 1967; 8:49 a.m.]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Area 607]

WISCONSIN

Declaration of Disaster Area

Whereas, it has been reported that during the months of March and April 1967, because of the effects of certain disasters, damage resulted to residences and business property located in the State of Wisconsin;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the offices below indicated from persons or firms whose property, situated in those counties in western Wisconsin bordering the Mississippi River and its tributaries, suffered damage or destruction resulting from floods and accompanying conditions occurring on or about March 30, 1967, and continuing thereafter.

OFFICES

Small Business Administration Regional Office, 816 Second Avenue South, Minneapolis, Minn. 55402.

Small Business Administration Regional Office, 25 West Main Street, Madison, Wis. 53703.

2. Temporary offices will be established at such other areas as are necessary, addresses to be announced locally.

3. Applications for disaster loans under the authority of this declaration will not be accepted subsequent to October 31, 1967.

Dated: April 4, 1967.

BERNARD L. BOUTIN, *Administrator.*

[F.R. Doc. 67-3978; Filed, Apr. 11, 1967; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

APRIL 7, 1967.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State commission hearings or other proceedings, and subsequent changes therein, and any other related matters shall be directed to the State commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

State Docket No. MC-4470, Sub 4, filed March 21, 1967. Applicant: POTTER FREIGHT LINES, INC., Post Office Box 418, Sparta, Tenn. Applicant's representative: Clarence Evans, 710 Third National Bank Building, Nashville, Tenn. 37219. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities* (except used household goods and commodities in bulk), amending certificate No. 296A so as to authorize service at the intermediate point of McMinnville with the certificate as amended to be used in conjunction with all of applicant's other operating authority, and amending certificate No. 296A by eliminating the prohibition against service between Chattanooga and McMinnville. The purpose and effect of this application and these amendments is and will be to authorize service between McMinnville and all other points now served by applicant. Applicant seeks authority in interstate commerce coextensive with that sought in intrastate commerce. Applicant operates, generally, in the Nashville-Chattanooga-Knoxville area, transporting property except used household goods and commodities in bulk (with exceptions and additions not material here), in both intrastate and interstate (by registration) commerce.

HEARING: Tuesday, May 23, 1967, at 9:30 a.m., Tennessee Public Service Commission, Commission's Courtroom, C-1-110 Cordell Hull Building, Nashville, Tenn. Requests for procedural information, including the time for filing protests, concerning this application should be addressed to the Tennessee Public Service Commission, Cordell Hull Building, Nashville, Tenn., and should not be directed to the Interstate Commerce Commission.

State Docket No. 8870-CCT, filed March 28, 1967. Applicant: ARTHUR N. LLOYD, INC., Post Office Box 247, Cocoa, Fla. 32923. Applicant's representative: Harry H. Mitchell, Post Office Box 806, Tallahassee, Fla. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of: *General commodities*, except those of unusual value, classes A and B explosives, commodities requiring special equipment, such as: (1) Commodities requiring refrigeration, (2) commodities requiring tank trucks or transportation by which the container for the commodity is a part of any motor vehicle or trailer, to, from and between all points and places in the following counties, in Florida, over irregular routes and on irregular schedules: St. Lucie, Indian River, Brevard, Volusia, Seminole, Orange, Polk, Lake, and Osceola. Both intrastate and interstate authority sought.

HEARING: Not yet assigned. Requests for procedural information, including the time for filing protests, concerning this application should be addressed to the Florida Public Service Commission, 700 South Adams Street, Tallahassee, Fla. 32304, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 67-3990; Filed, Apr. 11, 1967; 8:47 a.m.]

[Notice 441]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

APRIL 7, 1967.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission, under the Commission's deviation rules revised, 1957 (49 CFR 211.1

(c)(8)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 211.1(d)(4)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 211.1(e)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Deviation Rules Revised, 1957, will be numbered consecutively for convenience in identification and protests if any should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 2202 (Deviation No. 94), ROADWAY EXPRESS, INC., 1077 Gorge Boulevard, Post Office Box 471, Akron, Ohio 44309, filed March 27, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Amity Hall, Pa., over U.S. Highway 11 to the junction of the New Camp Hill Bypass, thence over the New Camp Hill Bypass to Harrisburg, Pa., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: Between Amity Hall, Pa., and Harrisburg, Pa., over U.S. Highway 22.

No. MC 30139 (Deviation No. 1), HOLMES TRANSPORTATION, INC., 550 Cochituate Road, Framingham, Mass. 01706, filed March 29, 1967. Carrier's representative: Kenneth B. Williams, 111 State Street, Boston, Mass. 02109. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From Boston, Mass., over Interstate Highway 93 to junction U.S. Highway 3, north of Plymouth, N.H., (2) from junction U.S. Highway 3 and Massachusetts Highway 128, in Burlington, Mass., over relocated U.S. Highway 3 to Tyngsboro, Mass., (3) from Nashua, N.H., over the Everett Turnpike to Manchester, N.H., and (4) from New Haven, Conn., over Interstate Highway 91 to White River Junction, Vt., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: (1) From Boston, Mass., over U.S. Highway 3 via Plymouth, N.H., to Twin Mountain, N.H. (also from Boston over Massachusetts Highway 28 to the Massachusetts-New Hampshire State line, thence over New Hampshire Highway 28 to junction U.S. Highway 3 at or near Manchester, N.H.), (2) from junction U.S. Highway 3A (formerly U.S. Highway 3) and Massachusetts Highway 128, over U.S. Highway 3A to Tyngsboro, Mass., (3) from Nashua, N.H., over U.S. Highway 3 to Manchester, N.H., and (4) from New Haven, Conn., over U.S. Highway 5 to White River Junction, Vt., and return over the same routes.

No. MC 69281 (Deviation No. 2), THE DAVIDSON TRANSFER & STORAGE CO., 6201 Pulaski Highway, Baltimore, Md. 21203, filed March 30, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: Between Baltimore, Md., and Harrisburg, Pa., over Interstate Highway 83, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: Between Harrisburg, Pa., and Baltimore, Md., over U.S. Highway 111 (now Maryland Highway 45).

No. MC 69281 (Deviation No. 3), THE DAVIDSON TRANSFER & STORAGE CO., 6201 Pulaski Highway, Baltimore, Md. 21203, filed March 30, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Baltimore, Md., over the John F. Kennedy Expressway (Maryland Northeastern Expressway and Delaware Turnpike, Interstate Highway 95) to junction with the New Jersey Turnpike at the Delaware Memorial Bridge, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Baltimore, Md., over U.S. Highway 40 to Pennsville, N.J., thence over U.S. Highway 130 to junction U.S. Highway 1, thence over U.S. Highway 1 to New York, N.Y., and return over the same route.

No. MC 69281 (Deviation No. 4), THE DAVIDSON TRANSFER & STORAGE CO., 6201 Pulaski Highway, Baltimore, Md. 21203, filed March 30, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From junction U.S. Highway 1 and Interstate Highway 495, over Interstate Highway 495 to junction Interstate 95, thence over Interstate Highway 95 to Petersburg, Va., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes, as follows: (1) From Baltimore, Md., over U.S. Highway 1 to Alexandria, Va., (2) from Washington, D.C., over U.S. Highway 1 to Richmond, Va., and (3) from Richmond, Va., over U.S. Highway 1 to Petersburg, Va., thence over U.S. Highway 460 to Suffolk, Va., thence over U.S. Highway 58 to Norfolk, Va., and return over the same routes.

No. MC 113265 (Deviation No. 1), ATLANTA-ASHEVILLE MOTOR EXPRESS, INC., Post Office Box 5287, 1268 Caroline Street NE., Atlanta, Ga. 30307, filed March 27, 1967. Carrier's representative: Paul M. Daniell, Suite 1600, First Federal Building, Atlanta, Ga. 30303. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From Atlanta, Ga., over Interstate Highway 85 to junction Interstate Highway 26, thence over Interstate Highway 26 to Asheville, N.C., and (2) from Atlanta, Ga., over Interstate Highway 85 to junction U.S. Highway 25, thence over U.S. Highway 25 to junction Interstate Highway 26, thence over Interstate Highway 26 to Asheville, N.C., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Atlanta, Ga., over Georgia Highway 13 to Buford, Ga., and (2) from Buford, Ga., over U.S. Highway 23 to Asheville, N.C., and return over the same routes.

No. MC 116004 (Deviation No. 9), TEXAS OKLAHOMA EXPRESS, INC., 2515 Irving Boulevard, Dallas, Tex. 75221, filed March 30, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From junction Interstate Highway 35 and Texas Highway 458 at or near Denton, Tex., over Texas Highway 458 to junction Texas Highway 99 at Pilet Point, Tex., thence over Texas Highway 99 to the Texas-Oklahoma State line, thence over Oklahoma Highway 99 to Ada, Okla., thence over Oklahoma Highway 13 to junction Oklahoma Highway 39, thence over Oklahoma Highway 39 to junction Interstate Highway 35 at Purcell, Okla., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: Between Denton, Tex., and Purcell, Okla., over U.S. Highway 77.

MOTOR CARRIERS OF PASSENGERS

No. MC 29957 (Deviation No. 8), CONTINENTAL SOUTHERN LINES, INC., Box 4107, Alexandria, La. 71301, filed March 30, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers or in a separate vehicle, over a deviation route as follows: From Baton Rouge, La., over Interstate Highway 10 to junction Interstate Highway 12, thence over Interstate Highway 12 to junction U.S. Highway 61, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: between Baton Rouge, La., and New Orleans, La., over U.S. Highway 61.

No. MC 29957 (Deviation No. 9) (Cancels Deviations No. 1, No. 2, No. 3 and No. 7), CONTINENTAL SOUTHERN LINES, INC., Box 4107, Alexandria, La. 71301, filed March 30, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers or in a

separate vehicle, over a deviation routes as follows: (1) From Memphis, Tenn., over Interstate Highway 40 to junction U.S. Highway 45, (2) from junction Interstate Highway 40 and U.S. Highway 45 over Interstate Highway 40 to Nashville, Tenn., (3) from Memphis, Tenn., over Interstate Highway 40 to junction Tennessee Highway 20, thence over Tennessee Highway 20 to Jackson, Tenn., and (4) from junction Tennessee Highway 20 and U.S. Highway 70 (approximately 5 miles northeast of Jackson, Tenn.), over U.S. Highway 70 to junction Interstate Highway 40, thence over Interstate Highway 40 to Nashville, Tenn., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1) From Memphis, Tenn., over U.S. Highway 64 to Whiteville, Tenn., thence over Tennessee Highway 100 to junction Tennessee Highway 18, thence over Tennessee Highway 18 to Jackson, Tenn., thence over Tennessee Highway 20 to Parsons, Tenn., thence over Tennessee Highway 100 to Nashville, Tenn., and (2) from Jackson, Tenn., over U.S. Highway 45 to junction U.S. Highway 45E, thence over U.S. Highway 45E to Milan, Tenn., and return over the same routes.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 67-3991; Filed, Apr. 11, 1967; 8:48 a.m.]

[Notice 1047]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

APRIL 7, 1967.

The following publications are governed by Special Rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER issue of April 20, 1966, which became effective May 20, 1966.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

No. MC 65626 (Sub-No. 18), filed April 4, 1967. Applicant: FREDONIA EXPRESS, INC., 320 Eagle Street, Fredonia, N.Y. 14063. Applicant's representative: E. Stephen Heisley, 529 Transportation Building, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk, in tank vehicles) (1) from points in Erie, Genessee, Livingston, Monroe, Niagara, Orleans, and Wyoming Counties, N.Y., to points in Maine, New Hampshire, Vermont, and Rhode Island, and (2) from points in Yates and Ontario Counties, N.Y., to points in Connecticut, Massachusetts, Rhode Island, Vermont, New Hampshire, and Maine.

HEARING: May 2, 1967, in Room 410, Federal Office Building, 121 Ellicott Street, Buffalo, N.Y., before Examiner Richard A. White.

No. MC 97275 (Sub-No. 19) (Republication), filed December 13, 1965, published FEDERAL REGISTER issue of January 19, 1966, and republished this issue. Applicant: ESTES EXPRESS LINES, a corporation, 1405 Gordon Avenue, Richmond, Va. 23224. Applicant's representative: Francis W. McInerny, Suite 602, Solar Building, 1000 16th Street NW., Washington, D.C. 20006. That by order of October 19, 1966, the Commission, Finance Board No. 1, approved in No. MC-F-9292, the purchase by applicant of the operating rights and property of Coastal Freight Lines, Inc., MC 109483, and in MC 97275 (Sub-No. 19) granted a certificate of public convenience and necessity to applicant, authorizing continuance of the operations and services lawfully provided under its certificate of registration. By order of January 5, 1967, the Commission, Finance Board No. 1, reopened the proceedings for reconsideration, and authorized applicant to operate under the operating rights granted in No. MC 109483, as modified, which rights, as so modified, were therein authorized to be unified with the operating rights granted in No. MC 97275 (Sub-No. 19) and to be embraced in a certificate to be issued in its name, with duplications eliminated, subject to the cancellation of the certificate of registration in No. MC 97275 (Sub-Nos. 14, 15, 16, 17, and 18). A supplemental order of the Commission, Finance Board No. 1, dated March 17, 1967, and served March 30, 1967, as modified, finds that the order of October 19, 1966, as modified by order of January 5, 1967 shall remain in full force and effect; therefore, the present and future public convenience and necessity require operation by applicant in interstate or foreign commerce as a common carrier by motor vehicle, over regular routes, of *general commodities* (except household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment).

(1) Between Norfolk, Va., and Manteo, N.C.: From Norfolk over Virginia Highway 170 to the Virginia-North Carolina State line, thence over North Carolina Highway 170 to junction North Carolina Highway 34, thence over North Carolina Highway 34 to Barco, N.C., thence over U.S. Highway 158 to Manteo, serving the off-route points on Roanoke Island, N.C.; (2) between Elizabeth City and Sligo, N.C., over North Carolina Highway 170; (3) between Manteo and Stumpy Point, N.C.: From Manteo over North Carolina Highway 345 to Croatan Sound, N.C., thence by ferry to Manns Harbor, N.C., thence over unnumbered highway to Stumpy Point, serving the off-route point of East Lake, N.C.; (4) between Richmond and South Boston, Va.: (a) From Richmond over U.S. Highway 1 (also over U.S. Highway 301, or Interstate Highway 95) to Petersburg, Va., thence over U.S. Highway 1 to South Hill, Va., thence over U.S. Highway 58 to South Boston; (b) from Richmond to South Hill, Va., over routes specified in (a) above, thence over Virginia Highway 47 to Barnes Junction, Va., thence over U.S. Highway 360 to Halifax, Va., thence over U.S. Highway 501 to South Boston; and (c) from Richmond to Petersburg over routes specified in (a) above, thence over U.S. Highway 460 to Blackstone, Va., thence over Virginia Highway 40 to Victoria, Va., or from Blackstone, Va., over U.S. Highway 460 to Nottoway, Va., thence over Virginia Highway 625 to junction Virginia Highway 49, thence over Virginia Highway 49 to Victoria, Va., thence over Virginia Highway 49 to Chase City, Va., thence over Virginia Highway 47 to Barnes Junction, Va., thence over U.S. Highway 360 to junction Virginia Highway 304, thence over Virginia Highway 304 to Boston. Restriction: No freight shall be both originated and delivered between Richmond and Petersburg, Va., and points intermediate thereto.

(5) Between Amelia and Waverly, Va.: From Amelia over Virginia Highway 614 to junction Virginia Highway 625, thence over Virginia Highway 625 to Blackstone, Va., thence over Virginia Highway 40 to Waverly, serving Amelia, and Waverly, for joinder only; (6) between junction U.S. Highway 460 and Virginia Highway 153 and junction U.S. Highway 460 and Virginia Highway 156: From junction U.S. Highway 460 and Virginia Highway 153, over Virginia Highway 153 to junction Virginia Highway 708, thence over Virginia Highway 708 to Sutherland, Va., thence over U.S. Highway 460 to junction Virginia Highway 627, thence over Virginia Highway 627 to Dinwiddie, Va., thence over Virginia Highway 703 to Carson, Va., thence over U.S. Highway 301 to junction Virginia Highway 156, thence over Virginia Highway 156 to junction U.S. Highway 460, serving junction U.S. Highways 460 and Virginia Highway 156 for joinder only, (7) between Blackstone and Wakefield, Va.: From Blackstone, over Virginia Highway 40 to junction Virginia Highway 46, thence over Virginia Highway 46 to Lawrenceville, Va., thence over U.S. Highway 58 to Edgerton, Va., thence over Virginia Highway 712 to junction Virginia Highway 608, thence over Virginia Highway 608 to Jarratt, Va., thence over Virginia Highway 631 to junction Virginia Highway 35, thence over Virginia Highway 35 to junction Virginia Highway 622, thence over Virginia Highway 622 to junction Virginia Highway 620, thence over Virginia Highway 620 to Wakefield, serving Dundas, Va., as an off-route point and serving Wakefield, for joinder only.

(8) Between South Boston and Suffolk, Va.: (a) From South Boston, over U.S. Highway 501 to junction Virginia Highway 96, thence over Virginia Highway 96 to Virgilina, Va., thence over Vir-

ginia Highway 49 to junction U.S. Highway 58, thence over U.S. Highway 58 to Suffolk, and (b) from South Boston, over U.S. Highway 58 to Broadnax, Va., thence over Virginia Highway 659 to junction Virginia Highway 611, thence over Virginia Highway 611 to Emporia, Va., thence over Virginia Highway 730 to junction Virginia Highway 195, thence over Virginia Highway 195 to Boykins, Va., thence over Virginia Highway 35 to junction Virginia Highway 673, thence over Virginia Highway 673 to junction Virginia Highway 684, thence over Virginia Highway 684 to junction U.S. Highway 258, thence over U.S. Highway 258 to Franklin, Va., thence over U.S. Highway 258 to the Virginia-North Carolina State line, thence over U.S. Highway 258 to junction Virginia Highway 189, thence over Virginia Highway 189 to Holland, Va., thence over Virginia Highway 653 to junction Virginia Highway 616, thence over Virginia Highway 616 to Whaleyville, Va., thence over U.S. Highway 13 to Suffolk, serving Hercules, Va., as an off-route point; (9) between Kenbridge, Va., and junction U.S. Highway 360 and Virginia Highway 646: From Kenbridge, over Virginia Highway 637 to South Hill, Va., thence over U.S. Highway 1 to the Virginia-North Carolina State line, thence return over U.S. Highway 1 to junction Virginia Highway 712, thence over Virginia Highway 712 to junction Virginia Highway 4, thence over Virginia Highway 4 to junction Virginia Highway 707, thence over Virginia Highway 707 to Boydton, Va., thence over Virginia Highway 92 to Chase City, Va., thence over Virginia Highway 646 to junction U.S. Highway 360, serving the junction of U.S. Highway 360 and Virginia Highway 646, for joinder only.

(10) Between La Crosse, Va. and junction Virginia Highway 40 and Virginia Highway 635: From La Crosse over Virginia Highway 618 to junction Virginia Highway 637, thence over Virginia Highway 637 to South Hill, Va., thence over U.S. Highway 1 to junction Virginia Highway 664, thence over Virginia Highway 664 to junction Virginia Highway 635, thence over Virginia Highway 635 to junction Virginia Highway 40; (11) between Ford and Lawrenceville, Va.: From Ford over Virginia Highway 622 to junction Virginia Highway 610, thence over Virginia Highway 610 to junction Virginia Highway 40, thence over Virginia Highway 40 to McKenney, Va., thence over U.S. Highway 1 to junction Virginia Highway 712, thence over Virginia Highway 712 to Edgerton, Va., thence over U.S. Highway 58 to junction Virginia Highway 670, thence over Virginia Highway 670 to junction Virginia Highway 46, thence over Virginia Highway 46 to the Virginia-North Carolina State line, thence return over Virginia Highway 46 to Lawrenceville; (12) between Petersburg, Va. and the Virginia-North Carolina State line: Over U.S. Highway 301 (also over Interstate Highway 95); (13) between Petersburg and Windsor, Va.: From Petersburg over U.S. Highway 301 to junction Virginia Highway 35 (also from Petersburg over Interstate Highway 95), thence over Virginia Highway 35 to Courtland, Va., thence over Virginia Highway 616 to junction Virginia Highway 603, thence over Virginia Highway 603 to junction U.S. Highway 258, thence over U.S. Highway 258 to Windsor, serving Windsor for joinder only.

(14) Between Dinwiddie and Wakefield, Va.: From Dinwiddie, over Virginia Highway 619 to Emporia, Va., thence over Virginia Highway 730 to junction Virginia Highway 653, thence over Virginia Highway 653 to junction Virginia Highway 35, thence over Virginia Highway 35 to junction Virginia Highway 628, thence over Virginia Highway 628 to Wakefield, serving Wakefield for joinder only; (15) between Ivor and Windsor, Va.: From Ivor, over Virginia Highways 616, 603, and 641 to junction U.S. Highway 58, thence over U.S. Highway 58 to junction U.S. Highway 258, thence over U.S. Highway 258 to Windsor, serving Ivor and Windsor for joinder only; (16) between Disputanta and Drewryville, Va.: From Disputanta, over Virginia Highway 618 to junction Virginia Highway 627, thence over Virginia Highway 627 to junction Virginia Highway 35, thence over Virginia Highway 35 to junction Virginia Highway 626, thence over Virginia Highway 626 to Sussex, Va., thence over Virginia Highway 735 to junction Virginia Highways 659 and 308, thence over Virginia Highway 308 to junction U.S. Highway 58, thence over U.S. Highway 58 to junction Virginia Highway 659, thence over Virginia Highway 659 to Drewryville (also from junction Virginia Highways 735, 659, and 308, over Virginia Highway 659 to Drewryville), serving Disputanta for joinder only.

(17) Between junction U.S. Highway 460 and Virginia Highway 611 and junction Virginia Highway 610 and Virginia Highway 153: From junction U.S. Highway 460 and Virginia Highway 611 over Virginia Highway 611 to junction Virginia Highway 708, thence over Virginia Highway 708 to junction Virginia Highway 610, thence over Virginia Highway 610 to junction Virginia Highway 153; (18) between Mannboro, Va., and junction Virginia Highways 612 and 153 over Virginia Highway 612; (19) between Darvills, Va., and junction U.S. Highway 1 and Virginia Highway 613 over Virginia Highway 613; (20) between Barnes Junction and Chase City, Va.: From Barnes Junction over U.S. Highway 15 to the Virginia-North Carolina State line, thence return over U.S. Highway 15 to junction Virginia Highway 49, thence over Virginia Highway 49 to Chase City; (21) between junction Virginia Highways 304 and 344 and Staunton River State Park, Va., over Virginia Highway 344; (22) between junction U.S. Highway 58 and Virginia Highway 4 and junction Virginia Highways 4 and 707 over Virginia Highway 4; (23) between junction Virginia Highways 40 and 626 and junction Virginia Highways 626 and 619 over Virginia Highway 626; (24) between Courtland, Va., and junction Virginia Highways 35 and 673 over Virginia Highway 35; (25) between Courtland, Va., and junction Virginia Highways 646 and 641 over Virginia Highway 646; (26) between junction U.S. Highway 58 and Virginia Highway 641 and junction Virginia Highway 641 and U.S. Highway 258 over Virginia Highway 641.

(27) Between Suffolk and Norfolk, Va., (a) over U.S. Highway 460, (b) over U.S. Highway 58, (c) over U.S. Highway 337, and (d) from Suffolk over routes specified in (a), (b), and (c) above to Bowers Hill, Va., thence over U.S. Highway 13 to Norfolk; (28) between Richmond and Norfolk, Va.: From Richmond, over U.S. Highway 60 to Seven Pines, Va. (also from Richmond, over Virginia Highway 33 to Seven Pines), thence over U.S. Highway 60 to Bottoms Bridge, Va., thence over Virginia Highway 33 to Glenns, Va., thence over U.S. Highway 17 to Yorktown, Va., thence over Virginia Highway 238 to junction Interstate Highway 64 and Virginia Highway 168, thence over Interstate Highway 64 and Virginia Highway 168 to junction U.S. Highway 17, thence over U.S. Highway 17 to junction U.S. Highway 13, thence over U.S. Highway 13 to Norfolk (also from junction U.S. Highway 17 over Virginia Highway 168 and Interstate Highway 64 to junction U.S. Highway 60, thence over Virginia Highway 168, Interstate Highway 64, or U.S. Highway 60 to Norfolk).

(29) Between Talleysville, Va., and junction Virginia Highways 156 and 33: From Talleysville over Virginia Highway 609 to junction Virginia Highway 606, thence over Virginia Highway 606 to junction U.S. Highway 360, thence over U.S. Highway 360 to Mechanicsville, Va., thence over Virginia Highway 156 to junction Virginia Highway 33; (30) between Richmond, Va., and the Virginia-District of Columbia State line: From Richmond, over U.S. Highway 360 to Tappahannock, Va., thence over U.S. Highway 17 to Fredericksburg, Va., thence over U.S. Highway 1 to the Virginia-District of Columbia State line (also from Fredericksburg, over Interstate Highway 95 to the Virginia-District of Columbia State line), serving Franconia, Va., as an off-route point. Restriction: No freight shall be both originated and delivered between Fredericksburg, Va., and the Virginia-District of Columbia State line; (31) between Adner, Va., and junction Virginia Highways 30, 168, and 168Y: From Adner over Virginia Highway 14 to St. Stephens Church, Va., thence over U.S. Highway 360 to Aylett, Va., thence over Virginia Highway 600 to junction Virginia Highway 601, thence over Virginia Highway 601 to junction U.S. Highway 301, thence over U.S. Highway 301 to junction Virginia Highway 30, thence over Virginia Highway 30 to junction Virginia Highways 168 and 168Y, serving Walkerton, Va., as an off-route point, and junction Virginia Highways 168 and 168Y, for joinder only.

(32) Between White Stone and St. Stephens Church, Va.: From White Stone, over Virginia Highway 3 to junction Virginia Highway 33, thence over Virginia Highway 33 to junction U.S. Highway 17, thence over U.S. Highway

17 to Glenns, Va., thence over U.S. Highway 17 to Tappahannock, Va., thence over Virginia Highway 627 to junction Virginia Highway 630, thence over Virginia Highway 630 to junction Virginia Highway 721, thence over Virginia Highway 721 to junction U.S. Highway 301, thence return over Virginia Highway 721 to St. Stephens Church, serving junction Virginia Highway 721 and U.S. Highway 301 for joinder only; (33) between Lester Manor, Va., and junction Virginia Highways 30, 633, and 632, over Virginia Highways 632 or 633; (34) between Urbana, Va., and junction Virginia Highways 33 and 227 over Virginia Highway 227; (35) between Bowling Green, Va., and junction Virginia Highways 628 and 600: From Bowling Green over U.S. Highway 301 to Port Royal, Va., thence over U.S. Highway 301 to junction U.S. Highway 17, thence over U.S. Highway 17 to junction Virginia Highway 642, thence over Virginia Highway 642 to junction Virginia Highway 625, thence over Virginia Highway 625 to junction Virginia Highway 628, thence over Virginia Highway 628 to junction Virginia Highway 600. Restriction: No freight to be picked up or delivered at Bowling Green, or the terminal area of Bowling Green, except Camp A. P. Hill, Va., serving Bowling Green for joinder only.

(36) Between Camp A. P. Hill, Va., and junction Virginia Highways 630 and 608 over Virginia Highway 608; (37) between junction U.S. Highway 17 and Virginia Highway 631 and junction Virginia Highways 635 and 627: From junction Virginia Highway 631 and U.S. Highway 17 over Virginia Highway 631 to junction Virginia Highway 635, thence over Virginia Highway 635 to junction Virginia Highway 627; (38) between Falmouth and Stafford Court House, Va.: From Falmouth, over Virginia Highway 664 to junction Virginia Highway 607, thence over Virginia Highway 607 to junction Virginia Highway 608, thence over Virginia Highway 608 to junction Virginia Highway 687, thence over Virginia Highway 687 to Stafford Court House; (39) between junction U.S. Highway 1 and Virginia Highway 611 and Wide Water, Va., over Virginia Highway 611; (40) between junction Interstate Highway 95 and the Marine Corps Trunk Highway, Va., and the Potomac River over the Marine Corps Trunk Highway; (41) between junction U.S. Highway 1 and Virginia Highway 633 and the Potomac River over Virginia Highway 633; (42) between Woodbridge and Occoquan, Va., over Virginia Highway 123.

(43) Between Hollowing Point and Springfield (Garfield), Va.: From Hollowing Point over Virginia Highway 600 to junction Virginia Highway 242, thence over Virginia Highway 242 to junction Virginia Highway 600, thence over Virginia Highway 600 to junction Interstate Highway 95, thence over Interstate Highway 95 to junction Virginia Highway 642, thence over Virginia Highway 642 to Lorton, Va., thence over Virginia Highway 642 to Interstate Highway 95, thence over Interstate Highway 95 to junction Virginia Highway 638, thence over Virginia Highway 638 to junction U.S. Highway 1, thence over U.S. Highway 1 to junction Virginia Highway 611, thence over Virginia Highway 611 to junction Virginia Highway 241, thence over Virginia Highway 241 to Alexandria, Va., thence over Virginia Highway 967 to junction Virginia Highway 644, thence over Virginia Highway 644 to Springfield. Restriction: No freight shall be both originated and delivered, between Fredericksburg, Va., and Virginia-District of Columbia State line; (44) between Alexandria and Winchester, Va.: From Alexandria over Virginia Highway 7 to Falls Church, Va. (also from Rosslyn, Va., over Virginia Highway 211 to Falls Church), thence over Virginia Highway 7 to Winchester, serving Ashburn, Gaylord, Hillsboro, Government Weather Bureau Mine, Lovettsville, Lucketts, Waterford, and Wheatland, Va., as off-route points; (45) between Dulles International Airport, Va., and junction Dulles Airport Road and Interstate Highway 66 over Dulles Airport Road.

(46) Between Langley (Fairfax County), Va., and junction Virginia Highways 7 and 606: From Langley over Virginia Highway 193 to Dranesville, Va., thence over Virginia Highway 7 to junction Virginia Highway 28, thence over Virginia Highway 28 to Herndon, Va., thence over Virginia Highway 606 to junction Virginia Highway 7, serving Sunset Hills, Va., as an off-route point; (47) between junction U.S. Highway 522 and the Virginia-West Virginia State line and junction U.S. Highway 50 and the Virginia-West Virginia State line: From the Virginia-West Virginia State line over U.S. Highway 522 to Winchester, Va., thence over U.S. Highway 50 to the Virginia-West Virignia State line, and return over the same routes serving all intermediate points in (1) through (47) above, except where otherwise restricted, and service is authorized in connection with said routes on that portion of Interstate Highway 495 located in Virginia; (48) between Richmond, Va., and junction Virginia Highway 47 and U.S. Highways 15 and 360 over U.S. Highway 360; (49) between Petersburg and Suffolk, Va., over U.S. Highway 460.

(50) Between Richmond and Norfolk, Va., (a) over U.S. Highway 60; (b) from Richmond over U.S. Highway 60 to junction Virginia Highway 168Y, thence over Virginia Highway 168Y to junction Virginia Highway 168, thence over Virginia Highway 168 to junction U.S. Highway 60, thence over U.S. Highway 60 (also from junction Virginia Highway 168 and 168Y, over Interstate Highway 64) to Norfolk; and (c) over Interstate Highway 64; (51) between Tappahannock and Greys Point, Va.: From Tappahannock over U.S. Highway 360 to junction Virginia Highway 3, thence over Virginia Highway 3 to Greys Point; (52) between Richmond and Fredericksburg, Va., (a) over Interstate Highway 95; (b) from Richmond over U.S. Highway 1 to junction Virginia Highway 54, thence over Virginia Highway 54 to junction Interstate Highway 95, thence over Interstate Highway 95 to Fredericksburg; (c) from Richmond over U.S. Highway 1 to junction Virginia Highway 54, thence over Virginia Highway 54 to junction U.S. Highway 301, thence over U.S. Highway 301 to Bowling Green, Va., thence over Virginia Highway 2 to junction U.S. Highway 17, thence over U.S. Highway 17 to Fredericksburg; and (d) from Richmond over Interstate Highway 95 to junction Virginia Highway 54, thence over Virginia Highway 54 to junction U.S. Highway 301, thence over U.S. Highway 301 to Bowling Green, Va., thence over Virginia Highway 2 to junction U.S. Highway 17, thence over U.S. Highway 17 to Fredericksburg; and (53) between Bowling Green, Va., and junction Interstate Highway 95 and Virginia Highway 207 over Virginia Highway 207, and return over the same routes, serving no intermediate points, as alternate routes for operating convenience only in (48) through (53) above.

Service is not authorized to or from points in the District of Columbia or Maryland; that applicant is fit, willing, and able properly to perform such service and conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; and that a certificate shall be issued subject, however, to the condition that the authority granted, to the extent it authorizes transportation of classes A and B explosives, shall be limited, in point of time, to a period expiring 5 years from the date of the certificate. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 111729 (Sub-No. 164) (Republication), filed July 21, 1966, published FEDERAL REGISTER issue of August 25, 1966, and republished this issue. Applicant: AMERICAN COURIER CORPORATION, 222-17 Northern Boulevard, Bayside, N.Y. 11361. Applicant's representative: Russell S. Bernhard, 1625 K Street NW., Washington, D.C. By application filed July 21, 1966, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes of: (1) Exposed and processed film and prints, complimentary replacement film, incidental dealer handling supplies (consisting of labels, envelopes and packaging materials) and advertising literature moving therewith (excluding motion picture film used primarily for commercial theater and television exhibition), (a) between Cleveland, Ohio, on the one hand, and, on the other, points in Pennsylvania, West Virginia, and Maryland, (b) between Cincinnati, Ohio, on the one hand, and, on the other, points in Kentucky, (c) be-

tween Baltimore, Md., on the one hand, and, on the other, points in Maryland, (d) between Richmond, Va., on the one hand, and, on the other, points in Virginia, (e) between Boston, Mass., on the one hand, and, on the other, Lewiston and Portland, Maine, and Concord, Laconia, and Nashua, N.H., and (f) between Glenside, Pa., on the one hand, and, on the other, Baltimore, Md., and Newark and Trenton, N.J.; (2) dentures, articulators, impressions, models, bites and products relating to restorative dentistry, between Charleston, W. Va., on the one hand, and, on the other, points in Kentucky, Ohio, and Pennsylvania.

(3) Advertising media including layouts, copy, artwork, tearsheets and photos and accompanying documents, between points in Hartford County, Conn., and New York, N.Y.; (4) oil samples and accompanying documents, between La Guardia and John F. Kennedy Airports, N.Y., and Newark, N.J., on the one hand, and, on the other, points in Connecticut; (5) oil samples, small hardware, advertising materials, maps, promotion items limited to shipments not to exceed 50 pounds per shipment, between points in Middlesex County, N.J., on the one hand, and, on the other, points in Hartford and New London Counties, Conn.; Baltimore, Md., and Philadelphia, Pa; (6) checks, business papers, and records, payroll records, audit, and accounting media, and sales and advertising pamphlets moving therewith (excluding plant removals), (a) between points in Middlesex County, N.J., on the one hand, and, on the other, points in Hartford and New London Counties, Conn.; Baltimore, Md.; and Philadelphia, Pa.; (b) between Orange, N.J., on the one hand, and, on the other, points in Connecticut, Maryland, Massachusetts, New York, Pennsylvania, and Rhode Island, and the District of Columbia; (c) between Baltimore, Md., and Lancaster, Pa.; (d) between Alexandria, Va., and York, Pa.; (e) between Cleveland, Ohio, on the one hand, and, on the other, points in New York; and (7) ophthalmic goods and commercial papers (excluding plant removals), between Cleveland, Ohio, and Grand Rapids, Mich.

An order of the Commission, Operating Rights Board No. 1, dated March 16, 1967, and served April 3, 1967, as amended, find that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier, by motor vehicle, over irregular routes, of (1) *exposed and processed film and prints, complimentary replacement film, incidental dealer handling supplies and advertising literature* moving therewith (excluding motion picture film used primarily for commercial theatre and television exhibition), (a) between Cleveland, Ohio, on the one hand, and, on the other, points in Pennsylvania, West Virginia, and Maryland, (b) between Cincinnati, Ohio, on the one hand, and, on the other, points in Kentucky, (c) between Baltimore, Md., on the one hand, and, on the other, points in Maryland, (d) between Richmond, Va., on the one hand, and, on the other, points in Virginia, (e) between Boston, Mass., on the one hand, and, on the other, Lewiston and Portland, Maine, and Concord, Laconia, and Nashua, N.H., and (f) between Glenside, Pa., on the one hand, and, on the other, Baltimore, Md., and Newark and Trenton, N.J.; (2) *dentures, articulators, impressions, models, bites and products relating to restorative dentistry*, between Charleston, W. Va., on the one hand, and, on the other, points in Kentucky, Ohio, and Pennsylvania: (3) *advertising media and accompanying documents*, between points in Hartford County, Conn., and New York, N.Y.

(4) *Oil samples and accompanying documents*, between La Guardia and John F. Kennedy Airports, N.Y., and Newark, N.J., on the one hand, and, on the other, points in Connecticut; (5) *oil samples, small hardware, advertising materials, maps, promotion items*, between points in Middlesex County, N.J., on the one hand, and, on the other, points in Hartford and New London Counties, Conn., Baltimore, Md., and Philadelphia Pa., restricted against the transportation of packages of articles weighing in the aggregate more than 50 pounds from one consignor to one consignee or any one day; (6) *checks, business papers and records, payroll records, audit, and accounting media and sales and advertising pamphlets* moving therewith (except cash letters), (a) between points in Middlesex County, N.J., on the one hand, and, on the other, points in Hartford and New London Counties, Conn., Baltimore, Md., and Philadelphia, Pa.; (b) between Orange, N.J., on the one hand, and, on the other, points in Connecticut, Maryland, Massachusetts, New York, Pennsylvania and Rhode Island, and the District of Columbia; (c) between Baltimore, Md., and Lancaster, Pa.; (d) between Alexandria, Va., and York, Pa.; (e) between Cleveland, Ohio, on the one hand, and, on the other, points in New York; and (7) *ophthalmic goods and commercial papers* (except cash letters), between Cleveland, Ohio, and Grand Rapids, Mich.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; and that subsequent to or concurrently with issuance of certificates to applicant in Nos. MC-111729 (Sub-Nos. 169, 170, and 171), MC-126745 (Sub-No. 19), and MC-127431 (Sub-No. 8), an appropriate certificate should be issued. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, as notice of the common carrier authority of which a need is found in this order will be published in the FEDERAL REGISTER, and for a period of 30 days from the date of such publication, any proper party in interest may file an appropriate petition for leave to intervene in this proceeding.

No. MC 117368 (Sub-No. 2EX) (Republication), filed July 18, 1966, published FEDERAL REGISTER issue of August 25, 1966, and republished this issue. Applicant: EDMOUR L. PELLETIER, doing business as IDYLLWILD FREIGHT LINES, Post Office Box 126, Hemet, Calif. Applicant's representative: R. Y. Schureman, 1010 Wilshire Boulevard, Los Angeles, Calif. By application filed July 18, 1966, under the provisions of section 204(a)(4a) of the Interstate Commerce Act, applicant seeks a certificate of exemption from compliance with the provisions of Part II of the act in connection with operations as a common carrier by motor vehicle, over regular routes of (A) used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A, (B) automobiles, trucks, and buses, viz.: New and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses, and taxis, freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, truck and trailers combined, buses and bus chassis, (C) livestock, viz.: Bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stage, or swine, (D) commodities requiring the use of special refrigeration or temperature control in specially designed or constructed refrigerated equipment, (E) liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids, in bulk, in tank trucks, tank trailers, tank semitrailers, or a combination of such highway vehicles, (F) commodities when transported in bulk, in dump truck or hopper-type trucks, (G) commodities when transported in motor vehicles equipped for mechanical mixing in transit, (H) logs, (I) articles of extraordinary value, as set forth in Rule 3 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.

(J) Commodities likely to contaminate or damage other freight, and (K) explosives, as described in and subject to the regulations of Agent H. A. Campbell's Tariff No. 10, over the routes indicated below. An order of the Commission, Operating Rights Board No. 1, dated March 16, 1967, and served April 5, 1967, finds that operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over regular routes, of *general commodities* (except commodities in bulk, classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment), (1) between Hemet and Pinyon Flats, Calif., over California Highway 74, (2) between junction Riverside County Highway R1 and California Highway 74 at Mountain Center, Calif., and the Twin Pines Ranch, approximately 8 miles south of the city of Banning, Calif., over Riverside County Highway R1, and (3) between junction California Highways 71 and 74 and Aguanga, Calif., over California Highway 71, serving all intermediate points and off-route points within

10 miles of each route, is of such nature, character, or quantity, as would not, if exempted from regulation under Part II of the Interstate Commerce Act, substantially affect or impair uniform regulation by the Commission of transportation by motor carriers engaged in interstate or foreign commerce in effectuating the national transportation policy, that a certificate exempting such operations should be granted, subject to the coincidental cancellation of the certificate of exemption presently held by applicant in No. MC 117368 (Sub-No. 1EX), dated December 3, 1959. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the exempt operations described in the findings in this order, a notice of the exemption actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 124333 (Sub-No. 8) (Republication), filed May 17, 1965, published FEDERAL REGISTER issue of November 4, 1965, and republished this issue. Applicant: BAKER PETROLEUM TRANSPORTATION CO., INC., Pyles Lane, New Castle, Del. Applicant's representative: Samuel W. Earnshaw, 833 Washington Building, Washington, D.C. 20005. By order entered May 27, 1966, the Commission, Operating Rights Board No. 1, granted to applicant a permit No. MC 124333 (Sub-No. 8), to conduct operations in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes of asphalt binder, in bulk, in tank vehicles, from the site of the Del Val Asphalt Corp. plant at or near Edgemoor, Del., to points in that part of New Jersey, Pennsylvania (except Bustleton, Philadelphia County), Maryland, and Virginia bounded by a line beginning at Perth Amboy, N.J., and extending along the Raritan River to junction Interstate Highway 287, thence along Interstate Highway 287 to junction U.S. Highway 22, thence west along U.S. Highway 22 to junction U.S. Highway 15 at or near Harrisburg, Pa., thence along U.S. Highway 15 to junction U.S. Highway 211 at or near Haymarket, Va., thence along U.S. Highway 211 to junction Interstate Highway 495, thence southeasterly along Interstate Highway 495 to junction U.S. Highway 50, thence along U.S. Highway 50 to the Atlantic Ocean at or near Ocean City, Md., thence north along the shore of the Atlantic Ocean to the Maryland-Delaware State line, thence along the Maryland-Delaware State line to the Pennsylvania-Delaware State line, thence along the Pennsylvania-Delaware State line to the Delaware River and the Pennsylvania-New Jersey State line, thence along the shores of the Delaware River, Delaware Bay, and Atlantic Ocean to Perth Amboy, N.J., the point of beginning, including points on the above-named highways, and to points in the District of Columbia; under a continuing contract with Del Val Asphalt Corp. of Wilmington, Del.

That by petition filed January 19, 1967, applicant seeks to reopen the proceeding for the purpose of modifying the territorial scope of the authority issued in Permit No. MC 124333 (Sub-No. 8), dated July 25, 1966. A supplemental order of the Commission, Operating Rights Board No. 1, dated March 9, 1967, and served April 3, 1967, finds that the order entered herein on May 27, 1966, be, and it is hereby, vacated and set aside; and that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of *asphalt binder*, in bulk, in tank vehicles, from the site of the Del Val Asphalt Corp. plant at or near Edgemoor, Del., to points in that part of New Jersey, Pennsylvania (except Bustleton, Philadelphia County), Maryland, and Virginia bounded by a line beginning at Perth Amboy, N.J., and extending along the Raritan River to junction U.S. Highway 1, thence northeasterly along U.S. Highway 1 to junction New Jersey Highway 529, thence north along New Jersey Highway 529 to junction U.S. Highway 22, thence west along U.S. Highway 22 to junction U.S. Highway 15 at or near Harrisburg, Pa., thence along U.S. Highway 15 to junction U.S. Highway 211 at or near Haymarket, Va., thence along U.S. Highway 211 to junction Interstate Highway 495, thence southeasterly along Interstate Highway 495 to junction U.S. Highway 50, thence along U.S. Highway 50 to the Atlantic Ocean at or near Ocean City, Md., thence north along the shore of the Atlantic Ocean to the Maryland-Delaware State line, thence along the Maryland-Delaware State line to the Pennsylvania-Delaware State line, thence along the Pennsylvania-Delaware State line to the Delaware River and the Pennsylvania-New Jersey State line, thence along the shores of the Delaware River, Delaware Bay, and Atlantic Ocean to Perth Amboy, N.J., the point of beginning, including points on the above-named highways, and to points in the District of Columbia; under a continuing contract with Del Val Asphalt Corp. of Wilmington, Del.

That by petition filed January 19, 1967, applicant seeks to reopen the proceeding for the purpose of modifying the territorial scope of the authority issued in Permit No. MC 124333 (Sub-No. 8), dated July 25, 1966. A supplemental order of the Commission, Operating Rights Board No. 1, dated March 9, 1967, and served April 3, 1967, finds that the order entered herein on May 27, 1966, be, and it is hereby, vacated and set aside; and that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of *asphalt binder*, in bulk, in tank vehicles, from the site of the Del Val Asphalt Corp. plant at or near Edgemoor, Del., to points in that part of New Jersey, Pennsylvania (except Bustleton, Philadelphia County), Maryland, and Virginia bounded by a line beginning at Perth Amboy, N.J., and extending along the Raritan River to junction U.S. Highway 1, thence northeasterly along U.S. Highway 1 to junction New Jersey Highway 529, thence north along New Jersey Highway 529 to junction U.S. Highway 22, thence west along U.S. Highway 22 to junction U.S. Highway 15 at or near Harrisburg, Pa., thence along U.S. Highway 15 to junction U.S. Highway 211 at or near Haymarket, Va., thence along U.S. Highway 211 to junction Interstate Highway 495, thence southeasterly along Interstate Highway 495 to junction U.S. Highway 50, thence along U.S. Highway 50 to the Atlantic Ocean at or near Ocean City, Md., thence north along the shore of the Atlantic Ocean to the Maryland-Delaware State line, thence along the Maryland-Delaware State line to the Pennsylvania-Delaware State line, thence along the Pennsylvania-Delaware State line to the Delaware River and the Pennsylvania-New Jersey State line, thence along the shores of the Delaware River, Delaware Bay, and Atlantic Ocean to Perth Amboy, N.J., the point of beginning, including points on the above-named highways, and to points in the District of Columbia; under a continuing contract with Del Val Asphalt Corp. of Wilmington, Del., will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; that an appropriate permit should be issued, subject to the coincidental cancellation at applicant's request of its Permit No. MC 124333 (Sub-No. 8), dated July 25, 1966. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 124511 (Sub-No. 5) (Republication), filed November 15, 1965, published FEDERAL REGISTER issue of December 2, 1965, and republished this issue. Applicant: JOHN F. OLIVER, Post Office Box 233, Mexico, Mo. Applicant's representative: Herman W. Huber, 101 East High Street, Jefferson City, Mo. In the above-specified proceeding, the examiner recommended the granting to applicant a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of refractories and refractory products from Mexico, Mo., to points in Indiana, except those points in Indiana located in the Chicago, Ill., commercial zone, and Portage and its commercial zone, Evansville, Decker, Hazelton, Patoka, Princeton, Fort Branch, Haubstadt, Evansville, and the site of the Alcoa plant near Yankeetown (near Warwick), Ind., subject to the following conditions: (1) That operations conducted by applicant pursuant to the foregoing authority shall be separate and apart from his private carrier operations, (2) that applicant shall maintain separate and distinct accounting systems for each of his respective private carrier operations and his for-hire carrier operations, and (3) the applicant shall not transport property both as a for-hire carrier and as a private carrier in the same vehicle at the same time. A decision and order of the Commission, Operating Rights Review Board Number 1, dated March 28, 1967, and served April 4, 1967, as modified, finds that operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of *refractories*, from Mexico, Mo., to points in Indiana, except those points in Indiana located in the Chicago, Ill., commercial zone, Portage and its commercial zone, Evansville, Decker, Hazelton, Patoka, Princeton, Fort Branch, Habustadt, Evansville, and the site of the Alcoa plant near Yankeetown (near Warwick), Ind., subject to the following conditions:

(1) That operations conducted by applicant pursuant to the foregoing authority shall be separate and apart from his private carrier operations, (2) that applicant shall maintain separate and distinct accounting systems for each of his respective private carrier operations and his for-hire carrier operations, and (3) the applicant shall not transport property both as a for-hire carrier and as a private carrier in the same vehicle at the same time; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application

as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 125430 (Sub-No. 3) (Republication), filed July 21, 1966, published FEDERAL REGISTER issue of August 25, 1966, and republished this issue. Applicant: CLAUDE W. WAGNER, Route 1, McHenry, Md. 21541. Applicant's representative: Paul F. Sullivan, Suite 913, Colorado Building, 1341 G Street NW., Washington, D.C. 20005. By application filed July 21, 1966, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of lumber, from points in Garrett County, Md., and points in Fayette and Greene Counties, Pa., to points in North Carolina. An order of the Commission, Operating Rights Board No. 1, dated March 20, 1967, and served April 5, 1967, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of *lumber*, from points in Garrett County, Md., Fayette and Greene Counties, Pa., and Champion, Pa., to points in North Carolina; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 128273 (Sub-No. 2) (republication), filed September 13, 1966, published FEDERAL REGISTER issue September 29, 1966, and republished this issue. Applicant: MIDWESTERN EXPRESS, INC., Post Office Box 4, Fort Scott, Kans. Applicant's representative: John E. Jandera, 641 Harrison Street, Topeka, Kans. 66603. By application filed September 13, 1966, applicant seeks a certificate of public convenience and necessity, authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of defluorinated phosphate, except in tank and hopper vehicles, from the plantsites of the Hooker Chemical Co., at or near Houston, Tex., to points in Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Oklahoma, and Wyoming. An order of the Commission, Operating Rights Board No. 1, dated March 9, 1967, and served April 4, 1967, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of *defluorinated phosphate*, from the plantsites of the Hooker Chemical Co., at or near Houston, Tex., to points in Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Oklahoma, and Wyoming, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 128809 (Republication), filed January 12, 1967, published FEDERAL REGISTER issue of February 2, 1967, and republished this issue. Applicant: COYLE ENTERPRISES, INC., 2360 East Elvira, Tucson, Ariz. 85701. Applicant's representative: Russell S. Bernhard, 1625 K Street NW., Washington, D.C. 20006. By application filed January 12, 1967, applicant seeks a permit authorizing operation, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of mishandled or delayed baggage, from the Tucson International Airport to points within the commercial zone of Tucson, Ariz., under contract with American Airlines, Inc., Trans-World Airlines, Inc., and Continental Airlines, Inc. NOTE: Applicant states that the above-proposed operations will be restricted to baggage having an immediately prior movement by aircraft from a point outside the State of Arizona. An order of the Commission, Operating Rights Board No. 1, dated March 23, 1967, and served April 4, 1967, finds that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of *baggage* from the Tucson International Airport to Tucson, Ariz., under a continuing contract or contracts with American Airlines, Inc., Trans-World Airlines, Inc., and Continental Airlines, Inc., restricted to the transportation of shipments having an immediately prior movement by air will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulation thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of permit in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

NOTICE OF FILING OF PETITION

No. MC 115162 (Sub-No. 5) (Notice of Filing of Petition To Modify, Amend, or Correct Certificate), filed March 13, 1967. Petitioner: WALTER POOLE, doing business as POOLE TRUCK LINE, Evergreen, Ala. Petitioner's representative: Robert E. Tate, 2025–2028 City Federal Building, Birmingham, Ala. 35203. Petitioner states that by application dated September 22, 1955, it sought authority to transport *lumber, poles, and piling*, between points in Alabama, on and south of U.S. Highway 80, on the one hand, and, on the other, points in Florida, Mississippi, Georgia, Louisiana, Tennessee, Kentucky, and Indiana. By order served March 1, 1956, petitioner was granted authority to transport *lumber*, (1) from points in Montgomery, Butler, Conecuh, Escambia, Dallas, and Monroe Counties, Ala., on the one hand, and, on the other, points in Tennessee, Georgia, Kentucky, points in Florida on and north of Florida Highway 50 from Indian River City to Weekiwachee Springs, and points in Mississippi on and south of U.S. Highway 80 from the Alabama-Mississippi State line to Jackson, Miss., and on east of U.S. Highway 51 from Jackson to the Mississippi-Louisiana State line; and

(2) From Mobile, Ala., New Orleans, La., and Pensacola, Fla., points in Santa Rosa, Okaloosa, Walton, and Holmes Counties, Fla., and points in Georgia to Montgomery, Selma, Brewton, and Greenville, Ala., and subsequently issued a certificate reflecting the authority granted. Petitioner states that it recently was advised to check with the Commission as to whether or not the radial authority granted should read "*between*" in lieu of "*from*", and had its representative check Commission records. By the instant petition, petitioner requests the Commission to correct, amend, or modify its existing Sub 5 certificate in accordance with the authority sought in its original application as stated above. Any interested person desiring to participate may file an original and six copies of his written representations, views, or argument in support of, or against the petition within 30

days from the date of publication in the FEDERAL REGISTER.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 1.240 TO THE EXTENT APPLICABLE

No. MC 59557 (Sub-No. 8), filed March 30, 1967. Applicant: AUCLAIR TRANSPORTATION, INC., 41 McGregor Street, Manchester, N.H. 03102. Applicant's representative: Mary E. Kelley, 10 Tremont Street, Boston, Mass. 02108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between points in that part of Massachusetts bounded by Interstate Highway 91 on the west, the Massachusetts-New Hampshire State line on the north, Atlantic Ocean on the east to Plymouth, Mass., thence along U.S. Highway 44 to Rhode Island-Massachusetts State line, thence Massachusetts-Rhode Island and Massachusetts-Connecticut State line to points of beginning, including points on the indicated highways. NOTE: This application is directly related to MC-F-9716, published in the FEDERAL REGISTER issue of April 5, 1967. If a hearing is deemed necessary, applicant requests it be held at Boston, Mass.

No. MC 77016 (Sub-No. 8) (Correction), filed February 24, 1967, published FEDERAL REGISTER issue of March 30, 1967, and republished as corrected, this issue. Applicant: BUDIG TRUCKING CO., a corporation, 1100 Gest Street, Cincinnati, Ohio 45203. Applicant's representative: Jack B. Josselson, 700 Atlas Bank Building, Cincinnati, Ohio 45202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Goshen, Ohio, and the territory within an 8-mile radius therefrom, on the one hand, and, on the other, points in Ohio. NOTE: Applicant states it intends to tack this proposed authority with other presently held authorized authority serving points in Ohio, Indiana, and Kentucky. This application is a matter directly related to Docket No. MC-F-9684, published FEDERAL REGISTER issue of March 8, 1967. The purpose of this republication is to show this application is directly related to Docket No. MC-F-9684, inadvertently omitted in previous publication. If a hearing is deemed necessary, applicant requests it be held at Cincinnati, Ohio.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240)

MOTOR CARRIERS OF PROPERTY

No. MC-F-9709 (Correction) (INDIAN TRAILS, INC.—Purchase (Portion)—VALLEY COACH LINES, INC.), published in the March 29, 1967, issue of the FEDERAL REGISTER, on page 5312. Applicant seeks to *lease* a portion of the operating rights of VALLEY COACH LINES, INC., in lieu of the erroneously stated purchase.

No. MC-F-9717. Authority sought for purchase by ATLAS VAN LINES, INC., 1212 St. George Road, Evansville, Ind., of a portion of the operating rights of ALASKA TRUCK TRANSPORT, INC., Post Office Box 797, Anchorage, Alaska. Applicants' attorney: Herbert Burstein, 160 Broadway, New York, N.Y. 10038. Operating rights sought to be transferred: *Household goods*, as a *common carrier*, over irregular routes, between points in Alaska, except points east of an imaginary line constituting a southward extension of the United States (Alaska)-Canada (Yukon Territory) boundary line other than Haines, Alaska. Vendee is authorized to operate as a *common carrier* in Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, Arizona, New Mexico, Utah, Wyoming, Idaho, Montana, South Dakota, California, Oregon, Nevada, Washington, North Dakota, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC-F-9718. Authority sought for purchase by FALWELL FAST FREIGHT, INC., 3915 Campbell Avenue, Lynchburg, Va., of the operating rights and property of PRATT'S TRANSPORTATION, INCORPORATED, 1929 Central Avenue NW., Roanoke, Va. 24017, and for acquisition by C. W. FALWELL, JR., R.F.D. 2, Lynchburg, Va., L. W. FALWELL, and W. CALVIN FALWELL, both of R.F.D. 3, Lynchburg, Va., of control of such rights and property through the purchase. Applicants' attorney: Harry C. Ames, Jr., 529 Transportation Building, Washington, D.C. 20006. Operating rights sought to be transferred: *General commodities*, excepting, among others, household goods and commodities in bulk, as a *common carrier*, over regular routes, between Roanoke, Va., and Lynchburg, Va., serving no intermediate points, with restrictions; *general commodities*, excepting, among others, household goods and commodities in bulk, over irregular routes, between Roanoke, Va., and points within 5 miles thereof, on the one hand, and, on the other, points in that part of Virginia located within 100 miles of Roanoke, Va., with restriction. Vendee is authorized to operate as a *common carrier* in Virginia, New York, Maryland, Pennsylvania, New Jersey, West Virginia, North Carolina, Delaware, Georgia, South Carolina, Tennessee, Kentucky, and the District of Columbia.

No. MC-F-9719. Authority sought for control by EASTERN FREIGHT WAYS, INC., Eastern and Moonachie Avenues, Carlstadt, N.J. 07072, of NEW YORK & WORCESTER EXPRESS, INC., 556 Southbridge Street, Worcester, Mass., and for acquisition by NANTAM SYSTEM, INC., and in turn by DANIEL E. SHEVELL and MYRON P. SHEVELL, all also of Carlstadt, N.J., of control of NEW YORK & WORCESTER EXPRESS, INC., through the acquisition by EASTERN FREIGHT WAYS, INC. Applicants' attorney: Maxwell A. Howell, 1120 Investment Building, 1511 K Street NW., Washington, D.C. 20005. Operating rights sought to be controlled: *General commodities*, excepting among others, household goods and commodities in bulk, as a *common carrier*, over regular routes, between Boston, Mass., and New York, N.Y., serving certain intermediate and off-route points; between Springfield, Mass., and Worcester, Mass., between Worcester, Mass., and New Bedford, Mass., serving all intermediate and certain off-route points; between Brockton, Mass., and Taunton, Mass., between Bridgewater, Mass., and Taunton, Mass., serving all intermediate points; between Worcester, Mass., and Gardner, Mass., serving all intermediate and certain off-route points, between Worcester, Mass., and Brockton, Mass., serving all intermediate points, and the off-route point of Abington, Mass., between Worcester, Mass., and Brockton, Mass., serving all intermediate and certain off-route points, between Worcester, Mass., and Brockton, Mass., serving all intermediate points, between Worcester, Mass., and Holyoke, Mass., serving all intermediate points, and the off-route points of West Springfield and Chicopee, Mass., between Worcester, Mass., and Holyoke, Mass., serving all intermediate points.

General commodities, except those of unusual value, and except dangerous explosives, livestock, commodities in bulk, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, and commodities requiring special equipment, moving at the time on bills of freight forwarders, between New York, N.Y., and Springfield, Mass., serving the intermediate points of Bridgeport and Hartford, Conn.; *brass and brass products*, between Worcester, Mass., and Providence, R.I., serving the intermediate point of Uxbridge, Mass., and the off-route point of Whitinsville, Mass.; and *general commodities*, excepting, among others, household goods and commodities in bulk, over irregular routes, between New York, N.Y., on the one hand, and, on the other, certain specified points in New Jersey. EASTERN FREIGHT WAYS, INC., is authorized to operate as a *common carrier* in Vermont, New York, Pennsylvania, New Jersey, Connecticut, and Massachusetts. Application has been filed for temporary authority under section 210a(b).

No. MC–F–9720. Authority sought for control and merger by HALL'S MOTOR TRANSIT COMPANY, Fifth and Vine Streets, Sunbury, Pa., of the operating rights and property of LAKE SHORE DELIVERY, INC., 219 Brigham Road, Dunkirk, N.Y., and for acquisition by JOHN N. HALL, 1151 South 21st Street, Harrisburg, Pa., and W. LEROY HALL, 300 West Willow Street, Carlisle, Pa., of control of such rights and property through the transaction. Applicants' attorneys and representative: John E. Fullerton, 407 North Front Street, Harrisburg, Pa., Russell R. Sage, 2001 Massachusetts Avenue NW., Washington, D.C. 20036, and M. E. Brunner, Fifth and Vine Streets, Sunbury, Pa. Operating rights sought to be controlled and merged: *General commodities*, excepting, among others, household goods and commodities in bulk, as a *common carrier*, over regular routes, between Buffalo, N.Y., and Erie, Pa., between Westfield, N.Y., and Jamestown, N.Y., between Barcelona, N.Y., and Jamestown, N.Y., between Laona, N.Y., and Jamestown, N.Y., serving all intermediate points; between Buffalo, N.Y., and Lewis Run, Pa., serving the intermediate point of Bradford, Pa.; between Jamestown, N.Y., and Buffalo, N.Y., between Jamestown, N.Y., and Dunkirk, N.Y., between Jamestown, N.Y., and Irving, N.Y., between Jamestown, N.Y., and Barcelona, N.Y., serving all intermediate points; between Fredonia, N.Y., and Bradford, Pa., serving no intermediate points, between Fredonia, N.Y., and Warren, Pa., serving no intermediate points, but serving the off-route point of Corry, Pa.; *general commodities*, except those of unusual value, livestock, classes A and B explosives, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading, between Union City, Pa., and Jamestown, N.Y., serving all intermediate and certain off-route points; between Union City, Pa., and Stow, N.Y., between Elgin, Pa., and Findlay Lake, N.Y., between Corry, Pa., and Pittsfield, Pa., serving all intermediate points; between Lottsville, Pa., and Chautauqua, N.Y., serving all intermediate points, and the off-route points of Niobe, N.Y., and Bear Lake, Pa., between North Clymer, N.Y., and Sherman, N.Y., serving all intermediate points.

General commodities, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, those injurious or contaminating to other lading, and oil drilling equipment and supplies and gas drilling equipment and supplies, over irregular routes, between Bradford, McKean County, Pa., on the one hand, and, on the other, certain specified points in Pennsylvania, with restriction; *veneer* and *plywood*, from certain specified points in New York, to Warren, Pa.; *such commodities* as require specialized handling or rigging because of weight or bulk, between points in Chautauqua County, N.Y., on the one hand, and, on the other, points in Pennsylvania and Ohio within 150 miles of city hall, Jamestown, N.Y.; *theatrical properties*, between certain specified points in New York, on the one hand, and, on the other, points in New York, Ohio, and Pennsylvania; *new furniture, metal doors, door frames, door jams, window frames, and interior trimmings*, from points in Chautauqua and Cattaragus Counties, N.Y., to points in Pennsylvania and Ohio; and *rejected or returnable new furniture, metal doors, door frames, door jams, window frames, and interior trimmings*, from points in Pennsylvania and Ohio to points in Chautauqua and Cattaragus Counties, N.Y. HALL'S MOTOR TRANSIT COMPANY is authorized to operate as a *common carrier* in Pennsylvania, New York, New Jersey, Ohio, Maryland, Delaware, Connecticut, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b). NOTE: The *household goods* authority of LAKE SHORE DELIVERY, INC., will be proposed to be transferred to another company in the near future.

No. MC–F–9722. Authority sought for control and merger by ST. JOHNSBURY TRUCKING COMPANY, INC., 38 Main Street, St. Johnsbury, Vt., of the operating rights and property of P. S. DUBREY TRUCKING CO., INC., 539 Hartford Turnpike, Shrewsbury, Mass., and for acquisition by HARRY ZABARSKY, also of St. Johnsbury, Vt., MILTON J. ZABARSKY and MAURICE ZABARSKY, both of 40 Erie Street, Cambridge, Mass., of control of such rights and property through the transaction. Applicants' attorneys and representative: Francis E. Barrett, Francis P. Barrett, both of 25 Bryant Avenue, East Milton, Mass. 02186, and Harry Zarrow, 507 Main Street, Worcester, Mass. Operating rights sought to be controlled and merged: *General commodities*, excepting, among others, household goods and commodities in bulk, as a *common carrier*, over regular routes, between Worcester, Mass., and Boston, Mass., between Worcester, Mass., and Gloversville, N.Y., serving all intermediate points, between Albany, N.Y., and Walloomsac, N.Y., serving all intermediate and certain off-route points, between Providence, R.I., and Boston, Mass., serving all intermediate and certain off-route points, between New York, N.Y., and Utica, N.Y., between Worcester, Mass., and Newburyport, Mass., serving all intermediate points, between Springfield, Mass., and Windsor, Vt., serving all intermediate points, and the off-route points of Easthampton and Northfield, Mass., those in Massachusetts within 15 miles of Springfield, and those in Vermont within 15 miles of Brattleboro, Vt., between Springfield, Mass., and South Deerfield, Mass., serving all intermediate points, and the off-route points of Easthampton and Northfield, Mass., those in Massachusetts within 15 miles of Springfield, and those in Vermont within 15 miles of Brattleboro, Vt., between South Hadley, Mass., and Sunderland, Mass., serving all intermediate points, and the off-route points of Easthampton and Northfield, Mass., those in Massachusetts within 15 miles of Springfield, and those in Vermont within 15 miles of Brattleboro, Vt., between junction U.S. Highway 5 and Vermont Highway 11, and Ascutney, Vt., serving all intermediate points, and the off-route points of Easthampton and Northfield, Mass., those in Massachusetts within 15 miles of Springfield, and those in Vermont within 15 miles of Brattleboro, Vt., between Athol, Mass., and Shelburne Falls, Mass., serving all intermediate points, and the off-route points of Turners Falls and Millers Falls, Mass., between Brattleboro, Vt., and Concord, N.H., serving all intermediate points, and off-route points in New Hampshire within 15 miles of Keene, N.H., and those within 15 miles of Concord; between Jaffrey, N.H., and Newport, N.H., between Palmer, Mass., and Amherst, Mass., serving all intermediate points; between junction U.S. Highway 5 and Vermont Highway 103, and Rutland, Vt., serving all intermediate points, and off-route points within 15 miles of Bellows Falls, Vt., and those within 15 miles of Rutland, between Albany, N.Y., and Rutland, Vt., serving all intermediate and certain off-route points, between Albany, N.Y., and points in New York and Vermont, serving intermediate points in New York north of Lake George and Kingsbury, N.Y., including Lake George and Kingsbury, and intermediate points in Vermont north of Burlington, Vt., including Burlington, and certain off-route points; between Sanford, Maine, and Providence, R.I., serving the intermediate points of Newburyport and Boston, Mass., with restriction; between Smithtown, N.H., and South Barre, Mass., serving certain intermediate points, between Boston, Mass., and Waterville, Maine, serving all intermediate and certain off-route points; *general commodities*, excepting, among others, household goods and commodities in bulk, over irregular routes, between Albany and Plattsburg, N.Y., on the one hand, and, on the other, certain specified counties in New York, between points in the above New York counties, on the one hand, and, on the other, Burlington, Vt.; between points within 20 miles of Boston, Mass., Providence, R.I., and Sanford, Maine, except points in New Hampshire and certain specified points in Maine, with restriction; *new textile machinery*, between Worcester, Mass., on the one hand, and, on the other, Carolina and Providence, R.I.; *waste* and *rags*, between Worcester, Mass., on the one hand, and, on the other, certain specified points in New York, Philadelphia, Pa., certain specified counties in Rhode Island, and points in Connecticut east of U.S. Highway 5 and north of Connecticut Highway 2, including points on the indicated portions of the highways specified, traversing New Jersey for operating convenience; *used textile machinery, second hand materials, and supplies* used in connection with the manufacture of textile products, and *textile mill waste materials*, between Worcester, Mass., and points within 10 miles of Worcester, on the one hand, and, on the other, points in Rhode Island, that part of New Hampshire on and south of U.S. Highway 4, and certain specified

counties in Connecticut; *sash* and *elevator weights*, from Worcester, Mass., to certain specified points in Rhode Island, and Nashua, N.H.; *wool*, from Boston, Mass., and West Warwick, R.I., to Worcester, Mass.; and *petroleum products*, in containers, from Albany, N.Y., to Burlington and White River Junction, Vt. ST. JOHNSBURY TRUCKING COMPANY, INC., is authorized to operate as a *common carrier* in New York, Pennsylvania, Delaware, New Jersey, Rhode Island, Vermont, Connecticut, Massachusetts, New Hampshire, Maine, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC-F-9723. Authority sought for purchase by YOURGA TRUCKING, INC., 104 Church Street, Wheatland, Pa. 16161, of the operating rights and property of GEORGE W. CHRISTOFF, doing business as PENN-DEL EXPRESS, Rural Delivery No. 1, West Middlesex, Pa., and for acquisition by JOHN H. YOURGA, also of Wheatland, Pa., of control of such rights and property through the purchase. Applicants' attorney: Harold G. Hernly, 711 14th Street NW., Washington, D.C. 20005. Operating rights sought to be transferred: *Iron and steel articles* as described in groups I, II, and III of appendix V to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, as a *common carrier* over irregular routes from Greenville, Pa., to points in Delaware; and *damaged shipments* of the commodities described above, from points in Delaware to Greenville, Pa. Vendee is authorized to temporarily operate under section 210a(a) in Pennsylvania, Michigan, New York, and New Jersey. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 67-3992; Filed, Apr. 11, 1967; 8:48 a.m.]

[Notice 1049]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

APRIL 7, 1967.

The following publications are governed by Special Rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER issue of April 20, 1966, which became effective May 20, 1966.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

The applications immediately following are assigned for hearing at the time and place designated in the notice of filing as here published in each proceeding. All of the proceedings are subject to the special rules of procedure for hearing outline below:

SPECIAL RULES OF PROCEDURE FOR HEARING

(1) All of the testimony to be adduced by applicant's company witnesses shall be in the form of written statements which shall be submitted at the hearing at the time and place indicated.

(2) All of the written statements by applicant's company witnesses shall be offered in evidence at the hearing in the same manner as any other type of evidence. The witnesses submitting the written statements shall be made available at the hearing for cross-examination, if such becomes necessary.

(3) The written statements by applicant's company witnesses, if received in evidence, will be accepted as exhibits. To the extent of the written statements refer to attached documents such as copies of operating authority, etc., they should be referred to in written statement as numbered appendices thereto.

(4) The admissibility of the evidence contained in the written statements and the appendices thereto, will be at the time of offer, subject to the same rules as if the evidence were produced in the usual manner.

(5) Supplemental testimony by a witness to correct errors or to supply inadvertent omissions in his written statement is permissible.

No. MC 95540 (Sub-No. 693), filed March 27, 1967. Applicant: WATKINS MOTOR LINES, INC., 1120 West Griffin Road, Lakeland, Fla. Applicant's representative: Alan E. Serby, 1600 First Federal Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Cleveland, Ohio, to points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, and Pennsylvania. NOTE: Common control may be involved.

HEARING: May 3, 1967, Room 232 U.S. Courthouse, 215 Superior Avenue, Cleveland, Ohio, before Examiner Henry Whitehouse.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 67-3993; Filed, Apr. 11, 1967; 8:48 a.m.]

[Notice 1050]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

APRIL 7, 1967.

The following publications are governed by Special Rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER issue of April 20, 1966, which became effective May 20, 1966.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

The applications immediately following are assigned for hearing at the time and place designated in the notice of filing as here published in each proceeding. All of the proceedings are subject to the special rules of procedure for hearing outlined below:

SPECIAL RULES OF PROCEDURE FOR HEARING

(1) All of the testimony to be adduced by applicant's company witnesses shall be in the form of written statements which shall be submitted at the hearing at the time and place indicated.

(2) All of the written statements by applicant's company witnesses shall be offered in evidence at the hearing in the same manner as any other type of evidence. The witnesses submitting the written statements shall be made available at the hearing for cross-examination, if such becomes necessary.

(3) The written statements by applicant's company witnesses, if received in evidence, will be accepted as exhibits. To the extent the written statements refer to attached documents such as copies of operating authority, etc., they should be referred to in written statement as numbered appendices thereto.

(4) The admissibility of the evidence contained in the written statements and the appendices thereto, will be at the time of offer, subject to the same rules as if the evidence were produced in the usual manner.

(5) Supplemental testimony by a witness to correct errors or to supply inadvertent omissions in his written statement is permissible.

That the following special rules of procedure shall apply for the receipt of the testimony of applicant's public witnesses:

1. Each applicant shall present for at least 80 percent of its public witnesses to be heard daily, written statements of such witnesses which shall contain, as a minimum, (1) name and address; (2) company; (3) qualification; (4) description of traffic and special transportation requirements, if any; (5) volume of traffic and points or areas to which it moves or from which it is received; (6) potential traffic requirements, if any; and (7) transportation service not utilized.

2. Such written statements shall be circulated to the opposing parties at the adjournment of the hearing on the date

preceding the day upon which the witnesses are scheduled to testify, or as otherwise directed by the presiding offices.

3. Supplemental testimony by the witnesses for whom the written statements are presented is, of course, permissible.

4. The written statements shall be offered in evidence as exhibits at the hearing in the same manner as any other type of evidence, and the witnesses submitting the statements shall be made available for cross-examination.

5. The admissibility of the evidence contained in the written statements and any appendices thereto will be subject to the same rules as if the evidence were produced in the usual manner.

No. MC 73165 (Sub-No. 233), filed March 31, 1967. Applicant: EAGLE MOTOR LINES, INC., Post Office Box 1348, Birmingham, Ala. 35207. Applicant's representative: Robert M. Pearce, Central Building, 1033 State Street, Bowling Green, Ky. 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel and iron and steel articles, and equipment, materials and supplies* used in the manufacture or processing of the above described commodities, between Chicago Heights, Ill., and points in the Chicago, Ill., commercial zone, as defined by the Commission on the one hand, and, on the other, points in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas.

HEARING: May 8, 1967, in Room 2119, U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Ill., before Examiner Francis A. Welch. This assignment is subject to the rules set forth in the order of March 23, 1967, in No. MC 217 (Sub-No. 10) et al.

No. MC 100666 (Sub-No. 96), filed March 27, 1967. Applicant: MELTON TRUCK LINES, INC., Post Office Box 7295, Shreveport, La. 71107. Applicant's representative: Wilburn L. Williamson, 450 American National Building, Oklahoma City, Okla. 73102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel and iron and steel articles, and equipment, materials, and supplies* used in the manufacture or processing of the above-described commodities, between Chicago Heights, Ill., and points in the Chicago, Ill., commercial zone, as defined by the Commission, on the one hand, and, on the other, points in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, and Wisconsin.

HEARING: May 8, 1967, in Room 2119, U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Ill., before Examiner Francis A. Welch. This assignment is subject to the rules set forth in the order of March 23, 1967, in No. MC 217 (Sub-No. 10) et al.

By the Commission.

[SEAL] NEIL GARSON, *Secretary.*

[F.R. Doc. 67-3994; Filed, Apr. 11, 1967; 8:48 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

APRIL 7, 1967.

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. 40971—*Lettuce—points in Colorado to points in western trunkline territory.* Filed by Western Trunk Line Committee, agent (No. A-2497), for interested rail carriers. Rates on lettuce, fresh or green, in boxes, crates, bushel, or half-bushel baskets or hampers, in carloads, minimums 43,000, 46,000, and 50,000 pounds, from specified points in Colorado, to specified points in western trunkline territory.

Grounds for relief—Market competition.

Tariff—Supplement 67 to Western Trunk Line Committee, agent, tariff ICC A-4420.

FSA No. 40972—*Sand from Guion, Ark., and points in Southern Freight Association territory.* Filed by O. W. South, Jr., agent (No. A5012), for interested rail carriers. Rates on sand, industrial, in carloads, as described therein, from Guion, Ark., also points in southern territory, to points in southern territory.

Grounds for relief—Rate relationship.

Tariffs—Supplement 12 to Southern Freight Association, agent, tariff ICC S-675, and supplement 136 to Southwestern Freight Bureau, agent, tariff ICC 4565.

FSA No. 40973—*Bituminous fine coal to Cornell, Wis.* Filed by Illinois Freight Association, agent (No. 324), for interested rail carriers. Rates on bituminous fine coal, in carloads, also in carloads subject to annual volume of 20,000 tons, from mines in Illinois, Indiana, and western Kentucky groups, to Cornell, Wis.

Grounds for relief—Natural gas competition.

Tariffs—Supplement 151 to Illinois Freight Association, agent, tariff ICC 966, and six other tariffs named in the application.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 67-3995; Filed, April 11, 1967; 8:48 a.m.]

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Wednesday, April 12, 1967 • Washington, D.C.

PART II

Department of Agriculture

Consumer and Marketing Service

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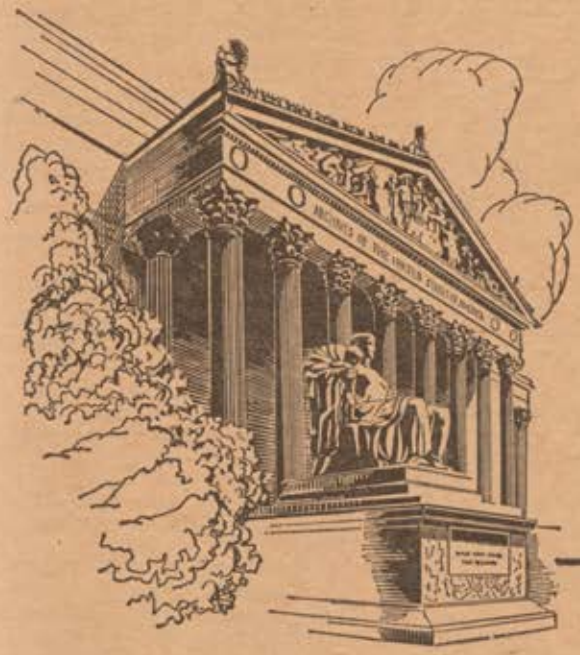
Milk in Delaware Valley Marketing Area

Decision on Proposed Amendments to Tentative Marketing Agreement and Order



DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 1004]

[Docket Nos. AO 160-A28, AO 160-A29]

MILK IN DELAWARE VALLEY MARKETING AREA

Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Philadephia, Pa., on January 18-19, 1965 pursuant to notice thereof issued on December 31, 1964 (30 F.R. 91) and on October 4-5, 7-29, November 3-5, and November 22-24, 1965, pursuant to notice thereof issued on August 27, 1965 (30 F.R. 11214).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator on December 8, 1966 (31 F.R. 15670; F.R. Doc. 66-13333) filed with the Hearing Clerk U.S. Department of Agriculture, his recommended decision containing notice of opportunity to file written exceptions thereto.

The preliminary statement, material issues, findings and conclusions, rulings, and general findings of the recommended decision (31 F.R. 15670; F.R. Doc. 66-13333) are hereby approved and adopted and are set forth in full herein subject to the following modifications:

1. Under the subheading *Preliminary statement*, the first paragraph is deleted.

2. Under issue No. 2, part (a):

(i) Under the subheading *Pool plant:*

a. The second sentence in paragraph 4 is changed.

b. Paragraph 10 is deleted and four new paragraphs are substituted therefor.

c. A new paragraph is added immediately after paragraph 16.

(ii) Under the subheading *Dairy farmer for other markets:*

a. The dates in paragraph four are changed.

3. Under issue No. 2, part (b):

(i) Under the subheading *Shrinkage*, the words "producer milk" are deleted from paragraph 8.

(ii) Under the subheading *Receipts from other order plants*, the first sentence of the third paragraph has been editorially changed.

4. Under issue No. 2, part (c):

(i) Under the subheading *Class I price:*

a. The date at the end of the first paragraph is changed.

b. The third sentence in paragraph 11 is changed.

c. The date in the last sentence in paragraph 19 is changed.

d. The date in the second sentence in paragraph 28 is changed.

e. A new paragraph is added immediately after paragraph 28.

(ii) Under the subheading *Location differentials*, a new paragraph is added after the last paragraph.

5. Under issue No. 2, part (e):

(i) An editorial change is made in the second sentence of paragraph 4.

(ii) Two new paragraphs are added after the sixth paragraph.

(iii) Under the subheading *Payments to individual producers and to cooperative associations:*

a. The date in the first sentence of the third paragraph is changed from the "16th" to the "15th".

b. A new paragraph is added immediately after the last paragraph.

6. Under issue No. 2, part (f), under the subheading *Other provisions and conforming changes*, a new paragraph is added after the last paragraph.

Preliminary statement. Prior to issuance of a decision based on the January hearing, audits of the records of various cooperative associations and proprietary handlers and other investigations by the market administrator revealed widespread practices resulting in the undercutting of the established order prices. Accordingly, on May 19, 1965 (30 F.R. 6947), the Assistant Secretary issued a notice of proposed termination of the order to which interested parties were given 20 days after publication to submit written data, views, or argument.

The notice stated, in part, "The Department has concluded that consideration should be given to immediate termination of the order in its present form on the basis that it provides an economic incentive for cooperatives to obtain Class I outlets for milk which otherwise would be disposed of for surplus use at a Class II value."

At the request of interested parties the Department further scheduled a public meeting on June 8, 1965, in Philadelphia to permit oral presentation of views, data, and argument. On the basis of the views expressed, which were almost unanimously in favor of continuing a Federal milk marketing order program in the market, the Department on June 28 announced that a decision on the termination of the order would be held in abeyance pending consideration at a public hearing of proposals for a different form of pooling (which were submitted as views and argument against termination) and other proposals which might be submitted.

Interested parties were given until August 16 to submit proposals. Three types of proposals were submitted: (1) Proposals to revise the administrative provisions of the order, intended to implement enforcement, (2) proposals to change the pooling procedure to marketwide pooling to eliminate the incentive which has been the cause of widespread price compromising, and (3) proposals to consolidate the order with (a) Order 2 and (b) Order 16.

In issuing the hearing call the proposals for order consolidation were not included. In this regard the notice stated as follows:

> This proceeding follows from an announcement by the Department that the order in its present form may not tend to effectuate the declared policy of the Act. This proceeding therefore is for the purpose of considering proposed amendments to the Delaware Valley order to effectuate the declared policy of the Act.
>
> The above noticed proposals [referring to types (1) and (2)] would amend only the Delaware Valley order. Other proposals have been received which would amend the New York-New Jersey order and the Upper Chesapeake Bay order to incorporate the marketing area of the Delaware Valley order into the marketing area of those respective orders. Consideration of those latter proposals would, because they provide for the expansion of the scope of these respective orders, require a review of all provisions of the respective orders as they relate to an expanded marketing area. This would necessarily result in an extended and complicated hearing procedure. To avoid this difficulty to the degree possible, it has been decided to hear pursuant to this notice, only those proposals which would amend the Delaware Valley order.
>
> If the record made at this hearing on this notice does not provide the basis for amending the Delaware Valley order in a manner which would tend to effectuate the declared policy of the Act, then a subsequent notice will be given of a hearing to consider the proposals already in hand which would amend, respectively, the New York-New Jersey and Upper Chesapeake Bay orders.

Hence, the primary question confronting the Secretary in this proceeding is whether, on the basis of this record, it can be concluded that the order can be revised in a manner which would tend to assure orderly marketing and equitable and full distribution of returns among producers, and if so what specific amendments should be made.

More specifically, the material issues on the record hereunder consideration relate to:

1. Amendment of the order to insure that the declared policy and the purposes of the Act are being carried out in the light of changed marketing conditions:

(a) By adopting marketwide pooling provisions to mitigate marketing problems which result from those conditions; or

(b) By adopting "enforcement aids" to implement more effective administration of the order to meet those conditions.

2. What the provisions of an order providing for marketwide pooling should be concerning:

(a) Scope of regulation.

(b) Classification and allocation of milk.

(c) Level and application of class prices.

(d) Obligations of unregulated plants with route disposition in the marketing area.

(e) Distribution of proceeds to producers.

(f) Administrative provisions.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Amendment of the order to insure its effectiveness.* It is concluded that the basic problem under the Delaware Valley order stems from the disparity of returns which exists among producers in this and adjacent Federal order markets, and

necessarily requires that the Delaware Valley order be appropriately amended to insure orderly marketing. Such problem can be resolved most effectively by providing a marketwide pool arrangement in lieu of existing handler pooling provisions. This change will eliminate or substantially reduce the financial incentive which is the basic cause of the disruptive marketing arrangements contrived to avoid and thereby compromise the minimum order prices for the Delaware Valley market. Short of such a change, there is no effective means, under the existing statutory authority, of insuring the integrity of the regulation, and the prompt, effective and uniform application of pricing provisions to all handlers.

The Delaware Valley milkshed in large measure is coextensive with the New York-New Jersey, Upper Chesapeake Bay and Washington, D.C., milksheds. Essentially all, if not all, of the plants of operating cooperatives in this overlapping supply area are fully regulated under one or another of the orders regulating these markets. There are, in addition, operating cooperatives with plants in western Pennsylvania and in Ohio, for example, which have demonstrated their ability to supply milk on a regular basis to the Delaware Valley market. Nine plants operated by cooperatives have associated with the market in recent years, seven of these since December 1, 1963.

Almost immediately upon the extension of regulation to southern New Jersey effective December 1, 1963, six plants of operating [1] cooperatives, not previously associated with the market, acquired regulated status as supply plants disposing of essentially all of their output for Class I use to proprietary handlers in the market. Within a year, the number of New Jersey producers under the order declined by 25 percent. Some of these producers went out of production, but the greater percentage of them found a market under the New York-New Jersey order (No. 2).

Four of the six plants, immediately preceding their regulation under the Delaware Valley order, had been regulated by Order 2. In each instance nonpool status was requested for the plant under Order 2 in order that it could acquire fully regulated status under Order 4. A fifth plant is owned and operated by the principal cooperative in the Upper Chesapeake Bay market, and prior to its regulation under Order 4 all of the milk now associated with the plant was pool milk (producer milk) under Order 16. The sixth plant, located in Ohio, was previously not regulated by any Federal order. The cooperative operating the plant, however, had members with milk priced under certain Ohio Federal orders and the balance of its supply was committed to a Pittsburgh, Pa., dealer.

In June 1965, following disclosure by the Department that there was evidence of widespread practices of price cutting in the market one cooperative withdrew three of its plants supplying proprietary handlers in this market and they reacquired regulated status under Order 2. However, a very substantial supply of additional milk became associated with the market when another operating cooperative withdrew its plant from the Order 2 pool to supply handlers previously served by the other cooperative. At the same time, the plant of the Ohio cooperative discontinued its shipments to handlers in the Delaware Valley market. The reasons or circumstances prompting its withdrawal are not revealed on the record.

Although the almost simultaneous entry of a number of supply plants into the market in December 1963 coincided with the extension of regulation to southern New Jersey the basic conditions which precipitated the entry of these plants existed much earlier. In his final decision concerning the matter of extension of regulation issued on October 31, 1963 (28 F.R. 11848) the Assistant Secretary set forth the following conclusions:

> The individual-handler pooling arrangement has accommodated the Philadelphia market since the inception of the order and is supported by most producers and handlers * * *. It is not apparent at this time that there are compelling problems resulting from individual-handler pooling which require a different pooling arrangement for the Delaware Valley market. Accordingly, it is concluded that the individual-handler pooling should be provided *at the outset* [italics supplied] of the new regulation.
>
> Notwithstanding this conclusion, there is some question whether the individual-handler pooling arrangement can be expected to accommodate the expanded market for an extended future period. In recent years several plants operated by cooperative associations and located beyond the normal boundaries of the milkshed have been brought under regulation of the Philadelphia order. The milk from these plants has essentially a Class I market, while regular Philadelphia producers, more favorably located, have either lost their market with Philadelphia handlers or have had their blend price materially reduced. Under the terms of the order, milk from these distant plants has not had a pricing advantage over local producer milk. Hence, *it is not clear why such distant sources of supply have been sought by handlers in lieu of using available local supplies* (italics supplied). However, had there been a marketwide pool, the prospects of a market blend price as compared to essentially a Class I price return, might well have resulted in a decision on the part of such cooperatives not to place their plants under the Philadelphia order.

To understand why a substantial number of plants operating cooperatives have associated with this market in recent years, one need only examine the financial gain which accrues to an operating cooperative by virtue of obtaining a Class I outlet in the Delaware Valley market. For example, the cooperative which withdrew three plants from the New York-New Jersey pool when it acquired a Class I market under Order 4 for the milk from those plants, grossed about $1 per hundredweight, on the average, over the Order 2 uniform price it would otherwise have received. The situation was essentially identical in the case of two other cooperative plants which switched from Order 2 to Order 4. Had these plants stayed in the New York pool and supplied milk to Order 4 handlers, the benefit to the cooperatives would have been the very minor increase in the blend price which would have accrued to all Order 2 producers by virtue of the increase in pool Class I sales.

In the case of the cooperative which shifted regulation of its plant from the Upper Chesapeake Bay order to the Delaware Valley order, the financial gain was less than that of the Order 2 cooperatives. On the average, the gain calculated at the difference between the Order 16 blend and the utilization value of the milk disposed of under Order 4, was about 45 cents per hundredweight.

For those cooperatives in western Pennsylvania which have associated otherwise unregulated plants with the Delaware Valley market, it must be concluded that to the extent that the alternative outlet would be manufacturing uses the financial incentive has been the difference between the value of the milk for manufacturing uses and its utilization value in accordance with its classification under Order 4. Using the order Class II price as a measure of value for milk for manufacturing uses, this incentive varied substantially among plants and from month to month from about $1 per hundredweight to slightly in excess of $2 per hundredweight. If the milk had been associated with another Federal order, the Youngstown-Warren order, for example, the amount of the incentive would, of course, have been less; i.e., the difference between that order's blend price and the use value of the milk in the Delaware Valley market.

It is not surprising that operating cooperatives not previously associated with the Philadelphia and/or Wilmington markets have sought Class I outlets in the Delaware Valley market. While the incentive to do so under the previous orders was essentially no different from that which now exists, it must be recognized that most Philadelphia and Wilmington based handlers have had longstanding relationships with their producers which they understandably have been reluctant to disturb, primarily because of certain institutional factors in the market; e.g., marketing arrangements under State milk control. Notwithstanding, a few handlers under the former "Philadelphia" order discontinued receiving milk directly from producers and began receiving milk from distant plants of operating cooperatives. In each case the minimum order prices to producers have been compromised and at the time of the hearing these situations were under investigation.

With the extension of the area of regulation, a number of new handlers, in New Jersey, became subject to the order. Several of these handlers had no regular source of supply and had been securing all or a major part of their supplies out-

[1] A cooperative which operates one or more milk plants at which it receives the milk of its members from which it delivers milk in bulk quantities to distributing plants or which it packages and distributes at wholesale or retail. This in contrast to a cooperative association which does not have receiving or processing facilities and whose function is to arrange for the sale of its members' milk.

side the jurisdiction of the New Jersey Office of Milk Industry at prices unrelated to and substantially below those established under the New Jersey regulation. Since these handlers had no established sources of supply on which they relied, they were free to search for the cheapest source of supply under Federal regulation. In fact, they actively sought such sources of supply among operating cooperatives which were looking for a more remunerative market for their members' milk.

Many of these cooperatives had long complained about the inequities of the individual-handler pooling arrangement in the local market. When the opportunity was presented to share in the Class I sales of the Delaware Valley market, and thus substantially enhance the returns of their members, these cooperatives apparently entered into various arrangements with certain brokers and/or handlers which provided them a Class I market but at the expense of compromising the Class I price. These arrangements also were advantageous to the buying handlers in that they provided the means to maintain a continuing procurement advantage over their competitors.

The current Delaware Valley situation is further complicated by the alarming and disturbing fact that much of the local industry does not regard the practices of price compromising as a manifestation of serious market disorder. Their proposals were characterized as "enforcement aids", intended to help the Department deal more effectively with what they contend are illegal acts, but acts which should, they said, present no enforcement problem. Such proposals are not designed to eradicate the evil but only to facilitate the detection and punishment of offenders.

Despite disclosure by the Department that it seemed likely the extent of price manipulation could be as much as $1 million annually, and that in our preliminary judgment it was possible that some of the many transactions might be found to be technically within the law, the major cooperatives and handlers historically associated with the Delaware Valley market (Philadelphia) have attempted to minimize the gravity of the situation. They contend that since only a minor segment (they estimate 10 percent) of the milk priced under the order is involved, enforcement should be no problem. They maintain that the real problem is the Department's desire to force a marketwide pool upon them against their wishes and its attempt to implement this end by nonenforcement of the existing order. In support of their position they attempted to place on the record the opinion testimony of experts in the field of administrative law to show that the existing order is enforceable. However, the hearing officer correctly rejected the introduction of such testimony.

In addition, they took the position that the "enforcement aids" which they proposed to be incorporated in the order would not extend the Secretary's authority in administration of the order. In fact, they were offered, proponents stated, "in an abundance of caution" with the expectation that their incorporation into the order would relieve the Department of any apprehension it might have concerning its enforcement authority. However, their principal proposals would: (1) Greatly extend responsibility for insuring producer payments for milk to persons who normally could not be regarded as having such financial responsibility, (2) specifically prohibit notes and similar negotiable instruments which could constitute payment to producers for milk, (3) limit the ability of a broker to act for producers in the sale of their milk unless the cost of his services was borne by the buying handler, (4) deny, under certain circumstances, a Capper-Volstead cooperative the "blending" privilege provided in the Act, and deny it the privilege of collecting, as the marketing agent, the proceeds from the sale of its members' milk.

While the Department must pursue and is pursuing all available legal procedures to the extent possible in an effort to enforce the existing order as to any past or current violations, it has attempted to make clear to the industry that there can be no assurance of obtaining full recovery of all monies which should have been paid to producers. In addition, the Department has attempted to make clear that the order cannot be continued if it does not maintain orderly marketing by providing prompt, equitable and full return of order prices to producers.

The fact that operating cooperatives have misused the individual-handler pooling arrangement by cooperating with third party intermediaries and handlers in devious schemes to undercut the minimum order prices has not only created unprecedented enforcement problems, but also has in many circumstances transferred to adjacent Federal order markets with marketwide pooling the unwarranted burden of carrying the necessary reserve associated with their Delaware Valley Class I sales.

The manager of the major cooperative in the upper Chesapeake Bay market testified that he had associated a plant located in the Upper Chesapeake Bay marketing area with the Delaware Valley market and that only milk for which he has an outlet in the Delaware Valley market is moved through the plant. The balance of the supply is moved directly from farms to Order 16 pool plants and is pooled under that order. A dairy farmer thus may be a producer under Order 4 on certain days during the month and a producer under Order 16 on other days. By this means, the cooperative retains solely for its own members the net proceeds of its Delaware Valley Class I sales while forcing on Order 16 producers who are not members of the cooperative the burden of carrying the lower priced necessary reserve for the cooperative's Delaware Valley sales. Although it is done by different means, essentially the same end is accomplished by the former Order 2 plants which have associated with this market.

The evidence strongly suggests that at least one of the cooperatives staunchly supporting the continuation of the present individual-handler pooling arrangement is also exploiting the individual-handler pooling arrangement. This it does by tailoring its Order 4 producer receipts to conform with its Class I sales in this market and carrying the bulk of its necessary reserves in the Order 2 pool. This cooperative, the principal plant of which was placed under Order 2 after the extension of the New York-New Jersey marketing area in 1957, took ownership, on October 1, 1964, of the operations of a very substantial fully regulated handler under Order 4. In the 10 preceding months, that handler's utilization averaged 71.5 percent Class I, which utilization was within 2 percent of the utilization of each of the remaining three largest handlers in the market. In the subsequent months through 1965, the utilization of the operation under control of the cooperative has averaged 90 percent Class I whereas the utilization of the other three largest handlers has remained essentially unchanged or declined slightly.

While some adjustment of producers was made between the cooperative's Order 4 and Order 2 operations, some operational changes were also made which transferred to the Order 2 plant a portion of the Class II operations formerly conducted in the Order 4 plant. Regardless of which procedure or combination of procedures was used to enhance utilization in the Order 4 operation by 20 percentage points, the Order 2 pool ended up carrying most of the reserve supplies of the cooperative.

More recently, one of the cooperatives which shifted regulation of its plant from Order 2 to Order 4, the circumstances of which are still under investigation, has entered into a purchase agreement whereby it has ostensibly acquired ownership of the operations of two of its Delaware Valley buyers. However, it is clear that the arrangement was entered into as a means of assuring retention of Class I outlets which were acquired through selling milk at below order prices. The plant continues to have essentially a 100 percent Class I utilization and since the cooperative also has pool bulk tank units under Order 2 we must conclude that its balancing supplies are pooled under Order 2.

In still another situation, the principal cooperative in the Upper Chesapeake Bay market has taken ownership of the operations of two of its buyers in the Delaware Valley market. In this instance, however, the transaction could have been economically necessary as the only means of recovering payment for milk previously supplied these handlers.

The current situation is quite different from that which was explored at previous hearings when marketwide pooling was an issue. On both previous occasions the proponents' primary arguments were predicated on an historical presentation of plant and producer movements, intended to support their position that the local market did not carry its fair share of the regional reserve.

In his decision (28 F.R. 11847) on this matter the Secretary found as follows:

> While the data clearly indicate that producers have been added to Order 2 in significantly greater numbers than to Order 4 (and this could be argued as evidence that Philadelphia does not carry its proportionate share of the reserve supply), the reasons for this situation must be closely examined.
>
> It is clear in certain cases brought out on the record that some Philadelphia handlers have laid off some producers. It is equally clear that producers without a market have difficulty in finding a ready outlet in the Philadelphia market. However, the individual-handler pooling system has functioned to maintain orderly marketing in the area.
>
> The New York-New Jersey order is unique among the large number of Federal orders. Historically, plants have been able to associate their supply of milk with the "pool" through the "regular" pool plant provisions without shipment of any milk to the fluid market. In this manner plants have been added to the pool with permanent pooling status. As a consequence, for many years there have been strong incentives for actively encouraging dairy farmers to enter that market.

The present problem is not primarily related to the shortcomings of any other Federal order. It is specifically a creation of the Delaware Valley order and is a forceful demonstration of the fact that an individual-handler pool cannot work effectively in a situation such as here presented where it presents incentive for price compromising as a means of associating milk with the market. Under the Federal order system, marketwide pooling has constantly demonstrated its ability to stabilize marketing conditions and insure the orderly marketing of the total volume of milk associated with the market.

The individual-handler pooling arrangement has provided a great financial incentive for operating cooperatives to exploit the local Class I market and at the same time has forced on producers (other than their members) in the adjacent markets the burden of sharing the cost of carrying the necessary reserve supplies associated with their Delaware Valley sales. This situation has been further aggravated because in substantial measure their Class I sales in this market have displaced local Delaware Valley producers who have been forced into Order 2 as the only alternative outlet for their milk.

The success of the milk order program over the years in furthering the aims of the statute in large measure has been the assurance of uniform and impartial application of regulation to all handlers and equitable and full distribution of proceeds for milk among producers.

Proponents of "enforcement aids" contend that there would be no problem with handlers compromising order prices if the Department would but enforce the order. Their proposals are aimed at further control of the activities of handlers, brokers, and other intermediaries, and cooperatives which participate with such persons to compromise order prices.

They also contend that the legality of their proposals is beyond question, in view of the broad powers granted to the Secretary by the Agricultural Marketing Agreement Act. In their view, the only question at issue is whether by accounting and investigation, violations can be uncovered and evidence found to prosecute the offenders. Their proposals, they contend, would ameliorate any problem in this regard by encouraging "voluntary" disclosure of information. But in fact, any such disclosure of information could only be accomplished through Government coercion.

We cannot agree that the detailed controls which were offered by proponents are an appropriate or adequate solution of the problem. The application of extensive Government coercion is time-consuming and expensive. In addition, there is always great uncertainty about its ultimate outcome. We should not incorporate into the order, under the guise of enforcement aids, basic changes (some of which may be of questionable legality), which greatly extend the scope of regulation, and which could unnecessarily inhibit what may in some circumstances be legitimate business arrangements and which would be of doubtful efficacy. Most particularly is this true when the fundamental cause of the current disorder is so readily apparent.

We are concerned, as are virtually all proponents, about the incidence and variety of ways open to handlers, cooperatives, and third party intermediaries to share the available financial incentive to compromise order prices. However, the adoption of the proposed rules and regulations would not, of themselves, assure the prompt, effective, equitable, and uniform application of the order. Under existing circumstances, the financial remuneration which can result from a Class I milk outlet in this market is such that no proliferation of controls could effectively eliminate price compromising as a device for entering the market. In this market it is the disparity in returns to producers as among the several markets and the individual-handler pooling arrangement, which permits retention by the seller of the full proceeds from the sale of his milk which has encouraged the exploitation of the Delaware Valley Class I market as a means of advancing the interests of cooperative members regardless of the debilitating effects on the market as a whole.

The actions of the cooperatives and handlers in compromising the minimum order prices required to be paid as a matter of law cannot, of course, be condoned or excused. It is apparent, however, that a basic flaw exists in the framework of the Delaware Valley order which cannot effectively contain and control the competitive stresses and strains undermining its structure.

The change to marketwide pooling under the provisions of an order as hereinafter set forth will substantially eliminate the financial incentive which has encouraged the employment of schemes intended to conceal the compromising of minimum order prices. This is true because under a marketwide pooling arrangement all handlers, including operating cooperatives, with an above average market utilization must pay the difference in utilization value into a producer-settlement fund. These monies are then distributed by the market administrator to those handlers whose utilization is below the market average. In this manner, all producers in the market receive the same uniform price irrespective of how their milk is utilized by the particular handler to whom they deliver. Under such an arrangement, no group of producers can retain for its sole benefit the increase in utilization value which results when a Class I disposition is made of milk. Hence, the incentive for "buying" a Class I market is greatly reduced or eliminated.

It was argued at the hearing that a marketwide pool would not reduce the incentive to "buy" a market but, conversely, would increase such incentive, since milk with no alternative market except for manufacturing uses would gain the difference between the manufacturing milk price and the order blend price, and that regardless of the specific requirements for pooling which might be provided under a marketwide pool, there would be opportunity to associate a much greater volume of milk with the market than has been possible under individual-handler pooling.

Such a thesis must be viewed as entirely hypothetical in light of the existing market structure here and in adjacent areas. As has been previously indicated, most of the available milk supplies in the milkshed are regulated by some Federal order. To the extent that unregulated supplies exist, the person(s) controlling such milk have elected to keep it outside the orbit of regulation. There is no apparent reason why a change in pooling arrangement under the Delaware Valley order should result in this milk being brought under Federal regulation.

It is, of course, true that to the extent that the Delaware Valley blend price is higher than the blend prices in adjacent markets there will be an incentive for a plant to become pooled under this order. Since much of the supply area overlaps those of adjacent Federal order markets, it is obvious that dairy farmers do have alternative outlets. It must be expected therefore that producers or plants will shift from one market to another in response to blend price differences. However, the order provides specific performance standards, and only plants meeting such performance standards may pool. Plants so performing are an integral part of the marketing system, and have every right to participate fully in the pool.

While it was alleged that a change in pooling procedure would result in Delaware Valley producers losing an estimated 50 cents per hundredweight in the sale of their milk, this position simply cannot be substantiated. Some dairy farmers who have held a preferential position in the market may get less, but dairy farmers in the Delaware Valley market as a whole will receive greater returns because when the price cutting practices are eliminated, a larger total of money will be returned to dairy farmers through the additional substantial sums now being diverted to intermediaries and handlers.

2. *Terms and provisions of the order.* The following findings and conclusions cover not only the issues considered at the October-November 1965 hearing, but also those considered at the January 1965 hearing on which no action has yet been taken, for reasons previously explained.

(a) *Milk to be priced and pooled. Scope of regulation.* Under the individual-handler pooling arrangement, which the existing order has provided, it was essential that only nominal performance standards be established. Otherwise a handler might elect to get a part or all of his supply from plants not meeting the qualifying standards and by so doing, evade effective regulation. Consequently, the order has provided full regulation for any plant which supplied milk to the market, any part of which was allocated to Class I.

The marketwide pooling arrangement herein provided results in a uniform payment to all producers each month, which payment reflects the average utilization value of the milk received by all handlers in the market during the month. Individual handlers whose proportion of Class I utilization is less than the average for the market receive payments from the producer-settlement fund while handlers who have a higher than average utilization in Class I make payments into the fund. By this means, both types of handlers are enabled to pay similar prices to their producers.

Under certain circumstances, operators of plants engaged primarily in manufacture or in supplying other fluid markets on a spot basis have an incentive to come under regulation for the purpose of receiving equalization payments from the producer-settlement fund in order that prices paid to their producers will be comparable with prices received by regular producers. Such plant operators normally would elect to join the pool when they would draw equalization payments from the fund, and would withdraw from the pool when their plant utilization was above the market average and they would be required to make payments to the fund. The distribution of equalization payments to such a plant would reduce the blended price with subsequent adverse effect upon the regular milk supply of the market. The maintenance of an adequate supply of pure and wholesome milk for the market therefore necessitates formulation of specific rules on pooling qualification and the distribution of returns under the order to prevent circumvention of the purposes of the order.

Performance standards should be drawn under a marketwide pool so that the Class I sales of the market will be shared among those dairy farmers who are an essential and regular part of the supply for the area. To this end, the performance standards should be sufficiently flexible to permit intermittent shipments of milk, or route distribution, by plants whose primary business may be in other markets without requiring full regulation of such plants. It is necessary therefore to establish definitive standards of performance for use in determining which plants and what milk constitute the regular and normal source of supply and thereby become fully subject to regulation. Such standards appear in the order and apply uniformly to all plants wherever located. Any plant regardless of location may be brought under regulation by the order or may remain outside the scope of regulation dependent on the mode of operation elected by the operator of such plant. The determination and decision as to how a plant shall be operated remains vested in the plant operator.

The several plant definitions included in the order provide the basis for determining those plants which will be accorded pooling status and the dairy farmers regularly delivering thereto will be entitled to receive the minimum blended price as determined in the distribution of proceeds resulting from the pool.

Plant definition. No substantive change should be made in the "plant" definition as presently provided in the order. A plant is currently defined as "the land, buildings together with their surroundings, facilities, and equipment, whether owned or operated by one or more persons constituting a single operating unit or establishment at which milk or milk products are received from dairy farmers or processed or packaged: *Provided,* * * *". It was proposed that the provision be amended by the addition of the words "as determined by the market administrator" immediately following the word "packaged". It was proponents' position that such addition would eliminate any question as to the market administrator's authority to make a determination as to the status of any facility or operation(s) under this definition and hence would tend to eliminate disputes over his determinations in this regard.

The proposed amendment would not add specific criteria on which the market administrator could base his determinations nor would it in any way clarify the present wording of the provision. Since the market administrator has responsibility to administer the terms and provisions of the order, it follows that, unless responsibility for a particular provision is specifically delegated to another person, the market administrator is responsible for its administration. With regard to this provision, he must ascertain the facts and determine whether a group of buildings and/or facilities do, or do not, constitute a plant within the meaning of the definition. No wording of this provision should or could deny a handler the right to seek relief from the market administrator's ruling through the prescribed legal procedures. Accordingly, the requested amendment is denied.

Handler representatives proposed during the hearing that the provision be modified to require the market administrator to furnish an advance determination of plant status upon request of any handler. Such a provision would be impractical and inappropriate. A determination of plant status must be made on the basis of operations during the month which could not be known to the administrator until after the end of the month. Hence, it would be impossible for him to make an advance determination of plant status which would be binding. Since such a provision could not serve a substantial purpose, it is therefore denied.

Pool plant. To qualify for pooling, a "distributing plant" should be required to have total route disposition both inside and outside the marketing area during the month of an amount equal to 50 percent or more during the period of September through February, and 45 percent or more during the period of March through August, of its receipts from dairy farmers, including diverted milk and farm bulk tank milk received for which a cooperative is the responsible handler. In addition, such plant should be required to dispose of as route disposition in the marketing area during the month a minimum of 10 percent of such receipts. A plant meeting both of these standards is sufficiently identified with the regular market supply to require participation in the marketwide pool.

It is desirable that qualification of a pool distributing plant during the short production months be determined on the basis of disposal of at least 50 percent of its receipts from dairy farmers as route disposition. It is not necessary that receipts from "supply" plants be included in the determination of the qualification of distributing plants since the matter here being determined is whether the dairy farmers delivering milk to a distributing plant should have producer status.

Most of the distributing plants regulated under the present order utilize an extremely high percentage of their total receipts as Class I and there is no question but that they each would readily qualify as pool plants under the above standards. A few plants during some of the flush production months have had a Class I utilization slightly under 50 percent. It is not intended that pool status shall be accorded distributing plants with primary disposition in manufacturing uses. Neither is it intended that distributing plants historically associated with the market shall be denied pool status under the amended order. Accordingly, it is concluded that during any of the months of March through August a distributing plant must dispose of at least 45 percent of its receipts from dairy farmers as route disposition to qualify for pooling.

One handler proposed that the requirement be not more than 40 percent during the flush production months, contending that under the individual-handler pooling arrangement he had been forced to drop producers needed in the short production months in order to maintain a satisfactory blend to hold the remainder of his supply and still had under a 50 percent utilization in some months. He suggested that this situation primarily reflected the variation in contract and wholesale business which constitute a large part of his business. Whether this is, in fact, the situation or, whether, as

appears more likely, he relies on his fluid operation as a partial supply for his separate, unregulated cheese operation cannot be determined from the record. In any event, based on his actual reported utilization, the 45 percent standard herein provided would have assured pooling of his plant in each month since November 1963. In addition, since this standard applies only with respect to dairy farmer receipts, the handler has flexibility to accommodate his particular needs by plant transfers from other handlers without affecting the status of his plant.

A plant from which less than the above percentages of receipts from dairy farmers are disposed of as Class I milk should not be considered to be primarily engaged in the fluid milk business and under such circumstances should not be permitted to equalize through the pool.

For reasons later set forth in this decision, a cooperative association is provided handler status with respect to milk of member producers which it causes to be diverted [2] to a nonpool plant for its account. Milk so diverted is deemed to have been received by the cooperative at a pool plant at the location of the pool plant from which such milk was diverted. Notwithstanding, it is intended for purpose of determining the pool status of any plant, that milk so diverted, as well as milk diverted for the account of the plant operator shall be considered as receipts from dairy farmers at such plant. Unless this is done, it would be possible for a cooperative to agree with a proprietary handler to associate milk with the pool, which milk is intended for the handler's unregulated manufacturing operation, while at the same time safeguarding the pool plant status of the handler's distributing plant by acting as the responsible handler on diverted milk.

Essentially all, if not all, of the distributing plants which have held fully regulated status under the Delaware Valley order have the preponderance of their route disposition in the marketing area. Nevertheless, it is possible that some plants located outside the marketing area may have some sales within the area. When marketing area sales constitute only a very minor part of a plant's total route disposition it is not necessary to subject the plant to full regulation to achieve the purposes of the Act. This will permit such plant greater flexibility in meeting competition in its normal unregulated market and at the same time insure the integrity of regulation in the marketing area.

A distributing plant meeting the pooling requirements of more than one order normally should be regulated under the order covering the area in which it has the greater distribution. However, recognition must be taken of the fact that the New York-New Jersey order provides that a plant holding pool status under that order shall continue to hold such status until the fourth consecutive month in which a greater disposition is made in another Federal order marketing area. Since it would not be appropriate to subject a plant to full regulation under two Federal orders, provision must be made to relieve a plant from full regulation under this order in circumstances where regardless of its status under this order it nevertheless is fully regulated under another order.

Under the terms of the New York-New Jersey order it is possible for a regulated plant to receive unregulated milk and dispose of such milk as route disposition outside the Order 2 marketing area with no monetary obligation to the pool, regardless of the price at which such milk might have been procured. To accomplish the purposes of the Act it has been necessary, under the individual-handler pooling arrangement provided by the Delaware Valley order, to regulate the otherwise unregulated supply of any Order 2 pool plant with route disposition in the marketing area.

With a change to marketwide pooling this rather complicated procedure is no longer appropriate. However, inequities would exist among handlers in the sale of milk in this marketing area unless some method is provided for removing the competitive advantage which results from the use of unregulated milk for Class I sales. This can be accomplished by requiring that the operator of an other order plant using unpriced milk for route disposition in the marketing area shall pay to the producer-settlement fund the difference between the Delaware Valley Class I price and the Order 2 uniform price, both applicable at the location of such distributing plant, on each hundredweight of milk so disposed of.

The Deputy Administrator recommended that the applicable payment on such unpriced milk be the difference between the Delaware Valley Class I and uniform prices. Both handlers and producers excepted to this conclusion, pointing out that unpriced milk purchased by an Order 2 regulated handler from nonpool bulk tank units and/or plants is normally purchased in direct competition with Order 2 pool milk and that the dairy farmers supplying such milk customarily are paid a price reflecting the Order 2 uniform price. Handlers further argued that any payment on such unpriced milk should appropriately be based on the Order 2 or Order 4 uniform price, whichever is lower.

Since, as exceptors pointed out, unpriced milk received at an Order 2 pool plant is normally purchased on the basis of the Order 2 uniform price and such milk has unregulated status primarily as a result of the decision of the handler operating the pool plant, it is concluded that the Order 2 rather than the Order 4 uniform price most appropriately represents the price from which the equalization payment should be computed. The proposed amended order has been revised to so provide.

In determining the amount of unregulated milk to which such payment shall apply, it is necessary that the market administrator recognize the assignment under the New York-New Jersey order of all pool and other order receipts at such plant and provide equivalent classification with respect to such milk under this order.

This procedure is necessary because of the special assignment provisions of Order 2 through which unpriced milk may be distributed outside the New York-New Jersey marketing area by an Order 2 pool plant. The resulting payments will minimize the possibility of a procurement advantage on any milk so disposed of in the Delaware Valley marketing area.

"Supply" plants are the second category of plants for which standards for pooling must be provided. While many handlers in the market receive all of their milk directly from producers, there are nevertheless a substantial number of supply plants which have been regularly supplying bulk milk to distributing plants. In addition, it is likely that from time to time supplemental supplies are secured from plants not regularly associated with this market.

A supply plant should be fully regulated in any month of September through February in which 50 percent or more of its receipts from dairy farmers are transferred to distributing plants each of which disposes of as route disposition a volume not less than 50 percent of its total receipts of fluid milk products and which has route disposition in the marketing area of at least 10 percent of such receipts. Such a plant must be considered as substantially associated with the Delaware Valley market and the dairy farmers supplying such plants should therefore participate in the marketwide pool.

During the flush production months it is likely that requirements for supply plant milk will be somewhat less than during the other months of the year. It is appropriate therefore that shipping requirements be lower in such months. Accordingly, it is provided that during any month of March through August a supply plant shall be fully regulated if it transfers 40 percent or more of its receipts from dairy farmers to distributing plants each of which disposes of as route disposition, a volume not less than 45 percent of its total receipts of fluid milk products and which has route disposition in the marketing area of at least 10 percent of such receipts.

Any supply plant meeting the 50 percent shipping requirement in each of the

[2] A movement of producer milk directed by a handler, to an unregulated plant without having first been received at a pool plant.

months of September through February should retain pooling status during each of the following months of March through August in which it does not meet the shipping requirement unless the operator of such a plant elects nonpool status for the plant.

The extent to which a distributing plant draws upon supply plants for milk supplies normally varies considerably according to the season of the year. This is due to the seasonal changes in production and milk sales. Accordingly, a supply plant should not be required to ship as much milk in the months of higher production as in the short production months. A supply plant, the milk supply from which is needed in the short production months is a necessary and integral part of the market supply and this should be recognized by according it pool status during the March through August period even if shipments are not made. This will provide producer status for dairy farmers shipping to plants which are thus recognized as regular suppliers of the market. A plant should be permitted to withdraw from pool status, however, at the operator's option in any of the months of March through August in which it does not meet the current shipping requirement. In such case it would not acquire pool status until it again met such shipping requirement. To protect the integrity of regulation, a plant eligible for automatic pooling status during the flush months should not be permitted to hold such status in any month in which the distributing plant(s) to which it made qualifying shipments in the September-February period are qualifying other supply plants for pooling. This provision is necessary to insure that the pool will not be burdened with milk for manufacturing uses.

Exception was taken to the above conclusions on the basis that a plant which had performed in the short production months should not be jeopardized by possible loss of its automatic pooling status in the flush months. Exceptors contended that supply plants could lose their status solely as a result of decisions on the part of the purchasing handler(s) to buy milk from plants not then holding pooling status. While this is correct, it is nevertheless reasonable to conclude in such circumstance that the plants previously qualified by shipments to such handlers and which are no longer making shipments, in fact, no longer have a bona fide association with the market. It is unlikely that a handler would jeopardize the continuing pool status of his normal supply in the manner suggested. Under normal circumstances a decision to substitute supply plants during the flush season would be made because of the nonavailability of the former supply. In such situation the milk appropriately should not continue to be pooled.

Two multiple plant handlers in the Delaware Valley market operate country plants which have historically been regulated under the order but which, under the procedure of operation now employed, could not be expected to meet the shipping requirements herein provided. These plants are manufacturing plants but the milk of dairy farmers delivering to such plants is approved for fluid use. However, under the system of farm bulk tank handling, to which the market is almost completely converted, milk needed by the handler for Class I use is moved directly from the farm to the city distributing plant. When not so needed it moves to the manufacturing plant.

Under the individual-handler pooling arrangement provision for system pooling has accommodated the pooling of these two plants. To permit continuation of the pooling of this milk supply, which has a long association with the fluid market, it is provided that in the case of a handler operating a pool distributing plant and one or more supply plants the several plants may, for the single purpose of qualifying such supply plants as pool plants, be considered as a unit. If such unit meets the pooling standards provided for distributing plants the supply plants shall be considered to have met the pooling requirements for supply plants. Having met the standard for pooling in the short production season, such plants then have continuing status during the flush season in the same manner and subject to the same conditions applicable to other supply plants.

Since the supply plants here involved are manufacturing plants and do not qualify by shipment it is possible that at times, or on a regular basis, milk could be received at such plants from dairy farmers which does not meet the quality requirements for disposition in the marketing area as fluid milk. As a condition of pooling therefore it is necessary that the handler be required to notify the market administrator each month in filing his reports pursuant to § 1004.30 of any such receipts. Such milk will be considered as milk received from a "dairy farmer for other markets" and assigned to Class II disposition for reasons later set forth in the discussion on allocation procedure.

Nonpool plant. Plants which do not meet the performance standards for pooling, but which enter the orbit of regulation by virtue of shipments of fluid milk products to pool plants, receipt of pool milk or route disposition in the marketing area, are defined as nonpool plants. Such definition is included in the order to facilitate drafting of the several order provisions, and conforms to the provisions adopted in other Federal orders as a result of the joint public hearings held in January 1963 to amend Federal orders to conform with the "Lehigh Decision." The "nonpool plant" definition includes such categories as "other order plant," "producer-handler plant," "partially regulated plant," and "unregulated supply plant." These plants are specifically defined as follows:

(1) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act;

(2) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act;

(3) "Partially regulated distributing plant" means a plant that does not meet the requirements for a pool plant and that is neither an other order plant nor a producer-handler plant, from which fluid milk products are disposed of as route disposition in the marketing area during the month; and

(4) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool distributing plant during the month, but which is neither an other order plant nor a producer-handler plant.

Handler. The impact of regulation under an order is on handlers. The handler definition identifies those persons from whom the market administrator must receive reports, or who have financial responsibility for payment for milk in accordance with its classified use value. To more fully accommodate the effective administration of the order, "handler" should be redefined and broadened to recognize the existing market structure.

As herein defined the definition includes (1) persons operating pool plants; (2) persons operating partially regulated distributing plants; (3) persons operating unregulated supply plants; (4) persons operating other order plants; (5) a cooperative association with respect to milk diverted to a nonpool plant; (6) a cooperative association with respect to milk which is delivered to a pool plant in a bulk tank truck owned and operated by, or under contract to, the association, unless both the cooperative and the operator of the plant have given prior notice to the market administrator that the plant operator intends to be the handler for such milk, and is purchasing the milk on the basis of farm weights determined by farm bulk tank calibrations and butterfat tests based on samples taken at the farm; (7) a producer-handler; and (8) any other person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant.

The handler who receives milk from producers is held responsible under the terms of the order for reporting receipts and utilization of such milk and for proper payment to producers and to the pool. To implement order administration and to better insure payment to producers, financial responsibility for producer milk under the order is placed on the operator of a pool plant where such milk is received or deemed to have been received, and, under specified circumstances, on cooperative associations. The financial status of such persons in the market is such as to minimize the

possibility of nonpayment. In addition, in the event of nonpayment there is reasonable assurance of the existence of assets from which monies may be recovered through appropriate legal processes.

An other order plant which enters the orbit of regulation under this order either through route disposition or by shipment of packaged or bulk milk is potentially subject to regulation under this order. It is necessary that the operator of such a plant be accorded handler status in order that the market administrator may require the necessary reports to determine such plant's status and the operator's obligations, if any, under this order.

Inclusion in the handler definition of any person operating a partially regulated distributing plant or unregulated supply plant, as well as a producer-handler, is necessary in order that the market administrator may require the necessary reports to determine the continuing status of such individuals and in case of distributing plants, the extent of their obligation, if any, to the producer-settlement fund.

Several of the cooperative associations whose members are suppliers of milk for the market assume the responsibility of balancing their buying handlers' supplies with such handlers' needs for fluid milk. Under the individual-handler pooling arrangements which have been provided in the past, a number of handlers have received only that milk necessary to meet their needs and the cooperatives have marketed as nonpool milk that milk for which no outlet was available through their buying handlers. In many situations, such milk undoubtedly was marketed as producer milk under either the Upper Chesapeake Bay or New York-New Jersey order. In the case of one cooperative, agreements with certain of its buyers has permitted the operation of a base plan by which the cooperative markets the "over-base" milk generally to unregulated outlets, and each producer receives a "blended" price computed on the basis of the uniform price of his particular handler for the base milk and the actual returns realized by the cooperative on his "over-base" milk.

Under the marketwide pooling arrangement herein provided, it is desirable that all milk which has established its bona fide association with the local market participate in the equalization pool. The handler definition, therefore, should be sufficiently broad so as to include a cooperative association with respect to producer milk diverted to a nonpool plant for the account of the association. Milk not needed by local handlers can generally be most economically handled by movement directly from the farm to its ultimate destination. Unless the cooperative is permitted to be the handler on such milk it is likely that cooperative members would bear the entire burden of carrying the market's reserve supplies, since handlers could continue to receive only that volume of milk needed to meet their immediate requirements and the cooperatives would be forced to handle the remaining milk as other than pool milk. Providing handler status to a cooperative association with respect to milk which it diverts will not only better insure orderly marketing but also will promote efficient utilization of producer milk in the highest available use class since the arrangement will also permit a cooperative association to divert milk for Class I use to a nonpool plant which milk might otherwise be used or disposed of by the proprietary handler in Class II.

The second role of a cooperative as a handler without a plant is with respect to its operations in delivering the farm bulk tank milk of its producer members directly from the farm to pool plants. Under the current arrangement for marketing the milk of producers using farm bulk tanks, the amount of milk delivered by any such producer, and the butterfat test thereof, can be determined only by measurement at the farm and from butterfat samples taken at the farm. After the milk has been pumped into the tank truck and commingled with the milk of other producers there is simply no opportunity to measure, sample, or reject the milk of an individual producer. Hence, it is essential that the producer be paid on the basis of such weights and tests.

When the pickup is conducted by a cooperative association or by a person under contract to or control of such association it is the association which controls the operation with respect to individual producer weights and tests. Accordingly, the association must appropriately assume the role of responsible handler unless through agreement between the association and the operator of the plant where the milk is received, noticed to the market administrator, the plant operator assumes the role of responsible handler and agrees to purchase the milk on the basis of farm weights and tests. When the cooperative association is the responsible handler, the milk is treated as a receipt of producer milk by the cooperative association at a pool plant in the same location as the pool plant at which the milk was physically received. The milk is then treated as a transfer by the cooperative association to the plant operator.

At the January 1965 hearing where the question of handler status for a cooperative association was one of the issues, the principal cooperative in the market, as well as the major handlers, objected to such a provision. They contended that the market had operated satisfactorily without such a provision and no problems had arisen. For those persons the inclusion of this provision need have no application. As long as the buying handler accepts responsibility and pays on the basis of farm weights and tests there is no problem. However, where this is not the case the cooperative must be made the responsible handler to insure that each producer receives payment for all of his milk picked up at the farm.

The order should specify, however, that handlers shall pay a cooperative association which is a handler pursuant to § 1004.10(c) at the uniform price for the milk received directly from producers' farms. It will simplify order accounting if such milk is paid for by the plant operator at the uniform price. This method of payment will facilitate any adjustments required when audit by the market administrator discloses an error such as an error in classification.

Payments into and out of the producer-settlement fund will be made directly between the regulated handler and the market administrator. This will establish directly the responsibility for accounting for milk and for its payment on the part of the handler. When settlement is made through a cooperative association, i.e., when a handler settles with the cooperative at class prices and the cooperative pays into or out of the producer-settlement fund, an unnecessary third party is intruded into the transaction. By eliminating the cooperative as an intermediary between the regulated handler and the market administrator, with respect to transactions with the producer-settlement fund, problems of financial responsibility, enforcement, and subsequent audit adjustments will be greatly reduced. These are important considerations, particularly in this market, in the context of order evasions previously described.

Finally, for purposes of reporting and verification only, it is necessary that handler status be accorded any other person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant. In the Delaware Valley market it is not uncommon for brokers and/or dealers with no plant facilities to contract with cooperative associations for a milk supply and to then make subsequent arrangements with proprietary handlers in the market to supply their requirements for milk. In some situations the broker (or dealer) takes title to the milk and in others does not. While the order has held and continues to hold the proprietary handler responsible for reporting and payments to producers in such situations, nevertheless there are obviously circumstances in which he has little, if any, specific knowledge with respect to the pickup and movement of the milk and payments to producers. In such cases the market administrator may find it necessary to review promptly the books and records of persons other than the proprietary handler to satisfactorily verify receipts, utilization and payments.

In investigating the current market problems previously referred to, the market administrator has had considerable difficulty, in some situations being forced to seek court orders, in obtaining access to necessary records. This problem may be circumscribed by adoption of this provision through which the market administrator may require of brokers and dealers involved in the marketing process reports of such nature and at such times as he deems necessary to verify the receipts, disposition and payment for producer milk.

Two of the major cooperatives and the principal handlers, all supporting continuation of the present individual-handler pooling, proposed a further broadening of the handler definition which could be construed to include haulers and all persons (including consumers) purchasing, handling or dealing in milk subsequent to its disposition in packaged form from a pool plant. It cannot be concluded from the record that the extension of responsibility under the order to such an end would serve any useful purpose in administration of the order and accordingly such proposal is denied.

Producer-handler. The producer-handler definition should be modified to limit its application to a person who operates a dairy farm and a distributing plant for which the source of supply for Class I milk is solely own-farm production and transfers from pool plants. To avoid the possibility that a person might attempt to masquerade as a producer-handler in its normal concept through hidden leases, rental arrangements and other corporate devices designed solely to circumvent regulation of the order, it is provided that producer-handler status shall be contingent on furnishing proof satisfactory to the market administrator that the maintenance and management of the herd and other resources necessary to produce the own-farm production and the operation of the plant are each the personal enterprise of and at the personal risk of such person.

Typically, a producer-handler conducts an operation, in which he processes, bottles and distributes preponderantly only own-farm production. Full regulation of such individuals would provide considerable administrative difficulty and is unnecessary under the existing market situation.

There are few producer-handlers operating in the area and the record gives no indication that they have been a disturbing factor in the market. Under the individual-handler pooling arrangement, no useful purpose could have been served by limiting a producer-handler's sources of milk supply in any way other than that which prohibited milk receipts from other dairy farmers. Hence, it is possible that to the extent that producer-handlers have operations in the market, their source of supply other than own-farm production could be milk from unregulated plants. To the extent that producer-handlers have had access to unpriced milk they have had a competitive advantage over other handlers. This situation can be corrected under the marketwide pooling arrangement. While the own-farm production of a producer-handler is not subjected to pricing regulations, such a person should not be entitled to supplement his production by purchases of unpriced milk. To continue to permit producer-handlers the privilege of using unregulated milk also would be inequitable to producers. It would permit use in the fluid market of unregulated milk without such milk being subject to the allocation and payment provisions, which provisions are intended to provide proper apportionment to producers of returns from Class I sales. Accordingly, the order should provide that use for Class I purposes of other than own-farm production and receipts from pool plants would preclude an operator from producer-handler status.

The principal proponent for marketwide pooling proposed that a producer-handler be limited in his disposition of Class I milk to not more than 100,000 pounds monthly. Proponent was unable to describe existing producer-handlers in the market or to assess the possible impact of his proposal. It is concluded that the record of this hearing provides no basis for the adoption of such a limitation and the proposal therefore is denied.

Dairy farmer for other markets. A "dairy farmer" is defined as any person who produces milk which is delivered in bulk to a plant. Milk, however, may be received at a pool plant from dairy farmers who are not part of the regular supply of such plant. In addition, in the case of supply plants which qualify as pool plants pursuant to § 1004.8(d) milk may be received which does not meet the health requirements for disposition as fluid milk. In order to distinguish such milk a "dairy farmer for other markets" definition is provided. The primary problem, however, revolves around the fact that supply plants which meet the prescribed shipping requirements during the short production months have automatic pooling status during the flush months. Under such circumstances a handler operating both pool and nonpool plants and having manufacturing facilities could, without affecting the status of his plant(s), augment his supply during the flush by taking on additional dairy farmers or by receiving shipments from dairy farmers of milk excess to their normal market. Such an arrangement would tend to dilute the pool and place on regular producers the burden of carrying the reserve supply for outside Class I markets for which they do not share in the Class I sales. It would be improper to accord producer status to dairy farmers whose milk is handled under such an arrangement.

Recognition must be given to the possibility that a plant may become pooled for the first time during the flush season. Under such circumstances the dairy farmers supplying such plant should have the same status as other producers in the market. Likewise a producer-handler who regularly had been associated with the market during the short production months, but who elected to change his status and become a regular handler buying from producers should not be denied status as a producer on his own-farm production. Such a change in status would under normal circumstances be an asset to the pool since producer-handlers are usually high Class I utilization handlers.

Recognizing that a handler's requirements for the fluid market may change, some flexibility is needed to permit the adjustment of producers without affecting the status of such producers during the flush production months. Accordingly, the "dairy farmer for other markets" definition is limited to those dairy farmers whose milk does not meet the health requirements or is received by a handler at a pool plant during any of the months of March through August, from a farm from which the handler, an affiliate, or any person who controls or is controlled by the handler received milk other than as producer milk during the preceding months of January and February, unless such dairy farmer held nonproducer status during such months solely because the pool plant at which his milk is currently received was not a pool plant in such months.

Because of the time at which the order will likely become effective it would be inappropriate to have this latter provision operative for the remaining months through August 1967. It is provided therefore that it will be effective on and after January 1, 1968.

Producer. The term "producer" defines those dairy farmers who constitute the regular source of supply for the market and to whom the minimum prices specified under the order must be paid. Under the individual-handler pooling arrangement it was unnecessary to restrict diversion privileges since each handler was in a position to add or release producers to accommodate his particular operation, except as his decisions might result in a blend price to be paid his producers which was unfavorable in comparison to that of other handlers with whom he competed in procurement. Under such circumstances he would likely lose his better producers to other handlers. For this reason there was little possibility that any handler would increase his receipts of producer milk solely for the purposes of obtaining a supply of milk for manufacturing uses.

Under a marketwide pooling arrangement, where all producers receive the same blended price, a decision on the part of any particular handler to increase his milk supply does not affect returns to his producers in relation to other producers on the market. Accordingly, it is necessary to restrict the diversion privilege to deter milk intended solely for manufacturing uses from becoming associated with the pool.

The milk supply for the fluid market is produced under the approval and supervision of the respective health authorities having jurisdiction in the marketing area. It must be presumed, therefore, that milk which is permitted to be received at a pool plant meets the quality standards of the health authorities. Unless milk so received falls in the category of milk received from "dairy farmers for other markets," producer-

handlers under any Federal order or producers under another Federal order issued pursuant to the Act, it is intended that it be accorded status as producer milk. For reasons previously stated in this decision relating to "dairy farmer for other markets" it would be inappropriate to permit milk from such source to share in the equalization pool of this market. Similarly, a producer-handler does not share his Class I sales with other producers and accordingly should not be permitted to gain the blend price for his excess milk.

Under the New York-New Jersey order a dairy farmer may have status as a producer by virtue of being included as part of a designated pool bulk tank unit. In such event the fact that the milk of such dairy farmer was moved directly from the farm to a Delaware Valley pool plant would not change its status as producer milk under the New York-New Jersey order. It is necessary therefore to exclude from the producer definition a dairy farmer whose milk is received directly at a pool plant and who notwithstanding his status under this order, would nevertheless be a producer under another Federal order with respect to such milk.

Even though producer status is established on the basis of receipt of milk at a pool plant, it must be recognized that the orderly and efficient handling of reserve milk requires the occasional diversion of the milk of individual producers to nonpool plants. The direct movement of the milk from the producer's farm to the plant of ultimate disposition avoids the expense and handling which would be involved if the milk were required to be first delivered to the pool plant where normally received and then transferred to the nonpool plant.

It is intended that the order shall assure an adequate, but not excessive supply of milk for the fluid market. The order should not be so drafted as to encourage handlers to associate an excessive volume of milk with the pool. This result could come about if unlimited diversions were permitted throughout the year.

During the months of September through February, when milk production is generally lowest, it is necessary to provide diversion privileges only to cover weekend receipts and nominal reserves resulting from day to day variation in Class I sales. It is provided therefore that diversion to a nonpool plant, other than a producer-handler plant or an other order plant, during any month of this period shall be limited to 10 days production of any producer. In addition, as an alternative to the 10-day limitation during the months of September through February and to permit maximum efficiency in handling reserve milk, diversion on a percentage basis should be permitted. A cooperative should be permitted to divert to a nonpool plant up to 15 percent of the milk of its producer members during any such month and a proprietary handler should be permitted to so divert up to 15 percent of the total nonmember producer receipts at his pool plant during any such month.

Under the provisions of the order herein proposed there is little possibility that a handler may take on unneeded milk during the March-August period for the purpose of having milk for Class II use. Hence, there is no need to limit diversions during this period when the problem of economical handling of the market's reserve supply is greatest. Handlers, including cooperative associations, therefore are given unlimited diversion privileges during this period.

If diversions were permitted to a producer-handler plant this could provide the means whereby a handler with own-farm production might evade equalization of his own-farm production while at the same time regularly receiving milk from other dairy farmers. The producer-handler as defined is limited in his source of supply to own-farm production and transfers from pool plants. It is therefore necessary for consistency in the application of the several order provisions to preclude diversions to a producer-handler plant.

Under most Federal orders producer status is determined on the basis of receipt of milk directly from the farm at a pool plant. It is appropriate therefore that the producer definition make no provision for diversion to an other order plant. This will eliminate any uncertainty as to the status under this order of any dairy farmer with respect to milk moved directly from his farm to an other order plant.

While diverted milk is included as producer milk by virtue of being deemed to have been received by the diverting handler at a pool plant at the location of the plant from which diverted, nevertheless, for pricing purposes such milk should be considered to have been received at the location of the nonpool plant to which diverted. Unless this procedure is followed there is a strong incentive for any handler operating an unregulated manufacturing plant in the country to associate an excessive quantity of milk with city distributing plants and then regularly receive the milk at his manufacturing plant as diverted milk up to the limits allowed. Without appropriate safeguards distant producers thus could receive the city blended price when, in fact, their milk was moving on an almost regular basis to a nearby manufacturing plant. Pricing diverted milk at the plant of physical receipt will tend to deter the association of milk intended solely for manufacturing uses and will insure that the pool will not subsidize transportation costs which, in fact, are not incurred.

Producer milk. Producer milk is intended to include only that skim milk and butterfat contained in milk produced by producers and received at pool plants directly from such producers or by a cooperative association as a handler on bulk tank milk. Producer milk also includes diverted milk of producers within the limitations presented in the producer definition.

Other source milk. Other source milk is defined as all skim milk and butterfat utilized by a handler in his operation except producer milk, fluid milk products received from pool plants, milk received from a cooperative in its capacity as a handler on farm bulk tank milk and inventory of fluid milk products on hand at the beginning of the month. It would include all skim milk and butterfat represented by fluid milk products received from plants other than pool plants and all manufactured milk products from any source received during the same or prior months including those from the plants' own manufacturing operation which are reprocessed or converted into another product during the month.

(b) *Classification and allocation of milk. Classification of half and half.* Skim milk and butterfat disposed of as half and half in fluid form should continue to be classified and priced in Class I as presently provided. The fluid milk product definition should be amended, however, to exclude sour half and half and thus provide a Class II classification and pricing for the skim milk and butterfat used to produce such product.

Two handler proposals were considered at the January hearing which would classify half and half as Class II. One proposal supported by a single proponent would apply only to half and half which is sterilized and placed in half-ounce containers. The other proposal, supported by almost all handlers in the market, would apply generally to all milk and cream mixtures with a butterfat content of at least 10 percent but less than 18 percent (the legal minimum butterfat content for cream, presently a Class II product).

Proponents of the broader proposal contended that a Class II classification and pricing is necessary to permit milk and cream mixtures to better compete with similar substitute products made with vegetable fat. It was their position that, unless the requested relief were granted, producers would be in jeopardy of complete loss of their market for milk, skim milk and cream in the form of half and half, which result, they suggested, would reduce overall producer returns. In support of their position, proponents pointed out that the Pennsylvania State Milk Control Commission had, under State orders in certain adjacent areas, responded to a similar request for a Class II classification and pricing and under such lower pricing half and half sales had significantly increased.

The proponent for a Class II classification of half and half in one-half ounce containers supported his proposal on essentially the same grounds as proponents of the broader proposal. In addition, he contended that while he was using local cream and nonfat dry milk solids to make his product, he had access to other approved sources of supply which he could secure at lower prices than those provided in the order. A change in his source of supply, he suggested, would lower producer returns.

Producers opposed a lower classification of half and half on the grounds that it is not compatible with the concept of the classified pricing scheme in that "half and half" is a fluid milk product required

by the appropriate health authorities to be made from milk and milk products from approved sources of supply; and that the product is sold in direct competition with other fluid milk products in Class I.

Market competition from a vegetable base (or any nondairy substitute) product is not an appropriate basis for determining the classification of a fluid milk product. Neither is size of package an appropriate basis for classification. While one proponent requested special consideration because his product is sterilized before packaging and, hence, has longer shelf life, this has no significance since the finished product has the same physical characteristics as similar unsterilized products, is used for the same purposes, and must meet the same quality requirements.

Under the classification scheme employed under Federal orders the fluid milk products classified as Class I are those which are required by the appropriate health authorities in the marketing area to be made from milk or milk products procured from approved sources. The extra cost incurred by producers in producing quality milk and in delivering it to market in the condition and in the quantity needed by the market necessitates a price for milk used in Class I somewhat above the price of milk used in manufactured products. The higher price must be at a level which will provide sufficient incentive to producers, through the uniform price, to encourage the production of those quantities of milk needed for Class I plus the necessary reserve to cover daily fluctuations in market demand.

Milk which is excess to Class I use at any time must be disposed of for use in manufactured products. These products compete with similar products made from unapproved milk on a national market. Milk so used must be classified as Class II milk and priced according to its value in such outlets.

Fluid cream is normally considered a fluid milk product. However, because Philadelphia is an open cream market, butterfat from producer milk must be priced competitively with the price of cream from outside sources. For this reason cream is classified and priced in Class II and the same butterfat differential is applicable to both Class I and Class II milk.

In his decision issued October 31, 1963 (28 F.R. 11847) with respect to the promulgation of the Delaware Valley order, the Assistant Secretary concluded that "Since skim milk and butterfat disposed of as half and half is subject to the same quality production requirements as other products in Class I by each of the respective health authorities having jurisdiction in the marketing area, there is no basis on this record for a lower classification and pricing." There was no evidence adduced at these hearings to permit a different conclusion.

Appropriately, the higher Class I price should apply uniformly to the fluid milk products for which an approved milk supply is required. The exclusion of a particular fluid milk product from Class I, which product is required to be made from the same quality of milk as other products in Class I, would have the effect of placing on consumers of other fluid milk products the burden of the added cost reflected in the higher Class I price needed to insure an adequate milk supply for the fluid milk; i.e., the placing of a lower price on milk used in some fluid milk products would require a higher price on milk used in other fluid milk products to insure adequate returns to producers to produce the needed total milk supply.

Proponent offered no specific evidence to support his position that he could secure approved supplies from outside sources at less than the cost of local milk. The fact that approved supplies may be secured from outside sources at a cheaper price than local milk, under the circumstances existing in this market, is not an indictment of the classification scheme employed. However, it may raise a question as to the appropriateness of the order Class I price level applicable to all fluid milk products. But, as is later pointed out in the Class I price discussion, both producers and handlers firmly endorsed the existing price level as necessary under current supply-demand conditions.

Sour half and half, however, should be classified and priced in Class II because it is not required to be made from skim milk and butterfat procured from approved sources of supply. It competes directly with sour cream which has always been a Class II product in this market. Sour half and half is not widely sold in the market. In fact, it is manufactured and distributed only by one handler who has no fluid distribution and who secures his supplies of milk and cream totally from outside sources, generally in the form of condensed skim milk and cream. Accordingly, local producers have realized no return from this product and, hence, a change in classification will have no effect on their blend prices.

Classification of yogurt. The order should also be revised to provide a Class II classification for skim milk and butterfat used to produce yogurt. Under the existing order provisions yogurt is included as a Class I product. This results from yogurt being a mixture of cream and milk or skim milk containing less than 18 percent butterfat, and not specifically excepted from the fluid milk product definition.

There is no indication in the record that yogurt is manufactured by locally regulated handlers. Essentially, all the yogurt being distributed in the market is manufactured at plants regulated under the New York-New Jersey Federal order, which provides a Class II classification for this product if disposed of in the New York Metropolitan District and a Class III classification if disposed of elsewhere. The product is generally distributed in the local market directly to wholesale accounts through food distributors and jobbers. Much of the yogurt moved to the local market is subsequently reshipped to other areas in Pennsylvania and to Baltimore and/or Washington. The orders regulating the latter markets prescribe a Class II classification for yogurt.

There is no indication on the record that the health departments in the several segments of this market require that yogurt be made from milk of approved sources. As previously indicated, most of the product sold locally originates in Order 2 pool plants and the health departments of the State of New York and New York City do not require that the butterfat and nonfat milk solids used in yogurt come from milk of approved sources.

This change in classification will have little, if any, effect on returns to local producers, since the product as presently handled in this market is generally outside the scope of regulation under this order.

Inventory of fluid milk products. The classification provisions of the order should be revised to provide that inventories of fluid milk products in packaged form on hand at the end of the month shall be classified as Class I. Inventory in bulk will continue to be Class II.

This treatment of inventories will tend to minimize any possible differences in classification between a handler's internal accounting and his reports to the market administrator. Handlers may consider products loaded on trucks parked on or adjacent to the premises as being in inventory. Some also may consider products on hand in distribution depots or in transit as being in inventory. The market administrator, however, may consider as inventory only those items which are physically on hand in the plant. The classification procedure herein recommended should eliminate any difficulties in this respect. In addition, it should tend to minimize month to month fluctuations in the pool obligations of high utilization handlers.

In the first month in which this provision is in effect, the reclassification charge will be applicable in the identical manner as in the past. In subsequent months a reclassification charge will be applicable only on bulk inventory which is assigned to Class I. However, to insure that all handlers pay the current month's Class I price for producer milk disposed of during the month, it is provided that if the Class I price increases, the handler will be charged the difference between the Class I price for the current month and the Class I price for the preceding month on the quantity of ending inventory assigned to Class I in the preceding month. Likewise, if the Class I price decreases the handler will receive a corresponding credit.

Shrinkage. The classification provisions of the order should be revised to provide for a division of shrinkage between plants when interplant transfers occur. The maximum 2 percent Class II shrinkage allowance on producer milk should be retained with a division of one-half percent to the transferor plant and 1½ percent to the transferee plant.

Plant loss of skim milk and butterfat, commonly referred to as shrinkage, represents a disappearance of milk for which the handler must be held accountable. To the extent that such losses are reasonable, it is appropriate that they be classified in the lowest valued use class. The amount of producer milk so classified, however, must be limited; otherwise there would be an incentive for a handler to maintain inadequate and incomplete records solely for the purpose of having milk actually disposed of for Class I use nevertheless classified and priced as Class II.

The present language of the shrinkage provisions is essentially that contained in the former Philadelphia order which provided for system accounting. Because the present order provides for individual-plant accounting, it has been necessary for the market administrator to issue an interpretation in regard to the application of the shrinkage provisions to multiple plant handlers. As currently administered, shrinkages or overages, as the case may be, are determined for each plant on the basis of such plant's reported receipts and utilization. The handler is billed for any overages pursuant to § 1004.70(c). Total shrinkage of skim milk and butterfat, respectively, at each plant is prorated between producer receipts and other source receipts. Shrinkage assigned to producer milk at each of the handler's plants is totaled and compared to total producer receipts of such plants, excluding any of such receipts on which an overage has been computed. To the extent that such shrinkage does not exceed 2 percent of such receipts, it is classified as Class II milk. Shrinkage in excess of this amount is classified as Class I milk.

Handlers requested clarification of the shrinkage provisions to conform with the procedure currently employed. In the alternative and, as their preference, they requested a return to system accounting.

In order to effectuate the purpose of the order, provisions thereof must insure that handlers accurately report the receipts and utilization of all their milk at all their producer milk plants and account for such milk at not less than the minimum prices prescribed by the order. In his decision of October 31, 1963 (28 F.R. 11847), the Assistant Secretary concluded as follows:

> Under the classified use plan of a Federal order it is necessary to insure that all milk and milk products are fully accounted for by the handler who is responsible for accounting and reporting to the market administrator and for making payments to producers on receipts of producer milk. Accounting for milk and milk products on a skim milk and butterfat basis at each individual plant and pricing in accordance with the form in which or the purpose for which such skim milk and butterfat is used or disposed of either as Class I milk or Class II milk is the most appropriate means of securing complete accounting on all milk involved in market transactions.

While handlers may differ with the conclusions of the Secretary in regard to the appropriateness of the accounting procedures prescribed, it is significant that their arguments are primarily concerned with their reluctance to accept responsibility under the order for the volumes and tests of milk which their own records show as movements between plants. Accurate accounting for interplant movements presents no problems substantially different from those of accurate reporting of producer receipts. No two plants are operated with exactly the same degree of efficiency. If plant records, substantiated by audit, show a greater disposition or utilization than reported receipts, it must be presumed that the handler has underreported his receipts and, accordingly, producers should be compensated for the full use value of their milk. Conversely, if receipts exceed reported disposition or utilization by an amount in excess of normal plant shrinkage, such unknown disposition must be considered a Class I disposition. These procedures are essential to insure accurate and complete accounting for milk received and disposed of at each plant and to prevent any handler from obtaining a pricing advantage over his competitors through the maintenance of inadequate records.

Multiple plant handler proponents of system accounting contended that individual plant reporting and accounting results in higher total operating costs to them than would otherwise prevail under the proposed system accounting method. It is impossible here to evaluate the comparative costs of performing the many individual operations involved in a milk business in a single plant versus a multiple plant operation. Obviously, however, a multiple plant handler has more flexibility in handling milk than does a single plant handler. In any case, the choice of a multiple plant or a single plant operation is clearly that of the handler. Administrative problems and operating costs associated with each type of operation obviously must be considered by the handler in making such choice. However, these problems cannot be compelling in deciding upon the appropriate accounting procedure to be provided in the order.

The order should not be revised to provide for system (combined plant) reporting and accounting. However, some change in the shrinkage provision is necessary to better insure equity among handlers in their costs for milk under the terms of the order. The fact that the plant of original receipt experiences an overage rather than shrinkage should not be a basis of denial of shrinkage on milk moved from such plant to a second plant. In addition, in a situation where a handler operates two separate plants with little or no intermovement of milk between them, the unused shrinkage allowance at one plant appropriately should not be available to the second plant. Finally, in the case of transfers of milk between plants operated by different handlers the application of the shrinkage provision should be identical to movements of milk between two plants of the same handler.

The inequities of the present shrinkage provisions can be satisfactorily ameliorated by providing for an appropriate division of the maximum 2 percent allowable shrinkage as Class II milk between transferor and transferee plants whenever interplant movements of bulk fluid milk products occur. The experience under Federal orders generally, substantiated further by testimony at this hearing, is that in a reasonably efficient receiving operation shrinkage should not exceed one-half of 1 percent and in a reasonably efficient processing operation shrinkage experienced should not exceed 1½ percent. It is concluded that any shrinkage in excess of these maximum limits should be classified as Class I milk.

The maximum shrinkage allowance of skim milk and butterfat in Class II therefore should be limited to:

(a) Two percent of producer milk received at a pool plant; plus

(b) One and one-half percent of milk receipts from a cooperative association in its capacity as a handler pursuant to § 1004.10(c); plus

(c) One and one-half percent of milk received in bulk from other pool plants; plus

(d) One and one-half percent of receipts of fluid milk products in bulk from other order plants, exclusive of the quantity for which Class II utilization was requested by the handler (and by the operator of such other order plant if such receipt is fully subject to the classification and pricing of such other order); plus

(e) One and one-half percent of receipts from dairy farmers for other markets pursuant to § 1004.14(b) and receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which Class II utilization was requested by the handler; less

(f) One and one-half percent of milk moved in bulk from a pool plant to other plants; and plus

(g) One-half of 1 percent in receipts of producer milk by a cooperative association in its capacity as a handler pursuant to § 1004.10(c).

It is appropriate to limit the volume of unregulated milk and other order milk that may be classified in Class II as shrinkage, since these types of receipts are allocated pro rata to class uses along with milk received from other pool plants and from producers. Under the allocation system herein provided, such other source milk will share with producer milk in any Class I quantity computed because of shrinkage in excess of established limits. No specific shrinkage limit is necessary on unregulated or other order milk that does not participate in the pro rata assignment to classes and which is allocated first to Class II, since the allocation procedure insures assignment of such milk to Class II in an amount at least equal to the shrinkage that may be associated therewith.

To insure an equitable assignment of total shrinkage in the two categories of receipts ((1) receipt for which percentage limits are set as to the quantity of shrinkage which may be Class II milk, and (2) receipt for which no shrinkage limit is set), the total shrinkage should be prorated to these two categories.

Transfers. The transfer provisions of the existing order should be modified and adapted to the marketwide pooling arrangement. In substance, however, the rules are essentially those contained in the present order. Classification of any fluid milk product which is moved to another plant should, under usual circumstances, be determined on the basis of its utilization in the plant to which transferred.

Fluid milk products transferred from one pool plant to another should be classified as Class I milk unless utilization as Class II milk is claimed by both handlers on their reports submitted for the month to the market administrator. However, sufficient Class II utilization must be available at the transferee plant for such assignment after prior allocation of receipts of unregulated milk, other order milk, inventory, and appropriate assignment of shrinkage. Moreover, if other source milk of the type to which surplus value inherently applies (such as nonfat dry milk) has been received at the transferor plant during the month, the skim milk or butterfat in fluid milk products involved in such transfer should be classified so as to allocate the least possible Class I utilization to such other source milk. In the case of a transferor handler who received other source milk from an unregulated supply plant or other order plant, the transferred quantity, up to the total of such receipts, should not be Class I to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant.

Fluid milk products transferred or diverted to a nonpool plant (not an other order plant, or a producer-handler plant) should be classified as Class I milk unless certain conditions are met. The pool handler must claim classification as other than Class I in filing his report for the month pursuant to § 1004.30 and the operator of the nonpool plant, if requested, must make his books and records available to the market administrator for the purpose of verifying the receipts and utilization of milk in such nonpool plant. Provision for verification by the market administrator is reasonable and necessary to insure proper application of the classification procedures prescribed in the order.

If the above conditions are met, the skim milk and butterfat so transferred or diverted should be assigned as follows: Any route disposition from such nonpool plant in the marketing area should first be assigned to such transfer or diversion, and thereafter pro rata to receipts at such plant from other order plants. Any route disposition from such plant into the marketing area of another Federal order should be assigned first to receipts from fully regulated plants under such order and thereafter pro rata to receipts from pool plants and other order plants not regulated by such other order. Any remaining Class I utilization should first be assigned to receipts at such nonpool plants from dairy farmers who the market administrator determines constitute the regular source of supply for such plant and thereafter pro rata to unassigned receipts from all pool and other order plants. Any remaining unassigned receipts should be assigned to Class II to the extent of such available utilization. However, if on inspection of the books and records of such nonpool plant the market administrator finds that all remaining receipts at the plant exceed available Class II utilization the transfer or diversion shall be classified as Class I up to the amount of such excess.

In the case of fluid milk products transferred from pool plants to fully regulated plants under another order, specific rules should apply to coordinate the classification under both orders. Specifically, fluid milk products transferred to an other order plant in excess of receipts from such plant in the same category (packaged, bulk designated for surplus disposal, or bulk milk not so designated) should be classified in the classes to which allocated as a fluid milk product under the other order. 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 should be classified as Class II to the extent that Class II utilization (or comparable utilization under such other order) is available for such assignment pursuant to the allocation provisions of the transferee order. If, however, 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 should be as Class I, subject to adjustment when such information is available. For these purposes, also if the transferee order provides for more than two classes of utilization, milk allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and milk allocated to other classes should be classified as Class II.

If the form in which a fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification should be in accordance with the form in which it leaves the transferor plant. This would be the case where the classification of a product differs in the shipping and receiving markets and accordingly, identical classification will not be possible. These differences exist primarily because the health authorities in different areas have varying requirements with respect to the quality of milk which must be used in some milk products. Hence, the order provisions must be designed to accommodate the differences in classification which might exist in this order compared to any order market to which such product is transferred.

A product which is defined as a fluid milk product (Class I) in this market, may not be so defined in another market to which shipment is made. In such case, any transfer of such a product to such market would be classified in the class determined by the provisions of this order. The allocation to classes in the other order would be in accordance with the provisions of such other order.

Transfers of fluid milk products to a producer-handler plant should be classified as Class I. Producer-handlers do not equalize their Class I sales with other producers and accordingly to the extent that they rely on pool purchases for balancing supplies producers should be compensated through a Class I return.

Allocation. The order provides for determining the value of milk received from producers each month at a plant on the basis of its classification. It is necessary, therefore, that the order determine assignment of milk from all the various sources to each use classification.

The system of allocation of receipts to class utilization must be similar to the system of allocation set forth in the decisions of the Assistant Secretary issued June 19, 1964 (29 F.R. 9109) with respect to 75 Federal orders. This was designed to integrate into the regulatory plan of each of the orders, milk which is not subject to classified pricing under any order, and to apply the regulatory plan of each of the Federal orders to milk regulated under another order which is disposed of from the other order plant on routes in the marketing area, or is received at a fully regulated plant. Inasmuch as those decisions set forth the standards for dealing with unregulated milk under Federal orders generally, it is desirable that the system of allocation under this order be similar. Further, the treatment of other order milk should conform with the plan stated in those decisions so as to coordinate the applicable regulations on all movements of milk between Federal order markets. Except for relatively minor variations to accommodate this individual market's situations, the general scheme of allocation must be based on the considerations of coordination among markets and uniform treatment of unregulated milk in the several markets.

Milk received at regulated plants from unregulated sources. When unregulated milk eligible for distribution in the market in fluid form is received by a regulated handler at his pool plant, provision must be made for its allocation to the total available classification of the pool plant, and for providing an appropriate rate of payment to the producer-settlement fund on any such milk allocated to Class I.

The order should provide that fluid milk products moved from an unregulated plant to a pool plant or from an other order plant to a pool plant, if such milk is not classified and priced under such other order, be classified as Class II milk if so reported by the operator of the regulated plant. Milk may be purchased by a pool plant operator from such sources either for use in his manufacturing operation or in connection with his Class I requirements. When the purchase is for manufacturing, the order should accommodate this by providing that such milk be allocated to the lowest priced class utilization in the pool plant. This treatment of unregulated milk received at pool plants will further serve

to accommodate unregulated plants which have surplus milk but do not have manufacturing facilities, since it will make available as an outlet the manufacturing facilities of pool plants without involving the unregulated plant in the regulation. When, however, manufacturing utilization in a regulated plant is insufficient for the assignment of all fluid milk products from unregulated plants to the agreed manufacturing use, the remainder, of course, must be allocated to Class I.

Other categories of milk receipts assigned first to Class II use (down allocated) should include receipts from producer-handlers; receipts from dairy farmers whose milk does not meet the health regulations; receipts from unidentified sources and receipts of other source milk in a form other than a fluid milk product. The reasons for such assignment are explained in subsequent findings on these specific types of receipts.

With respect to the general category of milk received which is not regulated by any Federal order (not producer-handlers, however) the order should provide that (within limits) unregulated milk received at a pool plant, which is not specifically designated for manufacturing use, be assigned a classification which is pro rata to regulated milk received by the operator of such plant. This should be provided because classification of bulk milk cannot be determined on the basis of its inherent characteristics as either Class I (i.e., in bottles) or as surplus (i.e., as in manufactured products). Its classification depends upon its utilization by the handler who receives it. Unless the regulated handler accepts the milk for Class II use, a method as described herein must be provided for assigning the unregulated bulk milk to classes of use. By assigning it pro rata with regulated milk (within limits), its indeterminate character as Class I or II will be recognized up to the limit provided.

A limit must be placed on the amount of unregulated milk which may share full classification with regulated milk. The receipt of unregulated milk in a regulated handler's operation is always a source of danger to the regulatory plan. Handlers obtain unregulated milk because it is a cheaper source of supply than regulated milk. Unless some limitation is placed on the volume of unregulated milk that may be prorated, a handler with a supply of regulated milk adequate for his Class I requirements could acquire cheaper unregulated milk to increase his manufacturing uses. This milk would share in his Class I utilization while an equal volume of regulated milk would be assigned to the expanded surplus use. This would impair the effectiveness of the regulation.

The limit placed on the amount of unregulated milk to be assigned pro rata with regulated milk is such that when, as a result of proration or assignment, as much as 20 percent of all regulated milk in the handler's plants is assigned to Class II, all additional unregulated milk will then be assigned to Class II. A reserve of milk for fluid requirements on a marketwide basis more or less than 20 percent of all handlers' receipts may be required, depending upon seasonal and other considerations. An individual handler associated with a regulated fluid market (whose main purpose is to furnish Class I milk to the market) will not need unregulated milk for the purpose of maintaining an adequate supply to service Class I sales in amounts which will increase his reserve above 20 percent of his total receipts in any given month. Whenever a handler has a milk supply such that 20 percent of his receipts are in Class II, he is fully supplied for furnishing a regulated Class I market. Even though a situation could conceivably arise where, because of the disruption of normal supplies, a handler receives milk from unregulated sources in excess of the quantities that may be prorated, the attainment of effective regulation nevertheless requires the imposition of this limit.

It is provided that in assigning unregulated bulk milk for purposes of classification, the overall utilization of the handler at all of his plants regulated under the order [3] (rather than the utilization at a single plant) should be used. This is necessary for the same reasons, set forth later in this decision, which apply to receipts of milk from plants regulated by other orders.

Payment at the difference between the Class I and uniform prices should be made by the receiving handler into the producer-settlement fund on the portion of unregulated milk which is assigned to Class I through proration. There can be no question that the Class I price basically should apply to both regulated and unregulated milk used in a fully regulated plant as Class I milk. To attribute any different valuation on the unregulated milk would automatically result in inequity as compared with regulated milk similarly utilized.

Although there is no room for doubt as to the need to attribute a Class I value for any milk so utilized (the minuend), the proper credit to be allowed to milk from unregulated plants is not clear, i.e., what subtrahend should be used in such a payment formula. It may be expected that in many situations a payment at any lesser rate than the difference between the Class I minimum price and the value of such milk as surplus would give unwarranted price advantage to unregulated milk over producer milk similarly utilized.

Milk at unregulated plants may be purchased from dairy farmers on a flat price basis without regard to use classification. Although most of the milk so purchased by the unregulated plant operator may be intended for local distribution outside the regulated market, excess milk supplies on a daily and seasonal basis will arise as they also do in regulated plants.

This frequently leaves excess milk at unregulated plants which is truly surplus to the normal fluid needs of those plants. This situation is accentuated at certain times of the year when there are characteristic seasonal increases in the production of milk without corresponding increases in the demand for milk. If it were not for the sale in the regulated market, such milk would have no higher value to the plant operator than its surplus value. In such circumstances, the operator of such an unregulated plant, including the fringe distributor, has great incentive to "dump" his surplus milk into the regulated market or its supply system at any price higher than a surplus price and thereby obtain a competitive advantage for such milk over regulated milk. Regulated handlers cannot similarly convert otherwise surplus Class II milk into Class I utilization without accounting to the producer-settlement fund at the full difference between these two utilizations, i.e., they account at Class I rather than Class II. There would then appear to be substantial justification for the same rate of charge against milk from unregulated plants obtained and used in similar circumstances.

Notwithstanding the fact that surplus milk is obviously available to handlers from time to time, in the light of the decision of the U.S. Supreme Court in the Lehigh Valley case (Lehigh Valley Cooperative Farmers, Inc., et al. v. United States, 370 U.S. 76), and because of the administrative difficulty in determining whether particular milk from an unregulated plant utilized as Class I in this market actually had only a surplus value or cost at source, it is concluded that the charge should be limited to the difference between the Class I price and the market order uniform price, adjusted for butterfat content and the location of the unregulated plant from which the milk was received. Although the use of the uniform price as the subtrahend will not assure complete removal of the minimum price advantage which may exist for some milk for the reasons just stated, it nevertheless will serve to minimize this advantage in such cases, and generally should be an equitable means of providing a reasonable measure of protection to the regulatory plan. If subsequent experience shows that such payment is not protecting the regulatory plan, then, on the basis of specific evidence, another rate of payment or another plan will need to be devised.

As a means of carrying out the equalization provided by market pooling, regulated handlers are required to pay the minimum uniform price to their own producers and, in addition, are required to pay to the producer-settlement fund the full difference between the Class I price and such uniform price on all regulated milk classified as Class I because of its use as fluid milk. Unregulated milk similarly used as Class I milk by a regulated handler likewise should carry a payment to the producer-settlement fund at least at the same rate as that required of regulated milk. If the han-

[3] Such total utilization would be subject to certain prior deductions for receipts assigned to the surplus classification as mentioned in prior findings.

dler buys regulated milk at a price in excess of the uniform price, he receives no credit for this excess payment in accounting to the producer-settlement fund. Neither should he receive credit for any amount paid for unregulated milk in excess of the uniform price. Both the regulated and unregulated milk, therefore, will be credited at only the uniform price in accounting to the producer-settlement fund.

These payments are not unfair or burdensome to the dairy farmer supplying the unregulated plant, whose milk is used as Class I milk by a federally regulated handler. The allowance of a credit for unregulated milk used as Class I by the regulated handler at the uniform price level will provide opportunity to the unregulated plant operator to pay his dairy farmers at least the uniform price on these Class I sales. The order cannot, of course, guarantee to the dairy farmer that his purchaser in fact will pay this full uniform price to him.

Milk received from "dairy farmers for other markets", except that which is not qualified for fluid disposition, should be allocated along with and in the same manner as, receipts from unregulated supply plants. Such milk would usually be available to and received by the regulated handler for the identical reasons and under similar circumstance as milk from unregulated supply plants.

The order must contain provisions of this kind which serve to adequately relate to the total scheme of regulation that milk received by regulated handlers which is not subject to full regulation. Otherwise, the very existence of the market pool order may establish the condition which makes impractical the attainment of the regulatory objective of stabilizing the market in the manner prescribed by the statute. Consequently, the Secretary must protect to the extent consistent with the Act the regulatory plan in any marketing area against defeat or impairment because of the introduction into the marketing area of milk from unregulated sources which is not subject to full regulation.

There may be instances where a distributor is subject to State milk control and pays the State minimum price on all of his receipts of milk including some that is assigned as Class I in a federally regulated market. The method of assignment and rate of payment into the producer-settlement fund applicable to other unregulated milk must also be applied to this source of "unregulated" milk even though the State regulated distributor may have paid a price for the Class I milk disposed of in the Federal order market that was higher than the uniform price established by the Federal order. This is necessary for the same reasons as apply to any operator of a plant who, for whatever reasons, pays a price for milk higher than the Federal order uniform price.

Packaged fluid milk products also may under certain circumstances be received from unregulated plants, and in such circumstances it is appropriate to treat it in the identical manner as bulk milk received from such plants.

Producer-handler surplus, reconstituted milk, manufacturing grade milk and unidentified receipts. Certain milk by its very nature must be treated as surplus when received at a pool plant and, therefore, must be assigned a surplus value. One such source is milk received at a regulated plant, in either bulk or packaged form, from a producer-handler (under any Federal order). Another source is milk produced by the reconstitution to fluid form of manufactured dairy products, such as fluid skim milk made by the addition of water to nonfat dry milk. Still another source is milk of manufacturing grade which is not eligible for disposition for fluid consumption in the market. As to milk from these sources, a payment into the producer-settlement fund at the difference between the Class I and surplus prices must be required of the receiving handler when such milk is allocated to Class I, following "down allocation" to the extent it can be absorbed in lower-priced uses.

The producer-handler's exemption from pooling and pricing is based on the principle that the producer-handler assumes the burden of disposing of his milk supplies in excess of his Class I milk needs. Being exempt from these provisions of the orders makes it possible for the producer-handler to retain the full return from his Class I sales of milk on routes even though such sales are in competition with regulated handlers.

Producer-handlers are primarily engaged in the distribution of Class I milk. Normally, they do not maintain facilities for processing and manufacturing any milk produced in excess of their Class I needs. Because of seasonality of milk production and for other reasons, producer-handlers will produce some milk in excess of their Class I needs. The best available outlets for this surplus milk usually are to fully regulated plants in the market. In view of a producer-handler's limited capacity for utilizing excess supplies of milk, it is often economically advantageous for him to dispose of such excess at surplus prices to regulated handlers. Such milk, therefore, would be available to regulated handlers at surplus prices. Under these circumstances, it would not be appropriate to allow the regulated handler credit from the producer-settlement fund at more than a surplus price for any such purchases. If milk received at a regulated plant from a producer-handler is, in any event, assigned to the regulated plant's Class I disposition, the regulated handler should be obligated to the producer-settlement fund on such milk at the difference between the Class I price and the surplus class price.

Inasmuch as a producer-handler's appropriate competitive relationship with other handlers and with other producers depends upon the producer-handler assuming the burden of his own surplus, an equitable relationship among the several groups would not be achieved if a producer-handler were allowed to dispose of his surplus and obtain the uniform price for such surplus. As long as the producer-handler has the advantage of enjoying the full benefit of his own Class I route sales without sharing them with other producers, he should not also receive Class I benefit from the market pool, at the expense of producers, for any of his milk which he is unable to sell as Class I. Surplus milk purchased from producer-handlers operating under another order has the same potential for creating disorderly marketing as surplus from producer-handlers operating under the same order. Therefore, no distinction in treatment for such milk should be provided.

The order should provide, therefore, that milk received from producer-handlers at a pool plant should first be assigned to surplus milk at the pool plant. If any is then assigned to Class I, a payment into the producer-settlement fund at the Class I surplus price difference should be applied. Such rate of payment on receipts by federally regulated handlers of milk from producer-handlers was ratified by Congress at the time provisions of the Agricultural Adjustment Act of 1933, as amended in 1935, authorizing the issuance of milk orders, were reenacted by the passage of the Agricultural Marketing Agreement Act of 1937. During the period between August 24, 1935, and June 3, 1937, the effective date of the latter Act, six Federal milk orders were issued under such Agricultural Adjustment Act. Two of such milk orders (Greater Kansas City, Mo., and Fall River, Mass.), placed in effect during this period, contained provisions requiring handlers who used bulk milk received from producer-handlers in other than the lowest-priced classification to pay the difference between the class use price and the lowest class (surplus) price for such milk as part of the handler's total obligation for milk. Such payment was distributed, together with the classified value of producer milk of the handler, through the market pool.[1]

A surplus value likewise is properly assigned to reconstituted milk (for instance, the result of combining nonfat dry milk or condensed milk with water). The products used in such reconstitution process are made from milk which always carries a manufacturing, or surplus, value. Producer milk used to produce such products is priced as surplus under all Federal orders. Since the milk used to produce these products is originally priced as surplus milk, payment into the producer-settlement fund at the difference between the Class I and surplus price is necessary to insure competitive equity with producer milk

[1] U.S.C. sec. 672, which contains the codified language of sec. 4 of the Agricultural Marketing Agreement Act of 1937, as amended, states in paragraph (a) "Nothing in this Act shall be construed as invalidating any marketing agreement, license, or order, or any regulation relating to or any provision of, or any act of the Secretary of Agriculture in connection with any such agreement, license, or order which has been executed, issued, approved, or done under secs. 601–608, 608a, 608b, 608c, 608d–612, 613, 614–619, 620, 623, 624 of this title, but such marketing agreements, licenses, orders, regulations, provisions, and acts are expressly ratified, legalized, and confirmed."

when reconstituted milk is used in Class I. No recognition should be given to processing costs involved in the manufacture of the products derived from unregulated milk and used in reconstitution, since similar costs are incurred in processing producer milk into such products.

Nonfat dry milk and condensed milk also may be added to fluid milk products to increase the nonfat solids content thus making so-called "fortified" fluid milk products. The incentive for handlers to use nonfat milk solids to fortify fluid milk products arises from the specific demands of consumers. The increased emphasis on low-fat diets and the high nutritional value of nonfat solids in relation to their weight have contributed to the increased demand for added nonfat solids in fluid milk products. Such products, are distinguished from reconstituted products, however, in that the resulting volume of fluid product is not increased appreciably since no water is added.

In the case of fortified products, the volume by which Class I sales are increased unquestionably relates to the nonfluid products used for fortification. Such products could be assigned first to this Class I volume and then to the surplus class of use. The same result can be obtained by limiting the Class I charge on fortified products to that which would be made for an equal volume of unfortified products. Nonfluid products, then, will be uniformly assigned first to the surplus class, with a payment into the producer-settlement fund at the difference between the Class I and surplus prices on any amount thereof assigned to Class I. Limitation of the Class I volume as described above avoids any payment with respect to use in fortification.

Milk of manufacturing grade is not eligible for fluid (Class I) uses under the requirements of the health authorities having jurisdiction in the marketing area. In certain plants, however, such milk might find its way into Class I. The appropriate value which attaches to such milk is the surplus price because such price accurately reflects its value as manufacturing milk only. The manufacturing value is the price which processors pay for this grade of milk. Receipts of manufacturing grade milk, therefore, should be assigned first to use in the surplus class. But should any manufacturing grade milk be assigned to Class I, a payment into the producer-settlement fund at the difference between the Class I and surplus prices likewise would be necessary to remove the competitive advantage this milk would have in relation to producer milk. Health authorities require that the source of milk eligible for fluid consumption must be identified. Any receipts from unidentifiable sources must therefore be treated as milk of manufacturing grade.

Receipts from other order plants. The order should provide for the assignment to Class I (i.e., to be deducted from gross Class I milk in the receiving plant) of 98 percent of skim milk and butterfat in packaged fluid milk products received from an other order plant if the fluid milk products so received are classified and priced under such other order. The remaining 2 percent should be assigned to Class II. The 2 percent may be considered as a safeguard against possible "over-assignment" of milk to Class I in the originating market (i.e., the assignment to such market of a transferred quantity which is greater, from a practical standpoint than normally can be disposed of as Class I in the receiving market). Since it is reasonable to expect that some route returns will be associated with intermarket transfers just as there are in connection with milk locally processed in the receiving market, an allowance of 2 percent for such returns which must fall into surplus use should be included to avoid such over-assignment in Class I. The above assignment must be conditioned on the milk being classified and priced as Class I, or the equivalent thereof, under the other order in recognition of the provisions of the New York-New Jersey order under which handlers, under certain circumstances, may use unpriced milk for out-of-area sales.

In the case of intermarket transfers of bulk milk a "surplus" classification (Class II milk) should apply whenever the parties involved agree that the shipment is for manufacturing use in this market. A higher classification would result only when it is found, on verification, that some portion of the milk could not have been used for manufacturing uses. This portion would then be reclassified as Class I. Receipts of bulk milk from another order plant which are not classified as Class II by agreement should be classified as Class I and Class II on the basis of the marketwide utilization of producer milk. Such classification should be limited, however, so that the quantity of milk assigned to Class II is not greater than the receiving handler has utilized as Class II.

The order should not provide for marketwide proration of milk received from another order plant if such milk is not classified and priced under such other order or when the receiving handler has a greater proportion of milk in Class II than the average for the market. Marketwide proration of receipts of milk from other markets is designed to deal primarily with milk received by a handler who is supplementing his local supply for Class I use. Marketwide proration would tend to encourage unduly and uneconomically the importation of milk by a handler with a higher proportion of milk in Class II than the market average because it would assign a disproportionate share of local producers' milk to Class II.

The particular classification which is given to bulk transfers from other orders will be within the control of the receiving handler and there will be no monetary obligation placed on him for this milk by the receiving market order. Inasmuch as other Federal orders from which milk might be received have provisions which complement those herein adopted, the situation will not arise where milk transferred would be classified as Class I in the shipping market and Class II in this market since the same classification would apply in both markets.

Assigning the bulk receipts from other order plants to the handler's system utilization will prevent a handler with more than one plant from discriminating against either his own producers or those supplying the other Federal order market by importing milk not serving a bona fide need for Class I use. It should be provided, therefore, that assignments of interorder bulk milk should be made over all utilization of milk at all the handler's regulated plants in the receiving market. In this order, allocation is on a plant-by-plant basis. Accordingly, provision is made herein that the allocation of bulk receipts from other orders at a plant shall be on a system basis, irrespective of individual-plant accounting for other purposes of the order.

Handlers who receive milk from other orders or from unregulated plants should be precluded from transferring such milk to regulated plants of other handlers at a utilization higher than would have resulted from a direct receipt at the second plant. Unless the order so provides, it would be possible to use a plant with high Class I utilization as a conduit for receiving milk from plants subject to other orders and avoid the allocation provisions of the order which apply to milk received directly from other orders and from unregulated plants.

In any month in which bulk milk is received in the market (without agreement as to Class II classification on the part of the handlers involved in the transfer) it will be necessary that the administrator in the shipping market know the classification of such milk on or about the date when handler reports are due under that order. Since the reporting dates under orders are very similar, it is possible the market administrator may not have complete information to compute his exact marketwide utilization of producer milk by the time the classification of a transfer is needed by the administrator in the shipping market. It is provided, therefore, that, when necessary, the market administrator will estimate the marketwide utilization of producer milk for purposes of determining the allocation of bulk milk received from other orders. It is also provided that such estimate will be made and publicly announced to the nearest whole percentage, and for this purpose will be final.

Federal orders generally provide that the administrator of any order receiving bulk milk from an other Federal order will promptly notify the administrator of the shipping market of the allocation of such milk so that a comparable classification on such milk may be applied under the shipping order. Information as to the classification of such milk must be passed on by the respective administrators to the handlers involved so that handlers may know the basis of their obligation on such milk. This order should provide similarly for such interchange of information.

Situations may arise where plants subject to this and another Federal order ship milk back and forth during the same month (i.e., each plant ships milk to the other plant). If such shipments are of a similar nature (packaged milk, bulk milk designated for surplus disposal, or bulk milk not so designated) only transfers of milk between two plants which are not offset by an equal quantity of milk received from the second plant need be considered. Since the classification of this milk in the shipping market is based upon its allocation in the receiving market, only the net difference in transferred quantities (in terms of butterfat and skim milk separately as may be necessary) need be allocated in the receiving market. Otherwise, from a mechanical standpoint, neither market could allocate receipts of milk to classes until all milk had been classified, including the shipment to the other market.

Certified milk. Certified milk is identified in the present order as a separate category of milk which, in the allocation procedure, is deducted from available Class I utilization in one of the early steps of the procedure. This is intended to remove such milk from the orbit of regulation.

No local handlers produce certified milk. However, a certified milk operation which has producer-handler (hence exempt) status under the New York-New Jersey order does dispose of some such milk in the marketing area either on route or through other handlers. With respect to direct distribution, such handler's status under Order 2 eliminates necessity for any special provision in the order. However, as a producer-handler under an other Federal order, transfers of packaged certified milk to a pool plant under this order would be down allocated unless a different procedure is specifically provided.

Since the handling of certified milk was not an issue at the hearing, there is no basis for considering any change in the treatment of such milk under the revised order. Accordingly, provision is made for its deduction from available Class I utilization in one of the initial steps of the allocation procedure.

(c) *Level and application of class prices. Class I price.* The Class I pricing provisions of the order should be revised: (1) To provide for the use of the U.S. manufacturing milk price series in lieu of the present Midwestern condensery price series as a tie to manufacturing milk values. This will better insure a continuing appropriate relationship of the Class I price to Class I prices in other federally regulated markets and to the value of milk for manufacturing uses. (2) To provide for the use of a comparison of total producer receipts with producer milk classified as Class I as a basis for computing the supply-demand adjustor and to limit the action of the supply-demand adjustor to 20 cents, plus or minus for the first 6 months following the effective date of the amended order. (3) To terminate the Class I pricing provisions on June 30, 1968.

The Delaware Valley Class I price is determined by an economic-type formula initially adopted under the Philadelphia order on April 1, 1951, and subsequently incorporated in the Wilmington, Delaware, order when it was issued on June 1, 1956. The Class I price is established on a quarterly basis and, exclusive of movements in the formula index, the price decreases seasonally 60 cents on April 1 and increases 60 cents on July 1. In addition, the Class I price is related to the Class I price under other Federal orders and to manufacturing milk values through a provision which insures that the price before application of the supply-demand adjustor will not exceed a 12-month average Midwestern condensery price by more than $2.60. Supply-demand adjustments in multiples of 20 cents, but not in excess of 40 cents, plus or minus, are provided whenever producer supplies in relation to Class I sales change from stated norms.

Since its inception, the formula has been modified to accommodate changes made in the reporting of various components of the formula index, to change the seasonality of pricing, to provide better intermarket price alignment, and to insure continuing alignment through a tie to Midwestern manufacturing milk values on which Class I prices in most Federal orders are based. When the Delaware Valley order was promulgated effective December 1, 1963, the U.S. manufacturing milk price series was substituted for the Midwestern condensery price series as a formula component for computing the basic Class I price level. However, the Midwestern condensery price series (plus $2.60) was retained as a limiting factor to insure continuing alignment of the Class I price with the Class I price in other federally regulated markets and to the value of milk for manufacturing uses. In addition, data used in the computation of the index of average daily Class I milk disposition (a formula component for computing the basic Class I price level) and the supply-demand adjustment were limited to disposition of Class I milk and producer receipts by plants fully regulated by the Philadelphia and Wilmington marketing areas. This limitation was necessitated because of the lack of information on receipts and sales for plants not previously regulated.

In his decision of October 31, 1963 (28 F.R. 11847) on the Delaware Valley order, the Assistant Secretary found as follows: "The level of the Class I milk price and alignment of this price with other markets in the Northeast was the subject of a public hearing held in New York City, May 6–23, 1963. Therefore, in respect of any decision resulting from the aforementioned hearing, no action is being taken on the proposals to revise the existing seasonality of the Class I milk pricing or the removal or revision of the provision limiting the level of the Class I milk price in relation to the Midwestern milk price."

In his decision of January 29, 1964 (29 F.R. 1646) on issues considered at the May 6–23, 1963, hearing, the Assistant Secretary concluded that the present seasonality of pricing should be adopted. Except for this change in seasonality of pricing under the Delaware Valley order he concluded that, "The Class I pricing provisions of the 10 Northeastern orders should not be revised at the present time."

The provision tying the Class I price to the Midwest condensery price series was initially incorporated in the Philadelphia order effective January 1, 1961, and was intended to insure that the order Class I price would be maintained in reasonable alignment with other order prices. At that time the Midwestern condensery price series was commonly used as the basis for computing Class I prices under Federal orders. Since its inception, this provision effected a 20-cent lower price than would have otherwise prevailed for each pricing quarter from April 1963 through March 1964, for the last quarter of 1965, and for the first quarter of 1966.

Producer proponents at the January 1965 hearing supported substitution of the U.S. manufacturing price series for the Midwestern condensery price series in this provision. They also supported the changes in the supply-demand adjustor hereinafter adopted. Handlers supported the two proposals and also, in the alternative, proposed removal of the supply-demand adjustor from the Class I price formula. There were no proposals under consideration for revision of any of the components of the formula index or of the existing Class I price level.

In support of their proposal, proponents contended that while prices reported under the condensery price series and the U.S. manufacturing price series were essentially identical during 1963 and 1964, the condensery price series should no longer be relied upon to provide a representative value of milk for manufacturing uses, since it reflects prices paid at only six plants owned and operated by four corporations. The price for milk for manufacturing purposes f.o.b. plants, United States, adjusted in the above manner to reflect the price for milk of 3.5 percent butterfat test, averaged $3.04, $3.11 and $3.19 per hundredweight, respectively, in 1963, 1964, and 1965. During these years, the condensery price for milk of 3.5 percent butterfat test averaged $3.046, $3.103, and $3.208, respectively.

Proponents pointed out that the condensery price series had, by previous amendment action, been replaced by the U.S. manufacturing price series as a formula component for computing the basic Class I price level and that the U.S. manufacturing price series was the basis for establishing the Class II price (Class III in New York-New Jersey) under this order and under the other Northeastern orders. Further, that the condensery price series had generally been replaced in other Federal orders in favor of either the U.S. manufacturing price series or the Minnesota-Wisconsin price series.

It is concluded that the U.S. average manufacturing milk price series should

be substituted for the Midwestern condensery price series. A detailed description of the series is contained in the decision for the ten Northeastern markets issued by the Under Secretary on April 25, 1962 (27 F.R. 4115), official notice of which is taken.

Ideally, there are better measures of manufacturing milk values, specifically, the Minnesota-Wisconsin price series. However, the U.S. manufacturing price series is used herein because it is already included in other provisions which were not considered for amendment at the January 1965 hearing. When the Class I price provisions lapse June 30, 1968, consideration might well be given to substituting the Minnesota-Wisconsin price series for the U.S. manufacturing price series where it is used in the Class I price formula.

Because the U.S. manufacturing milk price reflects the price at the average test of the milk received, it is necessary to provide a procedure for adjusting such price to reflect the value of milk of 3.5 percent butterfat test. As previously indicated, the series is presently used as a formula component for computing the Class I price as well as a basis for pricing Class II milk. In both instances, the price is adjusted to reflect a price for milk of 3.5 percent butterfat content by use of the Grade A (92-score) wholesale butter price in the New York market. This procedure is concluded to be equally appropriate for this purpose and the order language so provides.

The supply-demand adjustment mechanism of the Class I pricing formula should be modified to reflect a comparison of total receipts of producer milk and producer milk classified as Class I for the entire market. During the 6-month period from the effective date of this amendment, the supply-demand adjustor should be limited to plus or minus price adjustments to a maximum of 20 cents per hundredweight.

Producer and handler proposals to revise the supply-demand formula were also considered at the January 1965 hearing and directed toward: (1) Providing more appropriate supply-sales data to be used in computing the 12-month utilization percentage factor, and (2) revising the standard norms to limit the resulting price adjustments to 20 cents per hundredweight. In the alternative, handlers proposed elimination of the supply-demand adjustment mechanism, but retention of the existing price level.

The supply-demand adjustment mechanism in the Class I pricing formula is intended to adjust the price either upward or downward, as the case may be, whenever the relationship of supply to Class I sales varies from stated norms. Without a supply-demand adjustment mechanism there is no procedure other than an amendment hearing whereby the Class I price can be adjusted in response to changing supply-sales relationships. While the adjustor is not intended to eliminate the hearing process, it is a necessary component of a Class I pricing mechanism under the Federal order program to insure prompt and appropriate directional Class I price adjustments in response to changing supply in relation to sales.

It was proposed to revise the basis for computing the supply-demand utilization percentage by including receipts and utilization data of those handlers not now included in the computations (i.e., handlers regulated only by virtue of their sales in southern New Jersey) and to further modify the formula by relating total producer receipts to producer milk used in Class I. Under the present order provisions, the supply-demand utilization percentage factor is computed on the basis of a comparison of receipts of producer milk at plants fully regulated because of their sales in the marketing area other than southern New Jersey and total Class I sales of such plants.

Comparison of producer receipts with producer milk classified in Class I is an appropriate basis for computing a supply-demand adjustment. One of the problems involved in the present adjustment mechanism is the fact that the base norms reflect the experience of certain substantial plants which are no longer fully regulated plants under this order. In addition, the comparison of producer receipts with total Class I sales from fully regulated plants tends to distort the true situation on the market, since in many circumstances sales into the adjacent New York-New Jersey market are included. In most instances, the plants making such sales rely on and regularly receive milk from New York-New Jersey pool bulk tank units to cover such sales.

Inclusion in the formula of supply-sales data of those fully regulated handlers not now included in the computations would not likely effect a substantial change in the computation of the 12-month utilization percentage. Accordingly, it is concluded that the adjustor should be revised to reflect supply and demand conditions for the market.

Ideally, new base norms should be computed to reflect the normal supply-demand relationships to be expected in the market under the changes contemplated by this decision. The October-November 1965 hearing did not consider specific changes in the pricing provisions of the order. Neither is there any basis for projecting with certainty what the ratio of producer receipts to Class I sales will be as a result of the recommended change to market pooling. It is concluded therefore, that for the period from the effective date of the amended order through June 1968, the base norms should remain as is presently provided in the order.

Another proposal concerning the supply-demand adjustor which was considered at the January 1965 hearing would limit the resulting price adjustments to 20 cents per hundredweight. Both producers and handlers supported limitation of the amount of the supply-demand adjustment to 20 cents. As an alternative, however, handlers proposed elimination of the supply-demand adjustment mechanism, but retention of the existing price level.

Under the present formula, the Class I price is increased or decreased 20 cents whenever the ratio of producer receipts to total Class I sales is less than 129 or more than 139, respectively. An additional 20-cent adjustment, plus or minus, is effected whenever the ratio drops below 126 or exceeds 142, respectively.

Since adoption of the supply-demand adjustment provision in April 1951 for the Philadelphia market, this provision has operated to reduce the Class I price level 20 cents in only three pricing quarters (third quarter in 1962 and first and second quarters of 1963). However, beginning with October 1964 the supply-demand adjustment mechanism has effected a 20-cent increase in the Class I price because receipts of milk from producers at the specified plants during the 12-month period ending with the second preceding month were less than 129 percent of the total Class I disposition by such plants in the same period.

Based on September and October 1964 handler reports it was expected that the supply-demand adjustor would effect an additional 20-cent price increase for the January–March 1965 quarter, since it appeared certain that producer receipts would fall below 126 percent of Class I sales for the 12-month period ending with the second preceding month. Both producers and handlers requested suspension action to prevent such price increase and requested a hearing to reconsider the supply-demand adjustment mechanism.

On the basis of this request the Secretary issued notice of intention to suspend and invited views, data and arguments from interested parties. Subsequent to the issuance of this notice and on receipt of handler reports for the month of November 1964 the market administrator found that the anticipated 20-cent price increase would not materialize. Accordingly, the suspension action was terminated and the price announcement was issued.

Because the adjustor was expected to add an additional 20 cents to the Class I price on April 1, 1965, suspension action was taken by the Assistant Secretary on March 5, 1965 (30 F.R. 3311), at the request of affected parties in the market.

Under the marketwide pooling arrangement it is expected that some additional milk supplies will be added to the market. It is further expected that price will play a more important role in associating milk with the market than it has under the individual-handler pooling arrangement. For this reason it is desirable that the pricing formula shall insure sufficient price movement in response to changing supply-demand relationships to maintain an appropriate supply-demand balance in the market. Accordingly, provision must be made to permit Class I price adjustment up to 40 cents, plus or minus. For this purpose the two stage adjustor should be retained.

Since the supply-demand adjustment mechanism is constructed on a 12-month comparison of producer receipts and Class I sales any change in the supply situation which might result from the change in pooling procedure will not be immediately reflected in the Class I price. Unless appropriate safeguards are taken, it is likely that the Class I price level would be increased an additional 20 cents

through reinstatement of the two stage supply-demand adjustor. Such a result could seriously impede appropriate interorder price alinement. It is provided therefore that for the first 6 months of operation of the amended order supply-demand adjustments shall be limited to 20 cents plus or minus.

Because of the lack of adequate data in the October-November 1965 hearing and the uncertainties as to the operation of the proposed supply-demand adjustor under market pooling, it is desirable that the Class I pricing procedure be reexamined after a reasonable period of operation. For this reason a termination date of June 30, 1968, is provided in the pricing formula. This will provide sufficient time to accumulate the necessary market information to appraise the effect of the price level herein provided and to promulgate an amendment, if needed.

The Deputy Administrator in his recommended decision concluded that a termination date of December 31, 1967, should be placed on the Class I pricing provisions. However, to provide adequate time in which to appraise the operation of the pricing formula under marketwide pooling it is desirable that this date be extended through June 30, 1968.

Location differentials. No change should be made in the location differentials as prescribed by the present order. However, as previously discussed, milk which is diverted to a nonpool plant should be priced at the location of such plant and producers should be paid for such milk on the basis of that zone location.

Under the terms of the existing order, handler location differentials are applicable at plants located 45 miles or more from the nearer of specified locations in the marketing area. The Class I location differential is 23 cents at the 45-mile location and 1.5 cents is added for each additional 10-mile distance. The Class II location differential is 5 cents at plants located 45 miles but not in excess of 70 miles from the nearer of the specified locations and 1 cent is added for each additional 70-mile distance. Producer location differentials are identical to the handler Class I location differentials.

The principal proponent for marketwide pooling proposed that no location differentials be applicable at points within 125 miles of the specified locations within the marketing area and that a Class I location differential of 12 cents be applicable at plants 125 miles distance with 1.5 cents to be added for each additional 10-mile distance. He would provide no location differential for Class II milk.

Proponent's principal argument was that no location differential should apply within a radius from which milk should normally move directly from the farm to plants in the marketing area. It is presumably for this reason that he chose the 125-mile distance within which no location pricing would apply.

It is not clear why proponent would provide a differential of 12 cents (about 1 cent for each 10 miles distance) at the 125 mile zone and 1.5 cents for each additional 10 miles. However, it was his position, which he supported by his own experience, that milk could be moved for substantially lesser costs than the existing differentials. On the other hand, a number of producer witnesses whose milk is hauled by independent haulers indicated that they were paying rates commensurate with the existing differentials.

At the time of the hearing only one plant regulated under the order was subject to a location differential which plant would not be subject to a differential under proponent's proposal. Location differentials have been a matter of issue at several Order 4 amendment hearings in recent years and such differentials were substantially reduced in the order amendments effective February 1, 1958. It cannot be concluded on the basis of this record that the existing location differentials are inappropriate. However, if there is need for modification of these differentials this matter may appropriately be a consideration at a future hearing.

Exception was taken to the Deputy Administrator's failure to provide for the pricing of farm bulk tank milk at the farm or milkhouse, the zoning of farm milkhouse locations according to township location on the basis of distance from central market basing points, and to provide that no deduction from the producer price be permitted for hauling and other related services. Such a proposal was made and supported by a cooperative association primarily associated with the New York-New Jersey market, but little evidence was introduced relative to the need for such provision in the Delaware Valley market. The cooperative spokesman contended that the proposal should be adopted on the general grounds that it would solve many of the problems being considered at the hearing. The contentions, however, were based primarily on experience in the New York-New Jersey market with little consideration given to the actual effects of such provisions in this market. The record evidence of this hearing does not support the necessity for such provisions in this market and accordingly the request for such pricing is denied.

(d) *Obligations of unregulated plants with route disposition in the marketing area.* Unregulated milk may also enter the regulated market as direct route disposition from an unregulated distributing plant. The operator of such a plant is not required to account for all of his disposition of milk at the established class prices, to return minimum uniform prices to his dairy farmers, or to have his records audited. Thus, such a handler would have a competitive advantage over the operator of fully regulated plants in the disposition of higher valued Class I milk in the regulated marketing area unless some method is provided for removing it.

There is no way to treat unregulated milk equally with regulated milk other than to regulate it fully at the plant of first receipt from producers. This is the stage of the marketing system at which the minimum order prices apply. The average price paid for all milk received at an unregulated plant has significance when compared to the minimum class prices of an order only if the utilization of all such milk is known. Short of full regulation, any treatment of unregulated milk can at best only approach equality of treatment with regulated milk.

Ideally, marketing area boundaries are drawn to encompass that territory where the same handlers compete with each other for route disposition and to minimize overlapping sales areas with unregulated handlers. Improvements in refrigeration, transportation and packaging, however, have encouraged expansion of sales areas to such an extent that it is difficult in any region to delineate an area which wholly accomplishes these objectives. Even if such a delineation were initially possible, it inevitably would be only a temporary situation.

Milk distributors are interested in selling milk. One way of expanding their businesses is to expand geographically. This presents no particular problem for the order program with respect to the fully regulated handler since he is required to pay for his producer milk receipts on a classified use basis at the specified minimum order prices regardless of where his milk is sold. For each additional unit of Class I sales he makes he must pay the higher Class I price, whether such sales are made in or outside the marketing area. He cannot use milk bought at the lower surplus class price to expand his sales in either the regulated market or in other markets. He must report all receipts and utilization of milk and the payments made to producers and maintain records which will substantiate such reports on audit. The butterfat tests upon which he pays producers likewise are subject to verification. He must pay his pro rata share of cost of administration of the order.

The operator of the unregulated distributing plant is in a substantially different situation. He is not required, as are regulated handlers, to purchase his milk on a classified use basis nor is he required to pay his dairy farmers any particular minimum price. Normally, he pays a "flat" price without regard to utilization of the milk. The flat price which such a dealer pays is usually at a level which, in relation to competitive conditions in his area of procurement, will obtain sufficient milk for his needs. The operator of the unregulated distributing plant who competes with Federal order handlers for his supply is, in effect, in competition with the Federal order blend price and usually may procure his supply for an equivalent price. The operator of the unregulated distributing plant thus is in a position to obtain his Class I milk for sale in a regulated market at a lower price than the handler who is fully regulated by the Federal order.

Order provisions therefore are needed to minimize the price advantage an operator of the unregulated distributing

plant has on milk sales in a regulated marketing area. It is concluded that such a plant should be subject to partial regulation which provides the operator thereof a choice of options each of which would serve as a means of integrating his plant operations into the regulatory scheme. The options are:

(a) He should be allowed to show that payment for his total dairy farm supply has been at least as much as if his plant were fully regulated. This amount may be paid entirely to his dairy farmers or may be paid in part to his dairy farmers and in part into the producer-settlement funds of regulated markets;

(b) He may show that he has purchased Class I milk priced under some Federal order in an amount at least equivalent to his total Class I sales within the regulated area;

(c) He may make a payment into the producer-settlement fund on the quantity of Class I sales made in the regulated market at a rate equal to the difference between the Class I price and the blend price for such regulated market; or

(d) Any combination of (b) and (c).

If the operator of the unregulated distributing plant elects to show that he has complied with option (a) above, it will be clearly evident that he has paid at least as much for his Class I sales as a fully regulated handler, for in fact he has paid for all his milk as if he were fully regulated. Such an option accords him competitive parity with respect to his minimum class prices with regulated handlers. The regulated handler is required to pay for all his milk sold as Class I, whether inside or outside the marketing area, at the Class I price established by the order. The operator of the unregulated distributing plant will show that he has also paid at least the equivalent of the order Class I and Class II prices for milk utilized in these respective classes. This option provides a meaningful determination of actual pay prices of milk by such an operator for comparison with order values.

The above option has been provided in many Federal orders and a number of operators of unregulated plants with route disposition in regulated markets have found that using this option is advantageous. This option will particularly accommodate such operators who, because of State regulation of milk prices, pay their dairy farmers at least the minimum prices required by the order regulating the handling of milk in the Federal order marketing area where they distribute milk. When he pays for his milk supply as much as if he were fully regulated, this option gives him an opportunity to distribute milk in regulated areas without incurring any additional financial obligations on such milk as the result of the order. At the same time, the fact that he has paid full class prices for his milk will assure that the integrity of the regulatory plan has been protected.

Special provision should be made for an unregulated distributing plant which receives part (or all) of its milk supply from another plant which serves as a supply plant for the unregulated distributing plant. If performance of the supply plant in shipping to the unregulated distributing plant is equivalent to the performance of a regulated supply plant, the operator of the unregulated distributing plant should be permitted, at his election, to show that payments to dairy farmers at the supply plant are in accordance with order accounting and prices. If the necessary information and authority for audit are provided by the unregulated distributing plant, the operations of the supply plant may be included with those of the distributing plant to determine if the payments to dairy farmers are equivalent to payments which would be required under full regulation. Under this option, any amount by which such payments at both plants are less than under full regulation would be owed to the producer-settlement fund. This accords the same conditions to milk from a supply-type plant as is accorded milk received directly from dairy farmers at an unregulated distributing plant.

If the necessary information as to the supply plant is not provided, the obligation of the unregulated distributing plant under this option for milk from the supply plant should be computed in the same manner as the obligation of a regulated plant for a receipt of unregulated milk.

A second option—to purchase milk for his marketing area needs from a source fully regulated under a Federal order—also affords the operator of an unregulated distributing plant an opportunity to sell in a regulated area on a basis of competitive equity with respect to such sales.

The equivalent of the milk which he distributes in the marketing area would be fully priced Class I milk. Presumably, he would purchase it on the same basis as any other handler who purchases milk for Class I sales within the regulated market. Again, since the milk would be fully regulated under some Federal order, it would afford adequate protection to the regulatory plan.

Under certain conditions option (c) also would afford to the operator of an unregulated distributing plant competitive equity with respect to his sales within the regulated marketing area, and would protect the integrity of the regulatory scheme. The rate of payment is the difference between the Class I price and the blend price of the market for the month when the sale is made. This rate is a constant for all locations at a given butterfat test of milk. In essence, the option fixes a value of the sale at the Class I price and assumes payment to dairy farmers at the blend price of the market. It also assumes that all milk purchased by such distributor is for Class I use, i.e., that he has no surplus, or reserve supply.

If the operator of an unregulated distributing plant actually pays as much as the blend price to his dairy farmers and if the milk distributed in the regulated marketing area is not in fact surplus to his normal operations, the payment of a Class I price minus the market blend price on his sales in the marketing area usually will tend to protect the regulatory scheme. In the case of regular everyday distribution of about the same quantities of milk in a regulated area by the operator of an unregulated distributing plant, the supply of milk for such sales normally would be acquired on a regular basis and would not be milk surplus to other fluid operations. In view of the other options afforded the operator of the unregulated distributing plant, he will select this option when it is more advantageous to him than the other options.

(e) *Distribution of proceeds to producers.* Under the marketwide pooling arrangement herein provided all producers will receive payment at the rate of the marketwide uniform price each month. Because the obligation of each handler, computed by the application of the class prices to the actual utilization of his milk, may be more or less than such handler is required to pay to his producer some method of balancing these differences is required. A producer-settlement fund is provided for this purpose. A handler whose utilization value of milk is greater than the amount of his required payment to his producers will pay such difference into the producer-settlement fund. A handler whose utilization value of milk is less than that which he is required to pay his producers will receive such differences from the producer-settlement fund.

The market administrator, in making payment to any handler from the fund, should offset such payments by any amount of payments due to such fund from such handler. This is a recognized sound business practice and insures against the possibility of the market administrator making payments to handlers who are already indebted to the fund and financially unable to discharge his obligations thereto, or to a handler who seeks to obtain or has obtained money from the fund through the filing of incorrect reports.

For efficient functioning of the producer-settlement fund, a reasonable reserve should be set aside each month to cover possible contingencies which might jeopardize the solvency of the fund such as a failure of a handler to make prompt payment to the fund or payment due a handler as a result of an audit adjustment. This reserve should be operated as a revolving fund adjusted each month by adding one-half of the unobligated balance to the pool and withholding from the pool computation an amount equal to not less than 4 cents nor more than 5 cents per hundredweight of producer milk.

If the balance in the producer-settlement fund is insufficient to cover the payments due handlers from the fund the market administrator should uniformly reduce payments per hundredweight to such handlers. Each such handler may then reduce payment to his producers by an equivalent amount per hundredweight. The remaining amount due any handlers should be paid as soon as the balance in the fund is sufficient to meet such payments and such handlers

should then complete payments to producers on or before the date prescribed for making payments to producers. To reduce the likelihood of insufficient balance in the producer-settlement fund, milk received by any handler who has not made required payment to the fund for the preceding month should not be included in the current month's uniform price computation.

The order provides that whenever verification by the market administrator of reports and payments of any handler discloses errors resulting in money due to the market administrator, to the handler, or to the producer of such handler, the market administrator should promptly notify such handler and payment thereof would be required on or before the next date of making payment under the provision under which the error occurred.

It must be recognized that under the individual-handler pooling arrangement provided by the existing order any reclassification charge or other error with respect to the operation of any handler which would result in payment due producers would in fact be payable to the producers of that particular handler. Under the circumstances it is appropriate that any significant payments due producers from any handler as a result of disclosure of errors for any month(s) prior to the effective date of this amended order should be paid to the producers whose milk was involved. To accomplish this, the order provides that payment thus due for any such month shall be paid to the market administrator who in turn shall pay the producers whose milk was involved if the payment exceeds 2 cents per hundredweight. For administrative convenience, lesser amounts should be deposited by the market administrator in the producer-settlement fund for distribution to all producers. This procedure will accommodate the orderly transition from individual-handler to marketwide pooling.

Exception was taken to the Deputy Administrator's failure to provide for a base and excess plan for payment of producers. Such a plan was proposed as an adjunct to the current seasonal pricing arrangement and in recognition of the fact that at least one of the dominant cooperatives in the market has been using a base-excess plan with respect to the supplies of certain of its handler buyers.

A base plan is intended to serve the same function as seasonality of pricing, i.e., to encourage a pattern of production compatible with the fluid requirements of the market. The success of a base-excess plan requires the general support of producers on the market and there was no showing in the record of general support. Further, there was no showing that the proposed plan was compatible with the plan operated on a limited basis by one of the dominant cooperatives. Accordingly, the proposal for such a plan is denied.

Payments to individual producers and to cooperative associations. The present order provides that handlers shall make payment to producers and cooperative associations, for milk received during the month, on or before the last day of the month and on or before the 20th day of the following month. Payment on or before the last day of the month is for milk received during the first 15 days of such month and is at not less than the handler's estimate of his uniform price but not less than the Class II price for the preceding month. Final payment on the 20th day after the end of the month is his total obligation for milk receiving during the preceding month less partial payments made on or before the last day of the month.

It is concluded that the dates of payment to producers as presently provided should be continued. Producers are accustomed to receiving payment on these dates and the record presents no compelling evidence for change. However, when payment is being made to a cooperative association, either in its capacity as the marketing agent of the producer or in its capacity as a handler, such payment should be made two days earlier in order that the cooperative will have the necessary information and monies to pay its members on the same dates that other producers are paid. In this connection, the order provides that in making final payment to producers or to a cooperative as the agent of a producer each handler shall furnish a statement identifying the producer, the pounds of milk delivered and butterfat test thereof, the minimum price required to be paid, and the nature and amount of any deductions. Such information is necessary in order that the producer may verify that the payment is proper, and in the case of payment to a cooperative association is additionally needed for purposes of preparing producer payrolls.

To insure the solvency of the producer-settlement fund, it is provided that payments to the fund will be made on or before the 15th day after the end of the month and payments out of the fund will be made on the 17th day after the end of the month. This sequence of payment will insure that the market administrator has the necessary funds to pay handlers who draw from the fund and that the handlers in turn have monies to pay cooperative associations on the 18th day after the end of the month and producers 2 days later.

The Deputy Administrator recommended that payment to the producer-settlement fund be made on or before the 16th day after the end of the month. It is necessary, however, that such payment be made by the 15th day to insure sufficient time for the market administrator to deposit the monies and to prepare checks for payment from the fund on the 17th. To accommodate this change the date for the announcement of the uniform price is changed from the 14th to the 13th.

Marketing service. Marketing service provisions should not be incorporated in the order on the basis of this record.

Certain cooperative proponents for a marketwide pooling arrangement supported provision for deductions from producer returns to provide funds to the market administrator whereby he could perform marketing services such as check testing and weighing, checking farm bulk tank calibrations and dissemination of market information to all producers who are not now members of cooperative associations performing such services for their members.

In support of their position proponents pointed out that such a provision was contained in all Federal orders except Orders 2 and 4 and that marketing service provisions were an issue at a recent Order 2 amendment hearing on which no decision has yet been issued. In addition, they presented the results of their experience in checking farm bulk tank calibration of members in the State of Pennsylvania who were almost exclusively producers under Order 2. However, responsible officials of the State of Pennsylvania indicated on the record that the State had responsibility in this field and was carrying out such responsibilities.

Delaware Valley producers, however, are not confined to the State of Pennsylvania. The milkshed extends into the States of Delaware, Maryland, New Jersey, New York, Virginia, and West Virginia and for a considerable period milk regularly moved to this market from the State of Ohio. The record does not reveal the activities of responsible agencies in these States with respect to marketing service, nor is it specific with respect to the activities performed by responsible agencies in the State of Pennsylvania.

There can be no question as to the need and value to individual producers of the type of marketing services at issue. However, it would be neither necessary nor appropriate for the market administrator to duplicate services now being provided by the respective States. There is insufficient evidence in this record for determination of the specific needs for a marketing service provision under the order or the extent and cost of such a program. Accordingly, the request for such provision is denied.

(f) *Administrative provisions. Expense of administration.* The Act requires that handlers shall pay the cost of operating an order through an assessment on milk handled. Each handler operating a pool plant should be required to pay to the market administrator, as his pro rata share of the cost of administering the order, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, on all receipts within the month of milk from producers, including milk of such handler's own production, any other source milk allocated to Class I (except milk so assessed under another Federal order), milk received from a cooperative association in its capacity as a handler on farm bulk tank milk, and milk transferred in bulk to a pool plant from a plant owned and operated by a cooperative association. A cooperative association in its capacity as a handler should pay the administrative assessment only on its receipts for which the assessment is applicable, and for which such assessment is not paid by other handlers.

The present order prescribes a maximum assessment rate of 2 cents per hun-

dredweight on producer receipts. This rate, however, has not provided sufficient funds to cover administrative expenses necessarily incurred by the market administrator and a reasonable operating reserve. Experience in the operation of Federal orders has shown the need for maintaining an operating balance in the administrative fund sufficient to cover 6 months' expenses. This is the appropriate time which would be required to complete audits and close out the office in event the order should be withdrawn or terminated.

For 1963, operating expenses exceeded income by $16,336 and for 1964 by $46,602. Official notice is taken of the notice of proposed suspension issued by the Deputy Administrator on November 17, 1965 (30 F.R. 14564) which indicated that consideration was being given to suspension of the present maximum rate of assessment to permit the setting of a rate of 3 cents per hundredweight. While such suspension action has not been taken, the situation is being carefully watched since the operating balance is approaching a level at which administration of the order will be seriously impeded.

Because of the continuing drain on the fund, the 3-cent maximum rate proposed at the January 1965 hearing may no longer be adequate. Consequently, provision is made herein for a maximum rate of 4 cents per hundredweight. However, a final decision concerning the rate needed can only be made at the time the order is made effective. It is the policy of the Department to expend only those funds prudently necessary to properly administer the order. If at any time the reserve fund should exceed that deemed necessary, the effective rate would, of course, be reduced.

This order specifies minimum performance standards which must be met to obtain regulated status. With certain specified exceptions, operators of plants not meeting such standards would, under the provisions of the order, be required to either make specific payments into the producer-settlement fund on route disposition in the marketing area in excess of offsetting purchases of Federal order Class I milk, or otherwise pay into such fund and/or to dairy farmers an amount not less than the full classified use value of receipts.

The market administrator, in administration of the order as it applies to the nonpool distributor, must incur expenses in essentially the same manner as in applying the order to pool handlers. Partial regulation (as prescribed) of such distributor does not, however, provide the same benefits to such handler as accrue to the fully regulated handler; i.e., the privilege of participation in the market pool and assurance of uniform price payments to his dairy farmers. If the nonpool route distributor elects to make a payment on his in-area sales at the difference between the Class I price and the uniform price for the market, the expenses incurred by the market administrator in administration of the order with respect to such handler are nominal and payment of the administrative assessment on his in-area sales reasonably would constitute his pro rata share of administrative cost.

In the situation where the partially regulated distributor elects to pay the full use value of his milk to his dairy farmers, the administrative expense is substantially the same as that in the case of administering the order with respect to a fully regulated handler. However, if the assessment rate were similarly applied it is likely that the assessment might make possible a financial obligation under the order in excess of the handler's total obligation under the alternative of electing to make a payment into the producer-settlement fund. In order to give more meaningful effect to the choice of an alternative, the pro rata share of the administrative expense should be the assessment rate but only with respect to the route disposition in the marketing area which is in excess of Class I receipts from Federally regulated plants, regardless of the option which may be chosen by the unregulated distributor.

Similarly, an other order plant with route disposition in the marketing area which was processed from unpriced milk should be required to pay the administrative assessment rate on each hundredweight of milk so disposed.

In the case of unregulated milk which enters the market through a fully regulated plant for Class I use, it is the regulated handler who utilizes the unregulated milk and who must report to the market administrator the receipt and use of such milk as well as for all other milk received and utilized. Also, the receipts and utilization of all milk at his plant are subject to verification by the market administrator. It is concluded that the regulated handler should be responsible for payment of the administrative assessment with respect to such unregulated milk.

The Act clearly provides that the administrative costs of the order shall be borne by regulated handlers who process the milk of producers. Accordingly, this would include milk received from a cooperative association pursuant to § 1004.10(c), and milk transferred in bulk to a pool plant from a plant owned and operated by a cooperative association. A cooperative would pay the administrative assessment on all its producer milk which does not move to pool plants pursuant to § 1004.10(c) or is transferred in bulk from its plant to a pool plant.

Other provisions and conforming changes. In addition to the definitions specifically discussed earlier in this decision, which define the scope of regulation, certain other terms and definitions are included in the interest of brevity and to assure that each use of the term denotes the same meaning. Such terms as are defined in the attached order are common to many other Federal milk orders.

Other changes in the Delaware Valley order, which are not specifically discussed, are conforming changes necessary to implement the conclusions previously set forth herein.

Order language changes from that set forth in the recommended decision, and not heretofore specifically discussed, are typographical corrections or clarifying changes necessary to insure full implementation of the conclusion set forth herein.

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 to reach such conclusions are denied for the reasons previously stated in this decision.

Rulings on the exceptions to the rulings of the hearing examiner. Three of the briefs filed in this proceeding assigned numerous rulings by the examiner as error. The two briefs filed by handlers in the market do not comply with the requirements of section 900.9(b) of the rules since they do not set forth a concise statement for each ruling excepted to, however, each and every ruling of the examiner has been carefully reviewed and all rulings of the examiner objected to are hereby affirmed.

Almost all of the rulings to which objections are taken deal with the exclusion of testimony, both written and oral, in the area of order enforcement procedures. The exclusion of all such evidence was clearly proper. It was not the purpose of this hearing to discuss the legal methods available to the Department in the order enforcement area; but to receive evidence with respect to the economic and marketing conditions related to the amendments proposed. This was made clear by the examiner on numerous occasions throughout the hearing. Therefore, after full consideration of the rulings of the examiner, all rulings are affirmed and all requests for the consideration of evidence excluded, for the exclusion of evidence admitted, and for the reopening of the hearing are hereby denied.

Ruling on proposal to take no action on the record. On November 30, 1966, a petition was filed with Hearing Clerk requesting that no action be taken on the hearing record. In support of their position petitioners cited the recent cases in which the Secretary through court action had been successful in obtaining access to books and records of persons other than handlers for the purpose of checking the disposition of moneys by handlers. In addition, they cited three recent New York-New Jersey price hearings and the Secretary's action on increasing support levels which they contend demonstrates that the contentions of the Government and certain parties were incorrect and that the milk supply situation with regard to which testimony was taken in October 1965 has totally changed.

Petitioners' request in this regard is denied. In using the above cited situa-

tions as a basis for abandoning the record of the hearing petitioners fail to recognize the basic problem confronting the Department in the Delaware Valley market; i.e., an effective means, under existing statutory authority, of insuring the integrity of the order and the prompt, effective and uniform application of the pricing provisions to all handlers. This can only be resolved by amendatory action which will eliminate or substantially reduce the financial incentive which underlies the disruptive marketing arrangements contrived to avoid and thereby compromise the minimum order price.

The fact that the Department has successfully obtained access to certain books and records has in no way changed the market situation. Essentially none of the estimated amount (as much as $1 million annually) which the Department found was being expended by producers in this competition for more remunerative outlets has been restored to producers. Prospects for closing off the advantages enjoyed by certain high-use handlers are no more favorable than at the time of the hearing, and many of the practices detrimental to order purposes continue unabated despite the Department's aggressive actions.

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

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

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.

Numerous exceptions were filed to the recommended decision, which reiterate the objections in the briefs filed at the close of the hearing. These objections were previously ruled upon in the recommended decision, and after further review in the light of the exceptions filed, such rulings are hereby affirmed.

Exceptions filed by certain parties allege that the decision and the proposed order violate section 10(i) of the Act (7 U.S.C. 610(c)). However, the alleged grounds for such violations are not persuasive and these exceptions are overruled. For example, in Pierce v. Freeman, 238 F. Supp. 947, the District Court for the Eastern District of Louisiana construed section 10(i) of the Act as follows:

> After reading the entire act, the purpose of this section becomes quite obvious. It is certainly not to limit the powers of the Secretary as contended for by plaintiff. To so rule would, in effect, nullify all of the remainder of the act in order to give validity to this section. But such an interpretation is not warranted, because section 610(i) is, in fact, in harmony with the remainder of the act. All of the provisions of the act previously referred to herein permit the Secretary to act on his own initiative in issuing orders to regulate the marketing of milk and other agricultural products moving in interstate commerce. Section 610(i), on the other hand, contemplates a situation where the Secretary has not acted on his own initiative. In such a case he is directed by section 610(i) to act, when requested to do so by a State, in such a way as to assist the State in making its marketing orders effective.
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> This procedure, under section 610(i), comes into play only in instances where, in the particular area involved, the Secretary has not seen fit to regulate marketing activities on the Federal level, but acts only upon the request of the State and as an assist to the State in carrying out its marketing program. But should the Secretary later determine, in accordance with the other provisions of the act that direct regulation by the Federal Government is necessary or advisable, his previous orders, issued under section 610(i) on request of the State, could not preclude him from issuing such new orders in accordance with his findings, made pursuant to the other provisions of the act. And any action previously taken by him pursuant to the provisions of section 610(i) could not, of course, prevent such later orders as are issued by him pursuant to the other provisions of the act from being supreme and from superseding State orders or regulations in the same area. In brief, by the enactment of the Agricultural Marketing Agreement Act of 1937, as amended, Congress has preempted the entire field of marketing of milk in interstate commerce, and has, by this act, properly delegated to the U.S. Secretary of Agriculture the power to promulgate orders and regulations pursuant thereto.

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 Delaware Valley Marketing Area," and "Order Amending the Order Regulating the Handling of Milk in the Delaware Valley 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 Delaware Valley 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 January 1967 is hereby determined to be the representative period for the conduct of such referendum.

L. S. Iverson 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 (7 CFR 900.300 et seq.), such referendum to be completed on or before the 30th day from the date this decision is issued.

Signed at Washington, D.C., on April 7, 1967.

GEORGE L. MEHREN,
Assistant Secretary.

Order[1] Amending the Order Regulating the Handling of Milk in the Delaware Valley Marketing Area

DEFINITIONS

MARKET ADMINISTRATOR

[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.

REPORTS, RECORDS, AND FACILITIES

Sec.
1004.30 Reports of receipts and utilization.
1004.31 Other reports.
1004.32 Records and facilities.
1004.33 Retention of records.

CLASSIFICATION OF MILK

1004.40 Skim milk and butterfat to be classified.
1004.41 Classes of utilization.
1004.42 Shrinkage.
1004.43 Responsibility of handlers and the reclassification of milk.
1004.44 Transfers.
1004.45 Computation of skim milk and butterfat in each class.
1004.46 Allocation of skim milk and butterfat classified.

MINIMUM PRICES

1004.50 Class prices.
1004.51 Butterfat differentials to handlers.
1004.52 Location differentials to handlers.
1004.53 Equivalent prices or indexes.

APPLICATION OF PROVISIONS

1004.60 Producer handler.
1004.61 Plants subject to other Federal orders.
1004.62 Obligations of handler operating a partially regulated distributing plant.

DETERMINATION OF UNIFORM PRICE

1004.70 Computation of the net pool obligation of each pool handler.
1004.71 Computation of uniform price.

PAYMENTS

1004.80 Time and method of payment.
1004.81 Butterfat differential to producers.
1004.82 Location differential to producers.
1004.83 Producer-settlement fund.
1004.84 Payments to the producer-settlement fund.
1004.85 Payments out of the producer-settlement fund.
1004.86 Adjustment of accounts.
1004.87 Expense of administration.
1004.88 Termination of obligations.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

1004.90 Effective time.
1004.91 Suspension or termination.
1004.92 Continuing obligations.
1004.93 Liquidation.

MISCELLANEOUS PROVISIONS

1004.100 Agents.
1004.101 Separability of provisions.

AUTHORITY: The provisions of this Part 1004 issued under secs. 1-19, 48 Stat. 31 as amended, 7 U.S.C. 601-674.

§ 1004.0 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 Delaware Valley marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

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

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

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

(4) 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 (except a cooperative association in its capacity as a handler pursuant to § 1004.10(c) and as the operator of a pool plant with respect to milk which is transferred in bulk to the pool plant of another 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 his receipts of producer milk (including such handler's own production), milk received from a cooperative association pursuant to § 1004.10(c), milk received in bulk as a transfer from a plant of a cooperative association and other source milk allocated to Class I pursuant to § 1004.46(a) (5) and (9) and the corresponding step of § 1004.46(b). The payment shall also apply with respect to any handler in his capacity as the operator of a partially regulated plant or an other order plant with respect to route disposition in the marketing area of unpriced other source milk.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof the handling of milk in the Delaware Valley marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby amended, as follows:

DEFINITIONS

§ 1004.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1004.2 Secretary.

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

§ 1004.3 Department of Agriculture.

"Department of Agriculture" means the U.S. Department of Agriculture or any other Federal agency as may be authorized by Act of Congress, or by Executive order, to perform the price reporting functions of the U.S. Department of Agriculture.

§ 1004.4 Person.

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

§ 1004.5 Delaware Valley marketing area.

"Delaware Valley marketing area", called the "marketing area" in this part means all the territory in the Commonwealth of Pennsylvania situated within the following boundary line: Beginning at a point in the Pennsylvania State line at the northern boundary of the Lower Makefield township line in Bucks County, thence first westerly, thence southerly along said Lower Makefield township line to the Middletown township line; thence westerly and southerly along the Middletown township line to the Lower Southampton township line; thence northerly and thence westerly along the Lower Southampton township line to the Montgomery County line; thence northerly along the Montgomery County line to the Trenton cutoff of the Pennsylvania Railroad; thence westerly along said railroad to the Upper Dublin township line, thence along the southern and western boundaries of Upper Dublin township to the Whitemarsh township line; thence southerly along the Whitemarsh township line to the lower Merion township line; thence along the northern boundary of lower Merion township to the Delaware County line; thence northerly, westerly and southerly along the Delaware County line to the Pennsylvania State line; thence easterly and northerly along the Pennsylvania State line to the point of beginning; all of that territory situated within and bounded on the north, east, and west by the boundary line of the State of Delaware, and on the south by the Chesapeake and Delaware Canals, all of which area lies within New Castle County, Delaware, and all of the territory in the State of New Jersey within the outer boundaries of the following counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Salem, and Ocean (except the boroughs of Bay Head, Beachwood, Island Heights, Lakehurst, Lavallette, Mantoloking, Ocean Gate, Pine Beach, Point Pleasant, Point Pleasant Beach, Seaside Heights, Seaside Park, South Toms River, and the townships of Berkeley, Brick, Dover, Jackson, Lakewood, Manchester, and Plumsted).

§ 1004.6 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 to be engaged in making collective sales of or marketing milk or its products for its members.

§ 1004.7 Plants.

(a) "Plant" means the land and buildings together with their surroundings, facilities and equipment, whether owned or operated by one or more persons constituting a single operating unit or establishment at which milk or milk products are received from dairy farmers or processed or packaged. However, a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distribution depot for fluid milk products in transit for route disposition shall not be a plant under this definition.

(b) "Distributing plant" means a plant from which fluid milk products are disposed of during the month in the marketing area as route disposition.

(c) "Supply plant" means a plant from which fluid milk products are shipped during the month to a distributing plant.

§ 1004.8 Pool plant.

"Pool plant" means a plant (except an other order plant or the plant of a producer-handler) specified in paragraph (a), (b), or (c) of this section.

(a) A distributing plant from which during any of the months of September through February not less than 50 percent, and during any of the months of March through August not less than 45 percent, of the milk received at such plant directly from dairy farmers (including milk diverted as producer milk pursuant to § 1004.15 by either the plant operator or by a cooperative association, but excluding the milk of dairy farmers for other markets) or from a cooperative association in its capacity as a handler pursuant to § 1004.10(c), is disposed of as route disposition, and the volume disposed of as route disposition in the marketing area during the month is not less than 10 percent of such receipts.

(b) Subject to the provisions of paragraphs (c) and (d) of this section, a supply plant from which during any of the months of September through February not less than 50 percent, and during any of the months of March through August not less than 40 percent, of the milk received from dairy farmers (including milk diverted as producer milk pursuant to § 1004.15 by either the plant operator or by a cooperative association), or from a cooperative association in its capacity as a handler pursuant to § 1004.10(c) is moved during the month to a distributing plant except an "other order plant" from which a volume of fluid milk products which is not less than 50 percent during any month of September through February, or 45 percent during any month of March through August, of its receipts of milk from dairy farmers, cooperative associations and from other plants is disposed of as route disposition during the month, and the volume disposed of as route disposition in the marketing area during the month is not less than 10 percent of such receipts.

(c) A supply plant that was a pool plant during each of the months of September through February pursuant to paragraph (b) of this section shall be a pool plant during the following months of March through August, unless written application is filed by the plant operator with the market administrator on or before the first day of any such month, requesting the plant to be designated a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant. However, the automatic pool plant status of a supply plant pursuant to this paragraph shall be canceled for any month during the March through August period that another supply plant is qualified for pooling by shipping fluid milk products to the same distributing plant(s) by which such automatic pooling was accomplished.

(d) A supply plant(s) not otherwise meeting the provisions of paragraph (b) of this section shall be considered to have met such provisions if:

(1) It is owned and operated by a handler who also operates a pool plant pursuant to § 1004.8(a);

(2) It is located outside the marketing area and is not a pool plant under another Federal order;

(3) The handler files a written request with the market administrator on or before the first day of September for pool plant status for such plant;

(4) The plant(s) in combination with the pool distributing plant meet the provisions of § 1004.8(a);

(5) The handler qualifies no other supply plant by actual shipments to such pool distributing plant; and

(6) The handler notifies the market administrator each month at the time of filing reports pursuant to § 1004.30 in the detail prescribed by the market administrator with respect to any receipts from dairy farmers not meeting the health requirements for disposition as fluid milk in the marketing area.

§ 1004.9 Nonpool plants.

"Nonpool plant" means a plant other than a pool plant. The categories of nonpool plants are:

(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 other than a producer-handler plant or an other order plant, from which fluid milk products in consumer-type packages or dispenser units are disposed of as route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler or an other order plant from which fluid milk products are shipped to a pool plant.

§ 1004.10 Handler.

"Handler" means

(a) Any person in his capacity as the operator of:

(1) A pool plant;

(2) A partially regulated distributing plant;

(3) An unregulated supply plant; and

(4) An other order plant pursuant to § 1004.61.

(b) Any cooperative association with respect to the milk of any producer which it causes to be diverted in accordance with the provisions of § 1004.15 from a pool plant to a nonpool plant for the account of such cooperative association.

(c) Any cooperative association with respect to the milk of its producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association unless both the cooperative association and the handler notify the market administrator in writing prior to the first day of the month that the plant operator will be the handler and is purchasing the milk on the basis of farm weights and tests determined by farm bulk tank calibrations and at butterfat tests based on samples taken at the farm. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which such milk is delivered.

(d) A producer-handler; and

(e) Any other person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant.

§ 1004.11 Pool handler.

"Pool handler" means any person in his capacity as the operator of a pool plant or a cooperative association qualified as a handler pursuant to § 1004.10 (b) or (c).

§ 1004.12 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant, and whose sole source of supply for Class I milk is his own farm production and transfers from pool plants: *Provided*, That such person furnishes proof satisfactory to the market administrator that the maintenance and management of all dairy animals and other resources necessary to produce the entire amount of Class I milk handled (excluding transfers from pool plants), and the operation of the plant are each the personal enterprise of and at the personal risk of such person.

§ 1004.13 Dairy farmer.

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

§ 1004.14 Dairy farmer for other markets.

"Dairy farmer for other markets" means:

(a) Any dairy farmer with respect to milk reported pursuant to § 1004.8(d)(6); or

(b) Effective on and after January 1, 1968, any dairy farmer whose milk is received by a handler at a pool plant during any of the months of March through August, from a farm from which the handler, an affiliate of the handler, or any person who controls or is controlled by the handler, received milk other than as producer milk during the preceding months of January and February, unless such dairy farmer held nonproducer status during such months solely because the pool plant to which he currently ships was not a pool plant in such months.

§ 1004.15 Producer.

"Producer" means any person, except a producer-handler as defined in any order (including this part) issued pursuant to the Act, a dairy farmer for other markets, or any person with respect to milk produced by him which is subject to the pricing and payment provisions of another order issued pursuant to the Act, who produces milk which is received at a pool plant or by a cooperative association in its capacity as a handler pursuant to § 1004.10(c), or is diverted to a nonpool plant other than a producer-handler plant or an other order plant during any month(s) of March through August, or, in accordance with the provisions of paragraphs (a), (b), or (c) of this section, during any month of September through February. If a handler diverting milk pursuant to paragraph (a) of this section diverts milk of any dairy farmer in excess of the limits prescribed, such dairy farmer shall be a producer only with respect to that milk physically received at a pool plant. If a handler diverting milk pursuant to paragraphs (b) or (c) of this section diverts in excess of the limits prescribed, all diversions by such handler during the month shall be pursuant to paragraph (a) of this section.

(a) Not more than 10 days' production during the month unless, (1) in the case of a cooperative association, all of the diversions of milk of member producers of the cooperative during the month fall within the limits prescribed in paragraph (b) of this section, or (2) in the case of a pool handler (other than a cooperative association) diverting milk of nonmember producers, all of such diversions from such plant fall within the limits prescribed in paragraph (c) of this section.

(b) The diversion is the milk of a member of a cooperative association diverted for the account of such association and the amount of member milk so diverted does not exceed 15 percent of the volume of milk of all producer members of such cooperative association received at pool plants during such month.

(c) The diversion is the milk of a producer, who is not a member of a cooperative association, which is diverted by a handler in his capacity as the operator of a pool plant from which the quantity of nonmember milk so diverted does not exceed 15 percent of the total nonmember producer milk delivered to such handler during the month.

(d) Milk which is diverted pursuant to paragraphs (a), (b), or (c) of this section shall be deemed to have been received by the handler, for whose account it is diverted, at a pool plant at the location of the plant from which it was diverted, except that, for the purpose of applying location adjustments pursuant to §§ 1004.52 and 1004.82 milk which is diverted from a pool plant to a plant at which a greater location adjustment credit is applicable shall be priced at the latter location.

§ 1004.16 Milk and milk products.

(a) "Fluid milk product" means all skim milk (including reconstituted skim milk) and butterfat in the form of milk, skim milk, buttermilk, cultured buttermilk, flavored milk, milk drinks (plain or flavored), concentrated milk, and any other mixture of cream and milk or skim milk containing less than 18 percent butterfat (other than ice cream, ice cream mixes, ice milk mixes, eggnog, yogurt, sour half and half, and sterilized products in hermetically sealed containers): *Provided*, That when nonfat milk solids are added for "fortification", the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unmodified product of the same nature and butterfat content;

(b) "Producer milk" means any skim milk or butterfat contained in milk:

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

(2) Received from producers by a cooperative association in its capacity as a handler pursuant to § 1004.10(c); or

(3) Diverted in accordance with the provisions of § 1004.15;

(c) "Other source milk" means all skim milk and butterfat contained in or represented by:

(1) Receipts (including any Class II milk product produced in the handler's plant during a prior month) in a form other than as fluid milk products which are reprocessed, converted, or combined with another product during the month; and

(2) Receipts in the form of fluid milk products from any source other than producers, pool plants, or from a cooperative association in its capacity as a handler pursuant to § 1004.10(c).

§ 1004.17 Route disposition.

"Route disposition" means any delivery of a fluid milk product from a 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 to a plant.

§ 1004.18 Certified milk.

"Certified milk" is milk which is produced, packaged and sold under the label of certified milk in accordance with the rules and regulations promulgated by the American Association of Medical Milk Commissions, Inc.

MARKET ADMINISTRATOR

§ 1004.20 Designation.

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

§ 1004.21 Powers.

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

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

§ 1004.22 Duties.

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

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

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

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

(d) Pay out of the funds received pursuant to § 1004.87:

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

(2) His own compensation, and

(3) All other expenses necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

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

(f) Publicly announce at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 5 days after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1004.30 and 1004.31, or payments pursuant to §§ 1004.80 through 1004.87;

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

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

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

(j) On or before the date specified, publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, the following:

(1) The 5th day of each month the Class II price computed pursuant to § 1004.50(b), and the handler butterfat differentials computed pursuant to § 1004.51, both for the preceding month;

(2) The 13th day of each month, the uniform price computed pursuant to § 1004.71, and the butterfat differential to producers computed pursuant to § 1004.81, both for the preceding month;

(3) The 15th day of the month preceding the start of each calendar quarter, the Class I price computed pursuant to § 1004.50(a); and

(4) The 15th day of each month, the indexes computed pursuant to § 1004.50 (a)(1) for the preceding month, the 12-month average of prices for milk for manufacturing purposes as determined pursuant to § 1004.50(a)(3) for the period ending with the preceding month and the 12-month utilization percentage factor for the period ending with the preceding month calculated in the manner described in § 1004.50(a)(4).

(k) On or before the 15th day after the end of each month, report to each cooperative association which so requests, the class utilization of milk purchased from such association or delivered to the pool plant(s) of each handler by producers who are members of such cooperative association. For the purpose of this report, the milk so purchased or received shall be allocated to each class in the same ratio as all producer milk received by such handler during such month;

(l) Whenever required for purpose of allocating receipts from other order plants pursuant to § 1004.46(a)(10) and the corresponding step of § 1004.46(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 § 1004.46 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

§ 1004.30 Reports of receipts and utilization.

(a) On or before the 8th day after the end of each month each cooperative association in its capacity as a handler and each pool handler with respect to each of his pool plants shall report for the month to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) The quantities of skim milk and butterfat contained in (i) receipts of producer milk (including such handler's own production), (ii) receipts of fluid milk products and cream from other pool plants and milk received from a cooperative association for which it is a handler pursuant to § 1004.10(c), and (iii) receipts of other source milk;

(2) Inventories of fluid milk products and cream on hand at the beginning and end of the month; and

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

(b) Each handler who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section except that receipts of milk from dairy farmers shall be reported in lieu of producer milk, such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk; and

(c) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(d) Each cooperative association shall report with respect to milk for which it is a handler pursuant to § 1004.10 (b) and (c) as follows:

(1) Receipts of skim milk and butterfat from producers;

(2) Utilization of skim milk and butterfat diverted to nonpool plants; and

(3) The quantities of skim milk and butterfat delivered to each pool plant of another handler.

§ 1004.31 Other reports.

(a) Each pool handler shall report to the market administrator in detail and on forms prescribed by the market administrator as follows:

(1) On or before the 25th day after the end of the month for each pool plant his producer payroll for such month which shall show for each producer: (i) his name and address; (ii) the total pounds of milk received from such producer; (iii) the average butterfat content of such milk; and (iv) the net amount of the handler's payment, together with the price paid and the amount and nature of any deduction;

(2) Such other information with respect to receipts and utilization of butterfat and skim milk as the market administrator shall prescribe.

(b) Promptly after a producer moves from one farm to another, or starts or resumes deliveries to a pool handler, the handler shall file with the market administrator a report stating the producer's name and post office address, and the farm and plant locations involved.

(c) In making payments to producers pursuant to § 1004.80(a)(2), or to a cooperative association pursuant to § 1004.80(b), each pool handler shall furnish such producer or cooperative association with respect to each of its producer members from whom the handler received milk during the month, a written statement showing:

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and average butterfat test of milk delivered by the producer;

(3) The minimum rate at which payment to the producer is required under the provisions of § 1004.80(a)(2);

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The nature and amount of any deductions made in payments due such producer; and

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

(d) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to § 1004.62(b) shall report the same information as required in paragraph (a) of this section with respect to dairy farmers from whom he receives milk.

(e) On or before the 20th day after the end of the month, each handler pursuant to § 1004.10(e) shall report to the market administrator, in the detail and on forms prescribed by the market administrator, all transactions wherein milk was bought or dealt in, giving the following information:

(1) The name and address of any cooperative association or producer for whom the handler by either purchase or direction caused milk of producers to be moved to a plant;

(2) The total pounds of milk involved in the transaction, and the average butterfat content of such milk; and

(3) Such other information with respect to such transaction as the market administrator may prescribe.

§ 1004.32 Records and facilities.

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

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

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

(c) The pounds of skim milk and butterfat contained in or represented by all items in inventory at the beginning and end of each month required to be reported pursuant to § 1004.30(a)(2);

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

(e) Other information required to be reported pursuant to § 1004.31(e).

§ 1004.33 Retention of records.

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

CLASSIFICATION

§ 1004.40 Skim milk and butterfat to be classified.

The skim milk and butterfat to be reported by each handler pursuant to § 1004.30 shall be classified each month by the market administrator pursuant to the provisions of §§ 1004.41 through 1004.46.

§ 1004.41 Classes of utilization.

Subject to the conditions set forth in §§ 1004.42 through 1004.46 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 as a fluid milk product;

(2) Contained in inventory of packaged fluid milk products on hand at the end of the month; and

(3) Not specifically accounted for as Class II milk.

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

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

(2) Disposed of for livestock feed;

(3) Contained in fluid milk products which are dumped, if the handler gives the market administrator such advance notice of intent to dump as the market administrator may prescribe;

(4) Contained in inventory of fluid milk products in bulk which are on hand at the end of the month;

(5) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1004.42(b)(1), but not to exceed the following:

(i) Two percent of producer milk received at a pool plant; plus

(ii) One and one-half percent of milk received at a pool plant from a cooperative association in its capacity as a handler pursuant to § 1004.10(c); plus

(iii) One and one-half percent of milk received at a pool plant in bulk tank lots from other pool plants; plus

(iv) One and one-half percent of receipts of fluid milk products in bulk from an other order plant, exclusive of the quantity for which Class II utilization was requested by the handler (and by the operator of such other order plant if such receipt is fully subject to the classification and pricing provisions of such other order); plus

(v) One and one-half percent of receipts from dairy farmers for other markets pursuant to § 1004.14(b) and receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which Class II utilization was requested by the handler; less

(vi) One and one-half percent of milk moved in bulk tank lots from a pool plant to other plants; and plus

(vii) One-half of one percent in receipts of producer milk by a cooperative association in its capacity as a handler pursuant to § 1004.10(c);

(6) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1004.42(b)(2);

(7) Disposed of in bulk to any commercial food establishment for use on the premises in the manufacture of soup, candy, bakery products, or any other nondairy commercial food product: *Provided*, That such establishment does not dispose of any fluid milk product;

(8) The weight of skim milk in fortified fluid milk products which is excepted from Class I milk pursuant to paragraph (a) of this section.

§ 1004.42 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; and

(b) Shrinkage shall be prorated between: (1) Skim milk and butterfat in receipts described in § 1004.41(b)(5); and (2) skim milk and butterfat in other source milk, exclusive of that specified in § 1004.41(b)(5).

(c) In the case of milk received from producers by a cooperative association handler pursuant to § 1004.10(c), the cooperative association shall be responsible for proving that skim milk and butterfat in such milk which was not received at a pool plant should be classified other than as Class I, and the operator of a pool plant receiving skim milk and butterfat from a cooperative association handler pursuant to § 1004.10(c) shall be responsible for proving that such skim milk and butterfat should be classified other than as Class I.

§ 1004.43 Responsibility of handlers and the reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk and butterfat proves 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.

§ 1004.44 Transfers.

Skim milk and butterfat in the form of any fluid milk product shall be classified:

(a) As Class I milk if transferred from a pool plant or a cooperative association as a handler pursuant to § 1004.10(c) to a pool plant, unless Class II utilization is indicated by the transferee and transferor handlers (or by the handler if such transfer is between two pool plants of the same handler) in their reports pursuant to § 1004.30(a) for the month, subject to the conditions of subparagraphs (1), (2), and (3) of this paragraph:

(1) The skim milk or butterfat so assigned to either class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1004.46(a)(10) and the corresponding step of § 1004.46(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1004.46(a)(5), 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 § 1004.46(a)(9) or (10), and the corresponding steps of § 1004.46(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(b) As Class I milk, if transferred from a pool plant to a producer-handler;

(c) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(1) The 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 § 1004.30 for the month within which such transaction occurred;

(2) The operator of such nonpool transferee 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;

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any route disposition 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, and thereafter pro rata to receipts from other order plants;

(ii) Any route disposition 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, and thereafter pro rata to receipts from pool plants and other order plants not regulated by such order;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to the receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant, and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) Any remaining receipts from pool plants or other order plants shall be assigned to Class II: *Provided*, That if on inspection of the books and records of the nonpool plant the market administrator finds that the remaining unassigned receipts at such plant exceed the available Class II utilization, the transfer shall be classified as Class I up to the amount of such excess.

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

(1) If transferred in 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 the classes to which allocated as a fluid milk product under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as Class II to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, milk allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and milk allocated to other classes shall be classified as Class II; and

(6) If the form in which any fluid milk product is 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 § 1004.41.

§ 1004.45 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and other obvious errors, the reports of receipts and utilization submitted pursuant to § 1004.30(a) by each handler and compute the total pounds of skim milk and butterfat, respectively, in each class at each of the plants of such handler, and the total pounds of skim milk and butterfat in each class which was received from producers by a cooperative association handler pursuant to § 1004.10 (b) and (c) and was not received at a pool plant: *Provided*, That 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 products plus all the water originally associated with such solids.

§ 1004.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1004.45, the market administrator shall determine each month the classification of milk received from producers by each cooperative association handler pursuant to § 1004.10 (b) and (c) which was not received at a pool plant, and the classification of milk received from producers and from cooperative association handlers pursuant to § 1004.10(c) at each pool plant for each handler as follows:

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

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1004.41(b)(5);

(2) Subtract from the total pounds of skim milk in Class I, the pounds of skim milk in receipts of certified milk in packaged form;

(3) 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, if the fluid products so received are classified and priced as Class I milk under such order or the equivalent thereof if assigned to Class I milk under this order:

(i) From Class II milk, the lesser of the pounds remaining, or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Except for the first month this order is effective, subtract from the remaining pounds of skim milk in Class I, the pounds of skim milk in inventory of packaged fluid milk products on hand at the beginning of the month;

(5) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products from dairy farmers for other markets pursuant to § 1004.14(a) and from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II;

(i) The pounds of skim milk in receipts of fluid milk products, for which the handler requests Class II utilization, which were received from unregulated supply plants, from other order plants if not classified and priced pursuant to the order regulating the plant and from dairy farmers for other markets pursuant to § 1004.14(b), but not in any case to exceed the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of other source milk in the form of fluid milk products from unregulated supply plants, from other order plants if not classified and priced pursuant to the order regulating such plant, and from dairy farmers for other markets pursuant to § 1004.14(b), if not assigned pursuant to subparagraphs (3) and (6)(i) of this paragraph, to the extent that the total of such receipts is in excess of the pounds of skim milk determined as follows:

(*a*) Multiply the pounds of skim milk remaining in Class I milk (exclusive of transfers between pool plants of the same handler) at all pool plants of the handler by 1.25;

(*b*) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, receipts from pool plants of other handlers, from a cooperative association in its capacity as a handler pursuant to § 1004.10(c), in receipts from Order 2 pool bulk tank units and in receipts in bulk from other order plants which are classified and priced pursuant to the applicable order; and

(*c*) (*1*) Multiply any resulting plus quantity by the percentage that receipts of skim milk in other source milk in the form of fluid milk products from unregulated supply plants, from other order plants if not classified and priced pursuant to the order regulating such plant, and from dairy farmers for other markets pursuant to § 1004.14(b), remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II, shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant in excess of similar

transfers to such plant if classified and priced pursuant to the other order and if Class II utilization was requested by the operator of such plant and the transferee handler, but not in excess of the pounds of skim milk remaining in Class II milk;

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of fluid milk products in bulk (and for the first month this order is effective, in packaged fluid milk products) on hand at the beginning of the month;

(8) Add to the remaining pounds of skim milk in Class II milk, the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(9) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants, from other order plants if not classified or priced pursuant to the order regulating such plant and from dairy farmers for other markets pursuant to § 1004.14 (b), that were not subtracted pursuant to subparagraph (6) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(10) Subtract from the pounds of skim milk remaining in each class, the pounds of skim milk in receipts of fluid milk products from Order 2 pool bulk tank units and in bulk from other order plants (except receipts from other order plants not classified and priced pursuant to the order regulating such plant), in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraph (6) (iii) of this paragraph, pursuant to the following procedure:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk:

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1004.22(1); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(11) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other pool plants and from a cooperative association in its capacity as a handler pursuant to § 1004.10(c) according to the classification assigned pursuant to § 1004.44(a); and

(12) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

Minimum Prices

§ 1004.50 Class prices.

Subject to the provisions of §§ 1004.51 and 1004.52 the minimum class prices per hundredweight of milk for the month shall be as follows:

(a) *Class I milk.* For each month in each calendar quarter through June 1968, the price per hundredweight of Class I milk shall be the price computed for such quarter pursuant to subparagraphs (1) through (4) of this paragraph:

(1) Compute the indexes set forth in subdivisions (i) through (v) of this subparagraph for the second, third, and fourth months preceding the first month of the pricing quarter and divide the sum of these indexes by 15. The result shall be the formula index;

(i) Compute an index of wholesale commodity prices, using a 1957–58 base period by dividing by 0.99614, the average of the four latest weekly index figures (those available on the 15th day of the following month) of wholesale commodity prices as reported on a 1957–59 base by the Bureau of Labor Statistics, U.S. Department of Labor;

(ii) Compute an index of prices paid by Pennsylvania farmers per hundredweight for 20 percent protein mixed dairy feed, using a 1957–58 base period, by dividing by 0.03896 the monthly price for such feed published by the Pennsylvania Federal-State Crop Reporting Service;

(iii) Compute an index of prices received by Pennsylvania farmers for farm products except dairy, using a 1957–58 base period, by dividing by 2.103 the monthly index published by the Pennsylvania Federal-State Crop Reporting Service;

(iv) Compute an index of prices for milk for manufacturing purposes, f.o.b. plant United States, as reported by the Department of Agriculture, using a 1961–62 base period, by dividing by 0.030707 the monthly average prices determined pursuant to paragraph (b)(1) of this section, and adjust the result for seasonal variation by dividing by the applicable figure indicated below for such month:

January	1.023	July	0.988
February	1.014	August	.997
March	1.006	September	1.000
April	.989	October	1.004
May	.976	November	1.014
June	.984	December	1.014

(v) Compute an index of average daily pounds of Class I milk disposition using a 1957–58 base period, by dividing by 29,476 the daily average for the month of pounds of Class I milk disposition by plants fully regulated as a result of their sales in the marketing area other than in the State of New Jersey and excluding Class I milk disposition (on route or otherwise) outside the marketing area by any handler whose route disposition in the marketing area, exclusive of New Jersey, is less than 5 percent of his total route disposition, and excluding any duplication because of disposition between plants, and adjust the result for seasonal variation by dividing by the applicable figure indicated below for the month:

January	1.009	July	0.946
February	1.023	August	.949
March	1.011	September	1.020
April	1.025	October	1.046
May	1.010	November	1.005
June	.966	December	.990

(2) Subject to the conditions set forth in subparagraphs (3) and (4) of this paragraph the Class I price shall be that price indicated for the pricing quarter in the following Class I price schedule in the line corresponding to the bracket in which the formula index computed pursuant to subparagraph (1) falls, or if such index value is not within a bracket, the price for the calendar quarter shall be determined by the adjacent index bracket which is the same as or nearest to the bracket equivalent to the price in the previous quarter:

CLASS I PRICE SCHEDULE

[Price per hundredweight]

Formula index	1st quarter (January, February, March)	2d quarter (April, May, June)	3d quarter (July, August, September)	4th quarter (October, November, December)
At least but less than:[1]				
80.0–82.0	4.60	4.00	4.60	4.60
83.8–85.8	4.80	4.20	4.80	4.80
87.6–89.6	5.00	4.40	5.00	5.00
91.4–93.4	5.20	4.60	5.20	5.20
95.2–97.2	5.40	4.80	5.40	5.40
99.0–101.0	5.60	5.00	5.60	5.60
102.8–104.8	5.80	5.20	5.80	5.80
106.6–108.6	6.00	5.40	6.00	6.00
110.4–112.4	6.20	5.60	6.20	6.20
114.2–116.2	6.40	5.80	6.40	6.40
118.0–120.0	6.60	6.00	6.60	6.60

[1] If the formula index is more than 120.0 or less than 80.0 this table shall be extended at the same rate as the increase or decrease in the preceding bracket.

(3) If the annual level of the price for any calendar quarter (the price, less 15 cents, indicated for the first quarter for the bracket in which the formula index computed pursuant to subparagraph (1) of this paragraph falls) exceeds by more than $2.60 the simple average of prices for milk for manufacturing purposes, f.o.b. plants United States, reported on a preliminary basis by the Department of Agriculture for each of the 12 months ending with the second month preceding such calendar quarter, as determined at 3.5 percent butterfat content pursuant to paragraph (b)(1) of this section, the Class I price for such quarter shall be adjusted downward (in multiples of 20 cents) to a price at which the annual level price is within such $2.60 variance.

(4) The Class I price for any calendar quarter computed pursuant to subparagraphs (1) through (3) of this paragraph shall be further adjusted as follows: *Provided*, That for each of the 6 months following the effective date of this part, the adjustments pursuant to this subparagraph shall not exceed plus or minus 20 cents:

(i) Increased by 20 cents if the total receipts of producer milk during the 12-month period ending with the second month preceding such calendar quarter is less than 129 percent of the total pounds of such producer milk classified as Class I for the same period, and shall be increased an additional 20 cents if the ratio is less than 126 percent; and

(ii) decreased by 20 cents if the ratio of such receipts to such Class I disposition exceeds 139 and decreased an additional 20 cents if such ratio exceeds 142 percent.

(b) *Class II milk.* The price per hundredweight of Class II milk shall be determined for each month as follows:

(1) Adjust the average price for milk for manufacturing purposes, f.o.b. plants United States, as reported on a preliminary basis by the Department of Agriculture for the month, by subtracting for each one-tenth of 1 percent of average butterfat content above 3.5 percent, or adding for each one-tenth of 1 percent of average butterfat content below 3.5 percent an amount per hundredweight which shall be calculated by the market administrator by multiplying by 0.125 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported for the period between the 16th day of the preceding month and the 15th day, inclusive, of the current month by the Department of Agriculture; and

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

	Amount (cents)		*Amount (cents)*
January	+16	July	+16
February	+15	August	+23
March	+08	September	+19
April	+04	October	+19
May	+01	November	+19
June	+02	December	+19

§ 1004.51 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices for the month calculated pursuant to § 1004.50 shall be increased or decreased, respectively, for each one-tenth of 1 percent variation in butterfat content by the appropriate rate, rounded in each case to the nearest one-tenth cent determined as follows:

(a) *Class I milk.* Divide by 35 an amount calculated as follows: Add all market quotations (using the midpoint of any weekly range as one quotation) of prices per 40-quart can of fresh sweet cream of bottling quality of 40-percent butterfat content, not including prices for cream carrying special municipal approvals, reported at Philadelphia for each week ending within the month by the Department of Agriculture, divide by the number of quotations, subtract $2, divide by 9.7143: *Provided*, That such butterfat differential shall not be less than that provided pursuant to paragraph (b) of this section.

(b) *Class II milk.* Multiply by 0.120 the simple average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) reported for the period between the 16th day of the preceding month and the 15th day, inclusive, of the current month by the Department of Agriculture for Grade A (92-score) butter in the New York City market.

§ 1004.52 Location differentials to handlers.

(a) For that milk received from producers and from cooperative association handlers pursuant to § 1004.10(c) at a pool plant located 45 miles or more by shortest highway distance, as determined by the market administrator from the nearest of the City Halls in Philadelphia, Pa.; Trenton or Atlantic City, N.J.; and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section and for other source milk for which a location adjustment is applicable, the Class I price shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers, subject to the exception contained in § 1004.15(d):

Distance of plant from nearest City Hall:	*Rate per hundredweight (cents)*
45 miles	23.0
Each additional 10 miles or fraction thereof an additional	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee plant in an amount not in excess of that by which such Class I disposition exceeds 95 percent of the sum of receipts at such plant from producers, cooperative associations pursuant to § 1004.10(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, and from dairy farmers for other markets pursuant to § 1004.14(b). Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) For milk received from producers at a pool plant located 45 to 75 miles by the shortest highway distance as determined by the market administrator from the nearest of the City Halls in Philadelphia, Pa.; Trenton or Atlantic City, N.J.; and classified as Class II milk (except that for which a Class I location differential was assigned pursuant to paragraph (b)), the Class II price shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk was received from producers, subject to the exception contained in § 1004.15(d):

Distance of plant from nearest City Hall:	*Rate per hundredweight (cents)*
45 to 70 miles	5.0
Each additional 70 miles or fraction thereof an additional	1.0

§ 1004.53 Equivalent prices or indexes.

If for any reason a price or index specified by this part for use in computing class prices or other purposes is not reported or published in the manner described in this part, the market administrator shall use a price or index determined by the Secretary to be equivalent or comparable with the factor which is specified.

APPLICATION OF PROVISIONS

§ 1004.60 Producer-handler.

Sections 1004.40 through 1004.46, 1004.50 through 1004.53, 1004 62, 1004.70, 1004.71, and 1004.80 through 1004.87 shall not apply to a producer-handler.

§ 1004.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be considered as a nonpool plant except that the operator of such plant shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 1004.30) and allow verification of such reports by the market administrator. In addition, each handler operating an Order 2 pool plant from which any unpriced milk is disposed of as route disposition in the marketing area of this order shall, on or before the 15th day after the end of the month make payments to the producer-settlement fund of the difference between the announced Class I price under this order and the announced uniform price under Order 2, both applicable at his plant location, on the volume of such milk so disposed, and pay the administrative assessment provided in § 1004.87 with respect to such milk.

(a) Any plant qualified pursuant to § 1004.8(a) which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the Secretary determines that a greater volume of Class I milk is disposed of from such plant on routes in the Delaware Valley marketing area than in a marketing area regulated pursuant to such other order;

(b) Any plant subject to the classification and pricing provisions of another order issued pursuant to the Act, notwithstanding its status under this order pursuant to § 1004.8 (a) or (b).

§ 1004.62 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 §§ 1004.30(b) and 1004.31(d) 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 § 1004.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the 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 § 1004.70(e) and a credit in the amount specified in § 1004.84(b)(2) 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 §§ 1004.30(b) and 1004.31(d) 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 § 1004.8(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 milk (approved by a duly constituted health authority for fluid disposition) received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph, and (ii) any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(4) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class II price).

§ 1004.70 Computation of the net pool obligation of each pool handler.

The net pool obligation of each pool handler for each pool plant and of each cooperative association handler pursuant to § 1004.10 (b) and (c) with respect to milk which was not received at a pool plant shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of milk received from a cooperative association as a handler pursuant to § 1004.10(c) and allocated pursuant to § 1004.46 (a) and (b)(11) and the quantity of producer milk in each class, as computed pursuant to § 1004.46(c), by the applicable class prices (adjusted pursuant to §§ 1004.51 and 1004.52);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1004.46(a)(12) and the corresponding step of § 1004.46(b) by the applicable class prices;

(c) Add the amounts computed under subparagraphs (1) and (2) of this paragraph:

(1) Multiply the difference between the applicable Class II price for the preceding month and the applicable Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1004.46(a)(7) and the corresponding step of § 1004.46(b) for the current month;

(2) Multiply the difference between the applicable Class I price for the preceding month and the applicable Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1004.46(a)(4) and the corresponding step of § 1004.46(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.

(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 § 1004.46(a)(5) and the corresponding step of § 1004.46(b); and

(e) Add an amount equal to the values of skim milk and butterfat determined pursuant to subparagraphs (1) and (2) of this paragraph as follows:

(1) The value at the Class I price of skim milk and butterfat received from dairy farmers for other markets assigned to Class I pursuant to § 1004.46(a)(9) and the corresponding step of § 1004.46 (b), adjusted pursuant to § 1004.52;

(2) The value at the Class I price of skim milk and butterfat assigned to Class I pursuant to § 1004.46(a)(9), and the corresponding step of § 1004.46(b), excluding milk from dairy farmers for other markets, adjusted for the location of the nearest plants from which such types of receipts were received.

§ 1004.71 Computation of uniform price.

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 § 1004.70 for all handlers who filed the reports prescribed by § 1004.30 for the month and who made

the payments required pursuant to § 1004.84 for the preceding month;

(b) Add an amount equal to the total value of the location differentials computed pursuant to § 1004.82;

(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 multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 1004.81 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 included pursuant to paragraph (a) of this section; and

(2) The total hundredweight for which a value is computed pursuant to § 1004.70(e); and

(f) Subtract not less than four cents nor more than five cents per hundredweight. The result shall be the "uniform price," per hundredweight of milk of 3.5 percent butterfat received from producers.

PAYMENTS

§ 1004.80 Time and method of payment.

(a) Except as provided in paragraphs (b) and (d) of this section, each handler, except a cooperative association, shall make payment as specified in subparagraphs (1) and (2) of this paragraph to each producer from whom milk is received:

(1) On or before the last day of each month, at not less than the Class II price for the preceding month per hundredweight for his deliveries of producer milk during the first 15 days of the month; and

(2) On or before the 20th of the following month, the applicable uniform price per hundredweight for his deliveries of producer milk during the month subject to the following adjustments:

(i) Proper deductions authorized in writing by such producers;

(ii) Partial payments made pursuant to subparagraph (1) of this paragraph; and

(iii) If by such date such handler has not received full payment from the market administrator pursuant to § 1004.85 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the second day prior to the date on which payments are due individual producers, pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section; and

(c) In the case of milk received by a handler from a cooperative association in its capacity as the operator of a pool plant such handler shall on or before the second day prior to the date on which payments are due individual producers, pay to such cooperative association for milk so received during the month, an amount not less than the value of such milk computed at the applicable class prices for the location of the plant of the buying handler.

(d) Each handler who received milk from a cooperative association handler pursuant to § 1004.10(c), 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 the rate specified in paragraph (a)(1) of this section; and

(2) A final payment equal to the value of such milk at the uniform price adjusted by the applicable differentials pursuant to §§ 1004.81 and 1004.82, less the amount of partial payment on such milk.

§ 1004.81 Butterfat differential to producers.

The uniform price to each producer shall be increased or decreased, for each one-tenth of 1 percent by which the average butterfat content of his milk is above or below 3.5 percent, respectively, by the butterfat differential computed pursuant to § 1004.51(a) and rounded to the nearest full cent.

§ 1004.82 Location differential to producers.

(a) Subject to the exception contained in § 1004.15(d), the uniform price for milk received from producers and from cooperative association handlers pursuant to § 1004.10(c) at a pool plant located at least 45 miles from the nearest of the City Halls in Philadelphia, Pa.; Atlantic City or Trenton, N.J., by shortest highway distance as determined by the market administrator shall be reduced 23 cents, plus 1½ cents for each additional 10 miles or fraction thereof, which such plant is located from the nearest of the City Halls in Philadelphia, Pa.; Atlantic City or Trenton, N.J.

(b) For purposes of computations pursuant to §§ 1004.84 and 1004.85 the uniform price shall be reduced at the rates set forth in paragraph (a) of this section applicable at the location of the plant(s) at which the milk was received with respect to other source milk for which a value is computed pursuant to § 1004.70(e)(1) and at the location of the nonpool plant(s) from which the milk was received with respect to other source milk for which a value is computed pursuant to § 1004.70(e)(2).

§ 1004.83 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1004.61 and 1004.62, 1004.84 and 1004.86 and out of which he shall make all payments from such fund pursuant to §§ 1004.85 and 1004.86: *Provided*, That the market administrator shall offset the payment due to a handler against payment due from such handler.

§ 1004.84 Payments to the producer-settlement fund.

On or before the 15th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a) of this section exceeds the amounts specified in paragraph (b) of this section:

(a) The net pool obligation computed pursuant to § 1004.70 for such handler;

(b) The sum of:

(1) The value of milk received by such handler from producers and from cooperative association handlers pursuant to § 1004.10(c) at the uniform price adjusted by producer butterfat and location differentials, less in the case of a cooperative association on milk for which it is a handler pursuant to § 1004.10(c), the amount due from other handlers pursuant to § 1004.80(d); and

(2) The value at the uniform price adjusted by the producer butterfat differential pursuant to § 1004.81 and the location differential on nonpool milk pursuant to § 1004.82(b) (not to be less than the value at the Class II price) with respect to other source milk for which values are computed pursuant to § 1004.70(e).

§ 1004.85 Payments out of the producer-settlement fund.

On or before the 17th 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 § 1004.84(b) exceeds the amount computed pursuant to § 1004.84(a); *Provided*, That 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.

§ 1004.86 Adjustment of accounts.

(a) Except as provided in paragraph (b) of this section, whenever verification by the market administrator of reports or payments of a handler discloses errors resulting in money due the market administrator from such handler, such handler from the market administrator, or any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and pay-

ment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred;

(b) Whenever verification by the market administrator of the reports or payments of a handler discloses errors resulting in money due any producer or cooperative association from such handler for milk received by such handler prior to the effective date of this amended order, the market administrator shall promptly notify such handler of any amount so due, and payment thereof shall be made promptly to the market administrator. The market administrator shall then pay the producer or cooperative association to whom such monies are due, except that if the amount is not more than 2 cents per hundredweight on the milk involved, the monies shall be deposited in the producer-settlement fund.

§ 1004.87 Expense of administration.

As his pro rata share of the expense of administration, each handler shall pay to the market administrator on or before the 20th day after the end of the month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to milk handled during the month as follows:

(a) Each handler (excluding a cooperative association in its capacity as a handler pursuant to § 1004.10(c), and a cooperative association as the operator of a pool plant with respect to milk is transferred in bulk to a pool plant) with respect to his receipts of producer milk (including such handler's own-farm production, milk received from a cooperative association pursuant to § 1004.10(c), and milk transferred in bulk from a plant owned and operated by a cooperative association) and other source milk allocated to Class I pursuant to § 1004.46(a) (5) and (9) and the corresponding step of § 1004.46(b);

(b) Each handler in his capacity as the operator of a partially regulated distributing plant with respect to his route disposition in the marketing area in excess of his receipts of Class I milk from pool plants and other order plants; and

(c) Each handler in his capacity as the operator of an other order plant with respect to his route disposition in the marketing area, which milk was not classified and priced under such other order.

§ 1004.88 Termination of obligations.

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

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

(1) The amount of the obligation;

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

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

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this 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 until the 1st day of the 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; 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 setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1004.90 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 § 1004.91.

§ 1004.91 Suspension or termination.

The Secretary may suspend or terminate this part or any provisions of this part whenever he finds this part or any provisions 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.

§ 1004.92 Continuing obligations.

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

§ 1004.93 Liquidation.

Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such 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 assignment or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidating and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1004.100 Agents.

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

§ 1004.101 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.

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