# FEDERAL REGISTER

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Pages 15907–15981

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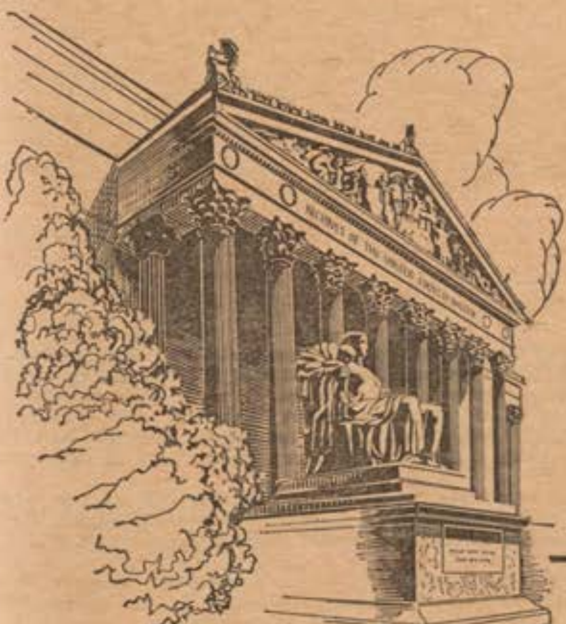
Atomic Energy Commission
Automotive Agreement Adjustment Assistance Board
Business and Defense Services Administration
Census Bureau
Civil Aeronautics Board
Civil Service Commission
Comptroller of the Currency
Consumer and Marketing Service
Federal Aviation Administration
Federal Communications Commission
Federal Crop Insurance Corporation
Federal Maritime Commission
Federal Power Commission
Federal Trade Commission
Fiscal Service
Fish and Wildlife Service
International Joint Commission—United States and Canada
Interstate Commerce Commission
Land Management Bureau
National Transportation Safety Board
Securities and Exchange Commission
Tariff Commission

**Detailed list of Contents appears inside.**



**FEDERAL REGISTER**

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# List of CFR Parts Affected

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## Title 5—ADMINISTRATIVE PERSONNEL

### Chapter I—Civil Service Commission

### PART 213—EXCEPTED SERVICE

#### Department of Justice

Section 213.3310 is amended to show that one position of Private Secretary (interdepartmental activities) in the Civil Division, Department of Justice, is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (14) is added to paragraph (e) of § 213.3310 as set out below.

**§ 213.3310 Department of Justice.**

* * * * *

(e) *Civil Division.* * * *

(14) One Private Secretary (interdepartmental activities).

* * * * *

(5 U.S.C. 3301, 3302, E.O. 10577, 19 F.R. 7521, 3 CFR, 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[F.R. Doc. 67-13643; Filed, Nov. 20, 1967; 8:46 a.m.]

### PART 213—EXCEPTED SERVICE

#### Interagency Committee on Civil Disorders

Section 213.3197 is added to show that positions on the staff of the Committee are excepted under Schedule A until September 30, 1968. Effective on publication in the FEDERAL REGISTER, § 213.3197 is added as set out below.

**§ 213.3197 Interagency Committee on Civil Disorders.**

(a) Until September 30, 1968, all positions on the Committee staff.

(5 U.S.C. 3301, 3302, E.O. 10577, 19 F.R. 7521, 3 CFR, 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[F.R. Doc. 67-13644; Filed, Nov. 20, 1967; 8:46 a.m.]

### PART 213—EXCEPTED SERVICE

#### National Capital Transportation Agency

Because the National Capital Transportation Agency was abolished on September 30, 1967, § 213.3359 of Schedule C is revoked. Effective on publication in the FEDERAL REGISTER, § 213.3359 is revoked in its entirety.

(5 U.S.C. 3301, 3302, E.O. 10577, 19 F.R. 7521, 3 CFR, 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[F.R. Doc. 67-13645; Filed, Nov. 20, 1967; 8:46 a.m.]

### PART 213—EXCEPTED SERVICE

#### Department of Housing and Urban Development

Section 213.3384 is amended to show that the position of Special Assistant to the Under Secretary is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (13) of paragraph (a) of § 213.3384 is amended as set out below.

**§ 213.3384 Department of Housing and Urban Development.**

(a) *Office of the Secretary.* * * *

(13) Two Special Assistants to the Under Secretary.

* * * * *

(5 U.S.C. 3301, 3302, E.O. 10577, 19 F.R. 7521, 3 CFR, 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[F.R. Doc. 67-13642; Filed, Nov. 20, 1967; 8:46 a.m.]

## Title 7—AGRICULTURE

### Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture

### PART 401—FEDERAL CROP INSURANCE

#### Subpart—Regulations for the 1969 and Succeeding Crop Years

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501–1518), the "Federal Crop Insurance Regulations for the 1961 and Succeeding Crop Years", as amended, which shall remain in full force and effect for the 1968 crop year, are hereby superseded for the 1969 and succeeding crop years by the regulations set forth below and the regulations to be hereafter published providing for the application and the various crop endorsements. The provisions of this subpart shall apply, until amended or superseded, to all continuous barley, dry bean, corn, corn-grain silage, cotton, flax, grain sorghum, oat, canning and freezing pea, dry pea, peanut, potato, rice, rye, soybean, sugar beet, sugarcane, tobacco, canning and processing tomato, and wheat insurance contracts and all continuous combined crop insurance contracts as they relate to the 1969 and succeeding crop years, and to other continuous contracts for which endorsements are added from time to time.


Sec.
401.101 Availability of Federal Crop Insurance.
401.102 Premium rates, production guarantees or amounts of insurance, and prices at which indemnities shall be computed and insurable crops.
401.103 Application for insurance.
401.104 Public notice of indemnities paid.
401.105 Creditors.
401.106 The contract.
401.111 The policy.


AUTHORITY: The provisions of this subpart issued under secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516.

**§ 401.101 Availability of Federal Crop Insurance.**

Insurance shall be offered under the provisions of this subpart on the crops and in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The crops and counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this section the name of the county and the crops on which insurance will be offered.

**§ 401.102 Premium rates, production guarantees or amounts of insurance, and prices at which indemnities shall be computed and insurable crops.**

(a) The Manager shall establish (1) premium rates, (2) production guarantees or amounts of insurance, and (3) when applicable, prices at which indemnities shall be computed for each crop which is insurable in a county, and for combined crop insurance. Such premium rates, production guarantees or amounts of insurance, prices at which indemnities shall be computed, and insurable crops shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

(b) The following shall apply to the transfer of any premium reduction earned under the provisions of section 6 of the policy set forth in § 401.111 if the insured is a partnership, corporation, or any other joint enterprise and there is no break in continuity of participation. Upon dissolution of such enterprise, such premium reduction may be credited to the contract of any member or stockholder thereof if the Corporation determines such person is operating only land formerly operated by the dissolved enterprise. Upon formation of a joint enterprise, the smallest premium reduction (zero if none), which the Corporation determines would have been applicable to any insurable acreage brought into the enterprise if the enterprise had not been formed, may be credited to the joint enterprise contract.

### § 401.103 Application for insurance.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in an insurable crop as landlord, owner-operator, tenant, or sharecropper. The application shall be submitted to the Corporation at the office for the county on or before the applicable closing date set forth below preceding the first crop year for which insurance is to be in effect, except that (1) in all counties in Washington, and in any county in Oregon and Idaho with an October 31 closing date, in which barley is an insurable crop, an application for insurance on barley may be filed until the April 15 following the closing date, provided that in such cases winter barley will not be insured for the first barley crop year of the contract, and (2) in counties where wheat is an insurable crop, an application for insurance on wheat may be filed until the April 15 following the closing date in all counties in Montana, in any county in North Dakota and South Dakota in which insurance is not limited to spring wheat only on the county actuarial table, and in any county in Idaho, Oregon, Utah, and Washington in which insurance is not limited to spring wheat only on the county actuarial table and a premium rate has been established on an irrigated basis, in Klamath and Linn Counties, Oreg., and in Modoc and Siskiyou Counties, Calif., but in any such case for the first wheat crop year of the contract, winter wheat in all of such countries and spring wheat planted on land which is nonirrigated in any of the counties decribed above which are located in the States of Idaho, Oregon (except Linn County), Utah, and Washington will not be insured, except that the closing date for combined crop insurance in any county shall be the earliest closing date for that county shown below for any of the crops for which production guarantees and premium rates are shown on the actuarial table for that county for combined crop insurance: *Provided, however*, That in counties in North Dakota and South Dakota where rye is an insurable crop under combined crop insurance, the closing date for rye shall be disregarded in determining the closing date for combined crop insurance.

(Closing Dates)

BARLEY

| | |
|---|---|
| Arizona and Washington | Oct. 31 |
| California: | |
| Modoc and Siskiyou Counties | Apr. 15 |
| All other California counties | Aug. 31 |
| Colorado and Wyoming | Mar. 31 |
| Delaware, Maryland, and Pennsylvania | Sept. 30 |
| Idaho: | |
| Idaho County and all Idaho counties lying north thereof | Oct. 31 |
| All other Idaho counties | Apr. 15 |
| Oregon: | |
| Klamath and Malheur Counties | Do. |
| All other Oregon counties | Oct. 31 |
| All other States | Apr. 15 |

DRY BEANS

| | |
|---|---|
| Michigan | May 31 |
| All other States | May 15 |

CORN

| | |
|---|---|
| Delaware, Illinois, Indiana, Iowa, Maryland, Michigan, Minnesota, Nebraska, Ohio, Pennsylvania, and Wisconsin | May 10 |
| North Dakota | Apr. 15 |
| All other States | Apr. 30 |

COTTON

| | |
|---|---|
| Alabama: | |
| Randolph, Clay, Talladega, Shelby, Tuscaloosa and Pickens Counties, and all Alabama counties lying south thereof | Apr. 10 |
| All other Alabama counties | Apr. 20 |
| Arizona and California | Mar. 31 |
| Arkansas and South Carolina | Apr. 20 |
| Florida and Louisiana | Apr. 10 |
| Georgia: | |
| Burke, Jefferson, Washington, Baldwin, Jones, Monroe, Lamar, Pike, Meriwether, and Troup Counties, and all Georgia counties lying south thereof | Do. |
| All other Georgia counties | Apr. 20 |
| Kentucky, Missouri, and Tennessee | Apr. 25 |
| Mississippi: | |
| Hinds, Jefferson Davis, and Madison Counties | Apr. 10 |
| All other Mississippi counties | Apr. 20 |
| New Mexico | Apr. 15 |
| North Carolina: | |
| Robeson, Hoke, Cumberland, Iredell, Lincoln, Mecklenberg, Cleveland, and Rutherford Counties | Do. |
| All other North Carolina counties | Apr. 30 |
| Oklahoma and Virginia | Do. |
| Texas: | |
| Childress, Cottle, King, Stonewall, Fisher, Scurry, Borden, Dawson, and Gaines Counties, and all Texas counties lying north and west thereof | Do. |
| Aransas, Refugio, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, and all Texas counties lying south thereof— | Jan. 31 |
| Goliad, Calhoun, Victoria, and Jackson Counties | Feb. 28 |
| Reeves, Ward, Pecos, and Terrell Counties, and all Texas counties lying south and west thereof | Apr. 15 |
| All other Texas counties | Mar. 31 |

FLAX

| | |
|---|---|
| All States | Apr. 15 |

GRAIN SORGHUM

| | |
|---|---|
| Nebraska | May 10 |
| Texas: | |
| Childress, Cottle, King, Stonewall, Fisher, Scurry, Borden, Dawson, and Gaines Counties, and all Texas counties lying north and west thereof | Apr. 30 |
| Calhoun and Victoria Counties | Feb. 28 |
| Aransas, Refugio, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, and all Texas counties lying south thereof | Jan. 31 |
| All other Texas counties | Mar. 31 |
| All other States | Apr. 30 |

OATS

| | |
|---|---|
| All States | Apr. 15 |

CANNING AND FREEZING PEAS

| | |
|---|---|
| Minnesota and Wisconsin | Do. |
| Utah | Mar. 31 |
| All other States | Mar. 1 |

DRY PEAS

| | |
|---|---|
| All States | Apr. 15 |

PEANUTS

| | |
|---|---|
| All States | Apr. 30 |

POTATOES

| | |
|---|---|
| All States | May 15 |

RICE

| | |
|---|---|
| All States | Apr. 10 |

RYE

| | |
|---|---|
| All States | Aug. 31 |

SOYBEANS

| | |
|---|---|
| Delaware, Illinois, Indiana, Iowa, Maryland, Michigan, Minnesota, Nebraska, Ohio, and Wisconsin | May 10 |
| North Dakota | Apr. 15 |
| All other States | Apr. 30 |

SUGAR BEETS

| | |
|---|---|
| California | Aug. 31 |
| All other States | Apr. 15 |

SUGARCANE

| | |
|---|---|
| All States | Aug. 31 |

TOBACCO

| | |
|---|---|
| Types of tobacco: | |
| 11b | May 15 |
| 12 | Apr. 30 |
| 13 | Apr. 15 |
| 14 | Apr. 10 |
| 11a, 21, 22, 23, 31, 32, 35, 36, 41, 54, and 55 | May 31 |

CANNING AND PROCESSING TOMATOES

| | |
|---|---|
| Ohio | May 10 |
| Utah | Apr. 15 |

WHEAT

| | |
|---|---|
| California: | |
| Modoc and Siskiyou Counties | Oct. 31 |
| All other California counties | Aug. 31 |
| Colorado, Kansas, New Mexico, Oklahoma, Texas, and Wyoming | Do. |
| Idaho: | |
| Idaho County and all Idaho counties lying north thereof | Oct. 31 |
| All other Idaho counties | Sept. 15 |
| Kentucky, North Carolina, South Carolina, and Tennessee | Oct. 15 |
| Minnesota | Apr. 15 |
| Nebraska and Utah | Sept. 15 |
| North Dakota: | |
| Adams, Bowman, Golden Valley, and Slope Counties | Do. |
| All other North Dakota counties | Apr. 15 |
| Oregon and Washington | Oct. 31 |
| South Dakota: | |
| Bennett, Dewey, Faulk, Haakon, Hand, Hughes, Hyde, Jones, Lyman, Mellette, Potter, Stanley, Sully, Tripp, and Walworth Counties | Sept. 15 |
| All other South Dakota counties | Apr. 15 |
| All other States | Sept. 30 |

(b) In counties where cotton, peanuts, or tobacco are insurable crops, application for insurance may be made by any owner-operator or tenant-operator on a form prescribed by the Corporation to cover the share which a share tenant or sharecropper has in a cotton, peanut, or tobacco crop in which such farm operator has an interest. The share covered shall be that share which the share tenant or sharecropper has at the time of planting and any share allocated to such person after planting pursuant to an understanding existing at the time of planting. As to such share tenant's or sharecropper's share, notwithstanding any provision of the contract to the contrary, (1) the applicant shall be considered the insured and the share insured shall be considered as his share, (2) premiums and losses shall be computed in the same manner and under the same terms and conditions as if the share tenant or sharecropper had signed (and the Corporation accepted) an individual application for insurance, except that each share tenant or sharecropper shall have only one unit unless more than one type of tobacco is insured, (3) the applicant shall designate on the acreage report the name of the share tenants or sharecroppers and the acreage allocated to each such person, (4) transfers of shares in insured acreage made before the beginning of harvest and the time of loss will be recognized when indemnities are computed, (5) any indemnity shall be for the benefit of the share tenant or sharecropper (or transferee) allocated the insurance unit on which the loss occurred and payment shall be made by joint check payable to the insured and said share tenant or sharecropper (or transferee), (6) collateral assignments shall not be honored but the insured shall from the proceeds of the joint check be entitled to any amounts owed such insured for advances to finance the current cotton, peanut, or tobacco crop on the insurance unit, and (7) the Corporation shall not deduct from any indemnity any amount except the current premium on the share tenant's or sharecropper's interest and any amount owed the Corporation by the share tenant or sharecropper (or transferee). For each crop year of the contract, the contract shall not cover the share of any share tenant or sharecropper who is insured with the Corporation under an individual contract.

(c) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for acceptance of applications in any county, by publishing a notice in the FEDERAL REGISTER, upon his determination that no adverse selectivity will result during the period of such extension: *Provided, however*, That if adverse conditions should develop during such period the Corporation will immediately discontinue the acceptance of applications.

(d) A contract under this subpart, without the filing of a new application, as a continuation of a continuous contract issued under Federal Crop Insurance Regulations for the 1961 and Succeeding Crop Years, shall be put into effect in accordance with the provisions governing changes in the contract, of the applicable policies issued under said 1961 regulations.

### § 401.104 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at the county courthouse a listing of the indemnities paid in the county.

### § 401.105 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or any involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in sections 14 and 15 of the policy set forth in § 401.111.

### § 401.106 The contract.

The insurance contract shall become effective upon compliance with the provisions of § 401.103(d) or upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the crops which are "insured crops" as provided in the policy and are covered by endorsements to the policy either when the policy is issued pursuant to the provisions of § 401.103 (d), or when insurance is accepted on the crops by the Corporation pursuant to a duly filed application. The contract shall consist of the policy and the endorsements for the crops covered by the contract, the county actuarial tables as defined in the policy, and the application. Any changes made in the contract shall not affect the continuity from year to year.

### § 401.111 The policy.

The provisions of the Federal Crop Insurance Policy for the 1969 and succeeding crop years are as follows:

Subject to the regulations of the Federal Crop Insurance Corporation (herein called "Corporation") and in accordance with the terms and conditions set forth in this policy, the Corporation upon acceptance of a person's application does insure such person against unavoidable loss of production of his insured crops due to causes of loss insured against that are specified in this policy. No term or condition of the contract shall be waived or changed on behalf of the Corporation except in writing by a duly authorized representative of the Corporation.

TERMS AND CONDITIONS

Subject to the provisions in the applicable endorsement:

1. *Causes of loss*—(a) *Causes of loss insured against*. The insurance provided is against unavoidable loss of production resulting from drought, earthquake, excessive rain, fire, flood, freeze, frost, hail, hurricane, insect infestation, lightning, plant disease, poleburn, snow, tornado, wildlife, wind, winterkill, and any other unavoidable cause of loss due to adverse weather conditions occurring within the insurance period, subject however, to any exceptions, exclusions, or limitations with respect to such causes of loss that are set forth in the applicable endorsement or in the county actuarial table (hereinafter referred to as the "actuarial table").

(b) *Causes of loss not insured against*. The contract shall not cover any loss due to the neglect or malfeasance of the insured, any member of his household, his tenants, sharecroppers, or employees, or failure to follow recognized good farming practices, or to damage resulting from the backing up of the water by any governmental or public utilities dam or reservoir project or due to any cause not specified as an insured cause in this policy as limited by the applicable endorsement or actuarial table.

2. *Crop, share, and acreage insured*. (a) An insured crop is a crop for which the insured has applied for insurance, for which the actuarial table shows a production guarantee or an amount of insurance per acre and a premium rate, for which an endorsement to this policy is in force and which is grown on insured acreage.

(b) The share insured shall be the share of the insured as landlord, owner-operator, tenant, or sharecropper, in the insured crop at the time of planting as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other interest in such corp shall be deemed to be insurable: *Provided*, That for the purpose of determining the amount of loss, the insured share shall not exceed the insured's share in the crop at the time of loss or the beginning of harvest, whichever occurs first.

(c) The acreage insured for a crop for each crop year shall be that acreage in the county planted to the crop on insurable acreage, as shown on the actuarial table, as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect: *Provided*, That in counties where a premium rate is established by farming practice, the farming practice carried out, as determined by the Corporation, on such acreage is one for which a premium rate is established on the actuarial table. Insurance shall not attach or be considered to have attached on any acreage that the Corporation determines was (1) not reported for insurance within the period specified in section 3 if such acreage is irrigated and an irrigated practice is not provided for such acreage, (2) destroyed and after such destruction it was practical to replant to the insured crop and such acreage was not replanted to such crop, (3) initially planted after the date fixed by the Corporation and placed on file in the office for the county, as being too late to initially plant and expect a normal crop to be produced, (4) volunteer, or (5) planted to a type or variety not established as adapted to the area or shown as noninsurable on the actuarial table.

In addition to the rights of the Corporation under section 7 hereof, the Corporation reserves the right to limit the insured acreage of any crop to the allotment, permitted acreage, or any other acreage limitations established under any act of Congress upon so notifying the insured in writing prior to the planting of such crop.

3. *Responsibility of the insured to report acreage and share*. Promptly after planting the insured crop each year, but not later than a date established by the Corporation and on file in the office for the county, the insured shall submit to the office for the county, on a form prescribed by the Corporation, a report showing all acreage in the county planted to the insured crop (including a designation of any acreage of an insurable crop covered by the contract to which insurance does not attach) in which he has a share and his share therein at the time of planting. If both winter and spring crops are insurable in a county, a separate report of acreage planted to winter crops shall be submitted promptly after completion of planting the insured winter crops. If the insured does not have a share in any insured acreage in the county for any year, he shall submit a report so indicating. Any acreage report submitted by the insured shall be binding upon the insured and shall not be subject to change by the insured. If the insured does not file an

acreage report for a crop by the date established by the Corporation, the Corporation may elect to determine by insurance units the insured acreage and the share or declare the insured acreage on any insurance unit(s) to be "zero."

4. *Irrigated acreage.* Where insurance is provided on an irrigated practice, the insured shall report as irrigated acreage only the acreage for which he has facilities and water to carry out a good irrigation practice.

Any reduction in production due to failure to carry out a good irrigation practice, unless due to failure of the water supply from an unavoidable cause occurring after planting, shall be production lost due to an uninsured cause.

Insurance shall not attach on any irrigated acreage planted to an insured crop the first year after a major leveling operation has been carried out, as determined by the Corporation.

5. *Premium rates, production guarantees or amounts of insurance, and prices at which indemnities shall be computed.* For each crop year of the contract the (a) premium rates, (b) production guarantees or amounts of insurance, and (c) when applicable, prices at which indemnities shall be computed shall be those established by the Corporation and shown on the actuarial table. At the time the application for insurance is made the applicant shall elect a price at which indemnities shall be computed from among those shown on the actuarial table. If the insured has not elected a price, or the price elected is a price not shown on the actuarial table for the crop year, the price which shall be applicable under the contract, and which the insured will be deemed to have elected, shall be the price provided on the actuarial table for such purposes. The insured may with the consent of the Corporation make a new price election for any crop year at any time before the closing date for filing applications for that year.

6. *Annual premium.* (a) The annual premium for an insured crop shall be earned and payable when the crop is planted.

(b) The total annual premium for an insured crop on all insurance units shall be reduced as follows for consecutive years of insurance, without a loss for which an indemnity was paid on any insurance unit (hereinafter called "unit") immediately preceding the crop year for which the reduction is applicable (eliminating any year in which a premium was not earned):

| *Percent premium reduction* | *Consecutive years with no loss* |
|---|---|
| 5 percent after | 1 year. |
| 5 percent after | 2 years. |
| 10 percent after | 3 years. |
| 10 percent after | 4 years. |
| 15 percent after | 5 years. |
| 20 percent after | 6 years. |
| 25 percent after | 7 years or more. |

If an insured has a loss on a crop for which an indemnity is paid, the number of such consecutive years of insurance on such crop without a loss for which an indemnity was paid shall be reduced by 3 years, except, that, where the insured has 7 or more such years, a reduction to four shall be made and where the insured has three or less such years, a reduction to zero shall be made.

If there is no break in continuity of participation, any premium reduction earned hereunder shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of the death of the insured, (2) the contract of the person who succeeds the insured as the insured's transferee in operating only the same farm or farms, if the Corporation finds that such transferee has previously actively participated in the farming operation involved, or (3) the contract of the same insured who stops farming in one county and starts farming in another county, or who changes to a separate crop contract from a combined crop contract.

(c) Any unpaid amount due to Corporation by the insured may be deducted from any indemnity payable to the insured by the Corporation, or from any loan or payment to the insured under any act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

7. *Contract changes.* The Corporation reserves the right to change the insurable crops, premium rates, production guarantees or amounts of insurance per acre, and prices at which indemnities shall be computed, and other terms and provisions of the contract, from year to year. Any changes in the contract, with respect to any crop, shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the cancellation date for that crop, preceding the crop year for which the changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 13.

8. *Notice of loss or substantial damage.* (a) The insured shall promptly give written notice of damage to the Corporation at the office for the county if, during the period before harvest, the insured crop on any unit is damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or he wants the consent of the Corporation to put the acreage to another use. No acreage of an insured crop shall be put to another use before the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late to replant to the same crop. The insured shall notify the Corporation when such acreage has been put to another use.

(b) In addition to the notices required in paragraph (a) of this section, if a loss is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county promptly after threshing (harvesting in the case of any crop that is not normally threshed) is completed on the unit, but not later than 15 days after such threshing or harvesting is completed: *Provided, however,* That, if threshing or harvesting is not completed by the calendar date for the end of the insurance period, the notice shall be given by such calendar date.

(c) Any insured acreage which is not to be harvested shall be left intact until the Corporation makes an inspection.

(d) There shall be no abandonment to the Corporation of any insured crop.

(e) The Corporation reserves the right to reject any claim for loss if any of the requirements of this section are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

9. *Acreage appraised to be put to another use.* The appraised potential production for acreage for which consent has been given to be put to another use shall be counted as production in determining the amount of loss under the contract as provided in the applicable endorsement. However, if consent is given and the Corporation determines that any such acreage is not put to another use before harvest of the insured crop becomes general in the county or if the acreage is harvested, or if the Corporation determines that additional damage by an insured cause occurs before the acreage is put to another use, the indemnity with respect to the unit shall be determined without regard to such consent and appraisal.

10. *Payment of indemnity.* Any indemnity will be payable within 30 days after a claim for loss is approved by the Corporation. However, in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation. If the insured is an entity other than an individual and is dissolved or is an individual who dies, disappears, or is judicially declared incompetent and such event occurs after the beginning of planting of any insured crop in any crop year any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

11. *Misrepresentation and fraud.* The Corporation may void the contract with respect to all crops without affecting the insured's liability for premiums or waiving any right or remedy including the right to collect any unpaid premiums if at any time, either before or after any loss, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which any such act or omission occurred.

12. *Other insurance against fire.* If the insured has other insurance, whether valid or not, against damage by fire during the insurance period, the Corporation shall be liable for loss due to fire only for the smaller of either (a) the amount of indemnity determined pursuant to this contract without regard to any other insurance, or (b) the amount as determined by the Corporation by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section the amount of loss from fire shall be the difference between the fair market value of the production on the unit involved before the fire and after the fire, as determined by the Corporation from appraisals made by the Corporation of the production and fair market value.

13. *Life of contract, cancellation, or termination thereof.* (a) The contract as to each insured crop shall be in effect for the first crop year specified on the application for insurance, except for any crop on which the closing date for the filing of applications has passed at the time the application is filed in which case it shall be in effect for the next crop year. Subject to subsections (b), (c), and (d) of this section, the contract shall continue in effect for each succeeding crop year until insurance on all crops is canceled by the insured or by the Corporation. Insurance on any insured crop may not be canceled for the first crop year but thereafter either party may cancel insurance on any insured crop for any crop year by giving a written and signed notice to the other party on or before the cancellation date specified in the applicable endorsement immediately preceding the crop year for which the cancellation is to become effective.

(b) Insurance shall terminate on any insured crop if, by the termination date for indebtedness shown in the applicable endorsement, (1) any premium due the Corporation on that crop remains unpaid, other than the premium due on a crop normally harvested in the calendar year in which the termination date for indebtedness for that crop occurs: *Provided,* That the date of premium payment for a premium deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved and from a loss claim shall be the date the insured signs the claim, or (2) the insured has not complied with a request by the Corporation that arrangements satisfactory to the Corporation be made for the payment of the premium for the following crop year.

(c) Insurance shall terminate on any insured crop if no premium is earned on that crop for 3 consecutive crop years.

(d) If the insured is an entity other than an individual and is dissolved or is an individual who dies or is judicially declared incompetent, the contract shall terminate as of the date of dissolution, death, or judicial declaration, but if such an event occurs after the beginning of planting of any insured crop in any crop year, the contract (1) shall not terminate with respect to any insured crop until the end of the insurance period for that crop, and (2) shall cover any additional acreage of all such crops planted for the insured or his estate for that crop year.

(e) For the purposes of subsection (d) hereof, death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the parties shall dissolve the joint entity.

14. *Collateral assignment*. The original insured may assign his right to an indemnity for a crop for any year under the contract by executing a form prescribed by the Corporation and upon approval thereof by the Corporation the interest of the assignee will be recognized and the assignee shall have the right to submit the loss notices and forms as required by the contract if the insured neglects or refuses to take such action.

15. *Transfer of interest*. If the insured transfers his share in the insured crop in any crop year he may, upon prior approval of the Corporation, transfer his right to an indemnity for such crop year with respect to the transferred share in the insured crop. Any transfer shall be made on a form prescribed by the Corporation and shall be subject to all the terms set forth thereon and to the terms hereof. Any transfer shall be subject to the conditions of the contract including any collateral assignment made by the transferor, and the Corporation shall not be liable for a greater amount of indemnity in connection with the insured crop than if the transfer had not taken place.

16. *Subrogation*. The insured assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment therefor is made by the Corporation, and shall execute all papers required and take such action as may be necessary to secure such rights.

17. *Records and access to farm*. The insured shall keep or cause to be kept, for 2 years after the time of loss, records of the harvesting, storage, shipments, sale, or other disposition of all of the insured crop produced on each unit covered by the contract, and separate records showing the same information for production on any uninsured acreage of the insured crop in the county in which he has an interest. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

18. *Forms*. Copies of forms referred to in the contract are available at the office for the county.

19. *Meaning of terms*. For the purposes of the crop insurance program:

(a) "County" (parish in Louisiana) in addition to the land within a county shall include acreage located in a local producing area bordering on the county as shown on the county actuarial table.

(b) "County actuarial table" means the county actuarial map(s) or lists relating to the classification of insurable and uninsurable acreage, forms and related material approved by the Corporation and on file and open for public inspection in the office for the county, which show the production guarantees or amounts of insurance per acre, premium rates, where applicable, prices at which indemnities will be computed, and related information applicable to acreage or persons with respect to an insurable crop in the county.

(c) "Crop year" means the period within which the insured crop is normally planted and normally harvested, and shall be designated by reference to the calendar year in which the crop is normally harvested.

(d) "Insurable acreage" means either (1) the land classified as insurable by the Corporation and shown as such on the county actuarial map or appropriate land identification list; or (2) the land owned or operated by a person to whom a farm classification is assigned by the Corporation or as otherwise provided on the actuarial table.

(e) "Insurance unit" means all the insurable acreage of the insured crop in the county at the time of planting (1) in which the insured has a 100 percent interest, (2) which is owned by one person and operated by the insured as a tenant, or (3) which is owned by the insured and rented to one tenant. Land rented for cash or for a fixed commodity payment shall be considered as owned by the lessee.

The Corporation and the insured may agree in writing before insurance attaches in any crop year to divide the insured's insurable acreage of the insured crop in the county into two or more units.

The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and reserves the right to consider any acreage and interest reported by or for the insured's spouse, child, or any member of his household, to be the bona fide interest of the insured or any other person having the bona fide interest.

(f) "Office for the County" means the Corporation's office for the county shown on the application for insurance or such other office as may be specified by the Corporation from time to time.

(g) "Person" or "Insured" means an individual, partnership, association, corporation, estate, or trust or other business enterprise or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(h) "Tenant" means a person who rents land from another person for a share of the crop or proceeds therefrom.

(i) "Time of loss" means the earlier of the calendar date for the end of the insurance period, or the date the entire crop on the unit is destroyed, as determined by the Corporation.

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

Adopted by the Board of Directors on November 8, 1967.

[SEAL] EARLL L. NIKKEL,
*Secretary, Federal Crop Insurance Corporation.*

Approved: November 16, 1967.

JOHN A. SCHNITTKER,
*Under Secretary.*

[F.R. Doc. 67-13666; Filed, Nov. 20, 1967; 8:48 a.m.]

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

## PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

### Miscellaneous Amendments

The Raisin Administrative Committee has unanimously recommended an amendment of Subpart—Administrative Rules and Regulations and of Subpart—Schedule of Payments. The Committee is established under, and these subparts are operative pursuant to, the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989; 32 F.R. 12157, 12555, 12710), regulating the handling of raisins produced from grapes grown in California. The amended marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Recent amendment of the amended marketing agreement and order, among others, made the following changes: (a) Deleted the authority for handlers temporarily to defer, under a bonding procedure, their reserve and surplus tonnage obligations; (b) deleted the authority for designating a percentage of the raisins acquired by handlers as surplus tonnage; (c) provided for preliminary, interim, and final reserve tonnage percentages, and for handlers to be paid, for holding for the Committee's account, only the reserve tonnage determined by the final reserve tonnage percentage; and (d) provided for reserve tonnage raisins to be disposed of in certain outlets previously prescribed for surplus tonnage. These changes require conforming changes to be made in the administrative rules and regulations and in the schedule of payments. The necessary conforming changes are made in the amendment of the subparts as hereinafter set forth.

Based on the foregoing, the recommendations of the Committee, the information submitted therewith, and other available information, it is found that the amendment, as hereinafter set forth, of Subpart—Administrative Rules and Regulations and of Subpart—Schedule of Payments, is in accordance with this part and will tend to effectuate the declared policy of the act.

Therefore, Subpart—Administrative Rules and Regulations (7 CFR 989.101 to 989.176) and Subpart—Schedule of Payments (7 CFR 989.401) are hereby amended as follows:

### Subpart—Administrative Rules and Regulations

§ 989.158 [Amended]

1. In the sixth sentence of paragraph (c)(4)(i) of § 989.158, the words "and surplus" are deleted and the word "obligations" is changed to "obligation".

2. Sections 989.166 and 989.167 are revised to read:

**§ 989.166 Reserve tonnage generally.**

(a) *Shrinkage allowance for normal and natural shrinkage in weight.* Each handler shall be entitled to a shrinkage allowance for normal and natural shrinkage in weight of 1 percent of the original natural condition weight of reserve tonnage raisins acquired by him during the crop year and held by him (for the account of the Committee) on the Saturday nearest to May 1 of the same crop year. Handlers shall be entitled to no other allowance for normal and natural shrinkage in weight for any of such raisins acquired during the crop year: *Provided*, That the Committee shall grant an additional allowance for any normal and natural shrinkage in weight of all such raisins held (for the account of the Committee) beyond the end of the crop year of acquisition, upon submission by the handler of satisfactory proof of such shrinkage occurring during the period of holding after the end of the crop year.

(b) *Setaside obligations referable to mixed varietal types.* A handler who acquired any lot of natural condition raisins of mixed varietal types (commingled within their containers) shall meet his reserve tonnage setaside obligation for each varietal type contained in the mixed lot by setting aside raisins of each such varietal type which have not been mixed or commingled with raisins of any other varietal type. The obligation as to each varietal type shall be computed according to the reserve percentage established by the Secretary, and the percentage of the varietal type contained in the mixed lot as shown by the incoming inspection certificate applicable thereto.

(c) *Storage of reserve tonnage raisins*—(1) *Time limits for setting aside pool tonnage.* Handlers shall be allowed 3 calendar days (exclusive of Saturdays, Sundays, and holidays) after acquiring any reserve tonnage raisins, or after publication in the FEDERAL REGISTER of the applicable reserve percentage established for the crop year, whichever occurs later, to segregate and properly stack each varietal type.

(2) *Conditions.* Each handler shall store reserve tonnage raisins in storage and under conditions which protect them from rain and which reasonably can be expected to maintain the raisins free of any biological or other infestation or contamination. Each handler shall, pursuant to § 989.66(b)(2), store each varietal type of reserve tonnage raisins held by him for the account of the Committee, separate and apart from all other raisins. Reserve tonnage raisins shall be stored in sweat boxes, picking boxes, or other portable containers not exceeding 1 ton capacity: *Provided*, That, in the event reserve tonnage raisins which are held in portable containers other than sweat or picking boxes are to be transferred from the premises of the handler storing them, such raisins at the time of the transfer shall meet the applicable minimum grade requirement except for such normal and natural deterioration and shrinkage as would have occurred if such raisins had been stored in sweat boxes or picking boxes. Storage of such raisins shall be deemed "separate and apart" if the containers are so marked and placed as to be capable of ready and clear identification as to the category in which they are held.

(3) *Substitution of free tonnage.* A handler may, pursuant to § 989.66(b)(3), after giving the Committee reasonable advance notice in writing and under its direction and supervision, substitute free tonnage raisins of like quality (i.e., standard raisins) for reserve tonnage raisins.

(d) *Remedy in the event of failure to deliver reserve tonnage raisins.* A handler who fails to deliver to the Committee, upon request, any reserve tonnage raisins in the quantity and quality for which he has become obligated (after any shrinkage allowances which may then be in effect are applied and allowances for any deterioration due to conditions beyond his control are made) shall compensate the Committee for the amount of the loss resulting from his failure to so deliver. The amount of compensation for any shortage of tonnage shall be determined by multiplying the quantity of reserve raisins not delivered by the latest weighted average price per ton received by producers during the particular crop year for free tonnage raisins of the same varietal type or types, plus any charges already paid or credited to the handler and cost incurred by the Committee on account of the handler's failure to deliver. The weighted average price shall be determined from those sales made during the particular crop year up to the time such cash payment is requested by the Committee, or up to the end of the particular crop year, whichever date may be earlier. The amount which a handler shall compensate the Committee for any reserve raisins which have deteriorated so as to be off-grade in quality during storage for reasons within his control, shall be the latest weighted average price received by the Committee for the applicable varietal type of reserve pool raisins, less the amount actually received by the Committee in the disposition of the deteriorated raisins delivered by the handler (or the salvage value of such raisins as determined by the Committee). Any amounts paid to the Committee in satisfaction of such deficiencies shall accrue to the earnings of the applicable reserve pool. The remedies provided in this paragraph shall be in addition to, and not exclusive of, any or all of the remedies or penalties prescribed in the act for failure on the part of the handler to comply with the applicable provisions of the act or of this part.

(e) *Disposition of reserve tonnage raisins which become off-grade for causes beyond the handler's control.* Any reserve tonnage raisins held by or for the account of the Committee which become off-grade for reasons beyond the handler's control shall, at the Committee's discretion, be reconditioned or disposed of by the Committee, or under the Committee's control, in eligible nonnormal outlets. Any monetary loss sustained in the reconditioning or disposition of such raisins, not covered by insurance carried by the Committee, shall be charged to the applicable reserve pool.

(f) *Offers of reserve tonnage raisins to handlers for sale in export.* Whenever the Committee offers reserve tonnage raisins to handlers for sale in export, it shall specify in addition to the normal quantity, the price and period within contract terms and conditions, the total which each handler will be permitted to purchase his share of the offer. Whenever a handler's share of an offer is less than, or exceeds, his holding of reserve tonnage raisins by not more than 2 tons, the Committee may adjust his share so as to avoid the cost involved in the physical transfer of raisins. If, prior to the expiration of the offer period, a handler desires to obtain reserve tonnage in an amount greater than that represented by his share of the offer, he may negotiate with another handler for any unpurchased portion of the other handler's share of an outstanding offer. No such transaction shall be deemed to reduce the transferring handler's share or to increase the transferee handler's share so as to affect either handler's share privileges in subsequent offers. Transfers to implement such transactions between handlers shall be permitted by the Committee only upon receipt of written authorization, on a form furnished by the Committee, by the transferring handler. All limitations applicable to the transferred tonnage shall continue to apply. Such reserve tonnage raisins will be released by the Committee to the transferee handler upon submission of his completed application and full payment for such raisins, and such transferee handler shall be responsible to the Committee for all documentation required in connection with the transaction. All such transfers shall be made at the expense of the handlers concerned.

**§ 989.167 Disposal of reserve raisins.**

(a) *Offer of reserve tonnage raisins for use in noncompetitive outlets.* Whenever the Committee proposes to offer to sell standard reserve tonnage raisins in noncompetitive outlets pursuant to § 989.67 (a) and (b), it shall promptly file with the Secretary complete information with respect thereto and the basis therefor. The Secretary shall have the right to disapprove, within seven calendar days, the making of such an offer or sale or any term or conditions thereof.

(b) *Determination of price of reserve tonnage sold for free tonnage use.* Whenever, pursuant to § 989.67(j), the Committee concludes, with respect to any varietal type of raisins, that a downward trend in the price received by producers for free tonnage, or in the prices received by handlers for free tonnage, or in the prices received by handlers for free tonnage, plus pooling costs, the Committee, ble to sell reserve tonnage at the average price received by producers for free tonnage, plus pooling costs, the Committee, subject to the requirements of § 989.67 (j), may sell reserve tonnage raisins at the currently prevailing field price for free tonnage raisins of the same varietal type, unless such price is deemed to be unrepresentative of the current f.o.b. price of free tonnage packed raisins. In such an event, or if there is no current field price, the Committee shall make any offer of reserve tonnage at approximately the computed field price obtained by deducting from the current f.o.b. price for free tonnage packed raisins of the varietal type to be offered, the approximate recent packing and handling margin between such packed price and the field price for free tonnage raisins.

(c) *Terms of reserve tonnage offers.* Whenever the Committee offers reserve tonnage raisins to handlers for use in free tonnage outlets, the Committee shall, among other terms and conditions of the offer, specify (1) the period in which each handler shall be given the opportunity to purchase his share of the offer, and (2) the period in which each eligible handler shall be given an opportunity to purchase his respective share of any reoffer. In the event reserve pool raisins are transferred by the Committee, the purchasing handler shall promptly empty the raisins from the containers used in the transfer so that the Committee may return the containers and pallets used in the transfer to the handler from whom the raisins were transferred within 10 business days from the date of transfer. Any handler who refuses to permit the containers in which reserve pool raisins are stored to leave his premises, shall, at his expense, place such raisins in containers supplied by the Committee.

**§ 989.168 [Deleted]**

3. Section 989.168 is deleted.

4. Paragraphs (a)(2) and (b)(2) (i) and (ii) of § 989.173 are revised to read:

**§ 989.173 Reports.**

(a) *Inventory reports.* * * *

(2) The quantity of reserve tonnage raisins for the account of the Committee; and

* * * * *

(b) *Reports of raisins received or acquired.* * * *

(2) *Acquisition of standard raisins.* Each handler shall report:

(i) The total net weight of the standard raisins acquired during the reporting period, segregated when appropriate, as to free tonnage and reserve tonnage;

(ii) The location of the reserve tonnage raisins; and

* * * * *

## Subpart—Schedule of Payments

5. Paragraphs (a), (b), and (d) of § 989.401 are revised to read:

**§ 989.401 Payments for services performed with respect to reserve tonnage raisins.**

(a) *Payment for crop year of acquisition*—(1) *Receiving, storing, and handling.* Each handler shall, beginning with the crop year which began September 1, 1967, be compensated at the rate of $6.25 per ton (natural condition weight at the time of acquisition) for receiving, storing, and handling the reserve tonnage raisins, as determined by the final reserve tonnage percentage, acquired during a particular crop year and held by him for the account of the Raisin Administrative Committee during all or any part of the same crop year.

(2) *Inspection.* Each handler shall be reimbursed by the Committee for inspection costs applicable to the reserve tonnage raisins, as determined by the final reserve tonnage percentage, received and held by him for the account of the Committee. Such payment shall be made at the currently applicable rate per ton paid by such handler to the inspection service and on the quantity reported by the handler. The Committee shall pay the cost of any inspection required by it of such reserve tonnage raisins while they are being held for its account: *Provided,* That the cost of inspection of any raisins substituted, pursuant to § 989.66(b)(3), by a handler for such reserve tonnage raisins, or which he received by transfer from another handler by purchasing, as permitted pursuant to § 989.166, a portion or all of such other handler's share of an offer, shall be borne by the handler and shall not be reimbursed to him by the Committee.

(3) *Fumigation.* Each handler shall be paid an allowance for fumigation at the rate of $1.50 per ton of reserve tonnage raisins, as determined by the final reserve tonnage percentage, received during the crop year of acquisition and held by him for the account of the Committee during all or any part of such crop year.

(b) *Additional payment for reserve tonnage raisins held beyond the crop year of acquisition.* Each handler holding reserve tonnage raisins for the account of the Committee on September 1 of any crop year (beginning with Sept. 1, 1967) which were also held by him as such on August 15 of the preceding crop year (but with respect to the 1966–67 crop year, held as surplus tonnage), shall be compensated: (1) For storing and handling such raisins at the rate of $1.20 per ton for the period ending November 30 of the then current crop year or any part thereof, 60 cents per ton for the next 3 months or any part thereof, 20 cents per ton for the next 3 months or any part thereof, and 20 cents per ton for the last 3 months of the crop year or any part thereof; and (2) for fumigation services at the rate of 15 cents per ton for each fumigation reasonably required to maintain such raisins in good condition.

* * * * *

(d) *Payment for other services*—(1) *General.* In addition to the payments provided in paragraphs (a), (b), and (c) of this section, handlers shall be compensated for other services performed with respect to reserve tonnage raisins as set forth in this paragraph.

(2) *Transportation.* The Committee may arrange with any handler for transporting reserve tonnage raisins. Payment for such transportation shall be based on then prevailing haulage rates within the production area for the type of transportation required.

(3) *Packing.* A handler who accepts an offer by the Committee to pack reserve tonnage raisins for its account shall be compensated for such packing in an amount determined by or acceptable to the Committee. In considering the amount of compensation to be paid, the Committee shall take into account, among other factors, the particular varietal type of raisins to be packed, the particular pack or package required, and the quantity and quality of the raisins to be packed.

(4) *Redelivery.* In the event the Committee removes reserve tonnage raisins of a previous crop year from a handler upon the request provided for in § 989.66 (f) and such handler subsequently desires redelivery to him of reserve tonnage raisins for contract packing, or other purpose, he shall reimburse the Committee in advance of such redelivery for the net costs to it of the removal, storage, and redelivery of such raisins: *Provided,* That the Committee may waive payment by the handler of part or all of such costs if it determines that such waiver is reasonably necessary to the prompt and favorable disposition of the raisins involved.

It is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice of this action and engage in public rule making procedure, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) A recent amendment of the amended raisin marketing agreement and order, among other changes, removed the authority (a) for temporary deferment of reserve and surplus tonnage obligations by handlers and (b) for designating a percentage of handlers' acquisitions as surplus tonnage; (2) this amendment brings the provisions of the subparts involved into conformity with the amended marketing agreement and order; (3) in view of the foregoing, this action should become effective promptly as handlers are in the process of acquiring raisins of the current crop; and (4) handlers are aware of this action as recommended by the Committee and require no advance notice to comply with this regulation.

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

Dated November 16, 1967, to become effective upon publication in the FEDERAL REGISTER.

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

[F.R. Doc. 67-13665; Filed, Nov. 20, 1967; 8:48 a.m.]

# Title 12—BANKS AND BANKING

## Chapter I—Bureau of the Comptroller of the Currency, Department of the Treasury

### PART 1—INVESTMENT SECURITIES REGULATION

### Upland Civic Center Building Authority Revenue Bonds (California)

**§ 1.199 Upland Civic Center Building Authority Revenue Bonds (California).**

(a) *Request.* The Comptroller of the Currency has been requested to rule that the $1,080,000 Upland Civic Center Building Authority Revenue Bonds are eligible for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Upland Civic Center Building Authority is a public entity created under the laws of California by an agreement between the City of Upland and the County of San Bernardino. Under this agreement the Authority is authorized to acquire land, construct and lease public buildings and to issue bonds to finance such projects. The Authority is issuing these bonds for the purpose of constructing a headquarters fire station and a new library which will be leased to the City. This construction represents the first stage of a planned Civic Center development.

(2) Under the lease rental agreement the City has unconditionally promised to pay annual rentals to the Authority in an amount sufficient to meet annual interest and principal payments on these bonds as well as other necessary expenses. The City, which possesses general powers of taxation has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion, therefore, that the $1,080,000 Upland Civic Center Building Authority Revenue Bonds are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and, accordingly, are eligible for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

Dated: November 16, 1967.

[SEAL] WILLIAM B. CAMP,
*Comptroller of the Currency.*

[F.R. Doc. 67-13648; Filed, Nov. 20, 1967; 8:47 a.m.]

### PART 1—INVESTMENT SECURITIES REGULATION

### Parking Authority of the City of Upland (California) Parking Revenue Bonds

**§ 1.200 Parking Authority of the City of Upland (California) Parking Revenue Bonds.**

(a) *Request.* The Comptroller of the Currency has been requested to rule that the $245,000 (1967) Parking Revenue Bonds of the Parking Authority of the City of Upland are eligible for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Parking Authority of the City of Upland is a public body corporate and politic created by the laws of California but authorized to function only upon a finding of need. The City Council has made the appropriate finding and, in accordance with the law, has declared itself to be the parking authority. Under the law a parking authority is authorized to issue revenue bonds to finance public parking facilities and may issue such bonds without obtaining the approval of the electors of the city where the bonds are issued to finance a project which is to be leased to the city and where the principal of and interest on the bonds are to be payable from rentals paid by the city under such lease. The Authority is issuing these bonds to finance the acquisition and construction of parking facilities which will be leased to the City and used to provide free public parking.

(2) Under the lease rental agreement the City has unconditionally promised to pay annual rentals to the Authority in an amount sufficient to meet annual interest and principal payments on these bonds as well as other necessary expenses. The City has also established a new business license tax, authorized under California law for the purpose of providing funds for the improvement of parking and business in specified areas, and proposes to pay a portion of the rentals from the proceeds of this tax. The lease specifically provides however that the City's obligation to pay rentals is a general obligation and is not limited to payment from any specific source. The City which possesses general powers of taxation has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion therefore that the $245,000 (1967) Parking Revenue Bonds of the Parking Authority of the City of Uplandare general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and, accordingly, are eligible for purchase, dealing in, underwriting and unlimited holding by national banks.

Dated: November 15, 1967.

[SEAL] WILLIAM B. CAMP,
*Comptroller of the Currency.*

[F.R. Doc. 67-13649; Filed, Nov. 20, 1967; 8:47 a.m.]

# Title 14—AERONAUTICS AND SPACE

## Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 7648; Amdts. 61-38, 63-8, 65-12]

### PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

### PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

### PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

### Certain Airman Certificates Issued to Persons Other Than U.S. Citizens; Duration Limitation

The purpose of these amendments is to delete the 12-month duration limitation for certain airman certificates issued to persons who are not U.S. citizens. The certificates affected are airline transport pilot certificates, pilot certificates with a lighter-than-air category rating, flight navigator and flight engineer certificates, and air traffic control tower operator, aircraft dispatcher, mechanic, and parachute rigger certificates and associated ratings.

These amendments were proposed in Notice No. 67-22 and published in the FEDERAL REGISTER on June 6, 1967 (32 F.R. 8094).

The original purpose for the 12-month certificate duration limitation was to provide a means for determining whether certificates issued to citizens of foreign countries should remain in force in the event the current reciprocal granting of airman privileges should be modified or terminated. Since the removal of the reciprocity requirement from the regulations, yearly renewal of these airman certificates serves no purpose, and the FAA has determined that the administrative workload associated with their renewal should be eliminated. The duration limitation has already been removed with respect to private and commercial pilot (heavier-than-air) certificates, which, like ground instructor certificates and ratings issued to persons other than U.S. citizens, have indefinite duration.

The public comments received on the notice, with two exceptions, favored the proposal to eliminate the 12-month duration limitation. One unfavorable comment was concerned with an asserted preferential treatment of foreign nationals in the issuance of certificates. However, the purpose of the proposal, as stated, is to remove a burden upon the FAA and the airmen involved that no longer serves a useful purpose. The other unfavorable comment asserted that privileged status should be given to U.S. citizens, and that a noncitizen who wishes to be treated like a U.S. citizen should go through all the necessary requirements to become a citizen. However, this comment does not take into account the fact that eligibility for airman certificates does not depend upon citizenship.

To protect the interests of airmen holding certificates which, because of the 12-month duration limitation, will expire or have expired, the amendments provide that those airmen may obtain reissuance of the certificates without proof of technical ability. The certificate will be reissued to the holder without an expiration date. Unless the holder of an expired certificate obtains a reissuance, he will be unable to exercise any airman privileges under that certificate.

Interested persons have been afforded an opportunity to participate in the making of these amendments, and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, Parts 61, 63, and 65 of the Federal Aviation Regulations are amended, effective December 21, 1967, as follows:

1. By amending Part 61 as follows:

**§ 61.9 [Amended]**

a. By striking out § 61.9(c).

b. By adding the following new section after § 61.9:

**§ 61.9a Reissuance: Expired certificates-airline transport pilot and lighter-than-air category rating.**

(a) An airline transport pilot certificate or pilot certificate with a lighter-than-air category rating bearing an expiration date and issued after September 26, 1950, to a person who was not a citizen of the United States may be reissued to that person without an expiration date.

(b) The holder of a certificate with an expiration date may not after that date exercise the privileges of the certificate without obtaining its reissuance.

2. By amending Part 63 as follows:

a. By amending § 63.15(a) to read as follows:

**§ 63.15 Duration of certificates.**

(a) A certificate issued under this part is effective until it is surrendered, suspended, or revoked.

* * * * *

b. By adding the following new section after § 63.15:

**§ 63.15a Reissuance: Expired certificates.**

(a) Any certificate covered by this part bearing an expiration date and issued after September 26, 1950 to a person who was not a citizen of the United States may be reissued to that person without an expiration date.

(b) The holder of a certificate with an expiration date may not after that date exercise the privileges of the certificate without obtaining its reissuance.

3. By amending Part 65 as follows:

**§ 65.15 [Amended]**

a. By striking out the words "to a U.S. citizen" in § 65.15(a) and by striking out § 65.15(b).

b. By adding the following new section after § 65.15:

**§ 65.15a Reissuance: Expired certificates.**

(a) Any parachute rigger certificate or rating that was issued after September 4, 1950, and any other certificate or rating covered by this part (except a repairman certificate) that was issued after September 26, 1950, bearing an expiration date, to a person who was not a citizen of the United States may be reissued to that person without an expiration date.

(b) The holder of a certificate or rating with an expiration date may not after that date exercise the privileges of the certificate or rating without obtaining its reissuance.

(Secs. 313(a), 601, 607, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1427)

Issued in Washington, D.C., on November 14, 1967.

WILLIAM F. MCKEE,
*Administrator.*

[F.R. Doc. 67-13637; Filed, Nov. 20, 1967; 8:46 a.m.]

# Title 16—COMMERCIAL PRACTICES

## Chapter I—Federal Trade Commission

## PART 15—ADMINISTRATIVE OPINIONS AND RULINGS

### Payment for Recruiting New Students

**§ 15.149 Payment for recruiting new students.**

The Commission advised a school that it might properly offer and pay a stated sum of money to present students under the following circumstances: At, or near, the conclusion of a course of instruction students would be supplied with cards recommending the school for distribution to their friends. When and if a recipient of one of the distributed cards contracted for, and paid the fee for, a course of study offered by the school, the student who had distributed that card would be, at his option, paid a stated sum or would have an equal sum credited against the cost of his further studies.

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

Issued: November 20, 1967.

By direction of the Commission.

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

[F.R. Doc. 67-13640; Filed, Nov. 20, 1967; 8:46 a.m.]

## PART 15—ADMINISTRATIVE OPINIONS AND RULINGS

### Trade Association Publication of Advertisements for Use by Members Featuring Range of Prices To Be Charged Consumers

**§ 15.150 Trade association publication of advertisements for use by members featuring range of prices to be charged consumers.**

(a) The Commission advised a trade association in the home improvement field that it would probably not be illegal for the association to furnish its members with advertising featuring a range of prices to be charged consumers.

(b) The advertisements in question were to be included in a booklet to be sent to all members and would be suitable for mailing to the members' customers. The advertisements would depict typical home improvement projects, list the specifications for the project and state a range of prices in terms of dollar amounts per month for a specified number of years. The prices would be qualified by stating that they will vary according to labor and material costs in various areas. One page of the booklet would include a schedule of financing charges for 1, 2, 3 years, etc. The advertisements would be marked "Proof" and members purchasing the booklets to send to their customers would have the option of changing any of the suggested project prices if they desire.

(c) The opinion stated that, in general, there could be no objection to the proposal if implemented exactly as outlined above. In this connection, however, the Commission added that all involved should be aware of the dangers of suppressing or eliminating or restraining price competition among individual builders or contractors because of the fact that prices are to be included in the advertisements. Thus, this plan would be rendered unlawful if in practice the suggested prices were used as a subterfuge or pretext for horizontal price agreements, or otherwise restraining competition, between contractors or builders in particular market areas. Special care must therefore be taken to insure that the legality of the plan is not impaired by the manner in which it is implemented. This advisory opinion is expressly predicated on the assumption that the proposal will be implemented in strict conformity with the representations made to the Commission.

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

Issued: November 20, 1967.

By direction of the Commission.

JOSEPH W. SHEA,
*Secretary.*

[F.R. Doc. 67-13641; Filed, Nov. 20, 1967; 8:46 a.m.]

# Title 17—COMMODITY AND SECURITIES EXCHANGES

## Chapter II—Securities and Exchange Commission

[Release No. 33-4884]

## PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

### Contents of Prospectus Used After 9 Months

Section 10(a)(3) of the Securities Act of 1933 provides that when a prospectus is used more than 9 months after the effective date of the registration statement, the information contained therein shall be as of a date not more than 16 months prior to such use. Section 10(a)(4) provides that there may be omitted from any prospectus any of the information required under section 10(a) which the Commission may by rules and regulations designate as not being necessary or appropriate in the public interest or for the protection of investors. Rule 427 (17 CFR 230.427) permits the omission from any prospectus used more than 9 months after the effective date of the registration statement of any information previously required to be contained in the prospectus insofar as later information covering the same subjects, as of a date not more than 16 months prior to the use of the prospectus, is contained therein.

Where securities have been registered on Form S-1 (17 CFR 239.11) but at the time of filing a prospectus as a part of a posteffective amendment the registrant would be entitled to register the securities on another form, such as Form S-8 (17 CFR 239.16b) or S-9 (17 CFR 239.22), the Commission has permitted the prospectus to be prepared in accordance with the requirements of such other form. In order that this practice may be generally known to all registrants and may also be applicable to forms, other than Forms S-8 and S-9, which may be adopted from time to time, Rule 427 has been amended to incorporate the current administrative practice in that rule.

*Commission action.* Section 230.427 of Title 17, Chapter II of the Code of Federal Regulations is amended to read as set forth below.

**§ 230.427 Contents of prospectus used after nine months.**

(a) There may be omitted from any prospectus used more than 9 months after the effective date of the registration statement any information previously required to be contained in the prospectus insofar as later information covering the same subjects, including the latest available certified financial statements, as of a date not more than 16 months prior to the use of the prospectus is contained therein.

(b) Notwithstanding the foregoing, a prospectus filed as a part of an amendment to an effective registration statement on Form S-1 (§ 239.11 of this chapter) may be prepared in accordance with the requirements of any other form which would then be appropriate for the registration of the securities to which the prospectus relates, provided all of the requirements of such other form (including the filing of any required undertakings) are met. The amendment shall be deemed to relate to the proper form if the Commission declares it effective.

(Secs. 6, 7, 10, 19; 48 Stat. 78, 81, 85, as amended; 15 U.S.C. 77f, 77g, 77j, 77s)

*Effective date.* Since the above amendment merely incorporates in the rule a long-standing administrative practice of the Commission, the Commission finds that notice and procedure pursuant to the Administrative Procedure Act are unnecessary and that the amendment may be made effective immediately upon publication. Accordingly, the amendment shall become effective November 9, 1967. The foregoing action is taken pursuant to the Securities Act of 1933, particularly sections 6, 7, 10, and 19(a) thereof.

By the Commission.

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

NOVEMBER 9, 1967.

[F.R. Doc. 67-13635; Filed, Nov. 20, 1967; 8:46 a.m.]

# Title 31—MONEY AND FINANCE: TREASURY

## Chapter II—Fiscal Service, Department of the Treasury

SUBCHAPTER B—BUREAU OF THE PUBLIC DEBT

## PART 306—GENERAL REGULATIONS WITH RESPECT TO UNITED STATES SECURITIES

### Subpart O—Book-Entry Procedure

*Correction*

In F.R. Doc. 67-13345, appearing at page 15672 of the issue for Tuesday, November 14, 1967, the following changes should be made:

1. In the fourth line of § 306.117(b), the word "purposes" is corrected to read "purpose".

2. In the 29th line of § 306.118 the word "pledge" is corrected to read "pledgee".

# Title 32—NATIONAL DEFENSE

## Chapter VII—Department of the Air Force

## MISCELLANEOUS AMENDMENTS TO CHAPTER

Chapter VII of Title 32 of the Code of Federal Regulations is amended as follows:

SUBCHAPTER D—CLAIMS AND LITIGATION

## PART 844—TAXATION, LEGAL AND ADMINISTRATIVE ACTIONS, AND LEGAL PROCESS

Part 844 is deleted from Subchapter D, Chapter VII, Title 32 of the Code of Federal Regulations.

SUBCHAPTER F—AIRCRAFT

## PART 855—USE OF AIR FORCE INSTALLATIONS BY OTHER THAN U.S. DEPARTMENT OF DEFENSE AIRCRAFT

Part 855 is amended by revising §§ 855.5(g), 855.6, 855.7(a) (1), (2), and (3), 855.9(c)(4), and the introductory paragraph and paragraph (a) of § 855.15. These sections now read as follows:

**§ 855.5 Emergency landing at an Air Force installation.**

* * * * *

(g) The installation commander will review the completed AF Form 181 (he need not complete the entries to be filled in by the approving authority) and forward the original copy with full details through channels to Hq USAF (AFOAPDA); he will also report the circumstances of the landing to:

(1) The General Aviation District Office of the Federal Aviation Administration, if the installation is in the United States or its possessions.

(2) The appropriate USAF authority, such as an air attaché, if the installation is in a foreign country.

**§ 855.6 Actions to take when aircraft land without permission.**

Any aircraft operator who lands at an Air Force installation without obtaining prior permission from an approving authority, except in a bona fide emergency as determined by the installation commander or his representative, is in violation of this part. Operators of civil aircraft landing in violation of this part will have to pay the unauthorized landing fee prescribed by § 855.15a and will probably experience delays while authorization for departure is obtained pursuant to this part. When the installation commander or his representative believes the violation was inadvertent due to lack of knowledge of the requirements in this part, and when the operator has complied with paragraphs (b) and (c) of this section and paid the fees assessed pursuant to paragraph (d) of this section, he may authorize the aircraft to depart. When it appears the violation may have been deliberate, e.g., a repeated violation, departure authorization can be granted only by Hq USAF. Before the aircraft is authorized to depart, the installation commander:

(a) Informs the aircraft operator of the restrictions on landing at AF installations (refer to the notice of such restrictions published in the FAA Airman's Information Manual or other source).

(b) Requires the operator to execute AF Forms 180 and 181; in item 7 of AF Form 181 explain in detail the reason and circumstances for the landing.

(c) Requires the operator to submit either an AF Form 203 or show evidence of sufficient insurance, including waiver of any right of subrogation against the United States; and evidence that such insurance applies to the liability assumed by the insured under the AF Form 180.

(d) Assesses the fees required by § 855.15(b), and if applicable § 855.15(c).

(e) Reviews the AF Form 181 (entries to be filled in by the approval authority need not be completed), include a statement within item 7 as follows: "An amount of $______ has been charged and collected for this unauthorized landing," and submit without delay the original with full details through channels to Hq USAF (AFOAPDA); also, reports the circumstances of the landing to:

(1) The General Aviation District Office of the Federal Aviation Administration, if the installation is in the United States or its possessions.

(2) The appropriate Air Force authority, such as an Air Attaché, if the installation is within a foreign country.

### § 855.7 How to request the use of an Air Force installation.

* * * * *

(a) *Prospective civil aircraft users will.*

(1) Complete, sign, and forward the original (one copy) of AF Form 180 to the approving authority. When the user is other than an individual (i.e., a club, corporation, etc.) the "Certificate" of acknowledgement on the lower half of AF Form 180 must be completed and signed by a second official of the organization. As necessary, the Air Force also may require that the "Certificate" of acknowledgement be authenticated by an appropriately designated third official. Once the completed and signed AF Form 180, "Hold Harmless Agreement," has been accepted by an approving authority, it is valid until obsolete and need not be resubmitted with future requests to the same approving authority.

(2) Prepare and sign a separate set (original and one copy for Hq USAF, or original and four copies for other approving authorities) of the user's portion of AF Form 181 for each type of use requested. The user should insure that all entries conform to the requirements of this part. Once the AF Form 181 has been approved and distributed, no further entries or amendments can be made. New requirements must be submitted on a new set of AF Forms 181, but may include the old listings.

(3) Have the insurer or his authorized agent complete, sign, and forward the original (one copy only) of AF Form 203 to Hq USAF (AFOAPDA), Washington, D.C. 20330. All coverages will be stated in U.S. dollars (see § 855.13 for required minimum coverage). When the approving authority is other than Hq USAF, a signed carbon copy of the original AF Form 203 will be submitted with the AF Forms 181 to that approving authority. Once an AF Form 203 is on file with an approving authority, it is valid until insurance expiration date and may be used by that approving authority as a basis for his action upon any subsequent AF Forms 181 submitted for approval. If necessary, insurance companies may reproduce the AF Form 203; however, reproductions or photostats of the completed form are not acceptable.

* * * * *

### § 855.9 Processing procedure of the approving authority.

* * * * *

(c) * * *

(4) The amount of insurance indicated on the AF Form 203 must be stated in U.S. dollars and must be adequate for the type of use requested and for the passenger capacity and gross takeoff weight of the aircraft being operated. When item 11 of the AF Form 181 includes the notation "All aircraft of the above model(s) owned (and/or operated) by the Blank Corporation" the approving authority will enter the additional statement "not to exceed (blank) passenger capacity" when the model aircraft indicated, in another configuration, could have a passenger capacity whereby the amounts of passenger liability insurance would become inadequate.

* * * * *

### § 855.15 Landing, parking, and storage fees.

The base operations officer, acting for the installation commander, will collect fees from all users (see exemptions in paragraph (d) of this section) and will remit all fees, with supporting documentation, to the base accounting and finance officer each workday. All fees due will be collected at the time of use unless a prior agreement between the user and the installation commander specifies otherwise. Fees collected in accordance with paragraph (a) of this section will be deposited to suspense fund account 57X6875 for a period of 60 days. After 60 days, these fees should be withdrawn and redeposited into the Treasury as miscellaneous receipts. All other fees collected in accordance with this part will be deposited into the Treasury as miscellaneous receipts.

(a) *Fee for unauthorized landing.* If an aircraft lands at an Air Force installation without obtaining prior permission (except for a bona fide emergency), a landing fee in excess of the normal landing fee will be charged to cover the additional expenses incurred due to special handling and processing. The fee for an unauthorized landing will be as follows:

(1) For aircraft weighing 12,500 pounds or less: $100.

(2) For aircraft weighing more than 12,500 pounds, but less than 40,000 pounds: $250.

(3) For aircraft weighting 40,000 pounds and above: $500.

* * * * *

(Sec. 8012, 70A Stat. 488, secs. 1107, 1108, 72 Stat. 798; 10 U.S.C. 8012, 49 U.S.C. 1507, 1508) [AFR 55-20, Change 1, Oct. 12, 1967]

SUBCHAPTER I—MILITARY PERSONNEL

## PART 882—DECORATIONS AND AWARDS

F.R. Doc. 67-12619, published at page 14824 in the issue of October 26, 1967, is corrected by revising § 882.54a to read as follows:

### § 882.54a Combat Readiness Medal.

(a) *Description.* Encircling a ring of stylized cloud forms, a border of concentric rays, its rim concave between 12 points, charged with six arrowheads, alternating with the points of two triangular flight symbols, having centerlines ridged conversely. One is pointed south and overlapping, and the other pointing north whose apex extends beyond the rim, becoming the point of suspension of the medal. The ribbon is predominantly old glory red and banded in blue, with a narrow dark blue stripe separated by two wider stripes of light blue.

(b) *Requirements for awards.* Completion of an aggregate of four years of sustained professional performance as a USAF combat ready aircrew or missile launch crew member assigned to an operational unit subject to the Combat Readiness Rating System under the provisions of AFM 55-11 (Air Force Operational Reporting System RCS: AF-V-21). During this period, the aircrew or missile launch crew member must have been:

(1) Certified as combat ready in accordance with USAF and major command qualification criteria by the appropriate wing commander or commander of a group not reporting to a wing; and

(2) Serving in a missile launch crew position, or in a rated AFSC position as an aircrew member.

NOTE: A written recommendation to justify award of the CRM, or a citation, certificate, and special orders on approved awards of this medal, are no longer required. Aircrew members on special duty with another U.S. military service may be credited with such service for award of the CRM provided they are designated or certified, while so serving, as combat ready in accordance with that service's criteria (if such criteria closely correlates to USAF and parent command criteria) and provided that other requirements stated in this section are met. A break in combat ready status (requalification, PCS, sickness, or other cause not attributed to any instance of nonprofessionalism) will be considered as qualifying service for award of the CRM, provided the break is not more than 120 days and the individual returns to combat ready status.

(c) *Initial awards.* All qualifying service from August 1, 1960.

(d) *Subsequent awards.* A bronze oak leaf cluster for each additional 4 years of qualifying service. A silver oak leaf cluster is worn in lieu of five bronze oak leaf clusters.

SUBCHAPTER K—MILITARY TRAINING AND SCHOOLS

## PART 901—APPOINTMENT TO THE U.S. AIR FORCE ACADEMY

**§ 901.6 [Corrected]**

F.R. Doc. 67-12527, published at page 14762 in the issue of October 25, 1967, is corrected by changing the word "Appointment" in the second line of the introduction of § 901.6 to read "Academy."

By order of the Secretary of the Air Force.

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

[F.R. Doc. 67-13627; Filed, Nov. 20, 1967; 8:45 a.m.]

# Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

## Chapter 9—Atomic Energy Commission

## PART 9-1—GENERAL
## PART 9-12—LABOR

### General Policy for Avoidance of Organizational Conflicts of Interest

On February 12, 1966, the Atomic Energy Commission published for public comment a proposed statement of general policy for the avoidance of organizational conflicts of interest. The statement described examples of various organizational conflict of interest which might come into being and methods for avoidance of such conflicts. It stated that the two paramount principles to be considered in avoiding organizational conflicts of interest are: (1) Preventing conflicting roles which might bias a contractor's judgment in relation to its work for AEC, and (2) preventing unfair competitive advantage. The published notice indicated the Commission was considering additional provisions concerning the use by a contractor in his private activities of information acquired by the contractor during the course of the contract when such information is not available to other interested firms.

The only comments received were from the Atomic Industrial Forum and the Council of Defense and Space Industry Associations.

After consideration of all relevant matters as presented in these comments, the statement as proposed has been revised. For the most part the comments were addressed to the draft additional provisions referred to above. These provisions have been replaced by the § 9-1.5408 below, "Commercial or other use of information and data obtained under AEC cost-type contracts." This section is a revised version of AECPR 9-12.5408 "Participation of employee working under AEC contract in related private activities of employer" which has been in effect for a number of years. Section 9-12.5408 is being deleted by this publication. Under § 9-1.5408, information developed or acquired in the performance of the contract, and which is required by the terms of the contract to be reported to AEC, could be authorized for use in the contractor's private activities if it has been reported to the AEC. Where AEC furnishes information to the contractor for the performance of the contract, it could not be used in the contractor's private activities unless such information is generally available to others. AEC would disseminate the information to other interested parties.

Section 9-1.5408 shall be implemented by including in cost-type contracts, where appropriate, a provision requiring the approval of the Contracting Officer for the private use of information or data developed or acquired by employees of such contractor in the performance of the contract.

Section 9-1.5407 covers situations which may involve restrictions on a contractor's participation in other related procurements. It should be noted that if a Contracting Officer determines that a proposed procurement does involve such a situation, all prospective contractors shall be advised of the extent of restrictions on follow-on or other work by notice in solicitations and by a clause in resulting contracts. Such notice and contract clause shall spell out the specific extent of any future restrictions on the contractor which are imposed by the contract.

The statement also provides that Man-Managers of Field Offices and appropriate Headquarters Division Directors may waive applicability of the rules, if they determine that the waiver will not be prejudicial to the best interests of the Government.

Chapter 9 of Title 41 of the Code of Federal Regulations is amended as follows:

1. Section 9-1.104 is amended as follows by adding to the listing in paragraph (c) the following item:

**§ 9-1.104 Applicability.**

* * * * *

(c) * * *

* * * * *

9-1.54— General Policy for the Avoidance of Organizational Conflicts of Interest.

2. The following subpart is added to Part 9-1—General:

**Subpart 9-1.54—General Policy for the Avoidance of Organizational Conflicts of Interest**


Sec.
9-1.5401 Purpose.
9-1.5402 Scope and applicability.
9-1.5403 Applicability to cost-type contractor procurement.
9-1.5404 Waiver.
9-1.5405 Definition.
9-1.5406 General policy.
9-1.5407 Guides applicable prior to selection of contractor and execution of contract.
9-1.5408 Commercial or other use of information and data obtained under AEC cost-type contracts.


AUTHORITY: The provisions of this Subpart 9-1.54 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

### Subpart 9-1.54—General Policy for the Avoidance of Organizational Conflicts of Interest

**§ 9-1.5401 Purpose.**

This subpart sets forth AEC general policy with respect to the avoidance of organizational conflicts of interest. This subpart is in addition to and not in lieu of other requirements in the AECPR concerning AEC policies for avoiding conflicts of interest. (See AECPR §§ 9-1.355; 9-3.951; and 9-56.401(a)(2)). The Report to the President on Government Contracting for Research and Development (generally known as the Bell Report) proposed that each department and agency head develop a "Code of Conduct" for organizations in the research and development field. This subpart has been developed in accordance with that instruction.

**§ 9-1.5402 Scope and applicability.**

(a) (1) This subpart identifies various organizational conflicts of interest which might come into being and methods for avoidance of such conflicts. It provides that action must be taken to avoid placing a contractor in a position where his judgment might be biased or where he would have an unfair competitive advantage within the scope and intent of this subpart.

(2) If a Contracting Officer determines that a proposed procurement does involve a situation covered in § 9-1.5407, all prospective contractors shall be advised of the extent of restrictions on follow-on or other work by notice in solicitations and by a clause in resulting contracts. Such notice and contract clause shall spell out the specific extent of any future restrictions on the contractor which are imposed by the contract. This, of course, does not require contract awards in circumstances that demonstrate a clear conflict of interests of a kind not specifically enumerated herein. Section 9-1.5408 shall be implemented by including in cost-type contracts, where appropriate, a provision requiring the approval of the Contracting Officer for the private use of information or data developed or obtained by employees of such contractor in the performance of cost-type contracts. A standard form of notice for use in solicitations or contract clause is not prescribed in this subpart since such notices and clauses must be especially adapted to apply the principle of these rules to the specific facts of each contractual situation.

(b) Except in unusual or specific situations identified by contracting officers, those parts of the rules which pertain to unfair competitive advantage are not applicable to contracts with educational institutions, or with not-for-profit organizations which conduct education and training activities, or whose facilities are used in joint programs with educational institutions for such purpose.

§ 9-1.5403 Applicability to cost-type contractor procurement.

This subpart shall be followed by Managers of Field Offices in reviewing and approving procurement policies and procurement actions of cost-type contractors that construct or operate AEC plants and laboratories or perform research and development services for AEC.

§ 9-1.5404 Waiver.

A Field Office Manager, or Headquarters Division Director, may waive the applicability of this subpart in specific cases if he determines that such waiver will not be prejudicial to the best interests of the Government.

§ 9-1.5405 Definition.

The term "organizational conflict of interest" means a situation where a contractor, normally a corporation, has interests, either due to its other activities or its relationships with other organizations, which place it in a position that may be unsatisfactory or unfavorable (a) from the Government's standpoint in being able to secure impartial, technically sound, objective assistance and advice from the contractor, or in securing the advantages of adequate competition in its procurement; or (b) from industry's standpoint in that unfair competitive advantage may accrue to the contractor in question.

§ 9-1.5406 General policy.

(a) In order to assist in deciding what, if any, steps should be applied to avoid organizational conflicts of interest, there are two paramount principles to be considered. These are: (1) Preventing conflicting roles which might bias a contractor's judgment in relation to its work for AEC, and (2) preventing unfair competitive advantage. The ultimate test should always be: Is the contractor placed in a position where his judgment may be biased, or where he has an unfair competitive advantage?

(b) Final program decisions, such as the determination of projects or programs and their scope, which are required to meet AEC missions and objectives, are of course the responsibility of Government personnel and cannot therefore be delegated to contractor personnel. Program decisions must be based on impartial, disinterested, and the best available technical and other judgments. The effective and formal power to make such decisions must remain in the hands of full-time AEC officials. Outside technical and other advice may be weighed and used selectively to assist in developing the bases on which program decisions will be made.

(c) It is difficult to identify, and to prescribe in advance a specific method for avoiding, all of the various situations which might involve potential organizational conflicts of interest. Basically, potential conflicts of interest become acute when AEC's quest for objectivity is paramount, such as for advice, evaluations, technical and analytical services and similar assistance that lay direct groundwork for program decisions on large future procurements, research and development programs, and production. The general policy in paragraph (a) of this section cannot be automatically or routinely implemented; the application of considered judgment is necessary if that policy is to be applied in an effective, workable manner. The following sections provide guides for the application of the general policy in specific situations. However, contracting and program officials should be alert to other situations which may warrant application of the general policy.

§ 9-1.5407 Guides applicable prior to selection of contractor and execution of contract.

(a) A contractor who in connection with the performance of a study contract will be given information by AEC regarding AEC's plans or programs which is not available to interested industrial firms, should not be permitted to compete with such firms for work relating to such plans or programs.

(b) Development contractors generally should not be prohibited from consideration as a supplier for a product which they develop and design. In development work it is normal to select firms which have done the most advanced work and which are the most experienced in the field. It is to be expected that these firms will develop and design around their own prior knowledge. Also, a contractor who participates in an early stage of development is not precluded from getting a contract for a later stage of development or production. As part of AEC's overall planning for the development, design and the production stages, consideration should be given to the likelihood of competitive solicitations for procuring parts of the design or product effort. The arrangement for such procurement should provide for the maximum competition consistent with satisfying AEC requirements. Where the designer and developer is permitted to compete with others for the furnishing of the final product, Field Office Managers should take appropriate steps to see that the information furnished AEC under the design and development contract is available to other potential bidders, on a timely basis.

(c) If a single contractor, other than a company which has participated in the development referred to in paragraph (b) of this section undertakes a contract which essentially is to assist the AEC or a contractor of AEC in preparation of a statement of work, or to provide material leading directly and predictably to a statement of work, to be used in the competitive procurement of a product or service, that contractor should not be allowed to supply the service, or the product or major components thereof either as a prime or subcontractor or vendor, except when it is determined and justified in accordance with established criteria that such contractor is a sole source for the required product or service. The content of a statement of work is not considered predictable if two or more contractors, unaffiliated with each other, are involved substantially in the preparation of material leading to it. Generally, feasibility studies which do not propose in detail the characteristics of a possible final product, are not work statements and a company should not be barred from bidding subsequently on the product.

(d) If a contractor agrees to prepare and furnish essentially complete specifications to be used in competitive procurement, that contractor should not be allowed to compete either as a prime or subcontractor or vendor, for a reasonable period including, at least, the initial procurement. This prohibition should not be applied to:

(1) Contractors who have furnished at AEC request specifications or data with respect to a product sold to AEC, even though the specifications or data may have been paid for separately or in the price of the product.

(2) Contractors acting as industry representatives who assist AEC in preparing, refining or coordinating specifications, if such assistance is supervised and controlled by AEC representatives.

(3) Contracts for a developmental or prototype item. However, the principle in the concluding sentence of paragraph (b) of this section should be applied.

(4) Purchases from divisions of or companies affiliated with the performing contractor, provided such purchases are supervised and controlled by AEC representatives.

(e) A contractor performing evaluation or consulting services for AEC in connection with a competitive procurement should not be allowed to evaluate or give other consulting services: (1) On a product or service which the contractor provides; (2) on the product or services of any company with which the contractor has a consulting relationship; or (3) on his own product or on similar services which he has performed for others. Such a contractor should not be allowed to give consulting services to prospective bidders on a procurement item for which he has performed or will perform evaluation services for AEC. It is recognized that under AEC management contracts for the operation of AEC facilities and certain research and development contracts, the performing contractor may solicit proposals and advise AEC concerning proposed purchases from competitors as well as from its own affiliated divisions or companies not directly engaged in the performance of the AEC management contract. In such cases the contracting officer should assure by appropriate review and supervision that the action taken is sound.

(f) A contractor's judgment may be tionships of its officers or employees with other organizations and because of organizational relationships (e.g., interlocking directorships). In selecting a contractor to develop technical specifications in connection with competitive procurement or to perform evaluation services on technical proposals, consideration should be given to present and past relationships of the contractor's organization and personnel to the companies whose proposals are to be evaluated. In order to avoid or minimize organizational conflicts of interest and to avoid assignments of work which would create unavoidable conflicts of interest, these relationships may require that an organization be eliminated from consideration for selection, or that a reasonable period of restraint, for example 1 year, be imposed on the organization or on the use of certain employees in the performance of contract work.

(g) Combinations of contracts for architect-engineering and construction services, which may result in self-inspection of construction work, tend to prevent a contractor from rendering unbiased decisions, or create difficulties in segregating costs between contracts, and should be avoided. However, it is recognized that sometimes it is advantageous under carefully circumscribed conditions for AEC to obligate a single firm to perform both architect-engineer and construction work, or for AEC to enter into a contract for architect-engineer and construction management services which may include performance of a segment of the construction work with the contractor's own forces (See AECPR § 9-1.355 which requires approval of Headquarters Director, Division of Contracts, for combined architect-engineer/construction contracts).

**§ 9-1.5408 Commercial or other use of information and data obtained under AEC cost-type contracts.**

(a) Cost-type contractors may be permitted to use, in their private activities, information and data developed or obtained in the performance of such contracts as provided in this section.

(b) The contractor shall be required to inform the Contracting Officer of all situations in which such information or data is proposed to be used. To assure that no unfair competitive advantage results to the contractor, the Contracting Officer shall be guided by the following principles in permitting the use of such information or data for private purposes:

(1) No part of the plans, specifications, cost estimates, technical information, or other data which are developed or acquired in the performance of the contract and which are required by the terms of the contract to be reported to AEC shall be used in the contractor's private activities, unless such information has been reported to AEC. Where AEC furnishes such information to the contractor for the performance of contract work, it shall not be used in the contractor's private activities, unless such information is generally available to others.

(2) Information which is reported to AEC by AEC contractors will normally be disseminated by AEC to others.

(3) Employees of management contractors operating AEC facilities may not be used to assist in the preparation of a proposal or bid for the performance of private commercial services similar or related to those being performed under the AEC contract unless such employee has been separated, with AEC approval, from performance of work under the AEC contract for such period as the Contracting Officer shall direct consistent with the purpose of this section.

(4) AEC management contractors operating AEC facilities, and performing services, as a part of their contract work, for other Government agencies or private organizations, should not be permitted to utilize information which is furnished by such customers, for their own private activities, unless it is generally available to others, or unless the customer authorizes such use.

(c) As used in this section, the term "cost-type contractor" shall include affiliated companies, parent organizations, or wholly owned subsidiaries.

**§ 9-12.5408 [Deleted]**

3. In Part 9-12—Labor, § 9-12.5408 is deleted from the Code of Federal Regulations.

(Sec. 161, Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; Sec. 205, Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486)

*Effective date.* These amendments are effective 30 days after publication in the FEDERAL REGISTER.

Dated at Germantown, Md., this 14th day of November 1967.

For the U.S. Atomic Energy Commission.

JOSEPH L. SMITH,
*Director, Division of Contracts.*

[F.R. Doc. 67-13623; Filed, Nov. 20, 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 32—HUNTING

### Noxubee National Wildlife Refuge, Miss.

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

**§ 32.32 Special regulations; big game; for individual wildlife refuge areas.**

MISSISSIPPI

NOXUBEE NATIONAL WILDLIFE REFUGE

Public hunting of white-tailed deer on the Noxubee National Wildlife Refuge, Miss., is permitted only on the areas designated by signs as open to hunting. This open area, comprising 42,000 acres, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 809 Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State regulations covering the hunting of white-tailed deer except for the special conditions indicated:

(1) The open season for hunting white-tailed deer on the refuge is from November 18 through November 28, 1967, Sundays excluded, and from December 26, through December 30, 1967, and from January 1 through January 6, 1968.

(2) Bag limits: November 18 through 28, bucks only; December 26 through December 30 and January 1 through January 6, 1968, one deer of either sex until 400 antlerless deer have been taken, after which, bucks only may be taken. Any antlerless deer killed shall be included in the bag limit on deer and not in addition thereto. A total kill quota of 800 deer has been established. If this quota is reached during the above open season, the refuge hunt will be terminated.

(3) Weapons: Any type gun may be used except 22 caliber rifles and shotguns smaller than 20 gauge. Shells with buckshot smaller than No. 1 prohibited. Long bows permitted.

(4) Dogs: The use of dogs is not permitted.

(5) Fires: Fires and the cutting of trees are not permitted.

(6) Check-out: All deer killed must be tagged as required by State Regulation and must be checked out at one of the designated refuge check stations.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 6, 1968.

W. L. TOWNS,
*Acting Regional Director, Bureau of Sport Fisheries and Wildlife.*

NOVEMBER 15, 1967.

[F.R. Doc. 67-13646; Filed, Nov. 20, 1967; 8:47 a.m.]

## PART 33—SPORT FISHING

### Upper Souris 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

UPPER SOURIS NATIONAL WILDLIFE REFUGE

Sport fishing on the Upper Souris National Wildlife Refuge, N.D., is permitted only on the areas designated by signs as open to fishing. These open areas comprise 7,000 acres and are 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 subject to the following special conditions:

(1) The refuge shall be open to the taking of all fish from January 1 to March 24. The refuge shal' than be closed to all fishing from March 25 to May 3. It shall then be open to the taking of all fish from May 4 to September 15. The refuge shall then be closed to fishing from September 16 to December 14 and open to fishing from December 15 to December 31. Shore fishing will be permitted at those roads and areas designated by the Refuge Manager for the period September 15 to December 14, 1968.

(2) The use of once frozen smelt and perch eyes will be permitted on open parts of the refuge. The use of minnows, fish or parts of fish (except perch eyes and frozen smelt), is prohibited north of the Lake Darling dam. 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 December 31, 1968.

JOHN M. DAHL,
*Refuge Manager, Upper Souris National Wildlife Refuge, Foxholm, N. Dak.*

NOVEMBER 14, 1967.

[F.R. Doc. 67-13631; Filed, Nov. 20, 1967; 8:45 a.m.]

# Proposed Rule Making

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[ 14 CFR Part 71 ]

[Airspace Docket No. 67-SW-74]

### CONTROL ZONE

#### Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to alter the Alice, Tex., control zone.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Southwest Region, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Tex. 76101. All Communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Air Traffic Division. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Tex. An informal Docket will also be available for examination at the Office of the Chief, Air Traffic Division.

The Alice, Tex., control zone is presently designated as that airspace within a 5-mile radius of the Alice International Airport (lat. 27°44'30" N., long. 98°01'40" W.); within 2 miles each side of the Alice VOR 153° radial, extending from the 5-mile radius zone to 8 miles southeast of the VOR; within 2 miles each side of the Alice VOR 270° radial, extending from the 5-mile radius zone to 8 miles west of the VOR; and within 2 miles each side of the 154° bearing from lat. 27°44'22" N., long. 98°01'49" W., extending from the 5-mile radius zone to 8 miles southeast of lat. 27°44'22" N., long. 98°01'49" W.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In § 71.171 (32 F.R. 2072) the Alice, Tex., control zone is amended to read:

ALICE, TEX.

That airspace within a 5-mile radius of the Alice International Airport (lat. 27°44'30" N., long. 98°01'40" W.); within 2 miles each side of the Alice VOR 153° (144° magnetic) radial, extending from the 5-mile radius zone to 8 miles southeast of the VOR; within 2 miles each side of the Alice VOR 270° (261° magnetic) radial, extending from the 5-mile radius zone to 8 miles west of the VOR; and within 2 miles each side of the 134° (125° magnetic) bearing from lat. 27°44'20" N., long. 98°01'46" W., extending from the 5-mile radius zone to 8 miles southeast of lat. 27°44'20" N., long. 98°01'46" W.

Alteration of the Alice control zone is necessary due to revision of an approach procedure at this location and to correct coordinates.

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

Issued in Forth Worth, Tex., on November 8, 1967.

HENRY L. NEWMAN,
*Director, Southwest Region.*

[F.R. Doc. 67-13638; Filed, Nov. 20, 1967; 8:46 a.m.]

## CIVIL AERONAUTICS BOARD

[ 14 CFR Part 288 ]

[Docket No. 19253; EDR-127]

### EXEMPTION OF AIR CARRIERS FOR MILITARY CHARTERS AND SUBSTITUTE SERVICE

#### Notice of Proposed Rule Making

NOVEMBER 16, 1967.

Notice is hereby given that the Civil Aeronautics Board is considering amendment of Part 288 of the Economic Regulations with respect to the purchase by the military of return legs of commercial charters at rates lower than the minimums prescribed in Part 288. A statement explaining the proposal is attached. The amendment is proposed under the authority of sections 204, 403, and 416 of the Federal Aviation Act of 1958, as amended (72 Stat. 743, 758, and 771, as amended; 49 U.S.C. 1324, 1373, and 1386).

Interested persons may participate in the proposed rule making through submission of twelve (12) copies of written data, views, or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. Reply comments may be filed ten (10) days after receipt of initial comments. Copies of all comments will be served on the Military Airlift Command and on the carriers listed in Appendix A as set forth below. All relevant matter in initial comments received on or before December 11, 1967, and in reply comments received on or before December 26, 1967, will be considered by the Board before taking final action. Upon receipt by the Board, copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 710 Universal Building, 1825 Connecticut Avenue NW., Washington, D.C.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
*Secretary.*

*Explanatory statement.* During the Board's last review of minimum rates for military charters, the Department of Defense (DoD) requested that Part 288 of the regulations be amended to permit DoD to purchase backhaul legs of one-way commercial charters at any tariff rate that might be lower than the minimum rates prescribed by the Board. DoD noted that § 208.101 of the regulations, which conditions the operating authority of supplemental air carriers, precludes those carriers from performing military airlift services at rates less than the Part 288 minimums. DoD expressed the opinion that this prohibition worked a hardship on both DoD and the supplemental carriers and that the effect of the regulation appeared inequitable. DoD therefore proposed that an exception to the Part 288 minimum rates be adopted in the form of the following proviso:

> And provided further that if either a scheduled or supplemental carrier performs a one-way charter flight for a nonmilitary user, the DoD may purchase by MAC airlift contract a flight of that aircraft in the opposite direction at a rate which is equal to any lower rate available in a tariff published by the carrier with the Board.

In response to the DoD proposal, we said in ER-494 (32 F.R. 7901), adopted May 25, 1967, "Since there is inherent in the proposal the possibility of undercutting the minimum rates by the filing of tariffs that could by their terms be used only by DoD, we will not adopt the proposal at this time but will treat it as a petition for rule making in order that further study may be given to its implications and the views of other interested persons."

Upon consideration of the foregoing, DoD filed a petition for rule making on July 17, 1967, seeking amendment of Part 288 to permit DoD to purchase the opposite legs of one-way flights flown as part of commercial charters at the minimum rates prescribed in Part 288 for round-trip passenger or cargo charters. DoD proposed the following proviso:

And provided further that if either a scheduled or supplemental carrier performs a one-way flight as part of a charter contract for a nonmilitary user, the DoD may purchase by MAC airlift contract a flight of that aircraft in the opposite direction at the minimum round-trip rates prescribed in this Part 288.7 for passengers or cargo.

DoD stated its belief that such an amendment would avoid the possibility of undercutting the minimum rates inherent in the previous proposal.

In our opinion, both of DoD's suggestions present dangers of undermining the minimum rates, which are prescribed on the basis of detailed cost submissions and after consideration of all related questions of policy raised by DoD and the carriers. Under the latest DoD proposal, DoD could pay the round-trip rate for one-way outbound charters whenever a carrier flew an inbound charter for a "nonmilitary user." Some of the carriers have obtained a substantial number of charters at low tariff rates on backhaul flights of outbound military charters, and the revenue from such charters is taken into consideration to reduce the one-way military charter minimum rates. Combination of the round-trip minimum rate with those low tariff rates might result in the carriers operating at a loss.

On the other hand, the use of tariff rates by DoD raises troublesome problems. As we indicated in ER-494, some carriers have undercut the minimum rates by publishing charter tariffs that are by their terms available only to the military and not to the general public, such as charters to or from military bases in the United States and foreign countries. At present, the route carriers have the authority to publish such tariffs while, as pointed out by DoD, the supplemental carriers who file such tariffs may be violating the rate condition attached to their certificates and stated in Part 208.[1]

In view of the foregoing, we wish to obtain the views of all interested persons before taking action on either of DoD's proposals. In particular, we expect the carriers and DoD to indicate the commercial charter tariffs that could be used by DoD under the tariff proposal, and we request that DoD furnish data as to the extent it would anticipate making use of commercial one-way charter rates. Although at this time we believe DoD has supplied insufficient support for adoption of its second proposed amendment, we will also consider comments with respect to that proposal.

APPENDIX A

Airlift International, Inc.
Alaska Airlines, Inc.
American Airlines, Inc.
Braniff Airways, Inc.
Capitol International Airways, Inc.
Continental Air Lines, Inc.
Delta Air Lines, Inc.
Eastern Air Lines, Inc.
The Flying Tiger Line Inc.
National Airlines, Inc.
Northwest Airlines, Inc.
Overseas National Airways, Inc.
Pan American World Airways, Inc.
Saturn Airways, Inc.
Seaboard World Airlines, Inc.
Southern Air Transport, Inc.
Standard Airways, Inc.
Trans Caribbean Airways, Inc.
Trans International Airlines Corp.
Trans World Airlines, Inc.
United Air Lines, Inc.
Universal Airlines, Inc.
World Airways, Inc.

[1] The Board presently has before it in Docket 19092 a complaint and request to cancel these tariffs.

[F.R. Doc. 67-13653; Filed, Nov. 20, 1967; 8:47 a.m.]

# FEDERAL POWER COMMISSION

## [ 18 CFR Parts 101, 104, 105, 141, 201, 204, 205 ]

[Docket No. R-334]

## UNIFORM SYSTEM OF ACCOUNTS FOR PUBLIC UTILITIES, LICENSEES AND NATURAL GAS COMPANIES (CLASSES A, B, C, AND D)

### Proposed Change in Accounting Requirements for Clearing, Grading and Damage Costs Related to Construction on Land and Rights-of-Way

NOVEMBER 14, 1967.

1. Notice is given pursuant to 5 U.S.C. 553 that the Commission is considering amendments to the Uniform System of Accounts which, in general effect, will require that the costs associated with the first clearing and grading of lands and rights-of-way, and damages resulting therefrom, be included in the accounts for the structures to which such costs are related rather than as currently provided by Electric Plant Instructions 7I and 8H and Gas Plant Instructions 7I and 8G. Instruction 7I requires that the first cost of clearing and the cost of grading the land (except when directly occasioned by the building of a structure) be included in the accounts for land rights and rights-of-way. Instructions 8H and 8G of the respective systems currently require that damages to abutting property during construction and grading and clearing costs when directly occasioned by the building of a structure be included in the accounts for structures and improvements. It will be seen from the foregoing that the change proposed, though seemingly complicated in detail, will do no more than require that the first clearing and grading costs be included in the plant accounts to which such costs are related. The instructions already require that the damages to abutting property be similarly charged.

2. The changes here proposed, while not suggested specifically by any of the companies required to comply with the Uniform System of Accounts, are prompted by questions that have been raised regarding the theory behind the present instructions and the practicality of their application. The changes would promote consistency in accounting practices. Furthermore, the Accounting Committee of the National Association of Railroad and Utility Commissioners (NARUC) issued an accounting interpretation in 1965 permitting natural gas pipeline companies to include the subject costs in the transmission mains plant account. Subsequently, the NARUC Committee voted to apply that interpretation equally to both natural gas and electric companies and agreed, also, that the system of accounts should be modified accordingly.

3. These amendments are proposed to be issued under the authority granted to the Federal Power Commission by sections 301, 304, and 309 of the Federal Power Act (49 Stat. 854, 855, 858; 16 U.S.C. 825, 825c, 825h) and sections 8, 10, and 16 of the Natural Gas Act (52 Stat. 825, 827, 830; 15 U.S.C. 717g, 717i, 717o).

4. Accordingly, it is proposed to amend Parts 101, 104, 105, 201, 204, and 205, Chapter I, Title 18 of the Code of Federal Regulations as follows:

a. In Part 101, the Uniform System of Accounts for Class A and B Public Utilities and Licensees, the Electric Plant Instructions are revised as follows: Two sentences are added to Instruction 7A; the first sentence of Instruction 7C is revised; items 3. and 8. of Instruction 7I are deleted; a sentence is added to Instruction 8A; a sentence is added to Instruction 9A; and Electric Plant Account No. 351 is deleted. As thus amended, the affected portions of Part 101 will read as follows:

#### Electric Plant Instructions

* * * * *

7. *Land and Land Rights.*

A. The accounts for land and land rights shall include the cost of land owned in fee by the utility and rights, interests, and privileges held by the utility in land owned by others, such as leaseholds, easements, water and water power rights, diversion rights, submersion rights, rights-of-way, and other like interests in land. Do not include in the accounts for land and land rights and rights-of-way costs incurred in connection with first clearing and grading of land and rights-of-way and the damage costs associated with the construction and installation of plant. Such costs shall be included in the appropriate plant accounts directly benefited.

* * * * *

C. The net profit from the sale of timber, cord wood, or other property acquired with rights-of-way or other lands shall be credited to the appropriate plant account to which related. Where land is held for a considerable period of time and timber on the land at the time of purchase increases in value, the net profit (after giving effect to the cost of the timber) from the sales of timber or its products shall be credited to account 421, Miscellaneous Nonoperating Income.

* * * * *

I. The items of cost to be included in the accounts for land and land rights are as follows:

* * * * *

3. [Revoked and reserved]

* * * * *

8. [Revoked and reserved]

* * * * *

8. *Structures and Improvements.*

A. The accounts for structures and improvements shall include the cost of all buildings and facilities to house, support, or safeguard property or persons, including all fixtures permanently attached to and made a part of buildings and which cannot be removed therefrom without cutting into the walls, ceilings, or floors, or without in some way impairing the buildings, and improvements of a permanent character on or to land. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way, and the damage costs associated with construction and installation of plant.

* * * * *

9. *Equipment.*

A. The cost of equipment chargeable to the electric plant accounts, unless otherwise indicated in the text of an equipment account, includes the net purchase price thereof, sales taxes, investigation and inspection expenses necessary to such purchase, expenses of transportation when borne by the utility, labor employed, materials and supplies consumed, and expenses incurred by the utility in unloading and placing the equipment in readiness to operate. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way and the damage costs associated with contruction and installation of plant.

* * * * *

## Electric Plant Accounts

* * * * *

3. TRANSMISSION PLANT

* * * * *

351 [Revoked and reserved]

* * * * *

b. In Part 104, the Uniform System of Accounts for Class C Public Utilities and Licensees, the Electric Plant Instructions are revised as follows: Two sentences are added to Instruction 6A; the first sentence of 6C is revised; items 3 and 8 of Instruction 6I are deleted; a sentence is added to Instruction 7A; a sentence is added to Instruction 8A; and Electric Plant Account No. 351 is deleted. As thus amended, the affected portions of Part 104 read as follows:

## Electric Plant Instructions

* * * * *

6. *Land and Land Rights.*

A. The accounts for land and land rights shall include the cost of land owned in fee by the utility and rights, interests, and privileges held by the utility in land owned by others, such as leaseholds, easements, water and water power rights, diversion rights, submersion rights, rights-of-way, and other like interests in land. Do not include in the accounts for land and land rights and rights-of-way costs incurred in connection with first clearing and grading of land and rights-of-way and the damage costs associated with the construction and installation of plant. Such costs shall be included in the appropriate plant accounts directly benefited.

* * * * *

C. The net profit from the sale of timber, cord wood, or other property acquired with rights-of-way or other lands shall be credited to the appropriate plant account to which related. Where land is held for a considerable period of time and timber on the land at the time of purchase increases in value, the net profit (after giving effect to the cost of the timber) from the sales of timber or its products shall be credited to account 421, Miscellaneous Nonoperating Income.

* * * * *

I. The items of cost to be included in the accounts for land and land rights are as follows:

* * * * *

3. [Revoked and reserved]

* * * * *

8. [Revoked and reserved]

* * * * *

7. *Structures and Improvements.*

A. The accounts for structures and improvements shall include the cost of all buildings and facilities to house, support, or safeguard property or persons, including all fixtures permanently attached to and made a part of buildings and which cannot be removed therefrom without cutting into the walls, ceilings, or floors, or without in some way impairing the buildings, and improvements of a permanent character on or to land. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way, and the damage costs associated with construction and installation of plant.

* * * * *

8. *Equipment.*

A. The cost of equipment chargeable to the electric plant accounts, unless otherwise indicated in the text of an equipment account, includes the net purchase price thereof, sales taxes, investigation and inspection expenses necessary to such purchase, expenses of transportation when borne by the utility, labor employed, materials and supplies consumed, and expenses incurred by the utility in unloading and placing the equipment in readiness to operate. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way and the damage costs associated with construction and installation of plant.

* * * * *

## Electric Plant Accounts

* * * * *

3. TRANSMISSION PLANT

* * * * *

351 [Revoked and reserved]

* * * * *

c. In Part 105, the Uniform System of Accounts for Class D Public Utilities and Licensees, the Electric Plant Instructions are revised as follows: Two sentences are added to Instruction 3A; a sentence is added to Instruction 4A; and a sentence is added to Instruction 5A. As thus amended, the affected portions of Part 105 will read as follows:

## Electric Plant Instructions

* * * * *

3. *Land and Land Rights.*

A. The accounts for land and land rights shall include the cost of land owned in fee by the utility and rights, interests, and privileges held by the utility in land owned by others, such as leaseholds, easements, water and water power rights, diversion rights, submersion rights, rights-of-way, and other like interests in land. Do not include in the accounts for land and land rights and rights-of-way costs incurred in connection with first clearing and grading of land and rights-of-way and the damage costs associated with the construction and installation of plant. Such costs shall be included in the appropriate plant accounts directly benefited.

* * * * *

4. *Structures and Improvements.*

A. The accounts for structures and improvements shall include the cost of all buildings and facilities to house, support, or safeguard property or persons, including all fixtures permanently attached to and made a part of buildings and which cannot be removed therefrom without cutting into the walls, ceilings, or floors, or without in some way impairing the buildings, and improvements of a permanent character on or to land. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way, and the damage costs associated with construction and installation of plant.

* * * * *

5. *Equipment.*

A. The cost of equipment chargeable to the electric plant accounts, unless otherwise indicated in the text of an equipment account, includes the net purchase price thereof, sales taxes, investigation and inspection expenses necessary to such purchase, expenses of transportation when borne by the utility, labor employed, materials and supplies consumed, and expenses incurred by the utility in unloading and placing the equipment in readiness to operate. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way and the damage costs associated with construction and installation of plant.

* * * * *

d. In Part 201, the Uniform System of Accounts for Class A and B Natural Gas Companies, the Gas Plant Instructions are revised as follows: Two sentences are added to Instruction 7A; the first sentence of Instruction 7C is revised; items 3. and 8. of Instruction 7I are deleted; a sentence is added to Instruction 8A; a sentence is added to Instruction 9A; and parenthetical cross-references are added to Gas Plant Accounts Nos. 325.4, 325.5, and 350.4. As thus amended, the affected portions of Part 201 will read as follows:

## Gas Plant Instructions

* * * * *

7. *Land and land rights.* A. The accounts for land and land rights shall include the cost of land owned in fee by the utility and rights, interests, and privileges held by the utility in land owned by others, such as leaseholds, easements, rights-of-way, natural gas rights, and other like interests in land. Do not include in the accounts for land and land rights and rights-of-way costs incurred in connection with first clearing and grading of land and rights-of-way and the damage costs associated with the construction and installation of plant. Such costs shall be included in the appropriate plant accounts directly benefited.

* * * * *

C. The net profit from the sale of timber, cord wood, or other property acquired with rights-of-way or other lands shall be credited to the appropriate plant account to which related. Where land is held for a considerable period of time and timber on the land at the time of purchase increases in value, the net profit (after giving effect to the cost of the timber) from the sales of timber or its products shall be credited to account 421, Miscellaneous Nonoperating Income.

* * * * *

I. The items of cost to be included in the accounts for land and land rights are as follows:

* * * * *

3. [Revoked and reserved]

* * * * *

8. [Revoked and reserved]

* * * * *

8. *Structures and improvements.* A. The accounts for structures and improvements shall include the cost of all buildings and facilities to house, support, or safeguard property or persons, including all fixtures permanently attached to and made a part of buildings and which cannot be removed therefrom without cutting into the walls, ceilings, or floors, or without in some way impairing the buildings, and improvements of a permanent character on or to land. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way, and the damage costs associated with construction and installation of plant.

* * * * *

9. *Equipment.* A. The cost of equipment chargeable to the gas plant accounts, unless otherwise indicated in the text of an equipment account, includes the net purchase price thereof, sales taxes, investigation and inspection expenses necessary to such purchase, expenses of transportation when borne by the utility, labor employed, materials and supplies consumed, and expenses incurred by the utility in unloading and placing the equipment in readiness to operate. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way and the damage costs associated with construction and installation of plant.

* * * * *

## Gas Plant Accounts

2. PRODUCTION PLANT

* * * * *

B. NATURAL GAS PRODUCTION PLANT

*B. 1 Natural Gas Production and Gathering Plant*

* * * * *

**325.4 Rights-of-way.**

This account shall include the cost of all interests in land which terminate more than 1 year after they become effective and on which are located gathering pipelines, telephone pole lines, and like property used in connection with the production of natural gas. (See gas plant instruction 7.)

**325.5 Other land and land rights.**

This account shall include the cost of land and land rights used in connection with the production of natural gas, when not properly assignable to any of the foregoing accounts. (See gas plant instruction 7.)

* * * * *

3. STORAGE PLANT

A. UNDERGROUND STORAGE PLANT

* * * * *

**350.4 Rights-of-way.**

This account shall include the cost of all interests in land which do not terminate until more than 1 year after they become effective and on which are located underground storage lines, telephone poles lines, and like property used in connection with underground gas storage operations. (See gas plant instruction 7.)

(e) In Part 204, the Uniform System of Accounts for Class C Natural Gas Companies, the Gas Plant Instructions are revised as follows: Two sentences are added to Instruction 6A; the first sentence of Instruction 6C is revised; items 3. and 8. of Instruction 6I are deleted; a sentence is added to Instruction 7A; a sentence is added to Instruction 8A; and parenthetical cross-references are added to Gas Plant Accounts Nos. 325.4, 325.5, and 350.4. As thus amended, the affected portions of Part 204 read as follows:

## Gas Plant Instructions

* * * * *

6. *Land and Land Rights.*

A. The accounts for land and land rights shall include the cost of land owned in fee by the utility and rights, interests, and privileges held by the utility in land owned by others, such as leaseholds, easements, rights-of-way, natural gas rights, and other like interests in land. Do not include in the accounts for land and land rights and rights-of-way costs incurred in connection with first clearing and grading of land and rights-of-way and the damage costs associated with the construction and installation of plant. Such costs shall be included in the appropriate plant accounts directly benefited.

* * * * *

C. The net profit from the sale of timber, cord wood, or other property acquired with rights-of-way or other lands shall be credited to the appropriate plant account to which related. Where land is held for a considerable period of time and timber on the land at the time of purchase increases in value, the net profit (after giving effect to the cost of the timber) from the sales of timber or its products shall be credited to account 421, Miscellaneous Nonoperating Income.

* * * * *

I. The items of cost to be included in the accounts for land and land rights are as follows:

* * * * *

3. [Revoked and reserved]

* * * * *

8. [Revoked and reserved]

* * * * *

7. *Structures and Improvements.*

A. The accounts for structures and improvements shall include the cost of all buildings and facilities to house, support, or safeguard property or persons, including all fixtures permanently attached to and made a part of buildings and which cannot be removed therefrom without cutting into the walls, ceilings, or floors, or without in some way impairing the buildings, and improvements of a permanent character on or to land. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way, and the damage costs associated with construction and installation of plant.

* * * * *

8. *Equipment.*

A. The cost of equipment chargeable to the gas plant accounts, unless otherwise indicated in the text of an equipment account, includes the net purchase price thereof, sales taxes, investigation and inspection expenses necessary to such purchase, expenses of transportation when borne by the utility, labor employed, materials and supplies consumed, and expenses incurred by the utility in unloading and placing the equipment in readiness to operate. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way and the damage costs associated with construction and installation of plant.

* * * * *

## Gas Plant Accounts

* * * * *

2. PRODUCTION PLANT

* * * * *

B. NATURAL GAS PRODUCTION PLANT

*B. 1 Natural Gas Production and Gathering Plant*

* * * * *

325.4 **Rights-of-way.**

This account shall include the cost of all interests in land which terminate more than 1 year after they become effective and on which are located gathering pipelines, telephone pole lines, and like property used in connection with the production of natural gas. (See gas plant instruction 6.)

325.5 **Other land and land rights.**

This account shall include the cost of land and land rights used in connection with the production of natural gas, when not properly assignable to any of the foregoing accounts. (See gas plant instruction 6.)

* * * * *

3. STORAGE PLANT

A. UNDERGROUND STORAGE PLANT

* * * * *

350.4 **Rights-of-way.**

This account shall include the cost of all interests in land which do not terminate until more than 1 year after they become effective and on which are located underground storage lines, telephone pole lines, and like property used in connection with underground gas storage operations. (See gas plant instruction 6.)

f. In Part 205, the Uniform System of Accounts for Class D Natural Gas Companies, the Gas Plant Instructions are revised as follows: Two sentences are added to Instruction 3A; a sentence is added to Instruction 4A; and a sentence is added to Instruction 5A. As thus amended, the affected portions of Part 205 will read as follows:

**Gas Plant Instructions**

* * * * *

3. *Land and Land Rights.*

A. The accounts for land and land rights shall include the cost of land owned in fee by the utility and rights, interests, and privileges held by the utility in land owned by others, such as leaseholds, easements, rights of way, natural gas rights, and other like interests in land. Do not include in the accounts for land and land rights and rights-of-way costs incurred in connection with first clearing and grading of land and rights-of-way and the damage costs associated with the construction and installation of plant. Such costs shall be included in the appropriate plant accounts directly benefited.

* * * * *

4. *Structures and Improvements.*

A. The accounts for structures and improvements shall include the cost of all buildings and facilities to house, support, or safeguard property or persons, including all fixtures permanently attached to and made a part of buildings and which cannot be removed therefrom without cutting into the walls, ceilings, or floors, or without in some way impairing the buildings, and improvements of a permanent character on or to land. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way, and the damage costs associated with construction and installation of plant.

* * * * *

5. *Equipment.*

A. The cost of equipment chargeable to the gas plant accounts, unless otherwise indicated in the text of an equipment account, includes the net purchase price thereof, sales taxes, investigation and inspection expenses necessary to such purchase, expenses of transportation when borne by the utility, labor employed, materials and supplies consumed, and expenses incurred by the utility in unloading and placing the equipment in readiness to operate. Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way and the damage costs associated with construction and installation of plant.

* * * * *

g. Although we recognize that adoption of the foregoing proposal to delete Electric Plant Account No. 351 will necessitate several technical conforming revisions to portions of Parts 101 and 104 and also in FPC Form No. 1, prescribed by § 141.1, and FPC Form No. 6, prescribed by § 141.11, we deem it unnecessary to detail those revisions here. They will, of course, be included in any order which may issue in this proceeding.

5. Any person may submit to the Federal Power Commission, Washington, D.C. 20426, not later than December 18, 1967, data, views, comments, and suggestions in writing concerning the proposal herein. An original and 14 conformed copies of any such submittals should be filed. The Commission will consider any such written submittals before acting on the amendments.

By the Commission.

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 67-13630; Filed, Nov. 20, 1967; 8:45 a.m.]

# Notices

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[A 1382]

### ARIZONA

#### Notice of Proposed Classification of Public Lands for Exchange

In F.R. Doc. 67-12633, appearing on pages 14860 and 14861 of the issue of October 26, 1967, the following changes should be made:

Under T. 7 S., R. 11 W., "sec. 7, E¼NW¼ should read sec. 7, E½NW¼,".

Under T. 7 S., R. 12 W., "sec. 21, NE¼" and "sec. 22, NW¼," are added.

RILEY E. FOREMAN,
*Acting State Director.*

NOVEMBER 13, 1967.

[F.R. Doc. 67-13632; Filed, Nov. 20, 1967; 8:45 a.m.]

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[Oregon 017967]

### OREGON

#### Order Providing for Opening of Public Lands

NOVEMBER 14, 1967.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934 (48 Stat. 1272), as amended June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315g), the following lands have been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 9 S., R. 46 E.,
Sec. 7, lot 3, E½SW¼.

The areas described aggregate 120.95 acres.

2. The lands are located in Baker County. They are semiarid in character and are not suitable for farming.

3. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands are hereby open to application, petition, location, and selection. All valid applications received at or prior to 10 a.m., December 20, 1967, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. Inquiries concerning the lands should be addressed to the Chief, Division of Lands and Minerals Program Management and Land Office, P.O. Box 2965, Portland, Oregon 97208.

VIRGIL O. SEISER,
*Chief, Branch of Lands.*

[F.R. Doc. 67-13633; Filed, Nov. 20, 1967; 8:45 a.m.]

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### SURVEY OF DISTRIBUTORS STOCKS OF CANNED FOODS

#### Notice of Determination

In conformity with Title 13, United States Code, sections 181, 224, and 225, and due notice of consideration having been published October 20, 1967 (32 F.R. 14610), I have determined that yearend data on stocks of 30 canned and bottled products, including vegetables, fruits, juices, and fish, are needed to aid the efficient performance of essential governmental functions, and have significant application to the needs of the public and industry and are not publicly available from nongovernmental or other governmental sources. This is a continuation of the survey conducted in previous years.

All respondents will be required to submit information covering their December 31, 1967, inventories of 30 canned and bottled vegetables, fruits, juices, and fish. Reports will not be required from all firms but will be limited to a scientifically selected sample of wholesalers and retail multiunit organizations handling canned foods, in order to provide yearend inventories of the specified canned food items with measurable reliability. These stocks will be measured in terms of actual cases with separate data requested for "all sizes smaller than No. 10" and for "sizes No. 10 or larger." (In addition, multiunit firms reporting separately by establishment will be requested to update the list of their establishments maintaining canned food stocks.)

Report forms will be furnished to firms covered by the survey. Additional copies of the forms are available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed that this annual survey be conducted for the purpose of collecting these data.

A. ROSS ECKLER,
*Director, Bureau of the Census.*

NOVEMBER 8, 1967.

[F.R. Doc. 67-13625; Filed, Nov. 20, 1967; 8:45 a.m.]

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### Business and Defense Services Administration

### STATE UNIVERSITY OF NEW YORK ET AL.

#### Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration, Washington, D.C. 20230, within 20 calendar days after date on which this notice of application is published in the FEDERAL REGISTER.

Regulations issued under cited Act, published in the February 4, 1967, issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C.

A copy of each comment filed with the Director of the Office of Scientific and Technical Equipment must also be Technical Equipment must also be mailed or delivered to the applicant, or its authorized agent, if any, to whose application the comment pertains; and the comment filed with the Director must certify that such copy has been mailed or delivered to the applicant.

Docket No. 68-00140-33-46500. Applicant: State University of New York, Downstate Medical Center, 450 Clarkson Avenue, Brooklyn, N.Y. 11203. Article: Ultramicrotome, Model LKB 8800A, Ultrotome III. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used to prepare ultrathin sections of cartilage, calcifying cartilage and bone induced in mouse thigh by cultured human cells for observation in an electron microscope. Equal thickness serial sections between the values of 50 Angstroms and 2 microns will be cut. Application received by Commissioner of Customs: September 18, 1967.

Docket No. 68-00142-33-46500. Applicant: The University of Mississippi, Medical Center, 2500 North State Street, Jackson, Miss. 39216. Article: Ultramicrotome, Model LKB 8800A, Ultrotome III. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used to prepare ultrathin sections of various tissue for observation in an electron microscope. Equal thickness serial sections between values of 50 Angstroms and 2 microns will be cut. Application received by Commissioner of Customs: September 18, 1967.

Docket No. 68-00139-33-46500. Applicant: Albert Einstein College of Medicine, 1300 Morris Park Avenue, Bronx, N.Y. 10461. Article: Ultramicrotome, Model LKB 8800A, Ultrotome III. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used to prepare ultrathin sections of kidney tissue for observation in an electron microscope. Various equal thickness serial sections will be cut in long series of thicknesses between the values of 50 Angstroms and 2 microns. Application received by Commissioner of Customs: September 18, 1967.

Docket No. 68-00138-33-46500. Applicant: Albert Einstein College of Medicine, 1300 Morris Park Avenue, Bronx, N.Y. 10461. Article: Ultramicrotome, Model LKB 8800A, Ultrotome III. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used to prepare ultrathin sections of kidney tissue for observation in an electron microscope. Various equal thickness serial sections will be cut in long series of thicknesses between the values of 50 Angstroms and 2 microns. Application received by Commissioner of Customs: September 18, 1967.

CHARLEY M. DENTON,
*Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.*

[F.R. Doc. 67-13626; Filed, Nov. 20, 1967; 8:45 a.m.]

# DEPARTMENT OF TRANSPORTATION

## National Transportation Safety Board

[Docket No. SA-399]

### ACCIDENT OCCURRING NEAR BLOSSBURG, PA.

#### Notice of Hearing

In the matter of investigation of accident involving aircraft of U.S. Registry N1116J, which occurred near Blossburg, Pa., June 23, 1967.

Notice is hereby given that an Accident Investigation Hearing on the above matter will be held commencing at 9 a.m. (local time) on December 12, 1967, in the Conference Room, second floor, Federal Building No. 7, 17th and H Streets NW., Washington, D.C.

Dated this 16th day of November 1967.

[SEAL] JOHN M. STUHLDREHER,
*Hearing Officer.*

[F.R. Doc. 67-13657; Filed, Nov. 20, 1967; 8:47 a.m.]

# ATOMIC ENERGY COMMISSION

[Docket Nos. 50-17, 50-310]

### PENNSYLVANIA STATE UNIVERSITY ET AL.

#### Notice of Issuance of Facility License Amendment

The Atomic Energy Commission has issued Amendment No. 3, set forth below, to Facility License No. R-72. The license authorized the Pennsylvania State University (PSU) to possess, but not to operate, the nuclear research reactor facility located at the Curtiss-Wright Nuclear Research Laboratory of the Pennsylvania State University at Quehanna, Pa. The amendment, effective as of the date of issuance, transfers said license to the Department of Forests and Waters of the Commonwealth of Pennsylvania and to the Nuclear Materials and Equipment Corp. (NUMEC).

By application dated October 4, 1967, and supplement thereto dated October 24, 1967, NUMEC applied for authority to possess, but not to operate, and the Department of Forests and Waters of the Commonwealth of Pennsylvania applied for legal title to the reactor facility located at Quehanna, Pa. PSU has notified the Commission of its consent to the transfer. There will be no changes to the facility and NUMEC has technically qualified persons, including health physicists, at the site to maintain the facility in the same conditon as by PSU. Consequently, the issuance of Amendment No. 3 does not involve safety considerations not previously evaluated. For administrative convenience the license has been assigned a new Docket No. 50-310.

The Commission has found that the transfer of the license to the Commonwealth of Pennsylvania and to NUMEC is in accordance with the provisions of the Atomic Energy Act of 1954, as amended, and has consented thereto, pursuant to the provisions of § 50.80 of 10 CFR Part 50.

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 provisions of 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 see the application for license amendment, dated October 4, 1967, and supplement dated October 24, 1967, on file at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md., this 9th day of November 1967.

For the Atomic Energy Commission.

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

[License No. R-72; Amdt. 3]

The Atomic Energy Commission ("the Commission") has found in accordance with the provisions of the regulations in Parts 2 and 50, particularly § 50.80, that:

1. The application for transfer of the license dated October 4, 1967, and the supplement thereto dated October 24, 1967, comply with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations set forth in Title 10, Chapter I, CFR;

2. Commonwealth of Pennsylvania, acting through its Department of Forests and Waters, and Nuclear Materials and Equipment Corp. (NUMEC) are qualified to be holders of the license;

3. The transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto;

4. Commonwealth of Pennsylvania is financially qualified and, through its contractual relationship with NUMEC, is technically qualified to possess title to the facility;

5. NUMEC is technically and financially qualified to possess, but not to operate, the facility and to engage in the proposed activities authorized by this license in accordance with the Commission's regulations;

6. The transfer of this license from the Pennsylvania State University to the Commonwealth of Pennsylvania and NUMEC will not be inimical to the common defense and security or to the health and safety of the public;

7. NUMEC has furnished proof of financial protection which satisfies the requirements of Commission regulations currently in effect, and will execute an indemnity agreement as required by section 170 of the Act and 10 CFR Part 140; and

8. Prior public notice of proposed issuance of this amendment is not required since possession of the facility in accordance with the license, as amended, does not involve significant hazard considerations different from those previously evaluated.

Accordingly, Facility License No. R-72, previously issued to the Pennsylvania State University is hereby transferred to the Commonwealth of Pennsylvania and NUMEC and amended in its entirety to read as follows:

1. This license applies to the light water-moderated and water-cooled swimming pool-type nuclear reactor facility (hereinafter referred to as "the facility") which is located at Quehanna, Pa., and which has heretofore been owned and operated by the Curtiss-Wright Corp. under License No. R-36, and possessed, but not operated, by the Pennsylvania State University under this license. The facility is described in the Pennsylvania State University's application dated September 29, 1960, amendment thereto dated November 2, 1960, and the joint application of the Commonwealth of Pennsylvania and NUMEC dated October 4, 1967 and supplement dated October 24, 1967 (hereinafter together referred to as "the application").

2. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:

A. Pursuant to Section 104c of the Act and Title 10, CFR, Chapter 1, Part 50, "Licensing of Production and Utilization Facilities", the Department of Forests and Waters of the Commonwealth of Pennsylvania, to possess title to the facility and NUMEC to possess, but not to operate, the facility as a utilization facility at the designated location at Quehanna, Pa., in accordance with the procedures and limitations described in the application and this license;

B. Pursuant to the Act and Title 10, CFR, Chapter I, Part 70, "Special Nuclear Material", NUMEC to receive and possess up to 5.3 kilograms of contained uranium-235, and 14.99 grams of plutonium contained in a plutonium-beryllium source, for use in connection with future operation of the facility; and

C. Pursuant to the Act and Title 10, CFR, Chapter 1, Part 30, "Licensing of Byproduct Material", the Department of Forests and Waters of the Commonwealth of Pennsylvania to possess title to, and NUMEC to possess, but not to separate, such byproduct material as was produced by previous operation of the reactor.

3. This license shall be deemed to contain and be subject to the conditions specified in Part 20, § 30.34 of Part 30, §§ 50.54 and 50.59 of Part 50 and § 70.32 of Part 70, Title 10, Chapter I, CFR, and to be subject to all applicable provisions of the Act, and to the rules and regulations and orders of the Commission, now or hereafter in effect, and to the additional conditions specified below:

A. The reactor shall not be operated without prior authorization of the Commission.

B. The fuel elements shall not be moved from their present location unless procedures for transferring these elements have been reviewed and approved by the Commission.

C. In addition to those otherwise required under this license and applicable regulations, NUMEC shall keep the following records:

1. Records showing radioactivity released or discharged into the air or water beyond the effective control of NUMEC as measured at the point of such release or discharge.

D. NUMEC shall immediately report to the Commission in writing any indication or occurrence of a possible unsafe condition relating to the possession of the reactor.

4. NUMEC shall, so long as this license shall be in force with respect to NUMEC, be responsible for assuring that the provisions of this license and Commission regulations for protection of health and safety from radiation hazards are observed with respect to the facility and materials covered by this license. NUMEC shall also be responsible for maintaining the facility in a safe condition. In the event of any expiration, modification, cancellation, or termination of the lease between the Commonwealth of Pennsylvania and NUMEC, either party may apply to the Commission for an appropriate amendment to this license to terminate this license in so far as its granted to NUMEC. Until such amendment is issued, the Commonwealth of Pennsylvania shall in no way prevent NUMEC from observing the requirements set forth in this condition. A copy of any notice of intent to terminate to modify the agreement submitted by either party to the other shall be furnished simultaneously to the Commission.

5. This license, as amended, is effective as of the date of issuance and shall expire at midnight December 12, 1972.

Date of issuance: November 9, 1967.

For the Atomic Energy Commission.

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

[F.R. Doc. 67-13624; Filed, Nov. 20, 1967; 8:45 a.m.]

# AUTOMOTIVE AGREEMENT ADJUSTMENT ASSISTANCE BOARD

[APTA No. 7-010]

## BORG-WARNER CORP.

### Certain Workers' Petition for Determination of Eligibility To Apply for Adjustment Assistance; Summary of Final Determinations and Notice of Certification

*Determinations of the Board.* Pursuant to the Automotive Products Trade Act of 1965 (Public Law 89-283; 79 Stat. 1016) the Automotive Agreement Adjustment Assistance Board determines that:

There has been no significant dislocation of workers from the radiator or clutch subassembly departments of the plant.

Dislocation of workers in the oil cooler department of the Long Manufacturing Division, Borg-Warner Corp. plant at Detroit, Mich., has occurred.

U.S. production of the automotive product concerned—oil coolers—has decreased appreciably (sec. 302(b)(2), Act), and U.S. imports from Canada of the automotive product concerned have increased appreciably (sec. 302(b)(3)(A), Act).

No factor other than the operation of the United States-Canadian Automotive Products Agreement has been the primary factor in causing the dislocation of the group of workers specified in the Board's following certification.

*Certification.* The Board hereby certifies that those workers in the oil cooler department of the Long Manufacturing Division plant, Borg-Warner Corp., Detroit, Mich., who were laid off for an indefinite period in August 1967 are eligible to apply for adjustment assistance.

*Background.* A petition for a determination of eligibility to apply for adjustment assistance under the Automotive Products Trade Act of 1965 was filed with the Automotive Agreement Adjustment Assistance Board on August 2, 1967, by the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (U.A.W.) and its Local 314 on behalf of a group of workers at the Detroit plant of the Long Manufacturing Division of Borg-Warner.

The petitioner alleged that a cutback in production of oil coolers and radiators was due to the transfer of production of such products to the plants of Long Manufacturing Division, Borg-Warner (Canada), Ltd., in Preston and Oakville, Ontario. It was further alleged that this action would affect other employees at the plant including those engaged in the production of clutches. The layoffs of 26 workers and the threatened layoff of 23 others were attributed in the petition to the Automotive Products Trade Act of 1965.

On August 2, 1967, the Automotive Assistance Committee of the Board requested the U.S. Tariff Commission to investigate and report on the facts relating to this petition (32 F.R. 11718, Aug. 12, 1967). Neither the petitioners nor any other party requested a hearing and none was held.

The Commission submitted its report on September 21, 1967 (APTA-W-17). The Commission stated that only certain sections of the report could be made public since much of the information it contains was received in confidence (32 F.R. 13545, Sept. 27, 1967). On October 6, 1967, in accordance with section 302(f)(2) of the Act, the Automotive Assistance Committee of the Board requested the Commission to furnish additional information on certain specified matters. A supplemental confidential report was submitted to the Board on October 31, 1967.

The Board, in addition, obtained advice from the Departments of the Treasury, Commerce, Labor, and the Small Business Administration under section 302(f)(1) of the Act.

*Long Manufacturing Production.* The Long Manufacturing Division's Detroit plant (Long/Detroit) produces a number of automotive parts including oil coolers, radiators, and clutch subassemblies primarily for use as original equipment. Production operations are organized largely along departmental lines corresponding to the major products.

The Long Manufacturing Division also produces oil coolers at Preston, Ontario, and radiators and clutches at Oakville, Ontario.

In model year 1964, prior to the United States-Canadian Automotive Products Agreement, oil coolers were not produced by Long in Canada. Long/Detroit supplied oil coolers for both United States and Canadian customers. In model year 1965, Long transferred certain American and Canadian accounts to its Preston, Ontario, plant. Between model years 1965 and 1967, Preston output of oil coolers increased by more than a million units. Approximately 60 percent of the increase was for export to the United States. During the same period, production of these coolers at Detroit fell by approximately 30 percent and exports to Canada from Long/Detroit practically ceased.

Oil coolers imported into the United States are dutiable at the rate of 8.5 percent ad valorem, unless they are Canadian products for use as original motor-vehicle equipment which are duty free pursuant to the United States-Canadian Automotive Products Agreement.

*Conclusions and determinations—Automotive product.* The Board concludes that the petitioners were employed in a plant of Borg-Warner Corp. manufacturing automotive products as defined by the Act: oil coolers, radiators, and clutch subassemblies for use as original equipment.

*Dislocation.* Dislocation in the case of a group of workers means actual or threatened unemployment or underemployment of a significant number or proportion of the workers of a firm or an appropriate subdivision thereof.

There was no significant dislocation in either the radiator or clutch subassembly departments. Therefore, the Board makes no further determinations with respect to these two subdivisions.

Approximately one-fifth of the workers in the oil cooler department were indefinitely laid off in August 1967 as a result of cutbacks in orders for oil coolers.

The Board determines that the oil cooler department, Long Manufacturing Division, Detroit, is an appropriate subdivision and that a significant number or proportion of the workers thereof have been dislocated (sec. 302(b)(1), Act; sec. 501.2(i)(2), Board Regulations).

*Role of the operation of the agreement.* Under section 302(c) of the Act, if there is an appreciable decrease in U.S. production and an appreciable increase in imports from Canada, or an appreciable decrease in exports to Canada, of the automotive product concerned (sec. 302(b), Act), the appropriate group of workers must be certified as eligible to apply for adjustment assistance unless the Board determines that the operation of the Agreement has not been the primary factor in causing or threatening to cause the dislocation.

The Tariff Commission obtained data covering U.S. oil cooler production and trade with Canada. In the 4-month period, February-May, 1967, U.S. production was appreciably lower than production during the corresponding months in 1964. The data on U.S. imports of oil coolers from Canada show that there have been appreciable imports in these 4 months of model year 1967 and that there were no such imports from Canada in model year 1964. During this period exports of oil coolers to Canada decreased appreciably.[1]

The Board, therefore, determines that the economic criteria in section 302(b) of the Act are met.

*Conclusions.* The Board finds that the elimination of the duty on oil coolers imported from Canada enabled Long's Preston, Ontario, plant to compete successfully in the U.S. market.

The Board, therefore, determines that no factor other than the operation of the United States-Canadian Automotive Products Agreement has been the primary factor in causing the layoffs from the oil cooler department of the Long Manufacturing Division plant at Detroit during August 1967.

(Sec. 302, Automotive Products Trade Act of 1965, 79 Stat. 1018, E.O. 11254, 30 F.R. 13569, the Automotive Agreement Adjustment Assistance Board Regs., 48 CFR Part 501; 31 F.R. 827; Board Order 1, 31 F.R. 853)

EDGAR I. EATON,
*Executive Secretary, Automotive Agreement Adjustment Assistance Board.*

NOVEMBER 10, 1967.

[F.R. Doc. 67-13634; Filed, Nov. 20, 1967; 8:46 a.m.]

[1] February-May was selected to compare the most recent representative 4-month period with the corresponding period of 1964 model year, in order to avoid the effect of a difference in the changeover periods between the model years.

# FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 17849; FCC 67M-1928]

## AMERICAN TELEVISION CO., INC.

### Order Scheduling Hearing

In re applications of American Television Co., Inc., Fort Smith, Ark., Docket No. 17849, File No. BPH-5831, for construction permit.

*It is ordered,* That Charles J. Frederick shall serve as Presiding Officer in the above-entitled proceeding; that the hearings therein shall be convened on February 1, 1968, in Fort Smith, Ark., at 10 a.m.; and that a prehearing conference shall be held on December 7, 1967, commencing at 9 a.m., in the offices of the Commission, Washington, D.C.

Issued: November 14, 1967.

Released: November 15 ,1967.

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

[F.R. Doc. 67-13658; Filed, Nov. 20, 1967; 8:47 a.m.]

[Docket No. 17834; FCC 67M-1919]

## BETTERVISION SYSTEMS, INC.

### Order Canceling Hearing

In re cease and desist order to be directed against: Bettervision Systems, Inc., Owner and Operator of a CATV System at Buckhannon, W. Va., Docket No. 17834.

Before the Hearing Examiner is a petition by the respondent in the above-entitled proceeding, filed November 7, 1967, requesting that the prehearing conference and hearing both be postponed,[1] accompanied by a copy of a November 6 letter to counsel for the intervenor, Northern West Virginia Television Broadcasting Co., confirming telephone conversation to the effect that intervenor would not object to the granting of the requested postponements provided the Bureau and the Hearing Examiner would acquiesce. The November 6 letter also recites the intention of the petitioner herein and the intervenor to confer together prior to the prehearing date for the purpose of resolving their differences. The petition states that respondent's attorney has previously scheduled commitments for the remainder of November and the first part of December but that he would be available for a prehearing conference on December 6 through 8, or on the 12th or 13th of that month. Postponement of the hearing until early January is suggested. Counsel for the Commission's Broadcast Bureau has advised the Examiner orally that he does not object to the cancellation of the presently scheduled date (December 6) for convening the hearing with the understanding that the prehearing conference will be held on December 6 at 9 a.m., and a new hearing date established at that time.

The Hearing Examiner has a previously scheduled hearing on December 4 which is likely to consume at least a week. Consequently it would be a convenience to the Examiner's own schedule to postpone the hearing in this proceeding for a few days. Inasmuch as all parties have indicated their lack of objection, the relief requested will be granted, subject to the understanding, however, that the hearing will be reset during the prehearing conference, if at all feasible, for a date within a week or two of the prehearing conference, which will be rescheduled to convene at 9 a.m. on December 6.

*It is so ordered,* And the prehearing conference presently scheduled for November 15 is hereby rescheduled and will convene at 9 a.m., December 6, 1967, at the Commission's offices, Washington, D.C.; and

*It is ordered further,* That the presently scheduled hearing date (December 6) is hereby canceled.[2]

Issued: November 14, 1967.

Released: November 15, 1967.

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

[F.R. Doc. 67-13659; Filed, Nov. 20, 1967; 8:48 a.m.]

[1] The petitioner did not comply with Rule 1.292 which prescribes the number of copies of such interlocutory pleadings to be filed. For that reason, the Examiner did not receive the documents until today.

[2] This is a cease and desist proceeding which must be expedited. The parties are enjoined to utilize the extra time herein provided to get ready for an early trial. If the respondent has defenses or extenuating matters to plead it should be prepared beforehand to submit them at an early date. On the other hand, as indicated in the Show Cause Order, it may elect to waive the hearing entirely and submit a written statement.

[Docket Nos. 17538, 17539; FCC 67M-1925]

## LAUREL CABLEVISION CO. ET AL.

### Postponement of Further Prehearing Conference

In re petitions by Laurel Cablevision Co., Somerset, Pa., Docket No. 17538, File No. CATV 100-24; Punxsutawney TV Cable Co., Inc., Punxsutawney, Pa., Docket No. 17539, File No. CATV 100-155, for authority pursuant to § 74.1107 of the rules to operate CATV systems in the Johnstown-Altoona Television Market; and in re application of New York-Penn Microwave Corp., Brockport, Pa., Docket No. 17540, File No. 7793-C1-P-66, for construction permit for new Point-to-Point Microwave Radio Stations.

Pending Commission disposition of the Petition for Reconsideration filed by Punxsutawney TV Cable Co., Inc., in this proceeding: *It is ordered,* On the Hearing Examiner's own motion, that the further prehearing conference heretofore scheduled for November 17, 1967, is postponed to November 30, 1967 at 9 a.m., in the offices of the Commission, in Washington, D.C.

Issued: November 14, 1967.

Released: November 15, 1967.

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

[F.R. Doc. 67-13660; Filed, Nov. 20, 1967; 8:48 a.m.]

[Docket No. 17474; FCC 67M-1923]

## MEL-LIN, INC. (WOBS)

### Memorandum Opinion and Order Continuing Hearing

In re application of Mel-Lin, Inc. (WOBS), Jacksonville, Fla., Docket No. 17474, File No. BP-14323, for construction permit.

On November 7, 1967, Station WRHC, Inc., respondent herein, filed a petition requesting an extension of all procedural dates heretofore established on October 24, 1967. Mel-Lin, Inc. (WOBS), filed on November 8, 1967, an opposition to the petition for continuance and a reply thereto was filed by WRHC, Inc., on November 9, 1967. In the meantime counsel for the Broadcast Bureau informally advised the Hearing Examiner that the Bureau interposed no objection to the grant of the petition for continuance.

2. The petitioner pleads that when agreeing to the procedural dates heretofore established, counsel stated on the record that it might be necessary to request an extension of time. The petitioner further pleads that its consulting engineer, after returning to Jacksonville, Fla., determined that there was not ample time for him to prepare the rebuttal exhibits in order to meet the exchange dates heretofore established. The petitioner further pleads that at the time of filing its petition for continuance on November 7, 1967, it had not received all of the applicant's engineering exhibits.

3. It is deemed appropriate and reasonable in light of the circumstances pleaded by the petitioner that the petition should be granted.

*Accordingly, it is ordered*, That the petition for continuance is granted and the date of the exchange of rebuttal exhibits shall be November 27, 1967, and the notification of witnesses shall be December 4, 1967; and

*It is further ordered*, That the hearing heretofore scheduled for November 20 be and the same is hereby rescheduled for December 11, 1967, 10 a.m., in the Commission's offices, Washington, D.C.

Issued: November 14, 1967.

Released: November 15, 1967.

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

[F.R. Doc. 67-13661; Filed, Nov. 20, 1967; 8:48 a.m.]

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[Docket Nos. 17609, 17610; FCC 67R-479]

## MINSHALL BROADCASTING CO., INC., AND UNIVERSITY CITY TELEVISION CABLE CO., INC.

### Memorandum Opinion and Order Amending and Enlarging Issues

In re applications of Minshall Broadcasting Co., Inc., Gainesville, Fla., Docket No. 17609, File No. BPCT-3879; University City Television Cable Co., Inc., Gainesville, Fla., Docket No. 17610, File No. BPCT-3939; for construction permit.

1. This proceeding involves the applications of Minshall Broadcasting Co., Inc. (Minshall), and University City Television Cable Co., Inc. (University City), each seeking an authorization to construct a new television broadcast station to operate on Channel 20, Gainesville, Fla. By Order, FCC 67-853, released August 1, 1967, the Commission designated these applications for hearing to determine whether three of University City's four principal stockholders could meet their respective $70,000 loan commitments to this applicant, and to determine, under a standard comparative issue, which of the applicants would better serve the public interest. In addition, the Commission noted that the principals of University City own CATV systems and therefore specified a condition to the effect that any grant to University City would be without prejudice to whatever action the Commission may deem appropriate as a result of the pending proceeding in Docket No. 17371.[1] Now before the Review Board is a petition to enlarge issues, filed by Minshall in August 21, 1967, requesting that the Board expand the inquiry under the financial issue, and add issues to determine whether University City failed to comply with section 1.65 of the rules, the efforts made by University to ascertain the needs and interest of the area proposed to be served and the manner in which it proposes to meet those needs and interests (Suburban issue), and whether cross-ownership of the applicant's CATV interests and the proposed television station would be contrary to the public interest.[2] The requests will be treated seriatim.

*Financial issue.* 2. Minshall seeks to expand the financial issue already specified (see par. 1, supra) to encompass a determination of whether University City's fourth principal stockholder, J. D. Cutlip, can meet his $70,000 loan commitment. In support of this request, Minshall points out that Cutlip's financial statement, dated March 31, 1967, discloses current and liquid assets of $121,500; however, Minshall contends, it also shows liabilities of $118,265, including $98,265 in notes payable, and does not delineate what portion of the notes are payable within 1 year. In addition, Minshall notes, Cutlip is also jointly and severally liable on a bank loan to the applicant for $650,000, payable in quarterly installments of $31,250. In its opposition, University City concedes that Cutlip does not have sufficient liquid assets to meet his commitment, and states that it has "no objection * * * to the financial issue being enlarged to include Mr. Cutlip." The allegations in the subject petition raise a substantial question as to Cutlip's ability to meet his commitment. In view of University City's failure to resolve this question in its responsive pleading, the Board will expand the financial inquiry as requested.

*Section 1.65 issue.* 3. To support this request, Minshall alleges that University City's application is incomplete because it fails to disclose (a) the business and financial interests of C. W. Thorniley (one of the principal stockholders), who holds ownership interests in various CATV systems; (b) that the remaining stockholders in University City each have a 10 percent interest in Waycross Cable Co. and two are officers of that company; (c) that relatives (presumably the wives) of two of University City's principals are officers and stockholders of that company; and (d) that one of the principals is the Mayor of Elkins, W. Va. Minshall also contends that University City's application contains the following inconsistencies: in one part of the application it is stated that the corporation is comprised of five stockholders holding 1,000 shares of issued stock, whereas in another part these five stockholders are represented as holding only 948 shares of stock collectively; and the corporate bylaws provide for one vice president, whereas the application lists two of the stockholders as vice presidents of the corporation.

4. In response, University City concedes that its opponent's allegations in this regard are accurate. However, University City contends, the application was prepared by its president without the benefit of legal counsel; the omissions were the result of inadvertent errors or misinterpretations of the application form; and they were not made with any intent to mislead the Commission. Moreover, University City submits, most of the information omitted was included in an amendment to its application, filed on May 2, 1967. "To further prove that [it] is not trying to conceal any information from the Commission," University City sets forth certain other past and present interests of its principals in CATV and other businesses, which were omitted from the application, but contained in a recently filed amendment. Finally, University City states that the inconsistency in stock ownership resulted from a typographical error; and that while two vice presidents were mentioned in the application, in fact one had replaced the other and, through oversight, the Commission was not notified of the change.

5. University City's representation that the omissions and inconsistencies in its application resulted from inadvertent errors and misunderstandings of the application form (and not from an intent to mislead), is supported by the fact that most of the information originally omitted from the application was contained in an amendment filed several months prior to the subject petition to enlarge; and there is no reason for suspecting the veracity of this representation. On the other hand, it is clear that University City did not submit complete and accurate information; the omissions

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[1] Inquiry Into Developing Patterns of Ownership in the CATV Industry, FCC 67-460, 7 FCC 2d 853.

[2] Also before the Board are the following related pleadings: (1) Reply to petition, filed on Sept. 18, 1967, by University City; (b) opposition of Broadcast Bureau, filed on Sept. 18, 1967; and (c) reply, filed on Sept. 28, 1967, by Minshall.

here were numerous; and, in some instances, they related to matters which could be of decisional significance in this proceeding (see par. 11, infra). Under these circumstances, we are of the opinion that, although a disqualifying issue is not appropriate, an issue inquiring into this matter and its effect on the applicant's comparative qualifications is warranted. Cf. Adirondack Television Corp., FCC 66R-507, 6 FCC 2d 156; Jones T. Sudbury, FCC 66R-374, 5 FCC 2d 158; and Ultravision Broadcasting Co., FCC 66R-108, 3 FCC 2d 66.

*Suburban issue.* 6. In support of this request, Minshall first points out that University City's four principal stockholders (owning 95 percent of the stock) are not residents of the Gainesville area; that in its application, University City (to show how it ascertained programing needs), relied on the fact that it has engaged in CATV distribution in Gainesville and that its president resides in Gainesville and has contacted various organizations in the area; that the application also reflects that University City will, if its application is granted, form a local advisory board of community leaders to assist in programing manners; and that, on April 14, 1967, the Commission requested from the applicant more specific information concerning its efforts to ascertain program needs, noting that it had failed to indicate any suggestions made by community leaders and whether those suggestions were adopted. University City's response to the Commission's letter did not, petitioner contends, set forth specific efforts; and while it did show contact with a number of community leaders who provided program suggestions, the applicant failed to amend its program proposal to accommodate most of those suggestions. In addition, Minshall alleges, University City failed to elicit suggestions regarding religious and agricultural programs, both of which it intends to broadcast; nor does there appear to be any basis for its proposed educational programs.

7. Opposing this request, University City reiterates that it gained considerable knowledge of the area through its CATV operation and that its president has had numerous contacts with community leaders in the area. Its program proposal, University City urges, is a reflection of these various contacts which were made over a long period of time. The persons contacted, University City states, were advised that a network affiliation would be obtained, and their recommendations were therefore limited to programs of local origin. Finally, University states that it solicited "broad program needs such as local news, calendar of events, etc. * * * but specific programs were not solicited as it was felt that those decisions could best be made" at a later date.

8. To show the methods used to ascertain community needs and interests, University City, in its application as originally filed, relied on its experience as a CATV distribution service in Gainesville and contacts made by its president, a resident of Gainesville, during the preceding 2 years. Four community leaders are listed as examples of these contacts. The application also sets forth, as illustrative of programs designed to meet the ascertained needs and interests, descriptions of 15 offerings covering a wide variety of various types of programs. No effort was made, however, to relate these programs to the results of the efforts made by the applicant. The April 4, 1967 Commission inquiry requested further information regarding specific efforts made and notes that although there was an indication that various community leaders were contacted, "you have failed to indicate any suggestions they made * * * and whether your programing will reflect those suggestions." In a letter filed with a May 2, 1967, amendment to its application, the president of University City states that he recontacted the persons and organizations originally contacted and elaborates on discussions held with 10 community leaders, including the nature of the suggestions made by several of those contacted. These suggestions reflect a desire for various general types of programs, i.e., news, public affairs, educational, etc., as well as certain more specific suggestions, i.e., job opportunities and situations wanted, calendar of events, etc.

9. We do not agree with petitioner's contention that the foregoing facts reveal that the program proposal was designed before any efforts were made and that subsequently obtained suggestions were not incorporated into the program proposal. On the contrary, University City has shown, based on the experience of its president and contacts made by him with community leaders, that it had an adequate basis on which to formulate its program proposal. While it appears to be true, as Minshall contends, that the illustrative programs set forth in University City's application were not initially shown to have been based on suggestions, and that its application was not amended to reflect the more particular program suggestions, University City has stated that its efforts were directed toward obtaining suggestions regarding broad program needs; these broad needs (as indicated in its amendment) are adequately reflected in the program proposal, which includes 21 hours per week of local programing; and its proposal appears to be sufficiently flexible to provide for the more specific suggestions in the future. In sum, where, as here, an applicant has elicited needs for various types of programs, and its proposal is sufficiently flexible and diversified to meet those needs, "a reasonable basis exists for concluding that the programing proposal meets the needs of the area to be served," and no further inquiry is warranted. Saul M. Miller, FCC 66-551, 4 FCC 2d 150. The request for a Suburban issue will therefore be denied.

*Cross interest issue.* 10. Minshall alleges that University City or its principals have interests in seven CATV systems serving approximately 22,000 subscribers in 17 Florida, Ohio, and West Virginia communities; and that this constitutes one of the largest combined CATV holdings in the country. The cross ownership, Minshall asserts, has far-reaching implications concerning competition, incentive to improve television signals, program origination, and pay television; and evidence should be adduced concerning the present CATV holdings of University City's principals, the potential growth of their existing interests, their plans for local program origination, and their plans for the establishment of pay television. The adduction of such evidence is both desirable and necessary, Minshall contends, for the following purposes: (a) If the Commission ultimately adopts a rule which would bar cross ownership of CATV and other communications interests, University City's application could be summarily denied on the basis of the condition already imposed; (b) if the Commission adopts a rule which makes disqualification turn on the degree of cross ownership, a disqualifying issue would be necessary to explore this matter; and (c) even if the Commission concludes that no degree of cross interest is disqualifying, the evidence adduced would be relevant under the comparative criterion of diversification of ownership of mass communications media.

11. The Review Board agrees with the Broadcast Bureau and University City that the addition of a disqualifying cross ownership issue would be inappropriate and serve no useful purpose at this time. Petitioner does not contend that the holdings of University City might violate any existing rules or policies under which this applicant could be disqualified.[3] Rather, it appears to seek information, much of which is the subject of the Commission's inquiry (see par. 1, supra), in anticipation of the possible outcome of that inquiry. In our opinion, a more orderly and expeditious procedure is to await the results of the inquiry, and, in the event that any new policy or rules may be applicable to University City, take whatever steps are then necessary to apply that policy. The condition already attached to any grant to University City is adequate to accomplish this end. Moreover, as pointed out by the Bureau, the pertinent facts concerning the CATV holdings of University City and its principals can be explored under the diversification criterion encompassed within the existing standard comparative issue. Under these circumstances, the requested issue will be denied.

*Accordingly, it is ordered*, That the petition to enlarge issues, filed on August 21, 1967, by Minshall Broadcasting Co., Inc., is granted to the extent indicated below, and denied in all other respects; and

*It is further ordered*, That Issue 1(a) specified in the designation order herein (FCC 67-853) is amended to read as follows:

[3] Compare General Electric Cablevision Corp., FCC 67-1102, released Oct. 2, 1967; and Citizens TV Protest Committee, et al. v. FCC, 348 F. 2d 56, 5 RR 2d 2015 (D.C. Cir. 1965), wherein questions of concentration of control were raised.

(a) Whether Ralph Shepler, Harry H. Harkins, C. W. Thorntley, and J. D. Cutlip have liquid and current assets (as defined in section III, paragraph 4(d), FCC Form 301) in excess of current liabilities in sufficient amounts to meet their respective commitments to loan $70,000 each to the applicant.

*It is further ordered*, That the issues in this proceeding are enlarged by the addition of the following issue:

To determine whether University City Cable Co., Inc. (or its principals), failed to provide accurate and complete information in its pending application, as required by section I, Form 301; whether it failed to keep its application up-to-date, as required by § 1.65 of the rules; and, if so, whether the failures reflect adversely on the applicant's comparative qualifications.

Adopted: November 8, 1967.

Released: November 16, 1967.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary*.

[F.R. Doc. 67-13662; Filed, Nov. 20, 1967; 8:48 a.m.]

[Docket Nos. 17609, 17610; FCC 67M-1911]

## MINSHALL BROADCASTING CO., INC., AND UNIVERSITY CITY TELEVISION CABLE CO., INC.

### Order Scheduling Further Hearing Conference

In re applications of Minshall Broadcasting Co., Inc., Gainesville, Fla., Docket No. 17609, File No. BPCT-3879; University City Television Cable Co., Inc., Gainesville, Fla., Docket No. 17610, File No. BPCT-3939; for construction permit for new television broadcast station.

Pursuant to a prehearing conference as of this date: *It is ordered*, That there will be a further hearing conference herein on January 5, 1968, 9 a.m., in the Commission's offices, Washington, D.C.

Issued: November 9, 1967.

Released: November 13, 1967.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE, *Secretary*.

[F.R. Doc. 67-13663; Filed, Nov. 20, 1967; 8:48 a.m.]

[Docket No. 16865; FCC 67M-1913]

## VIDEO SERVICE CO.

### Order Continuing Hearing

In re applications of Video Service Co., Atlanta, Ga., Docket No. 16865, File Nos. 1816/17-C1-P-66, CATV 100-101, for construction permits for new fixed (Video) radio stations at Lafayette and Waynetown, Ind. (KSQ-36 and KSQ-37).

The Chief Hearing Examiner having under consideration a petition in behalf of Danville Community Antenna System, Inc., filed November 9, 1967, requesting suspension of the procedural dates heretofore prescribed in the above-entitled proceeding;

It appearing that the petition states good cause and that all other parties to the proceeding consent to the granting thereof;

*It is ordered*, That the petition is granted, and that the dates for exchanging exhibits (Nov. 20, 1967) and for hearing (Dec. 11, 1967) in this proceeding are hereby suspended, pending the convening of a hearing conference by the presiding Examiner.

Issued: November 13, 1967.

Released: November 14, 1967.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE, *Secretary*.

[F.R. Doc. 67-13664; Filed, Nov. 20, 1967; 8:48 a.m.]

[1] Board Member Nelson not participating.

# FEDERAL MARITIME COMMISSION

[Docket No. 67-52, Supp. 1]

## ALASKA STEAMSHIP CO.

### Cancellation of FMC Port-to-Port Rates, West Coast/Alaska Trade; Order of Suspension and Expansion of Investigation

There have been filed with the Federal Maritime Commission by Alaska Steamship Co., respondent in this proceeding, publications designated Supplement No. 2 and Supplement No. 3 to FMC-F No. 144. Supplement No. 2 proposes to cancel tariff FMC-F No. 144 effective January 3, 1968, and Supplement No. 3 advances such cancellation effective date to December 11, 1967.

These tariff cancellations would cancel the ocean carrier's rates now on file with the Federal Maritime Commission (FMC) with minor exceptions[1] between Seattle, Wash., and Seward, Alaska. The cancellations refer to future application of recently filed rates with the Interstate Commerce Commission (ICC) in tariff ICC No. 99 covering movements to or from the involved ports.

All of the rates subject to the cancellation notice are presently under investigation by the FMC in proceedings titled Alaska Steamship Co.—General Increase in Rates in the Southeastern Area of Alaska, FMC Docket 66-23, and Alaska Steamship Co.—General Increase in the Peninsula & Bering Sea Areas of Alaska, FMC Docket 66-22.

The cancellation of the above tariffs now on file with the FMC may result in Alaska Steamship Co.'s providing port-to-port service between the named ports without having rates on file with the FMC, in apparent violation of section 18(a) of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act, 1933.

The proposed tariff cancellation applies to movements between Seattle, Wash. and Seward, Alaska. At the Seattle terminus of the movement, shippers deliver or receive their cargoes at a vanning station removed from the pier. This cargo is then carried from this vanning station to Alaska Steam's piers by AAA Transfer Inc., a company owned by Alaska Steam and operating as a motor carrier certificated by the ICC.

The issues raised herein require a prompt determination by the Commission and do not appear to present any issues that are not already part of the proceeding in Docket No. 67-52. Should any of the parties to this proceeding consider that there are additional facts or issues which are relevant, such facts or issues shall be specified with particularity by means of affidavits and memoranda setting forth such matters together with the statement of their relevance to this proceeding submitted on or before November 24, 1967. Should any other parties dispute these facts or issues, response by affidavits and memoranda shall be made before date of oral argument.

*Therefore, it is ordered*, That pursuant to the authority of section 22, Shipping Act, 1916, and section 3, Intercoastal Shipping Act, 1933, the investigation in this proceeding is hereby expanded to include the rates intended to be canceled by the aforementioned tariff filings to the same extent as those presently placed under investigation in this proceeding by the original order of investigation served October 20, 1967;

*It is further ordered*, That inasmuch as operating this service without a rate on file with the FMC may result in a violation of section 18(a) of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act, 1933, pursuant to section 3, Intercoastal Shipping Act, 1933, the operation of the said Supplement No. 2 and Supplement No. 3 to FMC-F No. 144 is suspended and the use thereof deferred to and including April 10, 1968, unless otherwise ordered by this Commission;

*It is further ordered*, That there shall be filed immediately with the Commission by Alaska Steamship Co. a consecutively numbered supplement to the aforesaid schedule which supplement shall bear no effective date, shall reproduce the portion of this order wherein the suspension matter is described and shall state that the aforesaid matter is suspended and may not be used until April 11, 1968, unless otherwise authorized by the Commission; and the rates, charges, and provisions which were to be removed from FMC jurisdiction by the suspended matter shall remain under FMC jurisdiction during the period of suspension, and the matter suspended may not be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise authorized by this Commission;

[1] Automobiles, motor trucks, and chassis; trailers; boats, canoes and skiffs; wood houses or buildings, set up; cans and can ends or tops; fish; fish bait; livestock; crossarms, ties, timbers; fruits and vegetables, fresh or green; powder, dynamite, high explosives and blasting caps.

*It is further ordered*, That copies of this order shall be filed with the said tariff schedules in the Bureau of Domestic Regulation of the Federal Maritime Commission;

*It is further ordered*, That (1) a copy of this order shall forthwith be served on the respondent and intervenor herein; and (2) this order be published in the FEDERAL REGISTER.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies) having an interest in this proceeding and desiring to intervene therein, should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rule 5(1) (46 CFR 502.72) with a copy to all parties to this proceeding.

By the Commission, November 15, 1967.

[SEAL] THOMAS LISI, *Secretary*.

[F.R. Doc. 67-13654; Filed, Nov. 20, 1967; 8:47 a.m.]

# FEDERAL POWER COMMISSION

[Docket No. G-4579 etc.]

## CITIES SERVICE OIL CO. ET AL.

### Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

NOVEMBER 13, 1967.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service heretofore authorized as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 4, 1967.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on all applications in which no protest or petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a protest or petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given: *Provided, however*, that pursuant to 18 CFR 2.56, as amended, all permanent certificates of public convenience and necessity granting applications, filed after April 15, 1965, without further notice, will contain a condition precluding any filing of an increased rate at a price in excess of that designated for the particular area of production for the period prescribed therein unless at the time of filing such certificate application, or within the time fixed herein for the filing of protests or petitions to intervene the Applicant indicates in writing that it is unwilling to accept such a condition. In the event Applicant is unwilling to accept such condition the application will be set for formal hearing.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

GORDON M. GRANT, *Secretary*.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein, nor should it be so construed.

| Docket No. and date filed | Applicant | Purchaser, field, and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| G-4579, C 10-30-67 | Cities Service Oil Co., Cities Service Bldg., Bartlesville, Okla. 74003. | Northern Natural Gas Co., acreage in Texas County, Okla. | 12.0 | 14.65 |
| CI60-487, C 10-31-67 | Murphy Oil Corp. et al., 200 Jefferson Ave., El Dorado, Ark. 71730. | Arkansas Louisiana Gas Co., Calhoun Field, Ouachita Parish, La. | 18.75 | 15.025 |
| CI61-691, C 10-30-67 | Sinclair Oil & Gas Co. (Operator) et al., Post Office Box 521, Tulsa, Okla. 74102. | Michigan Wisconsin Pipe Line Co., Northeast Cedardale Field, Major County, Okla. | [1,2] 17.9 | 14.65 |
| CI63-877, C 10-30-67 | Sarkeys, Inc. (Operator) et al., 4400 North Lincoln Blvd., Oklahoma City, Okla. 73105. | Natural Gas Pipeline Co. of America, acreage in Dewey County, Okla. | [3] 15.0 | 14.65 |
| CI-63-951, C-11-1-67 | W. H. Hildreth et al., c/o H. F. Young, partner, Box 494, Spencer, W. Va. 25276. | Consolidated Gas Supply Corp., Spencer District, Roane County, W. Va. | 25.0 | 15.325 |
| CI64-1506, C 10-26-67 | Pan American Petroleum Corp. (Operator) et al., Post Office Box 591, Tulsa, Okla. 74102. | El Paso Natural Gas Co., Gallup Field, San Juan County, N. Mex. | [4] 13.0 | 15.025 |
| CI65-741, C 11-1-67 | Roy G. Hildreth, Sr. et al., d.b.a., Roy G. Hildreth, Jr. et al., Route No. 3, Spencer, W. Va. 25276. | Consolidated Gas Supply Corp., Spencer District, Roane County, W. Va. | 25.0 | 15.325 |
| CI65-1145, C 10-27-67 | Pan American Petroleum Corp. | Arkansas Louisiana Gas Co., Various Fields, Latimer and Haskell Counties, Okla. | [3] 15.0 | 14.65 |
| CI66-73, C 11-1-67 | Joseph H. Hager et al., d.b.a., Little Swiss Oil & Gas Co., Post Office Box 1834, Huntington, W. Va. 25719. | Consolidated Gas Supply Corp., Collins Settlement District, Lewis County, W. Va. | [5] 27.0 | 15.325 |
| CI66-533, C 10-27-67 | B. E. Talkington et al., c/o Troy A. Brady, Jr., Post Office Box 371, Buckhannon, W. Va. 26201. | Equitable Gas Co., Meade District, Upshur County, W. Va. | 25.0 | 15.325 |
| CI67-224, C 10-23-67 | Midwest Oil Corp., 1700 Broadway, Denver, Colo. 80202. | Panhandle Eastern Pipe Line Co., South Peek Field, Ellis County, Okla. | [3] 17.0 | 14.65 |
| CI67-954, A 2-1-67 | Perry R. Bass (Operator) et al., [7] 1210 Fort Worth National Bank Bldg., Fort Worth, Tex. 76102. | Transwestern Pipeline Co., Hamon-Ellenburger Field, Reeves County, Tex. | 16.5 | 14.65 |
| CI67-994, A 2-3-67 | Sun Oil Co.[7] (Southwest Division), 1608 Walnut St., Philadelphia, Pa. 19103. | do | 16.5 | 14.65 |
| CI67-1445, A 4-10-67 | Victor Oil & Gas Co., Post Office Box 315, Rogersville, Pa. 15359. | The Manufacturers Light & Heat Co., Richhill Township, Greene County, Pa. | 22.5 | 15.325 |
| CI68-588, A 10-26-67 | Mosey Johnson, Garrett, Ky. 41630. | United Fuel Gas Co., acreage in Knott County, Ky. | 23.0 | 15.325 |
| CI68-589 (G-10686), F 10-26-67 | Jerome P. McHugh and Vincent E. Shryack (successors to Northwest Production Corp.), 930 Petroleum Club Bldg., Denver, Colo. 80202. | El Paso Natural Gas Co., San Juan Basin, Rio Arriba County, N. Mex. | [6] 14.05775 | 15.025 |
| CI68-590, A 10-26-67 | Frank A. Morrison, 1216 Vaughn Plaza Bldg., Corpus Christi, Tex. 78401. | Banquete Gas Co., a division of Crestmont Oil & Gas Co., Odem Field, San Patricio County, Tex. | [8] 12.0 | 14.65 |
| CI68-591, A 10-26-67 | E. C. Ware et al. (Jesse M. Cordle Lease) c/o John T. Diederich, Attorney at Law, 500 Price Bldg., Ashland, Ky. 41101. | Kentucky-West Virginia Gas Co., acreage in Lawrence County, Ky. | 17.0 | 15.225 |
| CI68-592, B 10-27-67 | Killam & Hurd (Operator) et al., Post Office Box 499, Laredo, Tex. 78040. | South Texas Natural Gas Gathering Co., West Mirando City Field, Webb County, Tex. | Depleted | |
| CI68-593, A 10-27-67 | Cities Service Oil Co. | Panhandle Eastern Pipe Line Co., acreage in Morton County, Kans. | 16.0 | 14.65 |
| CI68-594, B 10-30-67 | Humble Oil & Refining Co., Post Office Box 2180, Houston, Tex. 77001. | Mississippi River Transmission Corp., Dubach Field, Lincoln Parish, La. | (10) | -------- |
| CI68-595, A 10-27-67 | Mobil Oil Corp., Post Office Box 2444, Houston, Tex. 77001. | Cities Service Gas Co., Northwest Quinlan Field, Woodward County, Okla. | [9] 17.0 | 14.65 |
| CI68-596, A 10-30-67 | Charles R. Walbert and Mackellar Oil Co., c/o Ferrill H. Rogers, attorney, 1415 Liberty Bank Bldg., Oklahoma City, Okla. 73102. | Lone Star Gas Co., Thirteen Field, McClain County, Okla. | 15.0 | 14.65 |

Filing code:
A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

See footnotes at end of table.

| Docket No. and date filed | Applicant | Purchaser, field, and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| CI68-597 F 10-18-67 | Harry W. Brennan, Jr. (successor to International Helium, Inc.), 508 Petroleum Bldg., Longview, Tex. 75601. | Lone Star Gas Co., North Henderson Area, Rusk County, Tex. | 16.56 | 14.65 |
| CI68-598 F 10-18-67 | do | Arkansas Louisiana Gas Co., Carthage Field, Panola County, Tex. | [11] 11.3940 | 14.65 |
| CI68-599 F 10-23-67 | Phil W. Phillips (successor to Gas Futures, Ltd. (1958), et al.), Perryton, Tex. 79070. | Michigan Wisconsin Pipe Line Co., Laverne Area, Harper County, Okla. | 17.0 | 14.65 |
| CI68-601 (G-11832) F 10-20-67 | Carl M. Archer (successor to Pan American Petroleum Corp.), Box 488, Spearman, Tex. 79081. | Northern Natural Gas Co., Hansford (Upper Morrow) Field, Hansford County, Tex. | [12] 17.0 | 14.65 |
| CI68-602 (G-16139) F 10-20-67 | Carl M. Archer (successor to Gulf Oil Corp.). | Transwestern Pipeline Co., Hansford (Upper Morrow) Field, Hansford County, Tex. | 17.0 | 14.65 |
| CI68-603 (CS66-121) F 10-23-67 | MAPCO Production Co. (successor to Neleh Gas & Oil Corp.), 801 Oil Center Bldg., Tulsa, Okla. 74119. | Northern Natural Gas Co., Various Fields, Crane, Pecos and Crockett Counties, Tex. | 14.5 | 14.65 |
| CI68-604 (G-16139) F 10-26-67 | Yucca Petroleum Co. (successor to Gulf Oil Corp.), c/o Jerry F. Lyons, attorney, Post Office Box 550, Amarillo, Tex. 79105. | Transwestern Pipeline Co., Southeast Share (Upper Morrow) Field, Ochiltree County, Tex. | 17.0 | 14.65 |
| CI68-605 A 10-30-67 | Southwestern Natural Gas, Inc., Suite 1109, National Bank of Commerce Bldg., San Antonio, Tex. 78205. | West Lake Natural Gasoline Co. & Sinclair Oil & Gas Co., Nena Lucia (Strawn Reef) Field, Nolan County, Tex. | 12.0 | 14.65 |
| CI68-606 A 10-30-67 | H. L. Hawkins & H. L. Hawkins, Jr., c/o Ollie D. Brown, Jr., attorney, Suite 2703, 225 Baronne St., New Orleans, La. 70112. | Trunkline Gas Co., Lawson Field, Acadia Parish, La. | 20.5 | 15.025 |
| CI68-607 A 10-30-67 | General American Oil Co., of Texas (Operator), Meadows Bldg., Dallas, Tex. 75206. | do | 20.5 | 15.025 |
| CI68-608 A 10-31-67 | Mobil Oil Corp | Michigan Wisconsin Pipe Line Co., Northwest Quinlan Field, Woodward County, Okla. | [13] 17.5 | 14.65 |
| CI68-609 A 11-1-67 | Pan American Petroleum Corp. | Oklahoma Natural Gas Gathering Co.,[14] Ringwood Field, Major County, Okla. | 12.0 | 14.65 |
| CI68-610 A 11-1-67 | do | Texas Eastern Transmission Corp., Riggan Field Area, Willacy County, Tex. | 16.0 | 14.65 |

[1] Rate in effect subject to refund in Docket No. RI67-316.
[2] Subject to upward and downward B.t.u. adjustment.
[3] Plus tax adjustment.
[4] Applicant will receive payment for gasoline content and for additional liquid products if recovered on a sliding scale percentage of the value of the liquids.
[5] Subject to deduction for compression and/or treating costs should Buyer compress or treat gas.
[6] Includes 2 cents per Mcf gathering and transportation charge.
[7] By letter filed Sept. 26, 1967, Applicant agreed to accept permanent certificate containing conditions similar to those imposed by Opinion No. 468, as modified by Opinion No. 468-A.
[8] Rate in effect subject to refund in Docket No. RI64-398.
[9] Subject to 1.5 cents deduction for compression should Buyer compress gas.
[10] The last producing well ceased to produce; in addition all leases covered by subject contract have expired by their own terms.
[11] Includes 0.1440 cent per Mcf tax reimbursement.
[12] Includes 1 cent per Mcf for liquids.
[13] Includes 0.5 cent per Mcf upward B.t.u. adjustment. Subject to upward and downward B.t.u. adjustment.
[14] National Fuels Corp. purchases liquids extracted from Applicant's gas at the Ringwood Plant.

[F.R. Doc. 67-13575; Filed, Nov. 20, 1967; 8:45 a.m.]

[Project 120]

## SOUTHERN CALIFORNIA EDISON CO.

### Notice of Application for Amendment of License for Constructed Project

NOVEMBER 14, 1967.

Public notice is hereby given that application for amendment of license has been filed under the Federal Power Act (16 U.S.C. 791a–825r) by Southern California Edison Co. (correspondence to: John R. Bury, Attorney, Southern California Edison Co., Post Office Box 351, Los Angeles, Calif. 90053) for constructed Projected No. 120, located on the San Joaquin River in the vicinity of Los Angeles, Fresno, and Modera Counties, Calif., and affecting lands within the Cold Springs Indian Rancheria and other lands of the United States.

The application asks the Commission (1) to redesignate in the license a portion of the NE¼SW¼ and NW¼SE¼ sec. 14, T. 11 S., R. 24 E., M.D.B. & M. within the project boundary as occupying lands of the Cold Springs Indian Rancheria rather than as presently designated in the license as occupying public lands of the United States only, and (2) to redetermine the annual land charges to show the occupancy by the project of Indian lands as well as public lands of the United States.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is January 3, 1968. The application is on file with the Commission for public inspection.

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 67-13628; Filed, Nov. 20, 1967; 8:45 a.m.]

[Docket No. RP67-8]

## TRANSWESTERN PIPELINE CO.

### Order Accepting Revised Tariff Sheets for Filing, Waiving Notice Requirements, Approving Stipulation and Agreement and Requiring Refunds

NOVEMBER 14, 1967.

On August 28, 1967, Transwestern tendered for filing revised tariff sheets, to become effective May 1, 1967, and a "Stipulation and Agreement". The proposed tariff revisions reflect a reduction of Transwestern's jurisdictional rate for sales to California by 0.25 cent per Mcf which will reduce the annual jurisdictional revenues attributable to these sales by $584,000, based on deliveries of 640,000 Mcf per day.[1]

Transwestern's stipulation and agreement contains provisions whereby the company proposes to (1) adopt the principles set forth in Opinion No. 417, Alabama-Tennessee Natural Gas Co.,[2] relating to the flow-through of the benefits derived from taking tax deductions based on the use of liberalized depreciation, and (2) undertake specific rate reduction and refund obligations, as set forth more fully below.

In Opinion No. 500,[3] we granted to Transwestern Pipeline Co. (Transwestern) a certificate of public convenience and necessity and required the company to effect certain rate reductions in connection therewith. We also noted in that opinion that further proceedings would be initiated regarding the applicability of the Alabama-Tennessee principles to Transwestern.

Accordingly, on August 30, 1966, we issued an order in this docket directing Transwestern to show cause why its rates should not be reduced to that level resulting from the flow-through of the actual liberalized depreciation tax reductions in 1965 and the reduction of rate base by the accumulated reserve balance in Account 282 ("Accumulated Deferred Income Taxes—Liberalized Depreciation") as of December 31, 1965.

Transwestern filed a study, based on the year 1965 and another based on the year 1966, adjusted for the 640,000 Mcf per day delivery to California, in answer to this order. Thereafter, a series of conferences were held among the parties (Commission staff, Pacific Lighting Service and Supply Co., San Diego Gas and Electric Co., and the staff of the Public Utilities Commission of the State of California). Upon the completion of

[1] This reduction is in addition to the reduction made by Transwestern effective May 1, 1967, from 41.8 cents per Mcf to 32 cents per Mcf pursuant to Commission order in Docket Nos. CP63-204 et al. (Opinion No. 500).

[2] 31 FPC 208 (1964), aff'd., 359 F. 2d 318 (5th Cr. 1966), cert. denied, 385 U.S. 847 (1966).

[3] Transwestern Pipeline Co. et al., Docket Nos. CP63-204 et al., issued July 26, 1966.

these discussions, Transwestern submitted the instant proposals to comply with our show cause order. In addition to the immediate rate reductions described above, totaling $584,000, Transwestern's stipulation and agreement sets forth terms which may be summarized in principal part as follows:

(i) *Liberalized depreciation (Article II)*. As of May 1, 1967, Transwestern shall discontinue the use of deferred tax accounting for liberalized depreciation and shall adopt "flow-through" accounting. In this connection, Transwestern has submitted a plan for disposition of the balance in Account 282 in accordance with Opinion No. 417 under which it will be permitted to amortize the balance in Account 282 as of December 31, 1966 ($13,865,000) over a period of 13⅓ years by crediting Account 411 ("Income Taxes Deferred in Prior Years—Credit") and debiting Account 282. In any rate or certificate proceeding involving Transwestern, its rate base shall be reduced by the then average balance in Account 282. Transwestern reserves the right to take advantage of any changes which may occur with respect to the principles set forth in the Alabama-Tennessee and Midwestern[4] cases, whether through legislation, court decision, change in Commission policy or otherwise.

(ii) *Contingent refunds—suppliers' rates (Article III)*. Transwestern shall flow through the jurisdictional portions of any refunds it receives attributable to gas purchases prior to May 1, 1967, for which Transwestern presently has no obligation to pass on to its jurisdictional customers. Transwestern shall flow through the jurisdictional portions of any refunds it receives attributable to gas purchased on or after May 1, 1967, which result from reductions in gas supplier rates below the levels in effect on April 30, 1967. This provision shall not apply to refunds resulting from increases in gas suppliers' rates becoming effective on or after May 1, 1967, nor shall it apply to refunds resulting for costs of gas from sources of supply connected to Transwestern's system on or after May 1, 1967, unless such refunds relate to increases or new gas supplies utilized to offset reductions in rates pursuant to the contingent rate reduction provisions set forth below. The disposition of those refunds which Transwestern has no express obligation to flow-through, however, shall be governed by the applicability of such principle as may be finally established in the proceeding now before the Commission in Docket No. RP66-12.

(iii) *Contingent rate reductions—suppliers' rates (Article IV)*. Transwestern agrees that if, during the period commencing May 1, 1967, and ending on the first date on which a rate increase filed by Transwestern becomes effective, a reduction is made in any supplier's rate in effect on April 30, 1967, Transwestern shall file appropriate changes in its CDQ-1 and CDQ-2 rate schedules to reflect the effect of the jurisdictional portion of the reduction. Such reductions may be offset to the extent of any increase in the cost of gas supplied to Transwestern which may become effective on or after May 1, 1967.

(iv) *Rate reduction filings (Article V)*. The revised tariff sheets tendered for filing with Transwestern's stipulation and agreement shall be filed and made effective May 1, 1967, upon the issuance by the Commission of an order approving the stipulation and agreement. Any amounts collected for Transwestern's jurisdictional customers after May 1, 1967, in excess of the reduced rates set forth in the revised tariff sheets will be refunded without interest 30 days after the issuance of said order.

After due notice of the proposed settlement, no comments or objections were received by the Commission. Our review of the documents and data submitted in support of the proposed stipulation and agreement, including the cost of service data utilized for such purposes, indicates that Transwestern has fully complied with the requirements of the show cause order proceeding in Docket No. RP67-8. The proposed settlement is proper and in the public interest.

The Commission finds:

(1) The settlement of this proceeding on the basis of the stipulation and agreement filed by Transwestern on August 28, 1967, is proper and in the public interest and should be approved and made effective subject to the terms and conditions hereinafter ordered.

(2) Good cause exists for waiving the requirements of Part 154 of the Commission's regulations under the Natural Gas Act in order that the revised tariff sheets to be filed by Transwestern in accordance with its stipulation and agreement may become effective as of May 1, 1967, as hereinafter provided.

The Commission orders:

(A) The provisions of Part 154 of the Commission's regulations under the Natural Gas Act are hereby waived subject to the terms and conditions of this order and the revised tariff sheets tendered for filing with the above-mentioned stipulation and agreement are accepted for filing to become effective as of May 1, 1967.

(B) The stipulation and agreement filed by Transwestern on August 28, 1967 (incorporated herein by reference and made a part of this order) is approved and made effective, subject to the terms and conditions of this order.

(C) Transwestern shall comply fully with each of the obligations it has assumed in the stipulation and agreement approved in paragraph (B) above.

(D) Within 30 days after the effective date of this order, Transwestern shall refund to its jurisdictional customers any amounts collected from said customers on and after May 1, 1967, in excess of the amounts which it would have collected had the revised tariffs accepted in paragraph (A) above been in effect at all times from and after May 1, 1967. Such refunds shall be made without interest, in accordance with the terms of Article V of Transwestern's stipulation and agreement.

(E) Within 15 days after making the refunds prescribed in paragraph (D) above, Transwestern shall report to the Commission, in writing and under oath, the amount of the refund made to each of its customers, and shall serve a copy of such report upon each of the customers receiving a refund. Concurrently, Transwestern shall file with the Commission releases from its customers showing receipt of the appropriate amounts.

(F) Within 15 days after any date upon which Transwestern makes further refund payments (accompanied by reports to recipient customers and to the Commission) pursuant to Article III of its stipulation and agreement, Transwestern shall file with the Commission copies of releases, signed by those customers to whom it has made such payments, acknowledging receipt of the amount refunded.

(G) In the event Transwestern does not file a reduction or reductions in its CDQ-1 and CDQ-2 rates on any of the four dates specified in section 5 of Article IV of its stipulation and agreement approved herein, it shall submit a report to the Commission, within 15 days after each of the specified dates, setting forth the dollar amount of reductions in purchased gas cost (computed in accordance with the terms of said Article IV) which, but for the fact that the unit reduction determined does not equal or exceed one tenth of 1 cent per Mcf, would have been reflected in a reduction of its CDQ-1 and CDQ-2 rates.

(H) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission, and is without prejudice to any claims which may be made by the Commission, by the respondent, by the Commission staff, or by any other party affected by this order, in any proceeding now pending or hereafter instituted by or against Transwestern or any other persons or parties affected by this order.

By the Commission.

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

[F.R. Doc. 67-13629; Filed, Nov. 20, 1967; 8:45 a.m.]

[4] Midwestern Gas Transmission Co. et al., Docket Nos. RP61-19 et al., July 15, 1966 (Opinion No. 487).

# INTERNATIONAL JOINT COMMISSION—UNITED STATES AND CANADA

## NIAGARA RIVER AREA WATER POLLUTION

### Public Notice

Notice is hereby given that the International Joint Commission will convene a public International Meeting on January 16, 1968, at 9 a.m., in the Council Chambers, City Hall, Niagara Falls, N.Y., to inquire into the adequacy and effectiveness of the United States and Canadian abatement programs referred to in the Summary Report on Pollution of the Niagara River. This report was prepared for the Commission by its Lakes Erie-Ontario Advisory Board and was released on October 24, 1967.

At the meeting, the Commission will invite water pollution control agencies and enforcement authorities in both countries to describe the abatement programs they have underway and the timetables they foresee for achievement of the established water quality objectives in the Niagara River. The Commission will also receive written statements from others who may wish to submit them, and will entertain requests for time for oral presentation of these statements. Such requests, together with twelve (12) copies of the written statement, should be submitted to either of the Commission's Secretaries no later than January 3, 1968, so that time can be allotted and persons notified. If possible, an additional thirty (30) copies of the written statements should be brought to the meeting and deposited with the Secretaries.

Statements should be addressed to the adequacy and effectiveness of the pollution control measures and programs referred to in the Summary Report and any additional measures that might be taken to:

(1) Assure the successful implementation of those programs;

(2) Accelerate or improve the corrective measures contemplated; and

(3) Minimize the extent of pollution in the interim period before the corrective measures take full effect.

Copies of the Summary Report on Pollution of the Niagara River may be obtained free of charge from the Secretaries of the Commission at either of the addresses noted below.

W. A. BULLARD,
*Secretary, U.S. Section, International Joint Commission, Washington, D.C. 20440, Stop 86.*

D. G. CHANCE,
*Secretary, Canadian Section, International Joint Commission, 151 Slater Street, Suite 850, Ottawa, Ontario, Canada.*

NOVEMBER 15, 1967.

[F.R. Doc. 67-13647; Filed, Nov. 20, 1967; 8:47 a.m.]

# SECURITIES AND EXCHANGE COMMISSION

[70-4554]

## CENTRAL INDIANA GAS CO., INC., AND AMERICAN NATURAL GAS CO.

### Notice of Proposed Acquisition of Assets and Assumption of Liabilities

NOVEMBER 15, 1967.

Notice is hereby given that American Natural Gas Co. ("American Natural"), 30 Rockefeller Plaza, Suite 4950, New York, N.Y. 10020, a registered holding company, and its gas utility subsidiary company, Central Indiana Gas Co., Inc. ("Central Indiana"), have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a), 7, 9, 10, 12(f), and 12(g) thereof and Rule 43 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

American Natural and Central Indiana have entered into an agreement and plan of reorganization with Greenfield Gas Co., Inc. ("Greenfield"), a nonassociate Indiana corporation, under which Greenfield is to convey substantially all of its assets to Central Indiana. In consideration therefor, American Natural will issue and deliver to Greenfield 34,375 shares of American Natural $10 par value common stock. Central Indiana, in turn, will issue and deliver 1,075 shares of its common stock, $100 par value, to American Natural and will assume all of Greenfield's liabilities. Greenfield is to liquidate and dissolve and upon such liquidation will distribute the American Natural common stock to its stockholders.

Greenfield is a public-utility company which distributes natural gas in Greenfield and certain other communities located principally in Hancock County, Ind., adjacent to and immediately south of the service area of Central Indiana. It is stated that by combining such activities as customer billing and accounting, engineering and design, sales, dispatching, maintenance, operations, and certain administrative functions, operation of the Greenfield properties by Central Indiana can be accomplished more efficiently and at less cost than would be possible by Greenfield alone. It is further stated that by combining Greenfield's gas purchases with those of Central Indiana annual savings of approximately $70,000 in purchased gas costs can be made. It is also asserted that Greenfield requires the assistance of a larger system with greater resources of capital, personnel, and equipment to meet the expanding needs of its service area.

Greenfield's operating revenues for the 12 months ended June 30, 1967, amounted to $1,031,687; gross income was $66,391; and net income was $29,771. As of June 30, 1967, liabilities to be assumed by Central Indiana included $651,000 of first mortgage bonds and $168,757 of current liabilities. Reserves for deferred Federal income taxes and investment credit, in the amount of $127,602, will also be taken over and recorded on the books of Central Indiana. As of the above date, gross utility plant of Greenfield was recorded at $1,918,656, with related reserves for depreciation of $395,679.

American Natural will record its additional investment in the common stock of Central Indiana at the underlying book value of the net assets transferred to Central Indiana and will record in its Capital Stock account the par value of its stock issued ($343,750), and the excess over the par value ($506,672) will be credited to the Other Paid-In Capital account. Greenfield's assets and liabilities will be transferred to Central Indiana in the same amounts as carried on the books of Greenfield, since for accounting purposes the transactions are to represent a pooling of interests. The 1,075 shares of Central Indiana's common stock, $100 par value, to be issued to American Natural will have an aggregate par value of $107,500 which is equal to Greenfield's Common Stock account. Greenfield's earned surplus, amounting to $742,922, will be recorded as additional earned surplus on the books of Central Indiana.

The application-declaration states that the Public Service Commission of Indiana has jurisdiction over the acquisition and operation of the properties and assets of Greenfield and the issuance of securities by Central Indiana and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. The order of said State commission, when entered, is to be filed by amendment. Fees and expenses related to the proposed transactions are also to be supplied by amendment.

Notice is further given that any interested person may, not later than December 14, 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 the filing 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 with the request. At any time after said date, the 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. 67-13636; Filed, Nov. 20, 1967; 8:46 a.m.]

# TARIFF COMMISSION

[APTA-W-20]

## WORKERS' PETITION FOR DETERMINATION OF ELIGIBILITY TO APPLY FOR ADJUSTMENT ASSISTANCE

### Notice of Investigation

Upon receipt on November 14, 1967, of a request therefor from the Automotive Agreement Adjustment Assistance Board, the Tariff Commission instituted an investigation pursuant to section 302(e), Automotive Products Trade Act of 1965, with respect to a petition filed with the Board by Local 14 of the United Glass and Ceramic Workers of North America, on behalf of a group of workers at the Pittsburgh Plate Glass Co., Works No. 4, Ford City, Pa., which manufactures tempered glass components for automobiles. The petition alleges that dislocation of a group of workers has occurred, and that the operation of the United States-Canadian Automotive Agreement has been the primary factor in causing such dislocation. The Commission is conducting the investigation to provide a factual record on the basis of which the Board may make the determinations required by section 302 of the Act.

No hearing has been scheduled. A hearing will be held on request of any party showing a proper interest in the subject matter of the investigation, provided the request is filed with the Secretary of the Tariff Commission within 10 days after this notice is published in the FEDERAL REGISTER.

The petition filed in this case is available for inspection at the office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 at the Customhouse.

Issued: November 16, 1967.

By order of the Commission.

[SEAL] DONN N. BENT, *Secretary.*

[F.R. Doc. 67-13655; Filed, Nov. 20, 1967; 8:47 a.m.]

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[APTA-W-21]

## WORKERS' PETITION FOR DETERMINATION OF ELIGIBILITY TO APPLY FOR ADJUSTMENT ASSISTANCE

### Notice of Investigation

Upon receipt on November 14, 1967, of a request therefor from the Automotive Agreement Adjustment Assistance Board, the Tariff Commission instituted an investigation pursuant to section 302(e), Automotive Products Trade Act of 1965, with respect to a petition filed with the Board by Local 12 of the United Glass and Ceramic Workers of North America, on behalf of a group of workers at the Pittsburgh Plate Glass Co., Works No. 1, Creighton, Pa., which manufactures laminated glass components for automobiles. The petition alleges that dislocation of a group of workers has occurred, and that the operation of the United States-Canadian Automotive Agreement has been the primary factor in causing such dislocation. The Commission is conducting the investigation to provide a factual record on the basis of which the Board may make the determinations required by section 302 of the Act.

No hearing has been scheduled. A hearing will be held on request of any party showing a proper interest in the subject matter of the investigation, provided the request is filed with the Secretary of the Tariff Commission within 10 days after this notice is published in the FEDERAL REGISTER.

The petition filed in this case is available for inspection at the office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 at the Customhouse.

Issued: November 16, 1967.

By order of the Commission.

[SEAL] DONN N. BENT, *Secretary.*

[F.R. Doc. 67-13656; Filed, Nov. 20, 1967; 8:47 a.m.]

# INTERSTATE COMMERCE COMMISSION

[Notice 495]

## MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 16, 1967.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC 67 (49 CFR Part 340), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protest must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 52579 (Sub-No. 93 TA), filed November 13, 1967. Applicant: GILBERT CARRIER CORP., 1 Gilbert Drive, Secaucus, N.J. 07094. Applicant's representative: Aaron Hoffman (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel*, loose, on hangers, and *materials and supplies used in the manufacture thereof*, between Knoxville, Tenn., and points in the New York, N.Y., commercial zone, as defined by the Commission, for 150 days. NOTE: Applicant states it intends to interline with other carriers at points in the New York, N.Y., commercial zone. Supporting shipper: Terry-Ann, 1350 Broadway, New York, N.Y. 10018. Send protests to: District Supervisor, Walter J. Grossmann, Interstate Commerce Commission, Bureau of Operations, 1060 Broad Street, Room 363, Newark, N.J. 07102.

No. MC 113784 (Sub-No. 27 TA, filed November 13, 1967. Applicant: CANAL CARTAGE LIMITED, Post Office Box 368, Station C, Hamilton, Ontario, Canada. Applicant's representative: William J. Hirsch, 43 Niagara Street, Buffalo, N.Y. 14202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Urea*, in bulk, in pneumatic tank trailers, from ports of entry on the international boundary line between the United States and Canada on the St. Lawrence River, to points in Delaware, New Jersey, New York, and Pennsylvania, for 150 days. Supporting shipper: H. J. Baker & Bro. Inc., 733 Third Avenue, New York, N.Y. 10017. Send protests to: George M. Parker, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 121 Ellicott Street, Room 518, Buffalo, N.Y. 14203.

No. MC 120800 (Sub-No. 8 TA), filed November 13, 1967. Applicant: CAPITOL TRUCK LINE, INC., 2500 North Alameda Street, Compton, Calif. 90222. Applicant's representative: Warren N. Grossman, 825 City National Bank Building, 606 South Olive Street, Los Angeles, Calif. 90014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid methane*, in bulk, from San Diego and Ontario, Calif., to West Palm Beach, Fla., for 150 days. Supporting shipper: Pratt & Whitney Aircraft, Division of United Aircraft Corp., Florida Research and Development Center, West Palm Beach, Fla. Send protests to: John E. Nance, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Federal Building, Room 7708, 300 North Los Angeles Street, Los Angeles, Calif. 90012.

No. MC 126822 (Sub-No. 20 TA) (Correction), filed October 25, 1967, published FEDERAL REGISTER November 4, 1967, corrected and republished as corrected, this issue. Applicant: PASSAIC GRAIN AND WHOLESALE COMPANY, INC., Post Office Box 23, Passaic, Mo. 64777. Applicant's representative: Warren H. Sapp, 450 Professional Building, Kansas City, Mo. 64106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hides and pelts*, processed and partially processed; from Joplin, Mo., points in the Kansas City, Mo.-Kans., commercial zone, and Springfield, Mo.; to Wilmington, Del.; Berwick, Dover-Foxcroft, Hartland, South Paris, and Saco, Maine; Danversport, Peabody, Salem, and Woburn, Mass.; Dover, Lebanon, Manchester, Merrimack, Nashua, and Pennacook, N.H.; and Gloversville, N.Y.; for 150 days. Supporting shipper: Bert Lyon & Co., 100 West 12th Street, Kansas City, Mo. 64101; H. Elkan and Co., Chicago, Ill. NOTE: The purpose of this republication is (1) to show the destinations points of Lebanon, Manchester, Merrimack, Nashua, and Pennacook as being located in *New Hampshire* in lieu of New Jersey as published in previous publication and (2) to include an additional shipper which was inadvertently omitted. Send protests to: H. J. Simmons, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 110 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 127418 (Sub-No. 2 TA), filed November 13, 1967. Applicant: TROP-ARTIC REFRIGERATED SERIVCE, INC., 1410 Brown Bridge Road, Gainesville, Ga. 30501. Applicant's representative: Virgil H. Smith, Suite 431, Title Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cotton knit fabric*, in tubular form, in rolls, in temperature controlled equipment, from the plantsite of E-Z Mills, Inc., Cartersville, Ga., to Flagstaff, Ariz., for 180 days. Supporting shipper: E-Z Mills, Inc., Cartersville, Ga. Send protests to: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 309, 1252 West Peachtree Street NW., Atlanta, Ga. 30309.

No. MC 127705 (Sub-No. 13 TA), filed November 13, 1967. Applicant: KREVDA BROS. EXPRESS, INC., Post Office Box 68, Gas City, Ind. 46933. Applicant's representative: Donald W. Smith, Suite 511, Fidelity Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass and plastic containers*, from Dunkirk, Ind., to points in Maryland, New York, New Jersey, Pennsylvania, Ohio, for 180 days. Supporting shipper: Armstrong Cork Co., Lancaster, Pa. 17604. Send protests to: District Supervisor, J. H. Gray, Bureau of Operations, Interstate Commerce Commission, 308 Federal Building, Fort Wayne, Ind. 46802.

No. MC 127834 (Sub-No. 14 TA), filed November 13, 1967. Applicant: CHEROKEE HAULING & RIGGING, INC., 540-42 Merritt Avenue, Nashville, Tenn. 37203. Applicant's representative: M. Bryan Stanley (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum*, in coils, sheets, or plate, from the plantsites of the International Anodizing Corp. and the Production Steel Co., Inc., located at Nashville, Tenn., to Galesburg, Ill., and Shelbina, Mo., for 180 days. Supporting shipper: International Anodizing Corp., 1417 Poplar Lane, Nashville, Tenn. Send protests to: J. E. Gamble, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 706 U.S. Courthouse, Nashville, Tenn.

No. MC 129429 (Sub-No. 1 TA), filed November 13, 1967. Applicant: CHARLES J. GREGORY, 805 Rochards, Box 392, Gillette, Wyo. 82716. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand and Gravel*, from points in Campbell, Crook, and Johnson Counties, Wyo., and Butte County, S. Dak., to Powder River and Carter Counties, Mont., for 180 days. Supporting shipper: McGee and McCue Ready Mix Concrete, 601 Douglas Highway, Gillette, Wyo. 82716. Send protests to: Interstate Commerce Commission, Bureau of Operations, District Supervisor, Paul A. Naughton, D&S Building, 255 North Center, Casper, Wyo. 82601.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary*.

[F.R. Doc. 67-13650; Filed, Nov. 20, 1967; 8:47 a.m.]

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# FEDERAL REGISTER

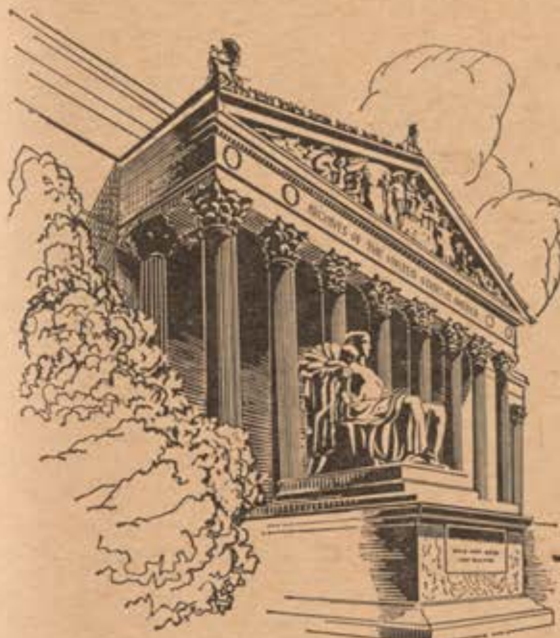
VOLUME 32 • NUMBER 225

Tuesday, November 21, 1967 • Washington, D.C.

PART II

Department of Agriculture

Consumer and Marketing Service



## Financial Assistance for Distribution of Federally Donated Commodities

# Title 7—AGRICULTURE

## Chapter II—Consumer and Marketing Service (Consumer Food Programs), Department of Agriculture

### SUBCHAPTER B—GENERAL REGULATIONS AND POLICIES—COMMODITY DISTRIBUTION

## PART 251—FINANCIAL ASSISTANCE FOR DISTRIBUTION OF FEDERALLY DONATED COMMODITIES

Sec.
251.1 General purpose and scope.
251.2 Definitions.
251.3 Administration.
251.4 Eligible participants.
251.5 Agreements.
251.6 Program Plan.
251.7 Submission of Program Plans.
251.8 Payments.
251.9 Records and audits.
251.10 Miscellaneous provisions.

AUTHORITY: The provisions of this Part 251 issued under sec. 32, 49 Stat. 774; sec. 301, 80 Stat. 379; 5 U.S.C. 301, 7 U.S.C. 612c.

### § 251.1 General purpose and scope.

This part contains the regulations prescribing the terms and conditions of a program under which the Department offers financial assistance to States, counties, and other political subdivisions to enable them to effect distribution of food commodities donated by the Department pursuant to the provisions of Part 250 of this chapter for use by needy persons in households. A limited amount of the funds appropriated under section 32 of Public Law 320, 74th Congress, is available for the purpose of this part. Within the limitation of available funds, financial assistance will be given on the basis of economic need in the State and local area.

### § 251.2 Definitions.

For the purpose of this part:

(a) The terms used in this part that are defined in Part 250 of this chapter shall have the meanings ascribed to them therein.

(b) "C&MS" means the Consumer and Marketing Service of the Department.

(c) "Distribution expenses" means expenses incurred in the certification of eligible recipients and the distribution of commodities to needy persons in households under Part 250 of this chapter, and directly related expenses, including expenses of educational assistance for maximum utilization of commodities by recipients but not including State administrative expenses.

(d) "Program" means the program of financial assistance set forth in this part.

(e) "State agency" means the agency of a State which administers or participates directly in the Program within the State.

(f) "Unit" means a county, or a political subdivision, or any combination of two or more counties or political subdivisions.

### § 251.3 Administration.

(a) *C&MS*. Within the Department, C&MS shall act on behalf of the Department in the administration of the Program.

(b) *State agency*. Within the States, responsibility for the administration of the Program in participating Units or for participation in the Program as a recipient of financial assistance shall, whenever practicable, be in the State distributing agency which has entered into an agreement under Part 250 of this chapter. If it is not practicable for the State distributing agency to accept such responsibility, the agency administering federally aided public assistance programs in the State shall have such responsibility. If no such agency of a State accepts responsibility for the administration of the Program in Units, C&MS shall be responsible for administering the Program in Units within the State.

### § 251.4 Eligible participants.

(a) Those Units which are designated by C&MS, or selected by the State agency and approved by C&MS, as requiring monetary assistance in meeting distribution expenses shall be eligible to participate in the Program upon the terms and conditions set forth in this part.

(b) State agencies approved by C&MS shall also be eligible to participate in the Program, upon the terms and conditions set forth in this part, as recipients of financial assistance in (1) meeting State administrative expenses if such expenses were formerly financed by the Office of Economic Opportunity to enable a State to conduct a food distribution program for needy persons in households under Part 250 of this chapter; (2) meeting distribution expenses within local areas where Units do not distribute commodities to needy persons in households under Part 250 of this chapter; and (3) meeting expenses of local distribution functions which are performed by the State for participating Units for reasons of economy or effectiveness.

### § 251.5 Agreements.

(a) *With the Department*. The Department shall enter into a written agreement with each State agency covering its responsibility for the administration of the Program in participating Units or its responsibility for participation in the Program as a recipient of financial assistance, or both. No agreement for participation of a State agency in the Program will be executed until a Program Plan, when required by C&MS, has been approved. The Department shall also enter into written agreement with each Unit whose Program Plan has been approved by C&MS where C&MS administers the Program. The agreements entered into under this paragraph shall incorporate by reference or otherwise the provisions set forth in this part, and shall include such other provisions as may be required by law or may be determined to be appropriate for the conduct of the Program within the State. When requested by C&MS, State agencies and Units shall present evidence of their authority to enter into such agreements.

(b) *Between State agencies and Units*. Each State agency shall enter into written agreements with Units whose Program Plans it has approved. Such agreements shall contain such terms and conditions as will insure that (1) the funds provided by C&MS are used in accordance with this part, (2) Units account to the State agency for all funds paid to them, (3) Units return any unobligated funds upon termination of participation in the Program, and (4) participation in the Program may be terminated immediately for failure to comply with provisions of the Program or on 30 days written notice by either party to the agreement. Such agreements shall contain such additional terms and conditions as required by the State agency's agreement with the Department and may contain such terms and conditions, not inconsistent with this part, as the State agency deems desirable to carry out the Program.

(c) *Term of agreements*. Agreements entered into under this part shall not extend financial assistance beyond the Federal fiscal year in which executed but the Department may renew agreements for each fiscal year thereafter by giving notice in writing. Provisions for termination upon written notice shall be included in the agreements.

(d) *State agencies and Units now under agreement*. Notwithstanding any other provision of this part, State agencies and Units, which prior to the effective date of this part have executed an Agreement for Financing Distribution of Donated Commodities during the Federal fiscal year 1968, may continue to operate under such Agreement until it is expressly terminated according to the terms thereof or until the end of the Federal fiscal year 1968, whichever is earlier. Such State agencies and Units shall be eligible to enter into new agreements under this part upon the termination of the existing agreements without obtaining further designation or approval under section 251.4.

### § 251.6 Program Plan.

Each Unit, and each State agency desiring financial assistance under this part shall formulate and set forth on Form CFP 109 a Program Plan consisting of three parts:

(a) Part 1: General information of a nature which will enable C&MS to evaluate applicant's eligibilty for participation, including a statement of applicant's need for financial assistance and a justification of the level of assistance requested from C&MS.

(b) Part 2: A plan of operation setting forth the procedures and methods to be used in certifying households as in need of food assistance and in making distribution of commodities to them, and including the requirements set forth in paragraph 250.6(e) of Part 250 of this chapter which are relevant to the Program under this part.

(c) Part 3: A budget showing the items of expense and the amount of expenses to be incurred, the contribution to be made by the State agency or the Unit, or both, or from any source within the State, in cash or in kind, to the proposed budget, and the maximum amount of expenditures in connection therewith for which C&MS is requested to make payment.

§ 251.7 **Submission of Program Plans.**

(a) *By State agency.* Each eligible State agency desiring financial assistance shall submit its proposed Program Plan to C&MS for approval. A State agency's Program Plan may be amended or a new Program Plan adopted with the written approval of C&MS. A Program Plan shall be amended or a new Program Plan adopted at the direction of C&MS.

(b) *By Units.* Each eligible Unit shall submit to the State agency, or to C&MS where C&MS administers the Program, its proposed Program Plan. The State agency shall submit the Unit Program Plans approved by it to C&MS for approval. A Unit Program Plan may be amended or a new plan adopted with the written approval of C&MS where C&MS administers the Program, or with the written approval of both the State agency and C&MS. A Unit Program Plan shall be amended or a new Program Plan adopted at the direction of C&MS.

§ 251.8 **Payments.**

(a) *Maximum obligation.* The maximum amount which C&MS shall be obligated to pay to any State or Unit is the smaller of (1) its approved budgeted expenses or (2) the expenses actually incurred by it in connection with approved budgeted items.

(b) *To State agencies.* For use in each Federal fiscal quarter year, C&MS shall advance funds to each State agency, for its use and for payment to participating Units, in an amount equal to the sum of the approved monthly expenses to be incurred by the State agency and Units during such quarter year, as set forth in the respective approved budgets. If the amount so advanced to the State agency by C&MS for any quarterly period exceeds the expenses actually incurred in connection with approved budgeted items for such period, the amount to be advanced by C&MS to the State agency for a subsequent quarterly period shall be reduced by the amount of such excess.

(c) *To Units.* State agencies, and C&MS where C&MS administers the Program, shall, on a monthly basis, (1) pay to each participating Unit an amount equal to the distribution expenses actually incurred by it in connection with approved budgeted items, or (2) advance funds to each participating Unit in an amount equal to its approved budgeted monthly distribution expenses, if need for an advance is shown in the Program Plan. If the amount advanced by C&MS or by the State agency to a participating Unit for any month exceeds the expenses actually incurred in connection with the approved budgeted items, the amount to be advanced by C&MS or by the State agency to the participating Unit for a subsequent month shall be reduced by the amount of such excess.

(d) *Unused funds.* State agencies shall require each Unit to return to them for transmittal to C&MS any Federal funds paid to such Unit under the Program which are unobligated upon termination of the Program in the Unit. State agencies, and Units where C&MS administers the Program, shall return to C&MS any Federal funds paid to them under the Program which are unobligated at the termination of the Program in the State or Unit. Such return shall be made as soon as practicable but in any event no later than 30 days following demand made by C&MS. State agencies, and Units where C&MS administers the Program, shall also pay C&MS any interest paid or credited on Federal funds paid to them under the Program.

§ 251.9 **Records and audits.**

State agencies and Units shall (a) maintain, and retain for 3 years from the close of the Federal fiscal year to which they pertain, complete and accurate records of all amounts received from C&MS and of all amounts disbursed under the Program, and (b) permit representatives of the Department and of the General Accounting Office of the United States to inspect, audit, and copy such records at any reasonable time. Each participating Unit shall furnish to the State agency, or to C&MS where C&MS administers the Program, on Form CFP 110, a certified record of the monthly expenses incurred by such Unit under its approved Program Plan. Each State agency shall submit to C&MS, on a quarterly basis, on a form approved by C&MS, a certified record of all disbursements made under the Program and of the balance of funds on hand, and unobligated, at the end of each quarter.

§ 251.10 **Miscellaneous provisions.**

(a) *Defaults.* Any State agency or any Unit may be disqualified from future participation in the Program if it fails to comply with the provisions of this part and of its agreement with the Department or the State agency. If any part of the money received by a State agency or by a Unit where C&MS administers the Program, by any improper or negligent action is diminished, lost, misapplied, or diverted from the Program by the State agency or by the Unit, repayment shall be made to C&MS promptly upon demand. If any part of the money received by a Unit where a State agency administers the Program, by any improper or negligent action is diminished, lost, misapplied or diverted from the Program by the Unit, the State agency shall promptly take action to obtain restitution and shall pay to C&MS all money recovered. Until the money is repaid, no subsequent payment under the Program shall be made to the State agency or the Unit. The State agency or the Unit shall have full opportunity to submit evidence, explanation, or information concerning instances of diversion of funds before a final determination is made in such cases. Disqualification from participation or repayment of a claim does not preclude the possibility of other action being taken through other means available where necessary, including prosecution for fraud under applicable Federal statutes. No provision of this part shall be construed as making the State agency liable in any respect for any default of any Unit if there exists no fault or negligence on the part of the State agency.

(b) *Amendments.* Any and all provisions of this part may be withdrawn or amended at any time by the Department, but no withdrawal or amendment shall be made without 30 days' prior written notice to State agencies, or to Units where C&MS administers the Program.

NOTE: The reporting and/or recordkeeping requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

*Effective date.* This part shall be effective on publication in the FEDERAL REGISTER.

Dated: November 15, 1967.

RODNEY E. LEONARD,
*Deputy Assistant Secretary.*

[F.R. Doc. 67-13600; Filed, Nov. 20, 1967; 8:45 a.m.]

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PART III

Department of Agriculture

Consumer and Marketing Service

## Milk in Northeastern Ohio, and Greater Youngstown-Warren and Greater Wheeling Marketing Areas

Recommended Decision

# DEPARTMENT OF AGRICULTURE

## Consumer and Marketing Service

## [ 7 CFR Parts 1008, 1036, 1048 ]

[Docket Nos. AO 179-A28, AO 325-A8, AO 268-A12]

## MILK IN NORTHEASTERN OHIO, GREATER YOUNGSTOWN-WARREN AND GREATER WHEELING MARKETING AREAS

### Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the Northeastern Ohio, Greater Youngstown-Warren, and Greater Wheeling marketing areas.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 20th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quintuplicate. 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 agreements and to the orders as amended, were formulated, was conducted at Cleveland, Ohio, on March 14-16, 1967, at Pittsburgh, Pa., on March 20-23, 29, 30, and 31 and April 3-7, 19, and 20, 1967, and at Erie, Pa., on March 28, 1967, pursuant to notice thereof which was issued February 17, 1967 (32 F.R. 3156).

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

1. Whether the handling of milk produced for sale in the proposed merged and expanded marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether the marketing areas of the present Northeastern Ohio, Greater Youngstown-Warren, and Greater Wheeling orders and other specified territory in Ohio and Pennsylvania should be included under one order; and

3. If an order is issued for one milk marketing area in the manner proposed, what its provisions should be with respect to:

(a) Milk to be priced and pooled;

(b) Classification;

(c) Class prices, butterfat differentials, and location differentials;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

1. *Character of commerce.* The handling of milk in the proposed merged and expanded marketing area is in the current of interstate commerce and directly burdens, obstructs, and affects interstate commerce in milk and milk products.

The marketing area specified in the proposed order, hereinafter referred to as the "Eastern Ohio-Western Pennsylvania marketing area", includes contiguous territory in 20 Ohio counties, 14 Pennsylvania counties and four West Virginia counties. The principal cities in this marketing area are Cleveland, Akron, Canton, and Youngstown in Ohio, Pittsburgh and Erie in Pennsylvania, and Wheeling, W. Va. The specific territory in the proposed marketing area is set forth in the marketing area discussion.

Handlers in the proposed area receive milk from dairy farms located in several States. Of the 14.4 million pounds of producer milk received by Wheeling order handlers in May 1967, 75 percent was delivered by Ohio producers, 19 percent by West Virginia producers, and 6 percent by producers in Pennsylvania. (Official notice is taken of the "Market Administrator's Report" for the Wheeling market for July 1967.) In December 1966, 46 percent of the 20.1 million pounds of producer milk under the Youngstown-Warren order came from Ohio farms, 52 percent from Pennsylvania farms, and 2 percent from New York farms. In the Northeastern Ohio area in December 1966, Ohio producers supplied 81 percent of the total producer milk supply of 139.7 million pounds. In addition, 13 percent of the total came from Indiana producers, 4 percent from Pennsylvania producers, and 2 percent from Michigan producers.

In 1966, 20 percent of the 1,108 million pounds of bulk milk received by Pittsburgh area fluid milk dealers came from outside Pennsylvania. Receipts in the Erie area from out-of-State sources in 1965 were 7.5 percent of the 186 million pounds of bulk milk received by fluid milk dealers in that area. At least four Ohio plants are regular sources of milk for Western Pennsylvania dealers.

Packaged milk also moves in interstate commerce within the proposed marketing area. Such movements include sales in Pennsylvania and West Virginia by Ohio handlers and in Ohio by Pennsylvania and West Virginia dealers.

Manufactured milk products likewise are involved in interstate commerce in the proposed area. Representative of this is the distribution throughout Western Pennsylvania of cottage cheese and sour cream from an Ohio plant specializing in the manufacture of these products.

2. *Need for merger and expansion of the marketing areas.* Marketing conditions in the Ohio, Pennsylvania, and West Virginia territory under consideration justify the issuance of a single merged order regulating the handling of milk in this territory.

The marketing area of the proposed order should include all the territory in the presently designated marketing areas of the Northeastern Ohio, Youngstown-Warren, and Wheeling orders and certain other territory in Ohio and Pennsylvania. The additional areas in Ohio are Carroll, Geauga, and Tuscarawas Counties and those parts of Ashtabula, Columbiana, Mahoning, and Portage Counties not now included in any Federal order marketing area. In Pennsylvania, the territory to be included is that in Areas 2 and 7 as defined by the Pennsylvania Milk Control Commission (PMCC). These two Pennsylvania areas encompass Allegheny, Armstrong, Beaver, Butler, Crawford, Erie, Fayette, Greene, Lawrence, Mercer, Venango, and Washington Counties; in Clarion County, the townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby; and all of Westmoreland County except the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward and the townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair.

The merger of the three orders and extension of Federal regulation into certain Western Pennsylvania areas was proposed by four cooperative associations. One cooperative is a principal producer group in the Pittsburgh area, represents a majority of the producers under the Youngstown-Warren and Wheeling orders, and also markets the milk of producer-members under the Northeastern Ohio order. Another major cooperative sells 41 percent of its member milk to Youngstown-Warren handlers, 26 percent to Pittsburgh area handlers, 26 percent to Erie area handlers, and 7 percent to Northeastern Ohio handlers. Another of the producer groups represents nearly half of the producers whose milk is pooled under the Northeastern Ohio order. The fourth proponent cooperative also has a number of members delivering milk to Northeastern Ohio order plants.

On the basis of the cooperatives' proposal, other cooperatives and handlers made various proposals to include in the marketing area of a single order certain additional territory in Ohio and Pennsylvania. Collectively, all proposals under consideration would encompass, in addition to the marketing area proposed herein, the remainder of Westmoreland County, Pa., and in Ohio those parts of Medina and Wayne Counties not now included in any marketing area. It was proposed also that the PMCC Areas 2 and 7 be regulated under a separate order.

*Regulation of Western Pennsylvania.* The market uncertainty facing Pennsylvania dairy farmers who supply milk to distributors in Western Pennsylvania is largely the result of marketing conditions that can be remedied best by the application of Federal order regulation to the area.

The Western Pennsylvania area under consideration includes all or parts of 14 counties that are nearest the bordering States of Ohio and West Virginia. Of this area, Erie County and Venango Township and the boroughs of Cambridge Springs and Venango in Crawford County make up Area 7 under the PMCC regulations. Area 2 consists of the remainder of the Western Pennsylvania territory. In 1960, the population of Western Pennsylvania was 3,435,000, with nearly half of the people being in the Pittsburgh metropolitan area. This may be compared with the population of 4,140,000 for the remainder of the marketing area proposed herein.

About 140 fluid milk dealers were operating in Western Pennsylvania during the 1965–66 licensing year. Of these, 114 were Area 2 dealers and 26 were in Area 7. In addition, there were 76 dealers in the two areas whose sources of supply are primarily their own production. About 1,108 million pounds of milk were handled by Area 2 fluid milk dealers in 1966 and over 186 million pounds by Area 7 dealers in 1965 (Area 7 data for 1966 are not available in the record). Approximately 3,600 dairy farmers were delivering milk in 1966 to Area 2 plants. Area 7 dealers received milk from about 630 dairymen in 1965.

The PMCC regulations for Areas 2 and 7 prescribed minimum prices that Pennsylvania handlers must pay for milk received from producers at Pennsylvania plants. The PMCC does not, however, regulate the price of milk received from sources outside the State. The inability of the State to price milk involved in interstate commerce provides an incentive for Western Pennsylvania handlers to secure milk supplies from out-of-State sources at prices that are lower than those required to be paid for milk received from Pennsylvania producers.

In 1965, 125.4 million pounds of milk were so obtained by Area 2 handlers at an average of 49 cents per hundredweight less than the PMCC's minimum prices. Of this amount, 31.6 million pounds were obtained from receiving stations at prices averaging 63 cents per hundredweight under PMCC prices. As indicated previously, 20 percent of the 1,108 million pounds of milk received by Pittsburgh area fluid milk dealers in 1966 came from outside Pennsylvania. Receipts in the Erie area from out-of-State sources in 1965 were 7.5 percent of the 186 million pounds of milk received by Area 7 fluid milk dealers.

The imported supplies cited above do not include movements of packaged milk into Western Pennsylvania from out-of-State plants. Such sales, to which PMCC prices do not apply, are becoming an increasingly significant factor in the market.

Not only do Western Pennsylvania handlers have an incentive to seek outside supplies but their procurement of such supplies is facilitated because they are desirable outlets for unregulated out-of-State plants and their producers. Milk otherwise destined for manufacturing use can be sold for Class I purposes at prices above the manufacturing milk price but below the PMCC's Class I price. As a practical matter, such prices need to be only high enough to provide these out-of-State producers with total returns that are comparable with those obtainable from alternative outlets. Witnesses testified that Class I milk is purchased by Pennsylvania handlers from Ohio producers at approximately the Ohio Federal order blend prices.

Because of the geographical location of Western Pennsylvania handlers, milk supplies in other States are reasonably accessible to such handlers. Additionally, improvements in roads and transportation equipment have facilitated the acquisition of such supplies. At least four Ohio plants (receiving stations and supply plants) located at Andover, Dorset, Newcomerstown, and Beloit are regular sources of milk for Western Pennsylvania handlers.

The lack of effective price control on interstate milk movements has caused both producers and handlers to take various actions that have tended to create a condition of uncertainty and instability in the market. Handlers have exploited this situation by obtaining milk from out-of-State sources at less than PMCC prices applicable to Pennsylvania produced milk. Faced with the actual or potential loss of Class I outlets to cheaper out-of-State supplies, Pennsylvania cooperatives have supplied Pennsylvania handlers with Ohio produced milk at prices below those established by the PMCC for milk produced in Pennsylvania. Also, cooperatives have avoided PMCC producer price regulations by shipping Pennsylvania produced milk into Ohio and then back to Pennsylvania handlers. In an attempt to gain a more secure market, some Western Pennsylvania producers have shifted from Pennsylvania based plants to various Ohio Federal order plants.

During recent years, the PMCC established Class I prices which witnesses described as unrealisticly high relative to the prices existing in the nearby Ohio markets. In 1964, for example, the PMCC Class I price for Area 2 averaged $1.11, and in one month was as much as $1.57, above the average Class I price in the Northeastern Ohio market. During that time, Western Pennsylvania producers faced intense competition from Ohio milk and resorted to rebates to Western Pennsylvania dealers to hold their Class I outlets. Price decreases in April and August 1964 lowered the Area 2 price by a total of 77 cents per hundredweight, thereby relieving some of the competitive pressure. While rebates are reportedly nonexistent today, there is no assurance under an inadequate classified pricing system that the pressures for lower prices will not again be manifested in this or some other disruptive manner.

Under the State's regulatory program, producers supplying Western Pennsylvania handlers have limited assurance that the returns for their milk will be commensurate with its full economic value. The PMCC orders for Areas 2 and 7 provide for a lower Class I price to be applicable to milk sold by a handler outside his area. In 1966, these prices ranged from 10 to 20 cents per hundredweight below the stated Class I prices in the Pittsburgh and Erie areas. In addition, handlers meeting certain requirements may pay their producers on an "optional" basis. The minimum prices under this plan are about 10 cents below the stated Class I prices. Also, sales of "distressed" fluid milk may be made by handlers for use in certain manufactured products at prices less than the PMCC Class II price. Returns to producers for distressed milk reflect whatever price the handler obtains for the milk less his transportation and handling charges.

The inability of Western Pennsylvania producers to compete equally with out-of-State milk supplies for fluid outlets tends to create instability in the market. The availability of cheaper milk weakens producers' bargaining position and lessens their ability to compete effectively for a Class I market for their milk. Producers in this situation cannot plan their future production program with the certainty of marketing conditions needed for sound management decisions. The proponent cooperatives contend that only a device such as a Federal milk order can provide the marketing environment in which producers may obtain the full economic value of their milk under orderly marketing conditions.

As long as all milk supplies for Western Pennsylvania are not subject to a fully effective classified pricing system, the uncertainty for Western Pennsylvania producers can be expected to continue. This could discourage the continuation of the necessary production resources and thereby threaten the maintenance of an adequate supply of milk for Western Pennsylvania. The application of Federal order regulation to Western Pennsylvania will provide the needed market stability.

All territory in the PMCC Areas 2 and 7 should be included in the marketing area of the proposed Eastern Ohio-Western Pennsylvania order. These areas are the basic sales areas within Pennsylvania of most Pennsylvania handlers who would be regulated under the order. Many of the handlers have distribution routes extending throughout each of the areas and compete with one another for Class I sales. Fluid sales by these handlers in other parts of Pennsylvania are not significant. Similarly, sales in Areas 2 and 7 by handlers operating primarily in other Pennsylvania areas are also insignificant. Western Pennsylvania handlers, while opposing any extension of Federal regulation to that part of the State, indicated that if an order does apply present distribution patterns warrant the inclusion in the marketing area of Areas 2 and 7 in their entirety. On the basis of these factors, it would be inappropriate to exclude from the proposed marketing area any part of Areas 2 and 7.

The Westmoreland County townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair and the boroughs of Bolivar, Donegal, Ligonier, New Florence, and

Seward should not be included in the proposed marketing area. Such areas are included in Area 9 under the PMCC's regulatory program. Some of the sales in this part of Area 9 are made by one or more Area 9 handlers who would not be regulated under the order as proposed herein. Other sales are made by a Pittsburgh handler who advocated the exclusion of these Westmoreland County areas. Evidence does not indicate that the inclusion of such areas in the proposed marketing area is necessary at this time to achieve orderly marketing conditions in Western Pennsylvania.

*Regulation of certain Ohio, Pennsylvania, and West Virginia markets under one order.* Regulation of the Northeastern Ohio, Youngstown-Warren, and Wheeling marketing areas and PMCC Areas 2 (Pittsburgh) and 7 (Erie) under a single order is the most appropriate means of effectuating the declared policy of the Act. A single Federal order establishing uniform class prices at reasonable levels with a marketwide pool for distributing returns to the producers supplying the market will provide a regulatory program for milk marketing consistent with current marketing conditions and practices.

When the Northeastern Ohio, Youngstown-Warren, and Wheeling orders were issued, they regulated areas that were generally distinguishable as separate markets for particular groups of producers. Similarly, the Pennsylvania Areas 2 and 7 have been considered as separate markets and regulated under separate State marketing orders. Changes in marketing practices during recent years, however, have caused these areas to become generally interrelated in both the procurement and distribution of milk. In view of the marketing trends prevailing throughout these areas, it may reasonably be expected that the interrelationship of the several areas will become even more pronounced in the future.

Sales areas of handlers are no longer confined to local areas. Better highways, improved transportation and refrigeration facilities, and the advent of single-service containers have made it feasible to move packaged milk over long distances. As local health department requirements have become less of an impeding factor, handlers have extended their distribution routes into other areas. The potential sales outlets in the various populated centers, and particularly the increasingly important supermarket business, have encouraged the widespread distribution patterns now prevailing.

Handlers, in attempting to achieve better economies of scale, have concentrated their processing and packaging operations in larger plants that contain the specialized equipment necessary to package milk in the many sizes and types of containers in use today. This has resulted in an increasingly wider geographic distribution from fewer and larger plants. The areas under consideration either adjoin each other or are relatively close to one another. Because distributing plants are scattered widely throughout these areas, only short distances are involved in many cases for operators of these plants to extend their distribution routes into another marketing area.

Some intermarket route distribution patterns in the proposed marketing area were cited in the record. A plant located in the Northeastern Ohio marketing area that is regulated under the Youngstown-Western Pennsylvania stores are supplied 46 stores in Western Pennsylvania. These stores were formerly served by a Pittsburgh handler. A number of Western Pennsylvania stores are supplied by a Northeastern Ohio order plant and two Youngstown-Warren order plants, one of which is located in Pennsylvania. Another Pennsylvania plant is regulated by the Youngstown-Warren order by virtue of its Ohio sales in the Youngstown-Warren marketing area. One handler closed his bottling plants in Erie and Youngstown and is now supplying these areas from his Pittsburgh and Cleveland plants. The handler's sales from his Pittsburgh plant are a significant share of the Class I sales in the Erie area. Some Erie handlers have packaged milk sales in parts of the Pittsburgh marketing area.

Approximately one-third of the total Class I sales in the Youngstown-Warren marketing area are made by four or more Northeastern Ohio handlers. In 1966, Youngstown-Warren handlers sold 8 percent of their total Class I milk in the Northeastern Ohio and Wheeling marketing areas. Packaged milk is sold in the Wheeling marketing area by at least two Youngstown-Warren, three Northeastern Ohio, and two Western Pennsylvania handlers. A Wheeling handler sells milk in Western Pennsylvania.

Such distribution patterns are indicative of the general trend of expanding sales areas of handlers. From a practical standpoint, separate markets within the proposed marketing area for particular groups of producers no longer exist. The cooperatives proposing the single order contend that under this circumstance all producers supplying milk to the several parts of the proposed marketing area should share uniformly the total proceeds of the Class I sales in the area and the burden of the reserve and surplus supplies normally associated with such sales.

The desirability of a single order to achieve greater stability and a more equitable distribution of returns to producers is accentuated by the effect on particular producer groups of shifts of Class I sales and supplies among the several regulated areas. In the smaller Youngstown-Warren, Wheeling, and Erie markets, particularly, a major loss of Class I sales to another regulated area can have a significantly adverse effect on the returns to producers supplying the area. Instances were cited where sales had shifted because of plant closings or other changes in handlers' operations. Handlers operating more than one plant, particularly, represent a potential cause of intermarket shifts of sales. At least eight multiple-plant handlers operate in the several areas that would be regulated by the proposed Eastern Ohio-Western Pennsylvania order. Shifts among handlers of large sales accounts, such as chain stores, also can have a major effect on producer returns in any one regulated area.

A relatively large plant specializing in the manufacture of cottage cheese and sour cream products recently became a pool plant under the Northeastern Ohio order. Products from this plant, which was previously associated with the Pittsburgh marketing area, are distributed in many parts of the proposed marketing area. Northeastern Ohio producers alone, however, rather than producers in the several areas supplied by the plant have this lower-valued Class II milk reflected in their returns.

The five areas under consideration are characterized by a substantial overlapping of milksheds. Northeastern Ohio handlers obtain milk from producers located as far east as the Pennsylvania counties of Clarion and Jefferson, which are also part of the Western Pennsylvania milkshed. Western Pennsylvania handlers, on the other hand, receive milk produced as far west as Tuscarawas, Guernsey, and Noble Counties in Ohio, areas that are also sources of milk for Northeastern Ohio and Wheeling handlers. Other Wheeling sources include Washington and Greene Counties in Pennsylvania, areas from which producers also ship to Western Pennsylvania handlers. Handlers in the Youngstown-Warren area purchase milk from producers in a number of Ohio and Pennsylvania counties from which milk is also delivered to Northeastern Ohio and Western Pennsylvania handlers.

While the sanitary inspection standards vary slightly in various parts of the proposed marketing area, there apparently have been no practical limitations on the movement of milk throughout this area. The States of Ohio and West Virginia reciprocate on health approvals. The State of Pennsylvania and the Pennsylvania county of Allegheny, which utilize different inspection standards, have no reciprocity arrangements on inspection requirements with Ohio and West Virginia. However, many Ohio producers and a number of Ohio plants have Allegheny and/or Pennsylvania health permits. It must be concluded that the health requirements throughout the proposed marketing area are not so different as to be an impeding factor in the adoption of a single regulation for the area.

*Regulation of additional Ohio territory.* Certain territory in Ohio not now included in any Federal order marketing area should be a part of the proposed Eastern Ohio-Western Pennsylvania marketing area. The additional areas are Carroll, Geauga, and Tuscarawas Counties and the presently unregulated parts of Ashtabula, Columbiana, Mahoning, and Portage Counties.

All Class I sales in Geauga and Portage Counties are made by regulated handlers. Sales in Ashtabula, Carroll, and Columbiana Counties are primarily by Northeastern Ohio, Youngstown-Warren, and Wheeling handlers. A producer-distributor type of operation is located in Carroll

County and another in Ashtabula County. Four similar operations are in Columbiana County. It is expected that these producer-distributors would be exempt from the pooling and pricing provisions of the proposed order. A few sales are also made in Carroll County by a presently unregulated Tuscarawas County handler who would be regulated under the proposed order. The record does not indicate any sales in the very small unregulated part of Mahoning County by unregulated handlers. By including these areas, the Eastern Ohio-Western Pennsylvania marketing area will more appropriately represent the basic sales areas of the handlers who would be subject to the proposed order. Not to regulate these areas could provide a competitive advantage for any unregulated handler making Class I sales in the areas.

On the basis of his present sales, the addition of Tuscarawas County will result in the regulation of a handler at New Philadelphia, Ohio. The sales of this handler in Tuscarawas County are approximately half of the total fluid milk sales in the county. About 2 percent of the total sales in the county is also made by a producer-distributor. The remaining sales in Tuscarawas County are by Northeastern Ohio handlers and to a very limited extent by a Columbus order handler.

Regulated handlers selling milk in Tuscarawas County are now at a competitive disadvantage relative to the unregulated New Philadelphia handler on the cost of milk obtained from dairy farmers. Such handlers are required under the order to pay minimum Class I prices for all fluid milk distributed on routes while the unregulated handler may pay only whatever price is necessary to attract a sufficient supply. The New Philadelphia dealer is purchasing milk at the Northeastern Ohio blend price, plus whatever premiums Northeastern Ohio handlers are paying. The difference between the Northeastern Ohio Class I and blend prices in 1966 was 51 cents. The dealer indicated his Class I utilization was about 10 percentage points higher than the Northeastern Ohio market's utilization.

A large proportion of the New Philadelphia dealer's fluid milk sales are in Tuscarawas County. Other Ohio counties in which he has sales include Stark, Harrison, and Carroll. These are counties in which regulated handlers make the majority of the Class I sales. By far the greater portion of the New Philadelphia dealer's sales are therefore in competition with sales of regulated handlers. Regulation of this dealer will merely make his procurement costs comparable to those of handlers with whom he competes.

The presently unregulated part (Litchfield, Spencer, Chatham, Homer, Harrisville, Westfield, and Guilford Townships) of Medina County should not be included in the proposed marketing area. Two relatively small unregulated handlers, one at Oberlin and the other at Ashland, have 7 percent and 5 percent, respectively, of their total sales in this area. Sales are also made there by three Northeastern Ohio handlers, although the extent of such sales is not in the record. The record does not indicate, either, the proportion of total sales in these townships by regulated and unregulated handlers.

The inclusion of this area in the proposed marketing area was not shown to be necessary for the maintenance of orderly marketing. Regulated handlers distributing in these townships presented no testimony for or against extending the marketing area to include the additional territory. In the absence of any compelling need for regulation of these townships, their inclusion in the proposed marketing area is denied.

The proposal to include all of Wayne County in the marketing area is similarly denied. Presently, Sections 1, 2, 3, 10, 11, and 12 of Sugar Creek Township in Wayne County are a part of the Northeastern Ohio marketing area. There was no evidence on the need for extending regulation to the rest of the county.

All producer milk received at regulated plants must be subject to classified pricing under the order regardless of whether it is disposed of within or outside the marketing area. Otherwise, the effect of the order would be nullified and the orderly marketing process would be jeopardized.

If only a pool handler's "in-area" sales were subject to classification, pricing, and pooling, a regulated handler with Class I sales both inside and outside the marketing area could assign any value he chose to his outside sales. He thereby could reduce the average cost of all his Class I milk below that of other regulated handlers having all, or substantially all, of their Class I sales within the marketing area. Unless all milk of such a handler were fully regulated under the order, he in effect would not be subject to effective price regulation. The absence of effective classification, pricing and pooling of such milk would disrupt orderly marketing conditions within the regulated marketing area and could lead to a complete breakdown of the order. If a pool handler were free to value a portion of his milk at any price he chooses, it would be impossible to enforce uniform prices to all fully regulated handlers or a uniform basis of payment to the producers who supply the market. It is essential, therefore, that the order price all the producer milk received at a pool plant regardless of the point of disposition.

In the course of the operation of the order, the question may arise as to whether waterfront facilities or any territory within the boundaries of the designated marketing area which is occupied by Government (municipal, State, or Federal) reservations, installations, institutions, or other establishments shall be considered as within the marketing area. So that there will be no doubt as to the meaning or the intent of the application of the marketing area definition in the order, it should be indicated that the marketing area shall include all waterfront facilities connected with the designated geographical units and any territory wholly or partly within the area which is occupied by Government (municipal, State, or Federal) reservations, installations, institutions, or other establishments.

3. (a) *Milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the order. This is accomplished by providing definitions to describe the category of persons, plants, and milk products to which the applicable provisions of the order relate.

The proposed amended order continues in a substantial manner the Northeastern Ohio order provisions which have been appropriate in achieving the ends sought by the regulations. The record shows that they will be no less suitable in achieving these ends under the proposed order for the enlarged marketing area. In those instances in which specific provisions of the amended order are substantively different from the Northeastern Ohio order, the justification therefor is set forth in the findings of this decision.

*Definition of plants.* Essential to the operation of a marketwide pool is the establishment of minimum performance requirements to distinguish between those plants substantially engaged in serving the fluid needs of the order market and those plants which do not serve the market in a way, or to a degree, that warrants their sharing (by being included in the market pool) in the market average utilization of Class I milk. Such distinction is necessary; otherwise, the proceeds of the higher Class I price would be dissipated by including in the market pool additional quantities of milk which were acquired by handlers primarily for manufacturing purposes. Such dissipated proceeds could accrue to the benefit of producers supplying milk to handlers who do not regularly or dependably furnish the fluid milk needs of consumers in the marketing area. Unless adequate standards of marketing performance are provided to determine which milk and plants will participate fully in the market pool funds, the uniform price of the market could be depressed to the point that it would not serve its function of attracting an adequate supply of milk for the fluid needs of the market without a Class I price higher than otherwise would be necessary.

Since Class I price increases are generally passed on to the public, such price increases necessitated solely because of inadequate performance standards for regulation would be contrary to the public interest. Therefore, in order to share in market pool funds, it is essential that plant operators perform marketing functions (i.e., deliver milk to market in specified amounts or proportions) which contribute to providing adequate and dependable market supplies. The marketing performance standards are essential provisions of a milk order if it is to attain the statutory purpose of assuring adequate supplies of milk in the most economical manner and in a way that best serves the public interest. The marketing performance standards also minimize the effects of regulation on handlers who have only a minor proportion of their distribution in the regulated market. They do this by exempting such handlers from full regulation.

Any plant, wherever located, may become a pool plant if it meets the marketing performance standards for regulation which are equal for all plants performing the same function. The performance standards for regulation of a plant are an essential means of assuring the regulated market of adequate and dependable supplies of milk. It should be emphasized that these performance standards do not impede the shipment of milk to regulated markets. Quite the contrary. Because they require milk to be shipped to the market in order to share in the market pool funds, they encourage milk shipments for Class I use which otherwise might not be made. This incentive is achieved by preventing plants which do not ship milk in accordance with the prescribed standards from sharing in the pool fund. The performance standards are thus the opposite of a barrier to the shipment of milk to the market.

Because of the difference in marketing practices and functions between distributing plants and supply plants, separate performance standards have been provided for them.

A "distributing plant" would be defined as a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and which has some route disposition in the marketing area during the month.

To qualify as a pool plant, a distributing plant would be required to meet performance standards as to the proportion of its supply used in route disposition, including such disposition in the marketing area. Thus, pool distributing plants would include only those plants primarily engaged in the distribution of fluid milk products. The plant's total route disposition, both inside and outside the marketing area, should be at least 50 percent (40 percent monthly in April through August) of its receipts from all sources of fluid milk products that are approved by a duly constituted health authority for fluid consumption and that are physically received at such plant or diverted as producer milk to a nonpool plant. The route disposition in the marketing area of such a plant should be at least 15 percent of its total receipts.

A plant from which Class I milk is distributed regularly in the marketing area may under normal circumstances be expected to dispose of its milk in such a way as to exceed by a reasonable margin the minimum performance standards necessary to qualify as a pool plant. At least three plants having some distribution in the proposed marketing area would not qualify for pool status under the proposed order or any other Federal order. Less than 15 percent of their receipts is disposed of as Class I in the marketing area; their major distribution is in areas that are unregulated by Federal orders. Also, there may be from time to time other plants supplying milk to the marketing area which would not qualify for pool status. Such plants should be required to file reports, make available their records for audit by the market administrator, and be subject to payment on terms hereinafter discussed if they are not fully subject to regulation under the order.

In their initial proposal, producers did not propose that a minimum percentage of a plant's receipts be disposed of in the marketing area to qualify a distributing plant for pooling. To qualify for pooling under that proposal, a plant with total route disposition of at least 50 percent (40 percent in some months) of its total receipts on routes both inside and outside the marketing area would qualify as a pool plant. This would enable a distributing plant having no association with the market to pool its total dairy farmer receipts by a token sale in the marketing area. At the hearing, however, producers took the position that a reasonable minimum in-area disposition requirement to qualify a distributing plant for pooling was necessary under current conditions in the proposed marketing area.

The operator of a plant outside the marketing area who has some distribution in the area proposed that the in-area Class I disposition of a distributing plant be at least 15 percent of its receipts to quilify it as a pool plant. This provision, which has been applicable and found to be appropriate in a number of orders, was supported by others at the hearing.

Essentially all, if not all, of the distributing plants that are pool plants under the Northeastern Ohio, Youngstown-Warren, and Wheeling orders have the preponderance of their route distribution in the Eastern Ohio-Western Pennsylvania marketing area. This is equally true with respect to the many distributing plants in Pennsylvania that would be regulated by the proposed order. The requirement that a distributing plant have 15 percent of its receipts disposed of in the marketing area would in no way change the status of these plants for pooling under the proposed order.

The principal purpose of a minimum in-area distribution requirement to qualify a distributing plant for pooling is to assure that it is associated with the market in a significant and regular manner. Otherwise, dairy farmers and handlers who ordinarily have no affiliation with the market could casually or incidentally associate themselves with the market when it was to their advantage to share unwarrantedly in the monthly Class I proceeds of the market. The pooling requirement that 15 percent of a plant's receipts be route disposition in the marketing area will not only provide a safeguard against such an exploitation of the pool but will also provide an appropriate measure of a plant's association with the market.

The in-area route disposition requirement for pooling would not restrict any milk plant operator from disposing of any fluid milk products in the marketing area. Any plant having more than a minor, or accidental, association with the fluid milk market could be eligible for pooling. On the other hand, the operator of any plant only marginally associated with a fluid milk market has a reasonable opportunity to make a choice of full or partial regulation, whichever might better serve his interest.

The requirement that a distributing plant's total route disposition be at least 50 percent (40 percent monthly in April-August) of its receipts to qualify for pooling is similar to that now provided in the Northeastern Ohio order and proposed by producers for the new order. These minimum percentages of a plant's receipts that must be disposed of on routes to qualify distributing plants for pooling have been satisfactory under the Northeastern Ohio order and, in conjunction with the minimum in-area sales requirement herein provided, should be equally appropriate under the conditions in the proposed marketing area. They are also similar to the comparable provisions in nearby orders. As such, they will facilitate the coordination in the marketing of milk from common supply areas.

The lower percentage requirement of route sales to qualify for pooling in the April-August period recognizes that some distributing plants handle reserve supplies of milk for the market during these months of seasonally high production and that sales to schools, which are closed in July and August, are a significant portion of the Class I sales from some plants. Requiring minimum route distribution from a plant of 40 percent instead of 50 percent of its receipts during these months will facilitate the handling of milk at such plants without endangering their pooling status or forcing them to drop producers.

Limited quantities (as provided in the attached order) of Class I milk may be sold within the regulated marketing area from plants not under any Federal order. There is, of course, no way to treat such unregulated milk uniformly with regulated milk other than to regulate it fully. Nevertheless, it is concluded that in present circumstances the application of "partial" regulation to plants having less association than required for marketwide pooling will not jeopardize marketing conditions within the regulated marketing area. Official notice was taken at the hearing of the Assistant Secretary's June 19, 1964, decision (29 F.R. 9002) supporting amendments to 76 orders, including the Northeastern Ohio, Youngstown-Warren, and Wheeling orders, in which the matter of partial regulation was discussed. That decision as it relates to an unregulated plant having some Class I distribution in the marketing area is appropriate under current conditions in the proposed marketing area and is adopted in its entirety.

The operator of any partially regulated plant would be afforded the options of: (1) Paying an amount equal to the difference between the Class I price and the uniform price with respect to all Class I sales made in the marketing area; (2) purchasing at the Class I price under any Federal order sufficient Class I milk to cover his limited disposition within the marketing area; or (3) paying his dairy farmers not less than the value of all their milk computed on the basis of the classification and pricing provisions of the order (the latter representing an amount equal to the order obligation for milk which is imposed on fully regulated handlers).

While all fluid milk sales of the partially regulated plant would not necessarily be priced on the same basis as fully regulated milk, the provisions described are, however, adequate under most circumstances to prevent sales of milk not fully regulated (pooled) from adversely affecting the operation of the order. They should be adopted in this order to complement the pooling requirements on fully regulated plants adopted herein.

"Supply plant" is the other plant category for which standards for pooling must be provided. A supply plant would be defined to mean a plant from which a fluid milk product acceptable to a duly constituted health authority is shipped during the month to a pool plant.

The proposed standards by which supply plants would qualify for pooling as presented at the hearing vary from as "liberal as possible" to as "tight as possible." The tightest shipping standards proposed would require a supply plant to ship at least 80 percent of its receipts to pool distributing plants to qualify as a pool plant in each month of July through February and 55 percent during the month to qualify in March–June. Under this proposal, a supply plant would be required to establish its qualification as a pool plant each month. No provision would be made for automatic pooling in months of heavy production on the basis of having qualified as a pool plant in specified preceding months.

The most liberal qualifying provisions would enable a plant to qualify as a pool plant in August–January on the basis of monthly shipments of 10 percent of its receipts. No shipments would be required for qualification in February–July if during the preceding August–January the plant had shipped at least 30 percent of its receipts during the total period and not less than 10 percent monthly. These requirements would be reduced further by enabling two or more supply plants to be considered as one plant for the purpose of determining their pool plant qualifications.

As proposed by major producer associations in the market, any supply plant could qualify as a pool plant in any month by shipping at least 50 percent of its receipts to pool distributing plants. However, a supply plant would be allowed to retain its pool plant status in the following February–August without making any shipments if it shipped during September–January at least 30 percent monthly and 50 percent for the entire period. After a plant had once qualified in this manner, it could continue to pool in the following September–January period with minimum shipments to pool plants of 30 percent monthly.

Under the Northeastern Ohio order, a supply plant may qualify for pooling in any individual month by shipping 30 percent of its receipts. A supply plant that had shipped 10 percent of its receipts monthly in August–January and 30 percent of its total receipts during that period to pool distributing plants would not be required to make any shipments in the following February–July to qualify as a pool plant in those months. In addition, once a plant had thus qualified it would be required to ship only 10 percent of its receipts monthly to a pool distributing plant in the following August–January to qualify for pooling in those months.

Under the Northeastern Ohio order, a plant operated by a cooperative may be designated a pool plant if during the immediately preceding 6 months at least half the milk of its producer-members was received at the pool plants of other handlers. That order also provides that two or more supply plants operated by the same handler may be considered as one plant in qualifying the plants for pooling.

Under the Youngstown-Warren order, a supply plant must ship at least 50 percent of its receipts to pool distributing plants to qualify for pooling in any individual month. A supply plant thus qualified for each month of September–January would be accorded pool plant status for the following February–August without being required to ship.

The Wheeling order requires monthly shipments of 55 percent of receipts to qualify a supply plant for pooling in an individual month and accords pool plant status in the following February–August to a plant that was a pool plant in September–January.

Pooling standards for supply plants should not be so high that they force uneconomic shipments of milk from supply plants to qualify such plants when such milk is not needed for Class I purposes in the market. At the same time, an appropriate minimum standard is needed to avoid the possibility that plants will refrain or refuse to supply the market when milk is needed for the Class I needs of consumers in the market.

It is inappropriate to include in the pool to receive the benefit of the uniform price those plants which are not a regular or dependable part of the market supply. Such plants, in which the principal operation is the utilization of milk in the manufacture of dairy products (which utilization returns to producers the Class II price), may be attracted to the pool only to participate in the higher valued Class I utilization of the fluid market without supplying the Class I fluid milk needs of consumers in the market.

A major function of the supply plant pooling standards is to insure that handlers who are processing milk and distributing it for sale primarily to consumers in the marketing area can regularly and dependably obtain milk from supply plants to meet their fluid milk requirements. Without such standards, supply plants would tend to keep milk at their plants for manufacture when it was to their advantage to do so.

To qualify for pool plant status, a supply plant should ship to distributing plants which are pool plants a specified percentage of its receipts of milk from dairy farmers whether received directly from them or from a cooperative in its capacity as a handler on farm tank milk. Such shipments should be at least 50 percent in each of the months of September, October, and November and 40 percent in other months. A plant meeting these qualifications is making a substantial contribution toward providing an adequate supply for the market and may reasonably be considered an integral part of the fluid milk supply for the market. A supply plant from which a proportionately lesser quantity of milk is disposed of in this manner, without otherwise having established a continuing association with the market, should not under present conditions be considered as contributing sufficiently to the market supply to share in the pool funds.

The demand for supply plant milk is less during the flush production months than during other months of the year. Requiring qualifying shipments to distributing plants during such flush production months would result in the uneconomical movement of milk. It is appropriate, therefore, that the shipping requirements in such months for a plant that has demonstrated an association with the market be less than in other months. It is thus provided that a supply plant that was a pool plant in each of the immediately preceding months of September through February shall be a pool plant for the months of March through August irrespective of its shipments, unless the operator of such a plant elects nonpool status for the plant or the milk received at the plant does not continue to meet the requirements of a duly constituted health authority.

Providing pool status to a plant in March through August on the basis of shipments in the preceding months will provide producer status for dairy farmers shipping to plants which are thus recognized as regular suppliers to the market. A plant should be permitted to withdraw from pool status, however, at the operator's option in any of the months of August through March in which it has not otherwise qualified as a pool plant. In such case, it would not acquire pool status until it again met a minimum shipping requirement.

The pooling standards for supply plants herein proposed are reasonable and appropriate under current conditions in the proposed marketing area. In conjunction with other provisions of the proposed order, they will enable the dairy farmers associated with qualified supply plant to keep their milk pooled under the order throughout the year and will insure orderly and stable marketing conditions.

A significant portion of the milk utilized at plants that would be pool distributing plants under the proposed order is received from supply plants. Of the 143 million pounds of producer milk pooled under the Northeastern Ohio order in 1966, 34.5 percent was received at regulated supply plants. There are no supply plants under the Youngstown-Warren and Wheeling orders. Although federally unregulated distributing plants that would be pooled by the proposed order receive milk from supply plants, the total quantity of milk received at such supply plants from dairy farmers was not available on the record.

The recent experience under the Northeastern Ohio order shows that supply plants are shipping increasing proportions of their dairy farmer receipts to pool distributing plants in the marketing area. The 11.6 million pounds of milk moved from pool supply plants under the Northeastern Ohio order to marketing area plants in 1962 was but 26 percent of their producer milk receipts. By comparison, in 1966 the 26.6 million pounds shipped was 55 percent of the producer receipts at regulated supply plants. The trend of supply plants shipping increasing proportions of their dairy farmer receipts to the marketing area is further indicated by the percentage of such shipments in the intervening years of 1963, 1964, and 1965 of 35, 45, and 54 percent, respectively.

In the 3 years of 1964, 1965, and 1966, the lowest monthly percentage shipments of producer receipts from Northeastern Ohio supply plants were in the months of March through August. These are the months, as herein proposed, during which a supply plant that had established an association with the market by qualifying as a pool plant in the immediately preceding 6 months, would not be required to make any shipments to pool. The lowest percentage of total shipments from supply plants to the marketing area in this 36-month period was 31 percent in the months of May and June 1964. Subsequent to July 1964, the percentage of shipments from regulated supply plants to the marketing area was not less than 40 percent in any month. The highest proportion of milk was shipped from supply plants to the marketing area in the months of September, October, and November, the months under the proposed order that a supply plant must ship at least 50 percent of its receipts to qualify. In 1966, shipments from Northeastern Ohio order supply plants to pool distributing plants were 62 percent of their producer receipts in September, 64 percent in October, and 65 percent in November.

Although the percentage shipments from regulated supply plants to the marketing area under the Northeastern Ohio order as cited above are based on the combined receipts and shipments of all plants, there is no indication that they are not representative of individual plants or that any supply plant whose dairy farmer deliveries are now pooled under the Northeastern Ohio order would be unable to meet the standards under the proposed order.

If they are an integral part of the Class I supply of the distributing plants, it may reasonably be expected that those federally unregulated supply plants now shipping to distributing plants that would be regulated by the proposed order would qualify as pool plants. If some such plants are only incidental or irregular sources of supply of fluid milk for marketing area plants, they should not be included in the marketwide pool. To do so would unwarrantedly dilute the pool returns to the producers on whom the market depends for an adequate and regular supply of Class I milk.

Any plant that would have been a pool plant under the proposed order (had it been in effect) in any month subsequent to August 1967 should be considered to have been a pool plant for such month for the purpose of determining its pool plant status. Such a provision is necessary to insure that all plants under the order would be accorded equitable treatment in qualifying as pool plants, irrespective of the effective date of the order. Should the proposed order become effective in March 1968, for example, a supply plant that would have been a pool plant under the order in the preceding months of September through February would thereby qualify as a pool plant for the months of March through August 1968.

Elsewhere in this decision, a cooperative is accorded handler status with respect to milk of member-producers which it causes to be diverted to a nonpool plant for its account. Milk so diverted is deemed to have been received by the cooperative at the pool plant from which diverted. For the purpose of determining the pool status of a plant, milk so diverted (as well as milk diverted for the account of the plant operator) would be considered as a receipt from dairy farmers at such plant to the extent that it would not result in nonpool status for such plant. Otherwise, it would be possible for a cooperative to pool limitless quantities of milk that have no association with the market and that are intended for and used solely for manufacturing purposes at an unregulated plant.

The proposal to designate as a pool plant a plant that is within a specified area and is operated by a cooperative whose producer-members deliver at least two-thirds of their combined monthly production to pool plants of other handlers should be denied. This proposal, which was opposed by various producer associations and handlers as "special class legislation", would accord pool plant status to a specified plant and would otherwise have no application under the order. The witness for the cooperative proposing pool status for the plant stated that this plant could otherwise qualify as a pool plant and that the particular provision they proposed was presently unnecessary. A similar provision is now contained in the Northeastern Ohio order and has apparently performed a useful purpose in the past in enabling the cooperative plant to serve as a balancing plant for the market. Under curent marketing conditions, however, the provision is not necessary or warranted under the proposed order.

The Northeastern Ohio order now exempts from the provisions of the order (except for reporting) any distributing plant located outside the marketing area that distributes in the marketing area not more than 300 points (one point being defined as one half-pint of cream or one quart of any other fluid milk product) of Class I milk per day on routes operated wholly or partly within the marketing area and is not otherwise qualified as a pool plant. Testimony at the hearing indicated that exempting this type of operation from the provisions of the proposed order is not desirable or justifiable under current marketing conditions.

It is not expected that this provision would result in exempting from the order any handler now operating in the proposed marketing area. The value this provision may have had in the Northeastern Ohio order in the past is not equally applicable under the proposed order, especially since the in-area sales standards for pooling in the proposed order are significantly different from those in Northeastern Ohio.

The Northeastern Ohio order now provides that a distributing plant be a pool plant in any month in which it has any route disposition in the marketing area. The 300-point exemption is complementary to the present pooling standard in that a distributing plant located outside the marketing area with only minor or irregular, or perhaps even accidental, sales in the marketing area would not be subject to full regulation. Such limited sales have not been considered sufficient to justify imposing the burden of full regulation on a plant that has so little association with the regulated market.

The proposed order provides that a distributing plant must have route disposition in the marketing area of at least 15 percent of its receipts to qualify for pooling. A plant with lesser in-area route disposition would not be subject to full regulation. In this circumstance, the 300-point exemption provision in unnecessary to relieve the plant from the burden of full regulation where only limited sales in the marketing area are involved.

In view of the above, the proposal to exempt a handler from the provisions of the order because of the location of his plant and/or a minimum route distribution in the marketing area should be denied.

The establishment of bulk tank units to form the basis for pooling and pricing milk should be denied. As proposed, a handler receiving milk from farmers in tank trucks would be permitted to designate one or more bulk tank units consisting of the production of one or more farmers as a "pool bulk tank unit" or a "nonpool bulk tank unit". A provision for bulk tank units is contained in the New York-New Jersey order but not in any other Federal milk order. It was not established that its use would have any value under the proposed order. Neither was it shown that there existed inadequacies or deficiencies in the type of pool plant provisions herein proposed that would be rectified by the adoption of a bulk tank unit provision in the Eastern Ohio-Western Pennsylvania order.

The proposal that a handler may qualify as pool plants a distributing plant and a supply plant by considering them as one plant and by meeting pooling standards for a distributing plant on the basis of their combined receipts and route distribution should be denied.

The standards by which distributing plants and supply plants may qualify for pooling are significantly different. A distributing plant, to obtain pool status, must have established its function as a distributing plant and an association with the market on the basis of its route distribution in the marketing area. A supply plant's requirements to pool are based solely on its shipments to pool distributing plants. A supply plant, whether or not affiliated or controlled by the operator of a distributing plant to which it ships, should appropriately establish its association with the market by its shipments to pool distributing plants.

Under the handler's proposal, pool plant status could be obtained by a supply plant solely because it was operated by, or under some control of, the operator of a pool distributing plant. Hence, such a supply plant, devoted exclusively to the utilization of milk for manufacturing purposes and/or having no association with the market, could be pooled under the order. This could have the effect not only of diluting the pool at the expense of producers regularly supplying the fluid market but also of impairing the maintenance of an adequate supply of milk for the market.

The same proposal would enable the combined operation of two or more distributing plants to be considered as one plant to qualify such plants as pool plants. The performance standards herein provided for distributing plants determine a plant's association with the market on the basis of the route distribution from that plant. To allow individual distributing plants to qualify as pool plants on the basis of a combined operation could result in pooling distributing plants that have no real association with the market. In effect, it would enable a distributing plant with a token distribution in the marketing area to be pooled under the order on the basis of an indicated affiliation with a pool distributing plant. It was not shown at the hearing that such a provision in the order was desirable or would contribute to orderly marketing. Moreover, such a proposal would tend to depreciate and be inconsistent with the minimum pooling standards for distributing plants provided in the attached order, which standards are found by this decision to be appropriate and necessary to effectuate the intent of the Act.

The proposal whereby a handler may qualify two or more supply plants as pool plants by considering the combined operation as one plant should be denied.

The principal argument advanced by proponents for incorporating such a pooling provision in the proposed order is that it is provided for in some orders. It was not established, however, that the basis on which such a provision was incorporated in such orders is applicable under the conditions in the proposed marketing area.

No testimony was presented to show that the proposed provision is necessary to qualify any supply plant that may reasonably be considered an integral part of the market supply of Class I milk. Neither was it shown that it would be to the benefit of producers regularly supplying the market. Proponents of the joint plant pooling, and the lower pool plant standards resulting therefrom, emphasized that they should be permitted to pool under the order the milk deemed necessary to maintain manufacturing operations considered by them to be incidental to or a part of their fluid milk business. Accordingly, a handler would be free to pool under the order the total dairy farmer receipts at a plant having no association with the fluid market and utilizing its total receipts for manufacturing purposes.

The pooling standards herein provided for supply plants is based on their performance in supplying Class I needs of the market. It is not the purpose of the order to include in the pool the milk received from dairy farmers at plants that are primarily engaged in manufacturing dairy products and that are not a part of the dependable supply of milk for the fluid market. The record evidence does not indicate that system pooling, under current conditions in the proposed marketing area, would contribute to orderly marketing or would otherwise tend to effectuate the intent of the Act.

Fluid milk products are distributed in the marketing area from plants that are fully subject to the classification and pricing provisions of other Federal milk orders. Full regulation under the proposed order should not be extended to such plants disposing of a major portion of their receipts in another regulated market. To do so would subject milk handled at such plants to duplicate regulation. The market administrator should, however, be apprised of the continuing status of such a plant. Accordingly, the operator thereof should submit to the market administrator reports of the total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

The operator of a plant from which milk is disposed of in this and another marketing area should be able to determine definitively and on a current basis the order under which the milk handled at his plant will be priced and pooled. A distributing plant that qualifies as a pool plant under this and other order in the same month should appropriately be pooled under this order if a greater volume of fluid milk products is disposed of from the plant in this marketing area on routes and to pool distributing plants than is so disposed of from such plant in the marketing area of the other order. This method of determining the status of a plant that qualifies as a pool plant under this and another order in the same month is reasonable and equitable and should be incorporated in the Eastern Ohio-Western Pennsylvania order.

Under some conditions, route disposition from a plant regulated by the New York-New Jersey Federal order outside the marketing area of that order or to a nonpool plant may be exempt from the pricing and pooling provisions of that order. The record does not indicate whether any fluid milk products from New York-New Jersey order plants are now disposed of on routes in the proposed marketing area or to handlers who would be regulated by the proposed order. The record does indicate, however, that milk is available from New York-New Jersey order plants to handlers under the proposed order.

In the event that milk is moved from a New York-New Jersey order plant without being subject to the pricing and pooling provisions of that order, it should be handled under the proposed order in the same manner as any other route disposition in the marketing area from an unregulated distributing plant or receipt of fluid milk products at a pool plant from an unregulated supply plant. Actually, such milk is in the same category as unpriced milk received from an unregulated plant and it would be inappropriate to handle in any manner defferent from milk received from an unregulated plant.

In view of the above, the order should provide, with respect to fluid milk products which are not priced and pooled pursuant to any order issued pursuant to the Act and which are disposed of from an other order plant on routes in the marketing area or to a pool plant, that an other order plant would be considered a partially regulated distributing plant with respect to the route disposition and an unregulated supply plant for the deliveries to pool plants.

A definition of "nonpool plant" is provided to facilitate formulation of the various order provisions as they apply to such a plant. A nonpool plant would mean a plant (except a pool plant) which receives milk from dairy farmers or is a milk manufacturing, processing or bottling plant. Specific categories of nonpool plants would be defined as follows:

(1) "An other order plant" is a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act unless such plant is qualified as a pool plant under this order and a greater volume of fluid milk products is disposed of from such plant in this marketing area as route dispositions and to pool distributing plants than is so disposed of from such plant in the marketing area regulated pursuant to such other order;

(2) "Producer-handler plant" is a plant operated by a producer-handler as defined in any order (including this order) issued pursuant to the Act;

(3) "Partially regulated distributing plant" is a nonpool plant that is a distributing plant and is not an other order

plant or a producer-handler plant. A partially regulated distributing plant would also include an other order plant with respect to route dispositions from such plant in the Eastern Ohio-Western Pennsylvania marketing area which are not priced and pooled pursuant to any order issued pursuant to the Act; and

(4) "Unregulated supply plant" is a nonpool plant that is a supply plant and is not an other order plant or a producer-handler plant. Unregulated supply plant would also include an other order plant with respect to fluid milk products which were received at a pool plant from such other order plant and which are not priced and pooled pursuant to any order issued pursuant to the Act.

*Handler*. The primary impact of regulation under an order is on handlers. A handler definition is necessary to identify those individuals from whom the market administrator must receive reports, or who have financial responsibility for payment for milk in accordance with its classified use value. As herein provided, the definition includes (a) persons operating pool plants; (b) a person operating a partially regulated distributing plant; (c) a cooperative association with respect to producer milk diverted from a pool plant to a nonpool plant for its account; (d) a cooperative association with respect to its members' milk delivered in a tank truck under its control from the farm to a pool plant; (e) a person in his capacity as the operator of an other order plant; and (f) a producer-handler.

Designating as handlers the operators of the various types of plants that may be associated with the market is necessary so that the market administrator may require of them the reports to determine the regulatory status of the plants.

The principal cooperatives in the market assume the responsibility of balancing supplies among various handlers. Milk not needed for fluid uses generally can be most economically handled by diversion directly to manufacturing plants. To facilitate such handling, a cooperative is accorded handler status for milk which it causes to be diverted to nonpool plants for its account.

Requiring a cooperative to be a handler for milk delivered from the farm to a pool plant in a tank truck owned and operated by or under contract to the cooperative will afford a practicable basis of accounting for such milk. In addition, it will provide added flexibility to a cooperative's operations in allocating its members' milk among handlers and will facilitate the diversion of such milk to nonpool plants when it is not needed at regulated plants.

Once milk from a producer has been commingled with milk of other producers in a tank truck, there is no further opportunity to measure, sample, or reject the milk of any individual producer whose milk is included in the load. A similar situation prevails when the milk of an individual producer is delivered in a tank truck to two or more plants. The operator of a pool plant to which bulk tank milk is delivered has an opportunity to determine only the weight and butterfat test of the total load.

If a tank truck picking up milk at the farm is operated under the supervision of a cooperative association, it is the association that determines the weight and butterfat content of each producer's milk. Handlers have no control and generally take no part in determining the weight and butterfat tests of milk at the farm. In some instances, handlers may not even know from which farms their milk is shipped.

The milk delivered by the cooperative as a bulk tank handler would be considered as a receipt of producer milk by the operator of the pool plant at which it was physically received. The pool plant operator's obligation for such milk to the producer-settlement fund, to the administration fund and to the cooperative would be the same as for producer milk received directly from the farm of an individual producer.

In some instances, as discussed elsewhere in this decision, differences between the quantities of producer milk determined at the farm and ascertained as physically received by the operator of the pool plant would be considered a receipt of producer milk by the cooperative at the location of the pool plant. For such differences the cooperative (instead of the pool plant operator) would be required to settle with the producer-settlement and administration funds.

*Producer-handler*. "Producer-handler" should be defined as any person who:

(a) Operates a dairy farm and a distributing plant and who received no fluid milk products from other dairy farmers or from sources other than pool plants; and

(b) Provides proof satisfactory to the market administrator that the care and management of all the dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts from pool plants) and the operation of the processing and packaging business are his personal enterprise and risk.

The order is not intended to establish minimum prices for producer-handlers but they should be required to make reports to the market administrator. Such reports are necessary to determine whether the operator continues to meet the producer-handler definition.

The producer-handler definition herein provided was proposed by producers and is essentially the same as that contained in a number of orders, including the Youngstown-Warren order. The various handler proposals, however, would provide more restrictive qualifications than herein proposed, including provisions that a producer-handler (1) receive no fluid milk products from sources other than his own farm production, (2) distribute on routes not in excess of a specified average daily amount (e.g., 300 quarts), (3) purchase not in excess of a limited quantity of fluid milk products from pool plants and (4) sell no milk to other handlers.

The exemption of a producer-handler from the pricing and pooling provisions of the order should be limited to bona fide producer-handlers. It is appropriate, therefore, to provide that to maintain producer-handler status, the maintenance, care and management of the dairy animals and other resources necessary to produce milk and the processing, packaging and disposition of milk shall be the personal enterprise and risk of the person involved. The term producer-handler is not intended to include any person who does not accept responsibility and risk for the operation of the plant in which the milk of his own production is processed and packaged for sale.

A producer-handler is in a position to adjust his farm production closely to the needs of his fluid milk business. It was not established that exempting from the order the handlers with own farm production who qualify as producer-handlers would affect adversely the competitive position of regulated handlers. Those who proposed more restrictive qualifications for producer-handlers did not show that producer-handlers have an advantage in their Class I sales or are a disruptive factor in the market.

As herein proposed, a producer-handler would be required to handle his own surplus. Any milk disposed of by him to a regulated plant would necessarily be surplus to his operation. Accordingly, the milk received at a pool plant from a producer-handler would be classified and priced as Class II milk in computing the pool plant operator's obligation to the producer-settlement fund. In this manner, no advantage would accrue to the producer-handler or the pool plant operator at the expense of other regulated handlers and producers supplying the market.

A producer-handler should be permitted to purchase fluid milk products from pool plants but from no other source without losing his producer-handler status. Such purchases should be classified as Class I. This will insure that any fluid milk products purchased by a producer-handler will not represent a lower priced source of supply, as might be the case if he were permitted to purchase fluid milk products from nonpool sources.

To permit producer-handlers to purchase fluid milk products from sources other than pool plants without becoming fully regulated would give them an unwarranted competitive advantage over other handlers in the market. This is so because they would be able to obtain the full value of their Class I sales for themselves without assuming the burden of their own surplus. However, as long as their Class I needs are obtained from their own production and from pool plants and they handle their own excess production, producer-handlers will not have any significant advantage over regulated handlers under present marketing conditions.

*Producer*. "Producer" should mean any person except a producer-handler as defined in this or any other order issued pursuant to the Act who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted to another plant under certain conditions. The producer definition will provide the necessary distinction between the production of those farmers whose milk will be priced and pooled each month under the order and the receipts at handlers' plants from all other sources.

"Producer" should not include a person with respect to milk that is physically received at a pool plant as diverted milk from an other order plant if a Class II classification under this order is designated for such milk and it is subject to the pricing and pooling provisions of another Federal order. Such a provision will contribute to orderly marketing by facilitating the movement of milk for manufacturing purposes from an other order plant to a pool plant.

*Producer milk*. "Producer milk" is intended to include all milk that is fully regulated by the order. Accordingly, it should be defined as all skim milk and butterfat contained in milk received at a pool plant directly from dairy farmers and milk diverted from a pool plant to other plants under certain conditions. As provided elsewhere in this decision, milk delivered by a cooperative as a bulk tank handler would be considered as a receipt of producer milk by the pool plant operator at the pool plant at which it was physically received.

When producer milk is not needed in the fluid market because of seasonal or day-to-day variations in demand, it may be more economical to deliver it directly to a nonpool plant for manufacturing instead of receiving it at a pool plant before transferring it to such manufacturing facilities. The testimony presented at the hearing emphasized the need for maintaining reasonable diversion provisions to accommodate the efficient handling of producer milk under the proposed order.

Under the Northeastern Ohio order, milk may be diverted to a nonpool plant without limit in April through July. In other months, at least 6 days' production of the producer must be delivered to a pool plant during the month to qualify his production for diversion during the remaining days of the month. Diversion between pool plants is allowed under the Northeastern Ohio order in any month if at least 6 days' production of the producer is delivered to the plant from which diverted during the month.

The Youngstown-Warren and Wheeling orders provide for unlimited diversions to nonpool plants in March through July. In other months, not more than 10 days' production of a producer may be diverted to a nonpool plant during the month. Unlimited diversions to other pool plants are allowed under the Wheeling order. The Youngstown-Warren order does not provide for such diversions.

Under all three orders, diverted milk is priced at the location of the plant from which diverted. None provides for diversions to other order plants.

The diversion provisions for the proposed order, as proposed by the principal producer associations in the market, would provide for unlimited diversions to nonpool plants in April through July, as now provided in the Northeastern Ohio order. For other months, they proposed that at least 15 days' production of a producer during the month be delivered to a pool plant to qualify any of that diversions to other order plants be allowed under certain conditions, and that diverted milk be priced at the location of the plant from which diverted.

Except for pricing some milk at the plant to which diverted under certain conditions, the diversion provisions in the attached order are substantially those proposed by producers. They are appropriate under conditions in the Eastern Ohio-Western Pennsylvania market. The requirements herein adopted whereby the milk of a producer may be physically moved to another plant as diverted milk without losing its identity as producer milk are sufficient to establish a producer's association with the fluid market and at the same time permit the necessary flexibility in diverting milk not needed for fluid use.

The producer proposal that at least 15 days of the monthly production of a producer in August through March be delivered to a pool plant to qualify his deliveries to nonpool plants as producer milk is equitable and appropriate to the extent that it qualifies as producer milk diversions to nonpool plants equal to the quantities delivered to pool plants in the same month. It is inappropriate, however, as proposed by producers, to provide that no milk of a producer diverted to a nonpool plant in August through March may be considered as producer milk unless at least 15 days' production of the producer was delivered to pool plants in the same month. Such a provision is not necessary to insure the integrity of the regulation and would tend to work inequities on producers. The intent of the Act would more appropriately be effectuated by providing for August through March that a producer may divert to a nonpool plant as producer milk as much of his monthly production as was delivered to pool plants in the same month, irrespective of the number of days his milk was delivered to a pool plant. Such a qualification is reasonable, will be equitable to all producers, and will tend to insure that only the milk of dairy farmers having a bona fide association with the market would be eligible to be diverted as producer milk to nonpool plants.

Milk diverted to nonpool plants in excess of the limitations provided should not be considered producer milk. Hence, eligibility for pricing and pooling under the order would be forfeited on a quantity of milk equal to such excess. It would be the responsibility of the diverting handler to specify which milk is ineligible as producer milk. If the handler fails to make such designation and the market administrator is unable to determine which milk was overdiverted, all milk diverted to nonpool plants by such handler would be ineligible as producer milk.

Unless it is diverted for manufacturing purposes, producer milk should not include any milk moved from a farm directly to an other order plant. Such milk's eligibility to be included under a Federal order would more appropriately be determined at the other order plant where received. In fact, diversion to such plants, if permitted unconditionally, could result in the pricing and pooling of the same milk under two orders.

Providing for the diversion of producer milk to an other order plant for manufacturing purposes will contribute to orderly marketing by facilitating the movement of milk for manufacturing from a pool plant to an other order plant. In some instances, a pool plant operator may find that his nearest outlet for unneeded supplies may be an other order plant. Specifying under the order that such milk may be diverted if a Class II classification is designated for such milk pursuant to the other order will tend to insure the integrity of the regulation under both orders.

Diversions to pool plants are to be distinguished from diversions to nonpool plants in that when milk is diverted to another pool plant there is no question as to whether the milk should be pooled. Substantial quantities of milk under the proposed order are diverted between pool plants. Providing for such diversions under the proposed order recognizes an established practice in the market that is helpful in obtaining the optimum utilization of producer milk.

Some proposals would price all or a portion of the milk diverted from a pool plant at the location of the plant where it is physically received. Otherwise, it was argued, an incentive would be provided to attach to the pool as diverted milk unneeded supplies of milk delivered to nonpool plants at distant locations from the market. Under this circumstance, the producer milk thus diverted would have the advantage not only of receiving the f.o.b. marketing area price but also of the lower hauling cost incurred in moving the producer milk to the nonpool plant instead of to a pool plant in or nearer the marketing area.

Proponents of pricing diverted milk at the plant from which diverted emphasized primarily its administrative feasibility, especially since producers are accustomed to receiving payment for their milk based on the location of the plant to which it is usually delivered. They stated that confusion would be created among producers if a portion of their deliveries were paid for at prices applicable at other locations when such prices are different from the prices applicable at the location of the pool plant to which their milk is customarily delivered.

If permitted without any safeguards, pricing diverted milk at the location of the pool plant from which diverted could provide an incentive to pool unneeded supplies having no real association with the Class I market. This, it was argued, would make it possible to exploit the pool by diverting milk to manufacturing plants and thereby negate the incentive to make milk available for the market's Class I needs. Moreover, it could result in producers in the market paying (through the pool) a transportation cost to the market on milk which is not moved to the market and on which an equivalent transportation charge is not incurred.

The physical delivery to a pool plant during the month of at least half of the pooled milk of a producer is a reasonable standard to establish that producer's association with a pool plant. If less than half of a producer's deliveries during the month is delivered to a pool plant, it would be more appropriate to price the milk moved as diverted milk to another pool plant at the location of the plant at which it was physically received.

An equivalent standard would be equally appropriate for milk diverted to nonpool plants in August through March, when the quantity of milk of any producer diverted to nonpool plants as producer milk may not exceed that delivered to pool plants. Hence, during these months, the milk of a producer diverted to a nonpool plant would be priced at the location of the pool plant from which diverted. Similarly, in April through July, when milk of a producer may be diverted to nonpool plants without limit during the month, the quantity of milk of any producer diverted to nonpool equal to that physically received at pool plants equal to that physically received at pool plants would be priced at the location of the pool plant from which diverted. However, the quantity of milk of any producer diverted to nonpool plants that exceeds that physically received at pool plants would be deemed to have been received by the diverting handler at the location of the nonpool plant to which diverted.

The standards herein provided for determining the location for pricing producer milk is economically sound under present conditions in the proposed marketing area and will safeguard the purpose for which the diversion provisions are intended.

*Other source milk.* "Other source milk" should be defined in detail in the order to facilitate the application of the order to the various categories of receipts at a regulated plant.

*Other source milk.* "Other source skim milk and butterfat contained in or represented by (a) fluid milk products from any source (except producer milk, fluid milk products from pool plants, and fluid milk products in inventory at the beginning of the month), (b) all manufactured dairy products from any source (including those produced at the plant) which are reprocessed or converted into another product during the month, and (c) any disappearance of nonfluid milk products in a form in which they may be converted into Class I products and which are not otherwise accounted for under the order.

In order to verify the utilization of milk received from producers, it is necessary that the market administrator be in a position to reconcile all receipts of milk and dairy products with the disposition records of the plant. If such records cannot be reconciled, the handler must be held responsible for the shrinkage or the overrun which occurs as a result of the discrepancy between the records of receipts and disposition. Otherwise, the handler with improper records would be in a position to gain an advantage over his competitors who properly account for all milk and dairy products received. It is equally necessary that the handler be required to account for all nonfluid dairy products in a form in which they can be converted into Class I products. Otherwise, a handler, by failing to keep records of the nonfat dry milk and similar products which can be reconstituted into skim milk or other fluid milk products, would gain a competitive advantage over other handlers in the market.

*Route disposition.* The term "route disposition" would mean a delivery (except to a plant), either directly or through any distribution facility (including disposition from a plant store, vendor, or vending machine), of a fluid milk product classified as Class I.

Fluid milk products may be moved from a milk plant to a distribution facility such as a warehouse, loading station or storage plant. The distribution from such latter point would be considered a route disposition from the milk plant. To do otherwise would be inappropriate because it would consider the disposition of fluid milk products to have been made at the temporary storage facility instead of at the location at which such products are received by retail and wholesale purchasers.

*Reload point.* A "reload point" should be defined as a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering the plant. A reload operation on the premises of a plant, however, would be considered a part of the plant operations and not a reload point under the order.

Pricing producer milk at the location of a reload point was proposed by the major producer associations in the market.They claim that establishing the reload point as a point of pricing would reduce the incentive for handlers to move distant milk to the market at producers' expense for manufacturing use.

A number of handlers opposed pricing producer milk at the location of the reload point instead of at the pool plant where it is first received. Such reload point pricing, they claimed, could result in less opportunity for distant milk to compete for market outlets in the Eastern Ohio-Western Pennsylvania marketing area. They also argued that providing for reload point pricing under the proposed order is unnecessary since reload points are not a significant factor at this time.

If there are any reload points in operation under the proposed order, it was not established on the record. Neither was it indicated that an extensive utilization of reload points in the market is contemplated in the immediate future.

Any provision for reload point pricing in this market should take into account the actual or contemplated reload point operations in the market. Without such data, it cannot be concluded that there is sufficient need for differentiating the pricing of milk at reload points based on their location. The proposal, therefore, is denied.

(b) *Classification of milk.* Milk and milk products received by handlers should be classified on the basis of skim milk and butterfat according to the form in which, or the purpose for which, such skim milk and butterfat was used or disposed of as Class I or Class II milk.

Milk is received by handlers directly from dairy farmers, from other handlers, and from other sources. Milk from all these sources is commingled in handlers' plants. It is necessary, therefore, to have a plan for allocating the uses of milk to each source of supply in order to afford a means to establish the classification of producer milk and to apply the classified pricing plan.

The products included in Class I milk are required by health authorities in the proposed marketing area to be produced in compliance with the inspection requirements of a duly constituted health authority. The extra cost of getting quality milk produced and delivered to the market in the condition and quantities required makes it necessary to provide a price for milk used in Class I products considerably above the manufacturing milk price. The higher price should be at a level which will yield a blend price to farmers that will encourage production of enough milk to meet market needs.

In accordance with these standards, Class I milk should include all skim milk and butterfat disposed of in the form of milk, skim milk, buttermilk, flavored milk, flavored milk drinks, condensed milk, cream (except sour cream), and mixtures of such cream or milk and skim milk. These Class I products would be designated in the order as "fluid milk products". Class I, however, should not include any of the above products which are sterilized and in hermetically sealed glass or metal containers. Fluid milk products to which extra skim milk solids have been added or frozen or concentrated milk disposed of for fluid use likewise would be included as Class I milk. Any skim milk and butterfat not accounted for in Class II would be included in Class I.

Some nonfat milk solids are utilized through reconstitution or fortification in the preparation of Class I products distributed in the marketing area. For purposes of accounting for this skim milk required to produce the product, the added nonfat milk solids should include the normal quantity of water originally associated with the solids. The volume of the reconstituted or fortified product classified in Class I would be the quantity equal to the volume of the same product made without the addition of nonfat milk solids. The remaining volume of the product, which represents the skim milk equivalent of added nonfat milk solids, should be classified as Class II.

As now provided in the Northeastern Ohio, Youngstown-Warren, and Wheeling orders, skim milk and butterfat unaccounted for in a Class II utilization by a handler must be classified in Class I. Such a provision is no less necessary in the proposed order to insure the integrity of the regulation. Otherwise, a handler could gain an advantage by not fully accounting for the disposition of the milk handled in his plant. In view of this, it is necessary that the utilizations at a plant which are included in the Class II category be explicitly set forth in the order.

Class II should be all skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), sour cream, eggnog, yougurt, aerated cream products, butter, cheese (including cottage cheese), evaporated or condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, milk shake mix containing not less than 14 percent total milk solids and sterilized products in hermetically sealed glass or metal containers.

Inventories of fluid milk products at the end of each month enter into the accounting for a handler's current receipts and utilization. To facilitate the accounting procedure, the month-end inventory of fluid milk products should be classified in Class II. They would, however, be subtracted, under the allocation procedures, from any available Class II in the following month. The higher use value of any such skim milk and butter fat allocated to Class I in the following month would be reflected in returns to producers.

Inventories would include only the skim milk and butterfat in bulk and packaged fluid milk products on hand at the end of the month. Since the disposition of skim milk and butterfat in nonfluid milk products has been accounted for when used to produce a manufactured dairy product (and classified as Class II milk), such skim milk and butterfat would not be included in inventories.

Inventories of fluid milk products on hand at a plant at the beginning of the first month in which the proposed order becomes effective or during any month in which a plant becomes regulated for the first time should be allocated to the available Class II utilization of the plant during the month. At plants that were fully regulated by an order in the immediately preceding month, this method of pricing will be consistent with that provided in the orders. At plants that were previously unregulated, the allocation of their unpriced milk on hand at the beginning of their first month under the order to the available Class II utilization would be consistent with the treatment accorded regulated handlers and would preserve the priority of assignment of current fluid milk receipts to current Class I utilization.

The proposed method of handling inventories, which is the same as that provided in the Northeastern Ohio, Youngstown-Warren, and Wheeling orders, is similarly provided for under the regulations of the Pennsylvania Milk Control Commission. Its inclusion in the proposed order was urged at the hearing and no testimony was presented in support of any other method of handling inventories.

Skim milk and butterfat in fluid milk products dumped or disposed of by a handler for livestock feed should be classified as Class II milk. Such outlets often represent the most efficient means of disposing of surplus skim milk. Transportation and handling costs are such that it is uneconomical to ship relatively small quantities of unneeded skim milk to trade outlets for surplus disposal. In the case of route returns of such products as homogenized milk and chocolate milk it is difficult or impracticable to salvage the butterfat for further use. Such butterfat which is not salvageable should be classified as Class II when dumped or disposed of for livestock feed.

It would not be practicable to permit in an unlimited manner the dumping of skim milk and butterfat by pool plant handlers. Neither would it be appropriate to classify such skim milk and butterfat for which no better outlet is available in other than Class II. Accordingly, the order should clearly specify a Class II classification for the skim milk and butterfat in fluid milk products dumped, provided that the market administrator is notified in advance and afforded the opportunity to verify the dumping.

Skim milk and butterfat in fluid milk products delivered in bulk form to and used at a commercial food processing establishment (other than a milk plant) in the manufacture of packaged food products for consumption off the premises should be classified in Class II. Such commercial food establishments usually can readily substitute concentrated milk products (e.g., condensed milk, butter, nonfat dry milk) in place of fluid milk products in their operations. To provide other than a Class II classification for the skim milk and butterfat in fluid milk products moved to commercial food establishments could result in losing for local producers these established outlets for Class II milk.

Some handlers proposed that fluid cream (for which a Class I classification is herein provided) be classified in Class II. In support of their position, they cited particularly the declining sales of fluid cream, which they attributed to pricing it in Class I. The decline in fluid cream sales in Northeastern Ohio and other order markets in recent years may be attributed to a number of factors besides price, however, including the demand for fluid milk products of lower butterfat content, the competition from other foods and the substitutes for fluid cream.

There is no apparent distinction between fluid cream and all other Class I products which must come from inspected sources. Producers are relied upon for the market's fluid cream requirements and they must incur the additional costs involved in the production of milk of acceptable quality for such product. If fluid cream were classified in Class II (instead of Class I) under the proposed order, it would tend to have the effect of dairy farmers subsidizing consumers who purchase this product or providing handlers an additional margin on producer milk utilized for such fluid cream sales. The handler proposal for classifying fluid cream in Class II is denied.

Frozen cream is most generally used to produce frozen desserts or other Class II products. Under some conditions, however, frozen cream may be ultimately disposed of as fresh fluid cream or used in the production of other Class I products such as flavored milk drinks. The classification of skim milk and butterfat used to produce frozen cream should, therefore, be based on the actual disposition of such cream. Frozen cream placed in storage should be considered as a Class II classification in the same manner as any fluid milk product in a handler's inventory at the end of the month. Its Class II classification would be definitively established in any month in which it was used to produce a Class II product or qualified as a Class II transfer to another plant. Frozen cream that was not accounted for in a Class II disposition would necessarily be classified in Class I.

The health inspection requirements for milk used for sour cream manufacture vary within the proposed marketing area. Such products need not meet the same inspection requirements as milk for fluid consumption. There are substantial imports into the marketing area of sour cream and sour cream products from areas where milk used to produce sour cream is priced at a level approximating the Class II price under the proposed order.

Under these conditions, regulated handlers under the proposed order would be at a competitive disadvantage in competing for sales of these products in their principal sales areas. It would be inappropriate, therefore, under conditions in the proposed marketing area, to provide other than a Class II classification (as is now provided in the Northeastern Ohio order) for milk used to produce sour cream.

Under the Northeastern Ohio order, a Class II classification is provided for milk shake mix. This product, which is in the same category as ice cream mix, is not defined by statute in any of the States in the proposed marketing area. In proposing that milk shake mix be included in the Class II classification, handlers proposed that it be described more explicitly in the order. The statutory minimum of total milk solids in frozen dessert mixtures is 14 percent in Pennsylvania and somewhat higher in Ohio and West Virginia. It would be appropriate in specifying a Class II outlet for milk shake mix that it be a product of not less than 14 percent milk solids. Such a product containing a lesser quantity of milk solids would not, under the statutory standards in the marketing area, be a frozen dessert mixture and should be appropriately classified as Class I.

Waste and loss of skim milk and butterfat experienced in plant operations are referred to as "shrinkage". Since shrinkage represents disappearance of milk for which the handler must account but for which no direct return is realized, it should be considered as Class II milk to the extent that the amount is reasonable and is not the result of inadequate or faulty records.

The maximum shrinkage allowance in Class II at each pool plant should be 2 percent of producer milk, plus 1.5 percent of producer milk from a cooperative as a handler and bulk fluid milk products from other pool plants, and less 1.5 percent of bulk fluid milk products transferred or diverted to other plants. The 1.5 percent shrinkage allowance would be allowed on bulk fluid milk products received from other order plants and unregulated supply plants exclusive of the quantity of such receipts for which a Class II utilization is expressly requested by a handler.

The proposed 2 percent maximum shrinkage allowance of producer milk in Class II is substantially the same as provided in the Northwestern Ohio, Youngstown-Warren, Wheeling, and most other Federal orders. Its inclusion in the order was proposed by producers. A handler spokesman at the hearing urged a 3 percent maximum shrinkage allowance of producer milk in Class II for manufacturing operations. The basis for this request was the claim that manufacturing operations incur larger plant losses than other operations. No testimony was presented, however, of any specific experience of handlers under the proposed order to substantiate quantitatively the handler claim. Neither was it otherwise shown that conditions in the proposed marketing area justify a maximum shrinkage allowance in Class II that is 50 percent above that found to be reasonable and adequate in the Northeastern Ohio, Youngstown-Warren, Wheeling, and most other Federal order markets.

Plants which are operated in a reasonably efficient manner and for which acceptable records of receipts and utilization are maintained should not have plant losses in excess of the maximums provided. Any shrinkage in excess of the maximums should be classified as Class I milk. This is reasonable and necessary to strengthen the classified pricing plan and will tend to encourage the maintenance of adequate records and the efficient handling of milk.

The maximum shrinkage allowance in Class II herein provided is based on the experience of the pool plant at which the milk classified is received. If a handler operates more than one plant, he would compute his shrinkage allowance for each plant separately. To provide otherwise would establish different standards for single and multiple plant operators and accord an unwarranted advantage to the latter. Combining the receipts and utilization figures of two or more plants for determining shrinkage could have the effect of allowing a Class II classification for shrinkage in excess of the limits herein found to be appropriate. This is because the excess shrinkage at a plant (which is subject to a Class I classification) would be eligible to be classified in Class II if combined with the classification of another plant of a handler.

As provided elsewhere in this decision, a cooperative would be the handler for milk delivered from producers' farms to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative. When a cooperative is a handler under such conditions, the operator of a pool plant receiving this bulk tank milk directly from the farm would settle with the pool and the cooperative for such milk in the same manner as a receipt from producers. However, the full 2 percent allowance for shrinkage would be permitted the handler only if he is purchasing the milk on the basis of farm weights and has so notified the market administrator. Otherwise, the maximum Class II shrinkage allowed the handler on such milk would be 1.5 percent and the cooperative would be responsible for any difference between the gross weight of producer milk received in the tank truck at the farms and that delivered to pool plants. This procedure is followed in a number of Federal orders, including the Northeastern Ohio, Youngstown-Warren, and Wheeling orders. It provides a reasonable basis for the allocation of the shrinkage allowance in those instances wherein the cooperative is the responsible handler with respect to milk picked up at producers' farms in bulk tank trucks.

In those instances in which a pool plant operator is not purchasing farm tank milk (from a cooperative as a handler) on the basis of farm weights, any difference between the quantities of producer milk determined at the farm and ascertained as physically received by the operator of the pool plant would be considered a receipt of producer milk by the cooperative at the location of the pool plant. The cooperative would report such differences, which may reasonably be expected to be within 0.5 percent of the quantity of the producer milk determined on the basis of farm weights during the month, to the market administrator for inclusion in the monthly pool computation. Up to 0.5 percent of the producer farm tank milk involved would be reported in the pool as Class II; any such difference in excess of the maximum allowable Class II shrinkage of 0.5 percent would be Class I. The cooperative would be responsible for settling with the producer-settlement fund for the total quanity of shrinkage as reported. If the quantity of bulk tank milk physically received at a pool plant from a cooperative during the month is the same as the farm weights, the cooperative would have no settlement to make with the producer-settlement fund on such milk.

It is appropriate to limit the volume of unregulated supply plant 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 quantities received from pool plants and producers. Under the allocation system provided, such other source milk will share with producer milk in any shrinkage allocated to Class I when the specified Class II shrinkage limitations are exceeded. No specific shrinkage limit is necessary on unregulated or other order milk that does not share a pro rata assignment and thus is allocated first to Class II uses, 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 to the two categories of receipts (i.e., receipts for which there is a percentage limitation for Class II shrinkage assignment and receipts for which there is no such limitation), the total shrinkage should be prorated to these two categories.

Skim milk and butterfat are not used in most products in the same proportions as contained in the milk received from farmers and, therefore, should be classified according to their separate uses. The skim milk and butterfat content of milk products received and disposed of by a handler can be determined through certain testing procedures. Some products such as ice cream and condensed products present a difficult problem of testing in that some of the water contained in the milk has been removed. It is desirable in the case of such products to provide an appropriate means of ascertaining the amount of skim milk and butterfat used to produce such products. The accounting procedure to be used in the case of concentrated milk products, such as condensed milk or nonfat dry milk, should be based on the pounds of milk or skim milk required to produce such product.

Skim milk and butterfat used to produce Class II products should be considered to be disposed of when the Class II product is produced. Handlers will need to maintain stock records on such products, however, to permit audit of their utilization records by the market administrator so that verification of such Class II uses may be made. If a handler fails to keep the necessary records for verification purposes, the skim milk and butterfat will be reclassified as Class I milk.

Each handler must be held responsible for a full accounting of all his receipts of skim milk or butterfat in any form. A handler who first receives milk from dairy farmers should be held responsible for establishing the classification of and making payment for such milk. Fixing responsibilities in this manner is necessary to effectively administer the provisions of the order.

Except for the quantities of shrinkage that may be classified in Class II, all skim milk and butterfat for which the handler cannot establish utilization should be classified as Class I milk. This provision is necessary to remove any advantage that might accrue to handlers who fail to keep complete and accurate records and to assure that dairy farmers receive payment for their milk on the basis of its use. Accordingly, the burden of proof should be on the handler to establish the utilization of any milk as other than Class I.

*Transfers.* The transfer provisions in the attached order, which were proposed by producers, are basically the same as those in the Northeastern Ohio, Youngstown-Warren, and Wheeling orders with but one exception. Under these orders, milk or skim milk moved from a pool plant to a nonpool plant may be classified as Class II if transferred or diverted to a nonpool plant within a specified distance from a designated location in the marketing area (e.g., 265 miles from Cleveland in the Northeastern Ohio order). Transfers or diversions of milk and skim milk to nonpool plants beyond the specified distances are classified as Class I.

Producers proposed that milk and skim milk transferred or diverted to nonpool plants be eligible for a Class II classification irrespective of the location of the nonpool plant. Although there may have been some justification in the past under the existing orders to specify a Class I classification for transfers and diversions to nonpool plants beyond a specified distance from a marketing area location, there is no need under current marketing conditions for such a limitation under the proposed order. On the contrary, such a limitation would tend to impede rather than facilitate the marketing of unneeded supplies of producer milk.

With the removal of the mileage limitation, the transfer provisions in the attached order, which have been appropriate in achieving the ends sought by regulation under the existing orders, should be equally satisfactory in achieving these ends under the proposed order.

*Allocation.* The system of allocating handlers' receipts to the various classes should be similar to that adopted in the Assistant Secretary's June 19, 1964, decision for 76 milk orders (including the Northeastern Ohio, Youngstown-Warren, and Wheeling orders) for integrating into the regulatory plan of each of the orders milk which is not subject to classified pricing under any order and receipts at a pool plant from other order plants. That decision provides a procedure for allocating over a handler's total utilization his receipts from all nonpool sources and for making payment into the producer-settlement fund on unregulated milk allocated to Class I.

Inasmuch as the aforesaid decision sets forth the standards for dealing with unregulated milk under Federal orders generally, it is appropriate and necessary that the same system of allocation be included in this order. Likewise, the treatment of other order milk received at pool plants should conform with the plan included in that decision so as to coordinate the applicable regulations on all movements of milk between Federal order markets. Producers and handlers recognized the necessity for such coordination and proposed allocation provisions that would be basically unchanged from those now provided in the Northeastern Ohio order.

The findings and conclusions of the June 19, 1964, decision (29 F.R. 9002) as they relate to a handler's receipts from all nonpool sources are equally applicable under current conditions in the proposed marketing area and are adopted in their entirety.

(c) *Class prices—Class I price.* The Class I price must be established at a level which, in conjunction with the other class prices, will result in returns to producers high enough to maintain an adequate, but not excessive, supply of quality milk to meet the requirements of consumers, including the necessary market reserves. In addition, it is important that the Class I price not be at a level which exceeds the cost of obtaining milk of acceptable quality and regular availability from alternative sources. Such a price will, of course, be in alignment with those prevailing in nearby Federal order markets.

The Class I price proposals considered at the hearing follow closely the Class I price provisions of the Northeastern Ohio order. In that order, the Class I price is determined by adding a differential of $1.67 to the basic formula price (Minnesota-Wisconsin price series) for the preceding month and adding or subtracting a supply-demand adjustment of not more than 25 cents that is based on the relationship of producer deliveries to handlers' Class I sales. The order also provides that in determining the Class I price through April 1968, the basic formula price shall be not less than $4.05 and the Class I differential shall be $1.87 instead of $1.67.

The Youngstown-Warren Class I price is determined by adding 10 cents to the Northeastern Ohio Class I price.

The Wheeling order Class I price is the basic formula price (Minnesota-Wisconsin series) for the preceding month plus $1.73, subject to a supply-demand adjustment that may not differ by more than 15 cents from the Northeastern Ohio supply-demand adjustor for the preceding month. Through April 1968, the applicable basic formula price may not be less than $4.05 and the Class I differential is $1.93 instead of $1.73.

Official notice is taken of the findings in the April 25, 1967, decision (32 F.R. 6501) supporting amendments to various orders, including Northeastern Ohio and Wheeling, which became effective May 1, 1967 (32 F.R. 6606). These amendments provide that in determining the Class I price through April 1968, the basic formula will be not less than $4.05 and the average annual Class I differentials will be increased 20 cents. The amendments also provide for replacing seasonal Class I differentials in Northeastern Ohio (and other orders) with a single monthly differential equal to the annual average of the seasonal differentials. Prior to May 1, 1967, the Northeastern Ohio Class I price differentials were $1.40 in April through July and $1.80 in the other months.

The Class I prices in the Youngstown-Warren and Wheeling markets have been at about the same level. During the period 1963–66, the Wheeling Class I price averaged $4.92; the Youngstown-Warren price averaged $4.93. In most of these years, the Wheeling price exceeded the Youngstown-Warren price by from 3 to 7 cents per hundredweight. However, in 1966, the Wheeling price was about 17 cents less than the Youngstown-Warren price.

There is no indication that the pricing provisions of the Northeastern Ohio, Youngstown-Warren, and Wheeling orders are not obtaining an adequate supply of milk for the market, or that basically these price provisions will be inappropriate under the proposed amended order. Of the 2.112 billion pounds of producer milk pooled under the three orders in 1966, 70 percent was Class I.

The Class I price level proposed for milk received at plants in the Pittsburgh area ranged from the same as to 25 cents above the Class I price that would be applicable in the Cleveland area. The proposal for the same Class I price in the Cleveland and Pittsburgh areas would also provide for the same Class I price throughout the entire marketing area. Various witnesses emphasized that the Class I price in the Pittsburgh area should be equivalent to the Cleveland area Class I price plus the cost of moving milk between the two locations.

The actual prices paid by Western Pennsylvania handlers (except the several presently subject to Federal orders) for all milk disposed of in the Class I category is not clearly established on the record. This is because a substantial portion of their aggregate Class I disposition is not subject to prescribed minimum prices. As previously indicated, the Pennsylvania Milk Control Commission (PMCC) fixes minimum prices that Pennsylvania handlers purchasing milk from producers must pay for such milk received at their plants in Pennsylvania. Such handlers, however, are not required by PMCC to pay any prescribed price for milk received from outside the State. Substantial quantities of milk are received by Pennsylvania handlers from producers and country plants outside Pennsylvania.

In 1966, Pittsburgh area (PMCC Area 2) fluid milk dealers received 883 million pounds of milk from producers either at their plants in Pennsylvania or at country receiving stations in the State. In addition, they received the same year 225 million pounds of milk from out-of-State sources. The quantity of milk handled by fluid milk dealers in the Erie marketing area (PMCC Area 7) is significantly less than that handled by those in the Pittsburgh area. Data for 1966 were not available for the Erie area. For 1965, of the 186 million pounds of milk received by fluid milk dealers in the Erie area, 14 million were from out-of-State sources.

The PMCC Class I price for Area 2 (Pittsburgh) has historically been about

11 cents higher than the Area 7 (Erie) price. Except for some abnormal variations in 1964 and 1965, the PMCC Pittsburgh area Class I price for the period 1961 through 1966 averaged 11 cents above the Erie area price. (From August 1964 through July 1965, the PMCC Pittsburgh Class I price was reduced substantially but the Erie Class I price was not. During this period, consequently, an atypical relationship existed between the Class I prices for the two areas.) In addition, for the period January through September 1967, the Pittsburgh price likewise averaged 11 cents above the Erie price. (Official notice is here taken of the PMCC monthly Class I price announcements for Areas 2 and 7 for January 1961 to date.)

The PMCC orders provide for a lower Class I price applicable to milk sold by a handler outside his area. These prices in 1966 ranged monthly from 10 to 20 cents below the stated Class I prices in the Pittsburgh and Erie areas. In addition, handlers who comply with certain conditions may pay their producers on an "optional" basis. Under the optional purchase plan, the prescribed minimum prices that a handler must pay his producers are about 10 cents below the stated Class I prices.

Of the 883 million pounds of milk received by Area 2 fluid milk plants by direct delivery from producers and from receiving stations in Pennsylvania, 542 million or 61 percent was classified as Class I. These Class I sales are apparently subject to PMCC's Class I pricing provisions. The remainder of the receipts at these plants, the 225 million pounds from out-of-State sources, are not priced by PMCC.

Since a Pittsburgh based handler may obtain all or a part of his milk from sources in or outside the State, the PMCC Class I prices often have limited applicability. They have no applicability to a handler who receives all his milk from sources outside the State. To a handler who receives his supply from sources both inside and outside the State, the proportion in which his in-State and out-of-State supplies are allocated to his Class I uses actually determines his Class I costs. The PMCC Class I price may have little, or not any, effect in determining a price applicable to his total Class I disposition. This situation is equally as true in the Erie portion of the proposed marketing area as well as in the Pittsburgh area.

The extent to which Pennsylvania milk, to which the PMCC Class I price is applicable, is allocated to Class I vis-a-vis milk received from out-of-State sources is indicated by the relative utilizations of milk in these categories for 1965 (complete 1966 data were not available on the record). Of the 1.294 billion pounds of milk received from all sources by 107 Area 2 fluid milk dealers in 1965, 63 percent was classified in Class I. Included in that total were 167 million pounds of milk received from out-of-State sources, 91 percent of which was classified as Class I.

It is apparent that Area 2 handlers receiving milk from out-of-State receiving stations are able to obtain such milk at prices lower than they would be required to pay for milk received from producers in Pennsylvania. For 31.6 million pounds of milk received from out-of-State receiving stations in 1965, Area 2 handlers paid $198,000 less than the PMCC's minimum prices, an average of 63 cents per hundredweight of milk.

Except for the proposal for the same Class I price at all locations in the proposed marketing area, there was no testimony at the hearing in support of a lower Class I price level at plants in the present Youngstown-Warren and Wheeling marketing areas relative to the Class I price that is now applicable in the Northeastern Ohio marketing area. Instead, it was urged that the present relationship of Class I prices that now exists for milk received at plants located in these various marketing areas be retained. Those proposing the same Class I price throughout the marketing area tended to overlook the historic relationship of prices at the various locations, which prices had been deemed appropriate to obtain adequate supplies of milk from producers at plants in these areas. It was not shown that the conditions that would prevail under an order as proposed would justify a reduction in the Class I price for producer milk delivered to plants now subject to the Youngstown-Warren and Wheeling orders.

Accordingly, the price in the Youngstown - Warren - Steubenville - Wheeling area (essentially the territory covered by the previous Youngstown-Warren and Wheeling marketing areas) should be established at 10 cents per hundredweight over the Cleveland Class I price. This will maintain the historical relationship between the Youngstown-Warren and Wheeling prices and also the historical relationship between the Cleveland price on the one hand and the Youngstown-Warren and Wheeling prices on the other.

The price in the Pittsburgh area should also be established at the same level as that for Youngstown-Warren and Wheeling and 10 cents higher than for Cleveland. The principal distribution in the Pennsylvania portion of the proposed marketing area is from plants in Allegheny County, the county in which Pittsburgh is located. Milk is received at plants in the Pittsburgh area from dairy farmers as much as 150 miles away. Since the production areas from which Pittsburgh area handlers receive their supplies overlap substantially the production areas for the Youngstown-Warren and Wheeling markets, Pittsburgh handlers would be disadvantaged under the proposed order in maintaining a supply of milk at Class I prices lower than for milk delivered to regulated plants at Youngstown and Wheeling. On the other hand, there is no justification for establishing a higher Class I price for milk delivered to plants in the Pittsburgh area than for milk delivered to the Youngstown-Warren and Wheeling areas. This is because there is no indication that the comparable Class I prices paid by Pittsburgh handlers for their total Class I utilization are even as much as the Youngstown-Warren and Wheeling order Class I prices.

Providing for the same Class I price in the Pittsburgh area as in the Youngstown-Warren and Wheeling areas would also tend to insure an appropriate relationship of the Class I prices between the Cleveland and Pittsburgh areas. The PMCC Class I price for the Pittsburgh area of $5.73 for 1966 is not the actual average price paid for all Class I milk disposed of from Pittsburgh area fluid milk plants. The $5.73 price and its equivalent in other specified periods were the prices emphasized at the hearing by the various proponents for a higher Class I price in the Pittsburgh area than at other locations in the proposed marketing area. What portion of the Class I milk disposed of from Pittsburgh area fluid milk plants is paid for at the various PMCC Class I prices was not established on the record. The record does state, however, that milk received from out-of-State sources and not subject to the PMCC prices was paid for at less than the PMCC prices.

The cited PMCC prices as a basis for a Class I price that should be applicable under the proposed order would need to be further reduced since Class I milk as defined by PMCC and under the proposed order, although similar, are not the same. A greater quantity of the milk disposed of by Western Pennsylvania handlers would be classified as Class I under the proposed order than under PMCC regulations. For example, cream which is Class I under the Northeastern Ohio, Youngstown-Warren and Wheeling orders, as well as under the proposed order, is Class II under the PMCC regulations. Because of the differences between Class I classification under the proposed order and the PMCC regulations, it may reasonably be concluded that the actual Class I price that is now obtaining an adequate supply of milk for the Pittsburgh area is nearer that provided in the Youngstown-Warren and Wheeling orders than is the stated PMCC Class I price. This is because the latter price is pricing only a part of the Class I disposition of Pittsburgh fluid milk dealers.

The Class I price under the proposed order for milk received at plants in the presently designated Youngstown-Warren and Wheeling marketing areas and at Pittsburgh area plants should be established 10 cents above the Class I price for milk received at other locations in the marketing area. To effectuate this, the territory in the marketing area within 80 miles (by the shortest highway distance as determined by the market administrator) of the Pittsburgh City Hall would be designated the "Pittsburgh district". The remainder of the marketing area would be designated the "Cleveland-Erie district".

Included within the Pittsburgh district would be the presently regulated Youngstown-Warren and Wheeling order plants and all but several plants in the PMCC Pittsburgh milk marketing area. In the remaining portion of the marketing area provided by this decision are principally those plants whose milk is now priced by the Northeastern Ohio order, plants now included in the Erie marketing area and a plant in Ohio that would become regulated for the first time under a Federal order.

The several plants in the present Pittsburgh milk marketing area that would not be included in the proposed Pittsburgh district are those which are more closely associated competitively with handlers at other locations in the proposed marketing area in both procurement and sales than with Pittsburgh area handlers. Typical of these are the handlers in the vicinity of Meadville, Pa., which is but 37 miles from Erie and 95 miles from Pittsburgh. The handlers whose plants are in the proposed Pittsburgh district are those whose principal distribution is within the major cities of the present Pittsburgh marketing area and the Wheeling and Youngstown areas. There is substantial competition among these handlers in both procurement and in sales.

There is no basis for establishing a price level in the Erie area above that provided presently and now proposed for the territory in the Northeastern Ohio marketing area. Likewise, it would be inappropriate to provide for a Class I price level in the Erie area equal to that provided for the Pittsburgh district. To do this would remove the incentive for the many producers in and near Erie County, who ship to Pittsburgh handlers, to continue to make such shipments. Presently, substantial quantities of milk are shipped from the Erie area to Pittsburgh district handlers. A Pittsburgh district Class I price that is 10 cents above that at Erie plants recognizes the historical relationship of prices at these locations and will insure that milk from the farms in the Erie area now supplying Pittsburgh district plants will continue to ship needed supplies to Pittsburgh.

The Class I price under the proposed order for milk received at plants in the Cleveland-Erie district would be the same as that now provided in the Northeastern Ohio order, i.e., adding $1.67 to the basic formula price (Minnesota-Wisconsin price series) for the preceding month and adding or subtracting a supply-demand adjustment of not more than 25 cents. In addition, in computing the Class I price through April 1968 the basic formula used would be not less than $4.05 and the Class I differential would be $1.187 instead of $1.67. The April 25, 1967, decision (32 F.R. 6501), which provides for the latter in a number of orders, including Northeastern Ohio and Wheeling, is adopted in its entirety with respect to justification for a basic formula of not less than $4.05 and a Class I differential of $.187 through April 1968. The findings set forth in that decision are equally appropriate under current conditions in the proposed marketing area.

The April 25, 1967, decision also provides for the removal of seasonal pricing in the various orders, including the Northeastern Ohio order. The conclusion in that decision that removal of seasonal pricing would contribute substantially to price alignment among all markets is equally applicable under current conditions in the proposed marketing area.

The Class I price for milk received at plants in the Pittsburgh district would be determined by adding 10 cents to the Cleveland-Erie district Class I price. At plants outside the marketing area the Class I price would be the same as the Class I price applicable at the nearest of several designated cities in the marketing area. For this purpose, Cleveland and Canton, Ohio, and Pittsburgh, Erie, and Uniontown, Pa., would be appropriate locations from which to make such determinations. It is reasonable to expect, for example, that competition in procurement and/or sales of a plant that is nearer the Cleveland-Erie district than to the Pittsburgh district would be with handlers in the Cleveland-Erie district than with Pittsburgh district handlers.

Until production and sales data under the proposed order have been accumulated for a reasonable period of time, the same supply-demand provisions now in the Northeastern Ohio order should be retained. They are the most suitable means currently available for measuring the supply of milk available for the market relative to its needs. There is no indication that the overall utilization of milk received from dairy farmers at plants which are presently federally unregulated and which would be subject to the proposed order are substantially different from the utilization at the presently regulated Federal order plants.

In 1966, of the 2.112 billion pounds of milk received from dairy farmers at plants subject to regulation under the Northeastern Ohio, Youngstown-Warren, and Wheeling orders, 70 percent was Class I. The most recent comparable utilization data available for the Pittsburgh marketing area is for the 12 months ending November 30, 1966. In that period, 68 percent of the 1.26 billion pounds of milk received by fluid milk dealers in the Pittsburgh milk marketing area was designated Class I by PMCC. For the Erie marketing area, the year 1965 is the most recent 12 months for which comparable data are available. In that year, 71 percent of the 173 million pounds of milk received from Pennsylvania producers was PMCC Class I. No information was available on the record of the utilization of 14 million pounds of milk received in 1965 by Erie area handlers from out-of-State sources.

Since the Class I utilization percentage of the aggregate producer deliveries to plants that would be regulated under the proposed order approximates that under the present Northeastern Ohio order, the present supply-demand provisions of the Northeastern Ohio order should be appropriate under the proposed order for the limited period herein provided. (Elsewhere in this decision, it is found that the Eastern Ohio-Western Pennsylvania Class I price, including the supply-demand provisions, should be effective only for the first 18 months of the order.) It is also appropriate that the supply-demand provisions under the proposed order be computed on the basis of producer receipts and Class I sales of all regulated plants instead of being limited to plants now subject to the Northeastern Ohio order. Using only supplies and sales of presently regulated Northeastern Ohio plants in computing the supply-demand adjustment for the enlarged order could tend to incorrectly reflect the actual supply-demand conditions for the whole market. There is no assurance, for example, that all plants now regulated under the Northeastern Ohio order will be continuously in operation in the first 18 months of the new order or that some plants now regulated will become nonpool plants in that period. On the other hand, the effect on the supply-demand adjustment of some plants discontinuing their association with the market would be minimized under the proposed order since consideration would be given to the receipts and sales of plants coming on the market for the first time as well as those which have discontinued their operations or have become nonpool plants.

It is proposed that the Eastern Ohio-Western Pennsylvania Class I price be effective only for the first 18 months in which the order is in effect. It is appropriate that the Class I price structure be reexamined at a public hearing after the accumulation of at least 1 year's data on milk supplies and sales. At that time, sufficient experience under the new order would be available to determine whether the Class I price level herein proposed should be changed. Also, sufficient data would then be available to determine whether any changes in the supply-demand provisions should be made.

*Class II price.* The Class II price should be the same as the Northeastern Ohio order Class II price: the basic formula price (Minnesota-Wisconsin price series) for the month or a butter-powder formula price plus 10 cents, whichever is lower. In 1966, when the Northeastern Ohio Class II price averaged $3.76, the Minnesota-Wisconsin price was the Class II price in only 1 month. In that year, the Minnesota-Wisconsin price series averaged $3.92 and the butter-powder formula price, $3.66.

The Class II price herein provided was proposed by the principal producer associations in the market and was supported by some handlers. It is used not only in the Northeastern Ohio, Youngstown-Warren, and Wheeling orders in establishing a Class II price, but also in a number of other Federal orders, including the nearby Northwestern Ohio, Columbus, Cincinnati, Miami Valley, and Clarksburg orders.

In the Pennsylvania portion of the proposed marketing area, milk received by fluid milk dealers from Pennsylvania producers is now subject to PMCC prices. The PMCC Class II price, which is the higher of the Minnesota-Wisconsin price or a butter-powder formula price, averaged $3.94 in 1966. The PMCC "Sub-class II" price which is its butter-powder formula price, averaged $3.65 in 1966. Sub-class II includes milk used in the manufacture of cheese (except cottage cheese), butter and nonfat dry milk. The PMCC Class II includes other Class

II dispositions (as provided in the proposed order) and dispositions such as fluid cream and mixtures of milk and cream, which are Class I in the proposed order. Of the 1.26 billion pounds of milk handled by Pittsburgh area fluid milk dealers in the year ending November 30, 1966, 27 percent was classified in Class II and 6 percent in Sub-class II by PMCC.

Two producer associations (neither of which maintains manufacturing operations or is extensively involved in marketing Class II milk) proposed as a Class II price the higher of the Minnesota-Wisconsin price or the present butter-powder formula price. For 1966, such price would have averaged $3.92, 16 cents above the Class II price provided by this decision.

A handler urged that the Class II price be the lower of the Northeastern Ohio order butter-powder formula price or the U.S. manufacturing milk price series used in the Federal order markets in the northeast. The average 1966 Class II (Class III in the New York-New Jersey order) price in these northeastern orders was $3.84 for New York-New Jersey and Massachusetts-Rhode Island, $3.89 for Connecticut, $3.92 for Delaware Valley, and $3.86 for Washington and Upper Chesapeake Bay. The handlers' proposed butter-powder formula price, which would have been the effective Class II price in every 1966 month, averaged $3.66, 18 to 26 cents below the northeastern order Class II prices and 10 cents below the Class II price provided by this decision.

The Class II price level in the northeastern Federal orders using the U.S. manufacturing milk price series is higher than that herein proposed. The handler spokesman stated that the U.S. manufacturing price series as a basis for determining the Class II price under the proposed order is more appropriate (because it is used in six northeastern orders) than any Midwest pay price, such as the Minnesota-Wisconsin price. He did not, however, explain why the butter-powder formula price proposed by him as an alternative Class II price (and not so utilized in any northeastern Federal order) should be included in the proposed order.

The principal argument of the handlers proposing the lower Class II price is that Pennsylvania is one of the leading States in ice cream manufacture, and Pennsylvania ice cream manufacturers must compete for sales outside the State with handlers who have lower raw material costs. This, according to handlers, is because the milk and milk products used in the manufacture of ice cream in Pittsburgh and other parts of Western Pennsylvania must be approved by a duly constituted health authority, in the same manner as milk for Class I purposes. The out-of-State handlers with whom they compete, handlers claim, may use milk and milk products from uninspected sources and are able thereby to utilize imported butterfat, presumably obtainable at a relatively low price, in their ice cream manufacturing operations.

The purpose of an order is to insure an adequate supply of pure and wholesome milk for the market's Class I needs. Since the quantities of producer milk required on different days of the week will vary substantially, the quantity of producer milk associated with the market must necessarily include a reasonable reserve above the market's actual Class I sales. That reserve must be disposed of by producers through their cooperatives or by handlers as Class II milk.

The Class II price should be at a level at which producer milk that is not needed for Class I purposes may be marketed. It should not, however, be at a price so low that it would encourage a handler to associate milk with the pool solely for manufacturing purposes. Neither should it be at a price that would return to producers less than the obtainable market value for such milk.

In establishing a Class II price, consideration must be given to the outlets that are available for Class II milk and the prices at which such outlets, including both regulated and unregulated plants, may obtain supplies from other sources. Consideration likewise must be given to the Class II prices in adjacent Federal order markets. If the proposed Class II price were higher than Class II prices in the nearby order markets, local producers may encounter difficulties in marketing reserve supplies, particularly in the months of seasonally high production.

There is no indication that the Northeastern Ohio, Youngstown-Warren, and Wheeling order producers and handlers have been unable to market reserve supplies at the proposed Class II price. Neither is there any indication that producers and handlers in the Pennsylvania portion of the proposed marketing area have been unable to market milk for Class II uses at prices comparable to that herein proposed.

The proposed Class II price, by obtaining for producers a price the same as that in the nearby order markets, will tend to insure the orderly marketing of the market's reserve supplies. A higher Class II price than what prevails generally in the area could tend to lose for producers their most accessible and desirable Class II outlets, since some such outlets may be the same as those for the reserve supplies of nearby order markets. On the other hand, there is no justification for providing a lower price than herein proposed. The record does not show that skim milk and butterfat needed by handlers for their Class II operations are available from other sources at prices lower than the proposed Class II price.

*Butterfat differentials.* The Class I butterfat differential should be 12 percent of the Chicago butter price for the preceding month and the Class II butterfat differential should be 11.5 percent of the Chicago butter price for the current month. For 1966, this would have resulted in Class I and Class II differentials averaging 8 cents and 7.6 cents, respectively.

The Northeastern Ohio, Youngstown-Warren, and Wheeling order Class I and Class II differentials are 13 percent and 11.5 percent, respectively, of the Chicago butter price. These resulted in average differentials in 1966 of 8.6 cents for Class I and 7.6 cents for Class II.

Under the PMCC regulations, the average Class I butterfat differential equivalent in Western Pennsylvania in 1966 was 10.4 cents, or 15.5 percent of the Chicago butter price. The PMCC Class II butterfat differential in Western Pennsylvania is 11.5 percent of the Chicago butter price, the same as provided in the Northeastern Ohio and other Federal orders and as herein proposed.

The butterfat differentials herein provided were proposed by the principal producer associations in the market. They have wide acceptance in the industry and are the Class I and Class II butterfat differentials most applicable in Federal orders.

The spokesman of one producer association proposed the same butterfat differential (12 percent of the Chicago butter price) for Class I and Class II. He stated that this has worked well in some Federal orders and would simplify the accounting procedures under the proposed order. Of the 73 Federal orders currently in effect, four have the same butterfat differential for Class I and Class II milk. The conditions in these markets that justify the same butterfat differential for Class I and Class II were not set forth in the record of this hearing. Because several orders use the same butterfat differentials for Class I and Class II is not sufficient justification per se to provide one butterfat differential for the two classes under this order.

A handler spokesman for the same Class I and Class II differential proposed a rate of 11.3 percent of the Chicago butter price. His principal argument for a lower Class I butterfat differential is that the demand in Class I products is increasingly greater for the nonfat solids and the demand for butterfat is declining. A lower Class II butterfat differential is desirable, he stated, to better enable cream to compete with cream substitutes. The handler's proposal would have the effect of increasing the cost of the skim milk portion of Class I and Class II milk and reducing substantially the cost of butterfat, especially in Class I milk.

The only testimony in support of a Class I differential higher than 12 percent of the Chicago butter price was presented by a handler who proposed retaining the Northeastern Ohio Class I differential of 13 percent of the Chicago butter price. He cited the continually increasing consumer demand for nonfat and low fat fluid milk products and the decreasing demand for butterfat. Lowering the Class I butterfat differential, and thereby increasing the cost of the skim milk portion of Class I milk, he argued, would tend to impede the increasing demand for the nonfat and low fat Class I products.

The proposed Class I butterfat differential will allocate less value to the butterfat in Class I milk and more value to the skim milk portion than is now provided in the Northeastern Ohio, Youngstown-Warren, and Wheeling orders and by the PMCC regulations applicable in Western Pennsylvania. In 1966, when the Northeastern Ohio Class I price averaged $5.47, the value of 3.5 pounds of butterfat in a hundred pounds of milk was $3.01 ($35\times8.6$ cents). The skim milk portion of such hundred pounds of milk was valued at $2.46.

The proposed butterfat differential of 12 percent of the Chicago butter price would have valued the butterfat in a hundred pounds of milk under the Northeastern Ohio order in 1966 at $2.80 ($35\times8$ cents). This is 21 cents less than the value of the 3.5 pounds of butterfat in a hundred pounds of Class I milk under the Northeastern Ohio order in 1966. Had such a differential been in effect, the value of the skim milk portion of the milk would have been increased by 21 cents.

A number of fluid milk products on the market have a proportionately higher percentage of solids-not-fat (e.g., fortified or modified skim milk). With a relatively high Class I butterfat differential, producers do not receive their appropriate share of the Class I sales value represented by the solids-not-fat portion of Class I products.

Except for the handler who proposed 11.3 percent of the Chicago butter price for a Class I and Class II differential, there was no opposition at the hearing to the Class II differential of 11.5 percent of the Chicago butter price. Any reduction below 11.5 percent of the Chicago butter price as a Class II differential would tend to price butterfat below that which widely prevails in other Federal order markets and in unregulated markets. Likewise, it would be inappropriate to price the butterfat in Class I milk at this lower manufacturing value, when it is sold by handlers in higher valued Class I products.

The proposed Class I and Class II butterfat differentials, by pricing butterfat in producer milk competitively with butterfat for comparable uses from alternative sources of supply, will facilitate the orderly marketing of producer milk under the proposed order.

The butterfat differential to producers should be calculated at the average of the Class I and Class II butterfat differentials weighted by the proportion of butterfat in producer milk classified in each class during the month. This procedure for determining the producer butterfat differential is commonly provided in Federal orders, including the Northeastern Ohio, Youngstown-Warren, and Wheeling orders. Its inclusion in the proposed order will assure returns to producers that reflect the actual value of their butterfat at the class prices provided by the order.

*Location adjustments.* Location adjustments should be incorporated into the order to provide an appropriate adjustment of the Class I and uniform prices. Such adjustments should be based on the location of any plant at which producer milk or other source milk is received.

For milk received at plants 85–100 miles from the nearest of the five designated cities (Canton and Cleveland, Ohio, and Erie, Pittsburgh, and Uniontown, Pa.), the Class I price should be reduced 15 cents. For plants beyond the 100-mile limit, the Class I price should be reduced 15 cents plus an additional 1.5 cents for each 10 miles or fraction thereof that such plants are more than 100 miles from the nearest of the city halls in the designated cities. The applicable mileage (from the nearest designated city to a plant) for determining the location adjustment would be measured by the shortest hard-surfaced highway distance as determined by the market administrator.

The five measuring point cities proposed for determining the location adjustment are the same measuring points used for determining whether the Pittsburgh district or Cleveland-Erie district Class I price would be applicable at a plant located outside the marketing area. These cities are so situated geographically in relation to the supplies for the market to serve most equitably as representative measuring points from which to determine location adjustment mileages.

In addition to the five cities herein proposed as measuring points for applying location differentials, five other cities (Akron, Ashtabula, Youngstown, Warren, and Wheeling) were proposed by producers for the same purpose. Since no practical purpose would be accomplished by designating as measuring points any of the additional cities proposed (i.e., obtaining significantly different applicable location adjustments at any location from which milk may be shipped to the marketing area), they are not so used.

The Northeastern Ohio, Youngstown-Warren, and Wheeling orders provide for location adjustments in the manner herein proposed. PMCC regulations for Western Pennsylvania do not provide for any such adjustments.

Under the Northeastern Ohio order, location differentials are applicable at plants that are 40 miles or more from the public square in Cleveland and also 27.5 miles or more from city halls in Akron, Canton, and Ashtabula. The Youngstown-Warren order location adjustments are applicable at plants 50 miles or more from the county courthouses in Youngstown and Warren, Ohio. Under the Wheeling order, location adjustments apply at plants 60 miles or more from the city halls in Wheeling, East Liverpool, and Steubenville.

The Northeastern Ohio location adjustment rate is 13 cents at plants 40–60 miles from Cleveland plus one cent for each 10 miles or fraction thereof in excess of 60 miles. The Youngstown-Warren location differential for plants 50–60 miles from the nearer of Youngstown or Warren is 10 cents plus 1.5 cents for each additional 10 miles or fraction thereof. The Wheeling location adjustment is 15 cents at plants 60–70 miles from the nearest of Wheeling, East Liverpool or Steubenville, 16.5 cents at 70–80 miles, 18 cents at 80–90 miles and plus one cent for each additional 10 miles or fraction thereof.

The minimum distances from their respective measuring points for which location adjustments apply under the Northeastern Ohio, Youngstown-Warren, and Wheeling orders have been appropriate for those respective orders since they were first established or amended 5 or more years ago. Providing location adjustment credits only at plants 85 miles or more from designated measuring points as herein proposed recognizes the rapidly changing and continuing technological improvements in moving milk greater distances from farms to milk plants. Farms within an 85-mile radius of the designated measuring points are preponderantly those delivering directly to plants in the marketing area. There would be no economic justification to provide that a handler should pay a lesser price (by receiving a location adjustment credit) for producer milk delivered to plants within such a radius. The 85-mile distance from the designated measuring point is a reasonable and appropriate standard under current conditions in the proposed enlarged marketing area as a minimum distance for establishing location adjustments.

Class I products, because of their bulky, perishable nature, incur a relatively high transportation cost if such products or the milk used to produce them are moved considerable distances. Milk delivered directly by farmers to plants in or near the marketing area, therefore, is worth more to a handler than milk received from farmers at a plant many miles from the marketing area. This is so because in the latter instances the handler must incur the additional cost of moving that milk to the marketing area. Under these conditions, the value of producer milk delivered to plants located some distance from the marketing area is reduced in proportion to the distance (and the cost of transporting such milk) from the point of receipt to the marketing area. Providing location differentials based on the cost of moving milk to marketing area plants will insure uniform prices to all handlers regardless of the location where the milk is procured.

Location differentials applicable to the various plants should reflect the efficiency resulting from technological changes in the marketing of milk in recent years. Such technological improvements, as better roads and larger tank trucks, have tended to reduce unit hauling costs for both producers and handlers.

The location adjustment rates proposed at the hearing range from one cent to more than two cents per hundredweight for each 10 miles. The 1.5-cent rate proposed herein appropriately reflects the cost of moving milk efficiently under present economic conditions in the Eastern Ohio-Western Pennsylvania market. It is the rate most applicable in Federal orders throughout the United States and is recognized as an appropriate and representative rate for transporting milk to the market. Because of its wide applicability, it will insure a reasonable alignment of prices between this and other orders at the various locations at which handlers under the different orders compete.

It is not intended that the Class I price should be dependent on the type of plant receiving the milk. To the extent that milk is received at a plant from producers at a considerable distance from the marketing area and brought to the marketing area by the handler, he has assumed a transportation cost which might otherwise be borne by producers. Transportation costs are incurred whether milk is moved in tank trucks from distant plants to the marketing area or whether packaged fluid milk products from processing plants at the same or a similar location are distributed on routes in the marketing area.

It was suggested that a location adjustment credit or a similar allowance apply to all pool supply plants wherever located to compensate the supply plant operators for costs incurred in operating such plants and moving milk from such plants to distributing plants. It is not the purpose of the order to either promote or discourage the operation of supply plants. The operator of a pool distributing plant may elect to obtain his supply from producers delivering directly to his plant or from a supply plant. The handler operating the supply plant does so because he deems it economically advantageous to him. A location adjustment credit or similar allowance for all pool supply plants as was suggested would be tantamount to a payment from the pool to supply plant operators. Incorporating such a provision in the proposed order would be inappropriate since it would, in effect, subsidize supply plants at the expense of all producers under the order.

Because of the variations in daily demand, some milk that is moved to the market and intended for use as Class I milk cannot be so utilized and must be processed into manufactured products. Under the Northeastern Ohio order, a location adjustment is applicable, under certain conditions, to milk in the Class II classification which was moved from another pool plant.

The maximum quantity of such milk to which an adjustment may apply at a transferee plant is 8 percent of its Class I utilization. Such a margin should be sufficient for handlers under the proposed order in balancing the receipts from supply plants with day-to-day bottling requirements. The attached order gives consideration to this by providing that any remainder of Class I milk in excess of 92.5 percent of the sum of the producer milk receipts and that assigned as Class I to receipts from other order plants and unregulated supply plants may be assigned to receipts from other pool plants. However, to assure that milk will not be moved at the expense of producers, such assignment should be made first to receipts from plants at which no location adjustment is applicable and then in sequence beginning with the plant with the lowest applicable location adjustment. This sequential assignment of milk is commonly provided in Federal orders, including the Northeastern Ohio, Youngstown-Warren, and Wheeling orders, and will provide an equitable basis for facilitating the movement of milk between pool plants for Class I purposes. Likewise, it will tend to discourage the unnecessary moving of milk from pool plants at the expense of producers.

Uniform prices paid to producers supplying plants at which location differentials apply should likewise be adjusted to reflect the value of milk f.o.b. the point at which delivered. The producer assumes responsibility of delivering his milk to the plant at which it is customarily received. The cost of such delivery is borne by the producer. This is commonly recognized in Federal orders, including those incorporated in the proposed order. It would not be economically feasible or otherwise justifiable in this market to price the milk of a producer other than at the location to which it is delivered.

One producer association spokesman proposed that milk be priced f.o.b. the farm. This would transfer the cost of moving milk from the farm to a plant from the producer to the plant operator. Under the existing Federal orders, under the PMCC regulations and otherwise in the proposed marketing area, the expense involved in moving milk from the farm to a milk plant has been the responsibility of the producers. The proponent of this provision represents relatively few producers on the market. There was no support for his proposal by the major producer associations in the market or by handlers. The testimony presented at the hearing cited the New York-New Jersey order provision which provides for such farm point pricing. It did not show, however, why such pricing would be appropriate under the proposed order, or that the present method of pricing milk f.o.b. the plant to which delivered would be inappropriate. The proposal to include such a provision in the order is denied.

(d) *Distribution of the proceeds to producers.* A marketwide equalization pool should be included in the proposed order as a means of distributing to producers the proceeds from the sale of their milk. Such a pool will assure a producer supplying the order market a return based on his pro rata share of the total Class I sales of such market. The "blend" that a producer receives for each month's deliveries will be a price based on the overall utilization of all producer milk received at the pool plants of all regulated handlers during such month.

The uniformity of payments to producers provided under a marketwide pool permits a handler either to maintain a manufacturing operation in his plant to handle the seasonal and daily reserve supplies of milk or to limit the operation at his plant to the handling of milk for Class I purposes only, without affecting the blended prices payable to his producers as against other producers in the market.

The facilities in the various plants in the area for handling producer milk in excess of that needed for Class I purposes vary considerably. While a number of plants in the market are exclusively Class I operations and handle little or no surplus milk, others utilize varying proportions of their supplies for manufacturing purposes. Under these conditions, a marketwide pool in the Eastern Ohio-Western Pennsylvania marketing area will facilitate the marketing of producer milk. A marketwide pool will make it possible for producer associations to assist in diverting seasonal reserve milk and thus keep producers on the market who are needed to fulfill the year-round requirements of the market. It will assist also in apportioning among all producers the lower returns from reserve milk where otherwise this burden would be placed on individual groups of producers. A marketwide pool will thereby contribute to market stability and the attainment of an adequate and dependable supply of producer milk.

Two Pennsylvania handlers and a spokesman for some Pennsylvania producers urged that a separate order be provided for Western Pennsylvania (instead of one order as provided by this decision) and that it provide for a handler pool. The facilities in the Pennsylvania plants in the proposed marketing area for handling producer milk in excess of that needed for Class I purposes vary considerably, as they do in the other portions of the proposed marketing area. The uneven distribution of the handling of the reserve supplies in the market that has in the past justified, and now justifies, marketwide pooling in the Northeastern Ohio, Youngstown-Warren, and Wheeling orders is no less prevalent in Western Pennsylvania than in other portions of the proposed marketing area. In view of these considerations, the proposal for a handler pool for distributing returns to producers under the proposed order is denied.

One handler proposed that a "Louisville plan" of fall production incentive payments be utilized in distributing returns to producers. Such a plan provides for setting aside a portion of the payments made by handlers for producer milk in the spring months of flush production for distribution to producers on the basis of their deliveries during the fall months of low production.

Louisville plans, also referred to as take-out and pay-back plans, are provided for in a number of Federal order markets, including the nearby markets of Columbus, Cincinnati, and Miami Valley. Louisville plans are not used in either the Northeastern Ohio, Youngstown-Warren, or Wheeling orders or elsewhere in the proposed marketing area.

Louisville plans are concerned only with distributing to producers the payments made by handlers for milk. Such plans do not affect the prices paid by a handler for producer deliveries. The principal producer associations in the market neither proposed nor supported the inclusion of a Louisville plan in the proposed order. It would be inappropriate to include in the order such a provision for distributing returns to producers that did not have their support. The proposal, therefore, is denied.

A proposal listed in the hearing notice would provide for payment from the pool to qualified cooperative associations for marketwide services rendered by such cooperatives. No testimony was presented at the hearing on this proposal, which was abandoned by its proponent. Accordingly, no action is taken on it in this decision.

*Payments for producer milk.* The Northeastern Ohio order provisions for paying producers are equally appropriate for the proposed marketing area and should be incorporated in the proposed order.

The Northeastern Ohio order provides that handlers must pay for producer milk at not less than the monthly uniform price by the 18th of the following month if paid directly to the producer and by the 16th if paid to a cooperative. It was proposed by one cooperative that these dates be advanced to the 15th and 13th. To attain this, the cooperative further proposed that the market administrator be required to complete the pool and announce the uniform price not later than the 12th of the month (instead of the 14th as now provided in the Northeastern Ohio order) and change the dates for payments to and from the producer-settlement fund from the 16th and 17th, respectively, to the 14th and 15th of the month.

As now provided in the Northeastern Ohio order, proposed at the hearing, and specified in the attached order, handlers must submit reports to the market administrator not later than the eighth day of the following month. There was no support at the hearing either by the proponent of advancing the dates for computing the pool and paying producers or by any other party for requiring handlers to submit their reports by an earlier date. To the contrary, it was testified that it would be impractical under the proposed order to provide an earlier date than the eighth day of the month by which handlers must file their reports.

The number of handler reports that would be included in the pool computation under the proposed order is vastly greater than the number now included in the Northeastern Ohio order. Moreover, such reports would be obtained from handlers over a much wider geographical area. These factors argue for more rather than less time to be allowed the market administrator to process handlers' reports and compute the pool.

On the basis of testimony presented at the hearing, it would be impractical to advance the dates by which the pool must be completed and producers paid without allowing a correspondingly greater time between the filing of reports and the pool computation. The cooperative proposal for advancing these dates is therefore denied.

Another cooperative proposed that handlers be required to pay the market administrator at the applicable class prices for all producer milk delivered to their plants. The market administrator in turn would distribute such monies to producers through payments at the uniform price. The payments could be made either directly to producers or to cooperatives authorized to collect for their members.

Under the provisions commonly provided in Federal orders, a handler is required to pay at least the uniform price to all producers (or their cooperatives) from whom he purchases milk. The difference between what the handler pays producers and the utilization value of his milk at the class prices is paid to or received from an "equalization fund". Handlers with higher-than-average utilization pay the difference into this fund. The money is then paid out to the handlers with a lower-than-average utilization.

The proponent cooperative stated that under its proposal, the market administrator would know more promptly than "under an equalization pool" when a handler is delinquent in his payments for producer milk. This, the cooperative claimed, would permit the market administrator to institute action more promptly in the collection of delinquent payments.

Other supporting reasons cited by the cooperative were that (1) handlers would be relieved of the work and expense in preparing producer payrolls and writing checks to producers, (2) handlers' accounting to the pool would be simplified, and (3) any misunderstanding or confusion which may attend payments by handlers into, and their withdrawal of monies from the equalization fund would tend to be dispelled.

Except for the cooperative making the proposal, there was no support at the hearing for it by producers or handlers. The reasons cited by the cooperative as to why its proposal should be adopted in this market are those which might well be presented by handlers. However, handlers opposed this system of payment despite the advantages the cooperative alleges it would have for them. In fact, handlers countered that the advantages indicated by producers were illusory in that no real functions would be eliminated and no actual efficiencies realized.

There is no indication that the method of paying producers now used in the Northeastern Ohio, Youngstown-Warren, Wheeling, and other orders is not working satisfactorily and would not work satisfactorily under the proposed order. Moreover, it was not shown what marketing conditions under the proposed order the proposal was intended to correct or that it would provide any advantages for producers and handlers in the market. Accordingly, the proposal that the handlers pay the market administrator directly for producer milk and the market administrator in turn pay producers is denied.

(e) *Administrative provisions.* Producer-settlement, administrative expense and marketing service funds should be provided under the proposed Eastern Ohio-Western Pennsylvania order in the same manner as under the present Northeastern Ohio, Youngstown-Warren, and Wheeling orders. Such funds of the present orders are equally necessary and appropriate for the proposed order.

The maximum rate of deduction for administration expense should be 3 cents per hundredweight and for marketing services, 5 cents. These are the maximum rates provided by the present Northeastern Ohio order. The same maximum rates for marketing services are provided also by the other two orders. However, these orders set maximum rates of 4 cents per hundredweight for administration expenses. No need was shown for maximum rates different from those in the Northeastern Ohio order. If experience indicates that administration of the order and marketing services can be performed at lesser rates, provision is made in the proposed order whereby the Secretary may adjust the rates downward without the necessity of a hearing.

To accomplish the merger of the Northeastern Ohio, Youngstown-Warren, and Wheeling orders effectively and equitably, the assets in the administrative and marketing service funds which have accrued under the separate orders should be combined. Similar procedure should be carried out with respect to the producer-settlement fund reserves. Any liabilities of such funds under the individual orders should be paid from the new funds so created. Similarly, obligations which are due and owing to the funds under the separate orders should remain and be paid to the combined funds under the merged order. This procedure would assure and maintain the continuity of the regulatory program in these areas. No opposition was voiced at the hearing to the proposed merger of the funds.

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. All currently regulated handlers who have contributed to the administrative funds of the separate orders will continue to be regulated under the merged order. Because the liabilities of each of the present funds would be paid from the consolidated fund, it is equitable to use accumulated monies to pay such liabilities and to carry over any minor balances for use in administering the merged order.

The money accumulated in the marketing service funds of the separate orders is that paid by producers for whom the market administrator has performed such services as verifying the tests and weights of producer milk and furnishing market information. The producers who have contributed to the marketing service fund of each order are expected to continue to supply milk for the expanded market. The consolidation of the assets in the three separate marketing service funds will allow the continuation of the marketing service program under the merged order.

The producer-settlement funds under the three present orders facilitate the payment by handlers for milk received from producers. A handler whose obligation for producer milk received during the month is greater than the amount he is required to pay producers at the applicable uniform price pays the difference into the producer-settlement fund. Each handler whose obligation for producer milk is less than the applicable uniform price receives payment of the difference from the fund. For the efficient functioning of the fund, a reasonable reserve is set aside at the end of each month.

Most of the producers for the Eastern Ohio-Western Pennsylvania market currently supply milk to one or the other of the present Federal order markets. The major part of the monies in the separate funds will be reflected in the uniform prices of the producers whose money will be in the merged fund reserves. These combined funds would also serve the function of contingency reserve funds from which money would be available for obligations (resulting from audit adjustments and otherwise) for which the funds of one or more of the present orders were responsible. It would be impractical to distribute the existing producer-settlement fund reserves to producers and to accumulate anew the required reserve for the consolidated order. To do so would increase administrative expenses without realizing any significant additional returns to producers under the presently existing orders.

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.

The presiding officer's rulings have been reviewed in the light of the briefs filed by interested parties. These rulings, for the reasons stated by the presiding officer on the record, are hereby affirmed.

GENERAL FINDINGS

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

(a) The tentative marketing 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 areas, 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, the marketing agreements upon which a hearing has been held.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDERS

The following order amending and consolidating the orders as amended regulating the handling of milk in the Northeastern Ohio, Greater Youngstown-Warren, and Greater Wheeling marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed:

## PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

### Subpart—Order Regulating Handling

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DEFINITIONS

**§ 1036.1 Act.**

"Act" means Public Act No. 10, 73d Congress, as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

**§ 1036.2 Secretary.**

"Secretary" means the Secretary of Agriculture or such other officer or employee of the United States authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

**§ 1036.3 Department.**

"Department" means the U.S. Department of Agriculture.

**§ 1036.4 Person.**

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

**§ 1036.5 Cooperative association.**

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

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sale or marketing milk or its products for its members; and

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

### § 1036.6 Eastern Ohio-Western Pennsylvania marketing area.

The "Eastern Ohio-Western Pennsylvania marketing area", hereinafter called the "marketing area", means all the territory within the boundaries of the following geographical units, including all waterfront facilities connected therewith and all territory wholly or partly therein occupied by Government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

(a) In Ohio:

(1) The following counties in their entirety:

| | |
|---|---|
| Ashtabula. | Jefferson. |
| Belmont. | Mahoning. |
| Carroll. | Monroe. |
| Columbiana. | Portage. |
| Cuyahoga. | Summit. |
| Geauga | Trumbull. |
| Harrison. | Tuscarawas. |

(2) All of Stark County except Paris and Sugar Creek Townships;

(3) Willoughby, Mentor, and Kirtland Townships and the city of Painesville in Lake County;

(4) Black River, Sheffield, Avon Lake, Avon, Amherst, Elyria, Ridgeville, Carlisle, Eaton, Columbia, and Grafton Townships in Lorain County;

(5) Liverpool, Brunswick, Hinckley, York, Granger, Medina, Lafayette, Montville, Sharon, and Wadsworth Townships in Medina County;

(6) Sections 1, 2, 3, 10, 11, and 12 of Sugar Creek Township in Wayne County; and

(7) Londonderry, Oxford, and Millwood Townships in Guernsey County.

(b) In Pennsylvania:

(1) The following counties in their entirety:

| | |
|---|---|
| Allegheny. | Fayette. |
| Armstrong. | Greene. |
| Beaver. | Lawrence. |
| Butler. | Mercer. |
| Crawford. | Venango. |
| Erie. | Washington. |

(2) In Clarion County, the townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby; and

(3) All of Westmoreland County except (i) the boroughts of Bolivar, Donegal, Ligonier, New Florence, and Seward and (ii) the townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair.

(c) In West Virginia, the following counties in their entirety:

| | |
|---|---|
| Brooke. | Marshall. |
| Hancock. | Ohio. |

### § 1036.7 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, concentrated milk, cream (except sour cream), and mixtures of such cream or milk and skim milk. "Fluid milk product" shall not include sour cream, milk shake milk mix containing not less than 14 percent total milk solids, and sterilized products in hermetically sealed glass or metal containers.

### § 1036.8 Route disposition.

"Route disposition" means a delivery (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I pursuant to § 1036.41(a)(1).

### § 1036.9 Distributing plant.

"Distributing plant" means a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and which has route disposition in the marketing area during the month.

### § 1036.10 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority is shipped during the month to a pool plant.

### § 1036.11 Pool plant.

"Pool plant" means a plant specified in paragraph (a) or (b) of this section that is not an other order plant or a producer-handler plant: *Provided*, That any plant that would have been a pool plant pursuant to this order had it been in effect in any month subsequent to August 1967 shall be considered to have been a pool plant for such month for the purpose of this section.

(a) A distributing plant that has route disposition during the month of not less than 50 percent (40 percent for each month of April through August) of the total receipts of fluid milk products that are approved by a duly constituted health authority for fluid consumption and that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1036.16 and that has route disposition in the marketing area during the month of not less than 15 percent of such receipts.

(b) A supply plant from which during the months of September, October, and November not less than 50 percent, and in all other months not less than 40 percent, of the milk approved by a duly constituted health authority for fluid consumption received at such plant from dairy farmers and handlers pursuant to § 1036.13(d) or diverted as producer milk to a nonpool plant pursuant to § 1036.16 is shipped to and physically received in the form of fluid milk products at pool plants pursuant to paragraph (a) of this section. A plant that was a pool plant pursuant to this paragraph in each of the immediately preceding months of September through February shall be a pool plant for the months of March through August unless the milk received at the plant does not continue to meet the requirements of a duly constituted health authority or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant.

### § 1036.12 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) Except as provided in paragraphs (c)(2) and (d)(2) of this section, "other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1036.11 and a greater volume of fluid milk products is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of from such plant in the marketing area regulated pursuant to such other order.

(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:

(1) A nonpool plant that is a distributing plant and is not an other order plant or a producer-handler plant; and

(2) An other order plant with respect to its route disposition in the marketing area that is not priced and pooled pursuant to any order issued pursuant to the Act.

(d) "Unregulated supply plant" means:

(1) A nonpool plant that is a supply plant and is not an other order plant or a producer-handler plant; and

(2) An other order plant with respect to fluid milk products which were received at a pool plant from such a plant and which are not priced and pooled pursuant to any order issued pursuant to the Act.

### § 1036.13 Handler.

"Handler" means:

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

(b) Any person in his capacity as the operator of a partially regulated distributing plant;

(c) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant to a nonpool plant for the account of such cooperative association;

(d) A cooperative association with respect to milk of its producer-members 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. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(e) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant; and

(f) A producer-handler.

§ 1036.14 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant and who received no fluid milk products from other dairy farmers or from sources other than pool plants: *Provided*, That such person provides proof satisfactory to the market administrator that the care and management of all the dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts from pool plants) and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1036.15 Producer.

"Producer" means any person except a producer-handler as defined in any order (including this part) issued pursuant to the Act who produces milk for fluid consumption in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1036.16 from a pool plant to a nonpool plant or another pool plant. "Producer" shall not include a person with respect to milk that is physically received at a pool plant as diverted milk from an other order plant if a Class II classification under this order is designated for such milk and it is subject to the pricing and pooling provisions of another order issued pursuant to the Act.

§ 1036.16 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk:

(a) Received at a pool plant directly from a producer or a handler pursuant to § 1036.13(d): *Provided*, That:

(1) If the milk received at a pool plant from a handler pursuant to § 1036.13(d) is purchased on a basis other than farm weights, the amount by which the total farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler pursuant to § 1036.13(d) at the location of the pool plant; and

(2) "Producer milk" shall not include milk that is physically received at a pool plant as diverted milk from an other order plant if a Class II designation under this order is designated for such milk and it is subject to the pricing and pooling provisions of another order issued pursuant to the Act;

(b) Diverted from a pool plant to a nonpool plant other than an other order plant or a producer-handler plant: *Provided*, That:

(1) Except as provided in subparagraph (4) of this paragraph, such milk shall be deemed to have been received by the diverting handler at the location of the plant from which diverted;

(2) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be deemed to have been received at such pool plant and shall not be producer milk;

(3) In any month of August through March, the quantity of milk of any producer diverted to nonpool plants that exceeds that delivered to pool plants shall not be deemed to have been received by the diverting handler and shall not be producer milk;

(4) In any month of April through July, the quantity of milk of any producer diverted to nonpool plants that exceeds that physically received at pool plants shall be deemed to have been received by the diverting handler at the location of the nonpool plant to which diverted; and

(5) The diverting handler shall designate the dairy farmers' deliveries that are not producer milk pursuant to this paragraph. If the handler fails to make such designation, no milk diverted by him to a nonpool plant shall be producer milk;

(c) Diverted from a pool plant to an other order plant if a Class II classification (or its equivalent) is designated for such milk pursuant to the provisions of another order issued pursuant to the Act and such milk is not subject to the pricing and pooling provisions of such order. The provisos in paragraph (b) of this section shall apply to this paragraph as if set forth fully herein; or

(d) Diverted from a pool plant to another pool plant for the account of a handler operating the pool plant from which diverted. Milk so diverted shall be deemed to have been received by the diverting handler at the location of the pool plant from which diverted, if at least half of the producer's milk pooled under this order during the month is physically received at such plant.

§ 1036.17 Other source milk.

"Other source milk" means the skim milk and butterfat contained in or represented by:

(a) Fluid milk products from any source except (1) producer milk, (2) fluid milk products from pool plants, and (3) fluid milk products in inventory at the beginning of the month;

(b) Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed, converted into or combined with another product in the plant during the month; and

(c) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for pursuant to § 1036.33.

§ 1036.18 Reload point.

"Reload point" means a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant. A reload operation on the premises of a plant shall be considered a part of the plant operation.

§ 1036.19 Chicago butter price.

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

§ 1036.20 Pittsburgh district.

"Pittsburgh district" means all the territory in the marketing area within 80 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) of the Pittsburgh, Pa., city hall.

§ 1036.21 Cleveland-Erie district.

"Cleveland-Erie district" means all the territory in the marketing area that is not within the Pittsburgh district.

MARKET ADMINISTRATOR

§ 1036.25 Designation.

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

§ 1036.26 Powers.

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

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

§ 1036.27 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 30 days following the date on which he enters upon his duties or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

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

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

(d) Pay, out of funds provided by § 1036.77:

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

(2) His own compensation; and

(3) All other expenses, except those incurred under § 1036.76, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

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

(f) Publicly announce at his discretion unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1036.30 through 1036.32, or payments pursuant to §§ 1036.70, 1036.74, 1036.76, 1036.77, and 1036.78;

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

(h) On or before the 20th day of each month, report to each cooperative association that so requests the class utilization of milk received during the preceding month by each handler from producers who are members of such association, prorating to such receipts the class utilization of all producer receipts of such handler;

(i) Audit all reports and payments by each handler by inspection of such handler's records and of the records of any other handler or nonhandler upon whose utilization the classification of skim milk and butterfat for such handler depends;

(j) On or before the dates specified herein, publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, the following:

(1) The sixth day of each month, the Class I price and the Class I butterfat differential, both for the current month; and the Class II price and the Class II butterfat differential, both for the preceding month; and

(2) The 14th day of each month the uniform price computed pursuant to § 1036.61 and the butterfat differential computed pursuant to § 1036.71;

(k) Prepare and disseminate to the public such statistics and information as he deems advisable and as do not reveal confidential information;

(l) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1036.45(a)(8) and the corresponding step of § 1036.45(b), 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 § 1036.45 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in the 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

### § 1036.30 Reports of receipts and utilization.

On or before the eighth day after the end of each month, each handler (except a handler pursuant to § 1036.13 (e) or (f)) shall report to the market administrator for such month with respect to each plant at which milk is received, reporting in detail and on forms prescribed by the market administrator:

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

(1) Producer milk (or, in the case of handlers pursuant to § 1036.13(b), milk received from qualified dairy farmers);

(2) Fluid milk products received from other pool plants;

(3) Other source milk;

(4) Milk diverted pursuant to § 1036.16; and

(5) Inventories of fluid milk products and Class II products at the beginning and end of the month;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing the respective amounts of skim milk and butterfat in route disposition in the marketing area; and

(c) Such other information with respect to the receipts and utilization of skim milk and butterfat as the market administrator may prescribe.

### § 1036.31 Producer payroll reports.

(a) Each handler pursuant to § 1036.13 (a), (c), and (d) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the 25th day after the end of the month his producer payroll for such month which shall show for each producer:

(1) His identity;

(2) The quantity of milk received from such producer and the number of days, if less than the entire month, on which milk was received from such producer;

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

(4) The net amount of such handler's payment, together with the price paid and the amount and nature of any deductions.

(b) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to § 1036.62(b) shall report to the market administrator on or before the 25th day after the end of the month the same information required of handlers pursuant to paragraph (a) of this section. In such report, payments to dairy farmers delivering milk that is approved by a duly constituted health authority for fluid consumption shall be reported in lieu of payments to producers.

### § 1036.32 Other reports.

(a) Each producer-handler shall report to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(c) Each handler pursuant to § 1036.13 (d) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the eighth day after the end of the month the quantities of skim milk and butterfat in producer milk delivered to each pool plant in such month.

### § 1036.33 Records and facilities.

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

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

(b) The weights and butterfat and other content of all milk and milk products handled during the month;

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

(d) Payments to dairy farmers and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

### § 1036.34 Retention of records.

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

CLASSIFICATION

### § 1036.40 Skim milk and butterfat to be classified.

The skim milk and butterfat required to be reported pursuant to § 1036.30 shall be classified each month pursuant to the provisions of §§ 1036.41 through 1036.45: *Provided*, That such skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

### § 1036.41 Classes of utilization.

Subject to the conditions set forth in § 1036.43, the classes of utilization shall be as follows:

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

(1) Disposed of in the form of a fluid milk product, except as provided in paragraphs (b) (2), (3), and (4) of this section; and

(2) Not accounted for as Class II milk.

(b) *Class II milk*. Class II milk shall be:

(1) Skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), sour cream, eggnog, yogurt, aerated cream products, butter, cheese (including cottage cheese), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, milk shake mix containing not less than 14 percent total milk solids, and sterilized products in hermetically sealed glass or metal containers;

(2) Skim milk and butterfat in fluid milk products delivered in bulk form to and used at a commercial food processing establishment (other than a milk plant) in the manufacture of packaged food products (other than milk products) for consumption off the premises;

(3) Skim milk and butterfat in fluid milk products disposed of by a handler for livestock feed;

(4) Skim milk and butterfat in fluid milk products dumped by a handler after notification to, and opportunity for verification by, the market administrator;

(5) Skim milk and butterfat in inventory of fluid milk products at the end of the month;

(6) Skim milk represented by the nonfat solids added to a fluid milk product which is in excess of an equivalent volume of such product prior to the addition;

(7) Skim milk and butterfat, respectively, in shrinkage at each pool plant but not in excess of:

(i) Two percent of producer milk (except that received from a handler pursuant to § 1036.13(d);

(ii) Plus 1.5 percent of producer milk received from a handler pursuant to § 1036.13(d): *Provided*, That if the handler receiving such milk files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage pursuant to this subdivision shall be 2 percent;

(iii) Plus 1.5 percent of bulk fluid milk products received from other pool plants;

(iv) Plus 1.5 percent of bulk fluid milk products received from other order plants exclusive of the quantity for which Class II utilization was requested by the operators of both plants;

(v) Plus 1.5 percent of bulk fluid milk products received from unregulated supply plants exclusive of the quantity for which Class II utilization is requested by the handler; and

(vi) Less 1.5 percent of bulk fluid milk products transferred or diverted to other plants; and

(8) Skim milk and butterfat in shrinkage of other source milk assigned pursuant to § 1036.42(b)(2).

### § 1036.42 Shrinkage.

The market administrator shall allocate shrinkage over each pool plant's receipts as follows:

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

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

(1) The net quantity of producer milk and other fluid milk products specified in § 1036.41(b)(7); and

(2) Other source milk exclusive of that specified in § 1036.41(b)(7).

### § 1036.43 Transfers.

Skim milk or butterfat in the form of a fluid milk product shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred or diverted from a pool plant to the pool plant of another handler, subject to the following conditions:

(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 the computations pursuant to § 1036.45(a)(8) and the corresponding step of § 1036.45(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1036.45(a)(3) and the corresponding step of § 1036.45(b), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1036.45(a)(7) or (8) and the corresponding steps of § 1036.45(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 in Class II in his report submitted pursuant to § 1036.30;

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

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any 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, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(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, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred shall be classified as Class II milk; and

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

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If 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, movements in bulk form shall be classified as Class II to the ex-

tent 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 § 1036.41.

**§ 1036.44 Computation of skim milk and butterfat in each class.**

For each month, the market administrator shall correct for mathematical and other obvious errors all reports submitted pursuant to § 1036.30 and compute for each handler the total pounds of skim milk and butterfat in each class: *Provided*, That the skim milk contained in any product utilized, produced or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all the water originally associated with such solids.

**§ 1036.45 Allocation of skim milk and butterfat classified.**

After making the computations pursuant to § 1036.44, the market administrator shall determine the classification of producer milk for each handler as follows:

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

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1036.41(b)(7);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants as follows:

(i) From Class II milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class II pursuant to § 1036.41(b)(6) plus 2 percent of the remainder of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products for which appropriate health approval is not established, or which are from unidentified sources; and

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

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant:

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

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants; and

(ii) Receipts of fluid milk products in bulk from another order plant, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of fluid milk products at the beginning of the month;

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

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

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant that are in excess of similar transfers to the same plant and that were not subtracted pursuant to subparagraph (4)(ii) of this paragraph:

(i) In series beginning with Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II utilization of skim milk announced for the month by the market administrator pursuant to § 1036.27(l) or the percentage that Class II utilization remaining is of the total remaining utilization of skim milk of the handler; and

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

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received from pool plants of other handlers according to the classification of such products pursuant to § 1036.43(a); and

(10) If the pounds of skim milk remaining exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class 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

**§ 1036.50 Basic formula price.**

The basic formula price shall be the average price per hundredweight for manufacturing grade milk f.o.b. plants in Wisconsin and Minnesota, as reported by the Department for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential (rounded to the nearest one-tenth cent) at the rate of the Chicago butter price times 0.12 and rounded to the nearest cent. For the purpose of computing Class I prices from the effective date hereof through April 1968, the basic formula price shall not be less than $4.05.

**§ 1036.51 Class prices.**

Subject to the provisions of §§ 1036.52 and 1036.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price*. For the first 18 months from the effective date of this order, the Class I price shall be the basic formula price for the preceding month adjusted as follows:

(1) Add $1.67 for plants in the Cleveland-Erie district and $1.77 for plants in the Pittsburgh district, plus 20 cents for each district through April 1968. At a plant outside the marketing area, add the amount applicable pursuant to this paragraph at the location of the city hall of the following cities that is nearest (by the shortest hard-surfaced highway distance as determined by the market administrator) such plant: Canton and Cleveland, Ohio; and Erie, Pittsburgh, and Uniontown, Pa.

(2) Add or subtract a supply-demand adjustment computed as follows:

(i) Determine the total hundredweight of producer milk classified in the second and third preceding months;

(ii) Determine the total hundredweight of milk classified in Class I by all handlers pursuant to § 1036.13 (a), (c), and (d) (adjusted to eliminate duplications due to Class I transfers between such handlers) in the second and third preceding months;

(iii) Determine the "current utilization percentage" by calculating the percentage, rounded to the nearest full percentage, that the amount obtained in subdivision (i) of this subparagraph is of the amount obtained in subdivision (ii) of this subparagraph;

(iv) Compute a "deviation percentage" by subtracting from the current utilization percentage, the designated "standard utilization percentage" for the month, as follows:

| Month | Standard utilization percentage |
|---|---|
| January | 130 |
| February | 129 |
| March | 129 |
| April | 130 |
| May | 131 |
| June | 132 |
| July | 141 |
| August | 149 |
| September | 142 |
| October | 128 |
| November | 126 |
| December | 128 |

(v) Determine the amount of the supply-demand adjustment from the following table: *Provided*, That if the deviation percentage does not fall within a listed bracket, the amount of the adjustment shall be determined by the adjacent bracket that is the same as or nearest to the bracket used in the preceding month:

| Deviation percentage: | Amount of supply-demand adjustment (cents) |
|---|---|
| +13 or over | −25 |
| +10 or +11 | −19 |
| +7 or +8 | −13 |
| +4 or +5 | −7 |
| +2 or −2 | 0 |
| −4 or −5 | +7 |
| −7 or −8 | +13 |
| −10 or −11 | +19 |
| −13 or below | +25 |

(b) *Class II price*. The Class II price shall be the basic formula price for the month: *Provided*, That such Class II price shall not be more than the sum of subparagraphs (1) and (2) of this paragraph plus 10 cents, rounded to the nearest cent:

(1) From the Chicago butter price for the month, subtract 3 cents, add 20 percent of the resulting amount and multiply by 3.5; and

(2) From the weighted average of the carlot prices per pound of spray process nonfat dry milk solids for human consumption, f.o.b. manufacturing plants the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, multiply by 8.5 and then multiply by 0.965.

**§ 1036.52 Butterfat differentials to handlers.**

For milk containing more or less than 3.5 percent butterfat, the class prices calculated pursuant to § 1036.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price*. Multiply the Chicago butter price for the preceding month by 0.12; and

(b) *Class II price*. Multiply the Chicago butter price for the month by 0.115.

**§ 1036.53 Location adjustments to handlers.**

(a) The Class I price for producer milk and other source milk (for which a location adjustment is applicable) at a plant more than 85 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) from all the cities listed in § 1036.51(a)(1) shall be reduced 15 cents and an additional 1.5 cents for each 10 miles or fraction thereof in excess of 100 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the city hall of the nearest of the cities listed in § 1036.51(a)(1).

(b) For the purpose of computing location adjustments, receipts of fluid milk products from pool plants at a pool plant shall be assigned any remainder of Class I milk at such plant that is in excess of 92.5 percent of the sum of producer milk receipts at the plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment is applicable pursuant to this section and then in sequence beginning with receipts from the plant with the lowest applicable location adjustment.

**§ 1036.54 Use of equivalent prices.**

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price that is required.

APPLICATION OF PRICES

**§ 1036.60 Computation of the net pool obligation of each handler.**

The net pool obligation of each handler pursuant to § 1036.13 (a), (c), and (d) during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class as computed pursuant to § 1036.45(c) by the applicable class price;

(b) Add the amount obtained from multiplying the overage deducted from each class pursuant to § 1036.45(a)(10) and the corresponding step of § 1036.45(b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.45(a)(5) and the corresponding step of § 1036.45(b);

(d) Add an amount equal to the difference between the Class I and Class II price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1036.45(a)(3) and the corresponding step of § 1036.45(b);

(e) Add the value at the Class I price adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received, of the skim milk and butterfat subtracted from Class I pursuant to § 1036.45(a)(7) and the corresponding step of § 1036.45(b).

**§ 1036.61 Computation of uniform price.**

For each month, the market administrator shall compute a uniform price as follows:

(a) Combine into one total the values computed pursuant to § 1036.60 for all handlers who filed the reports pursuant to § 1036.30 for the month, except those in default of payments required pursuant to § 1036.74 for the preceding month;

(b) Add or subtract for each one-tenth percent that the average butterfat content of milk represented by the values specified in paragraph (a) of this section is less or more, respectively, than 3.5 percent, the amount obtained by multiplying such difference by the butterfat differential pursuant to § 1036.71 and multiply the result by the total hundredweight of such milk;

(c) Add an amount equal to the total value of the minus location differentials computed pursuant to § 1036.72(a);

(d) Subtract an amount equal to the total value of the plus location differential computed pursuant to § 1036.72(a);

(e) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

(f) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1036.60(e); and

(g) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

**§ 1036.62 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 §§ 1036.30 and 1036.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) The obligation that would have been computed pursuant to § 1036.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk. There shall be included in the obligation so computed a charge in the amount specified in

§ 1036.60(e) and a credit in the amount specified in § 1036.74(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. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1036.30 a similar report for each 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 § 1036.11(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation, deduct the sum of:

(i) The gross payments made by such handler for milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph; and

(ii) 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 in the plant's route disposition in the marketing area;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) 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;

(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 or at the Class II price, whichever is higher.

### § 1036.63 Notification.

On or before the 14th day of each month the market administrator shall notify each handler who submitted a report for the preceding month pursuant to § 1036.30 of:

(a) The classification pursuant to § 1036.45 of skim milk and butterfat in producer milk received by such handler during the month and the value of such milk pursuant to § 1036.60;

(b) The uniform price for the month pursuant to § 1036.61; and

(c) The amount due such handler pursuant to § 1036.75 and the amount to be paid by such handler pursuant to §§ 1036.74, 1036.76, and 1036.77.

## PAYMENTS

### § 1036.70 Time and method of payment.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) To each producer, on or before the 18th day of the following month, the uniform price per hundredweight for his deliveries of producer milk during the month adjusted pursuant to §§ 1036.71, 1036.72, and 1036.76, subject to the following:

(i) Minus payments made pursuant to paragraph (c) of this section;

(ii) Less proper deductions authorized in writing by the producer; and

(iii) If by such date the handler has not received full payment from the market administrator pursuant to § 1036.75 for such month, he may reduce pro rata his payments to producers by not more than the amount of such under payment. 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)(1) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, each handler shall pay to the cooperative association for producer milk on or before the 16th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all milk received from certified members, less amounts owing by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer, and submit to the cooperative association written information which shows for each such member-producer (i) the total pounds of milk received from him during the preceding month, (ii) the total pounds of butterfat contained in such milk, (iii) the number of days on which milk was received, and (iv) the amounts withheld by the handler in payment for supplies sold. The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association;

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler shall be made by written notice to the market administrator, and shall be subject to his determination;

(c) Upon written request filed with him on or before the 15th day of the month by a producer, or by a cooperative association which collects payments pursuant to paragraph (b) of this section, each handler shall make payment as follows:

(1) On or before the last day of the month, to each such producer who has not discontinued delivery of milk to such handler, an amount not less than the value of milk received from such producer during the first 15 days of such month computed at the Class II price for the preceding month for milk of 3.5 percent butterfat content, without deduction for hauling; and

(2) On or before the 27th day of the month, to the cooperative association, for milk received during the first 15 days of the month from certified members specified in the request for payment, an amount not less than the aggregate value of such milk at the Class II price for the preceding month for milk of 3.5 percent butterfat content, without deduction for hauling; and

(d) On or before the 15th day after the end of each month, each handler shall pay a cooperative association which is a handler, for milk received by him from a pool plant operated by such cooperative association, at not less than the prices applicable pursuant to § 1036.51.

### § 1036.71 Butterfat differential to producers.

The uniform price shall be increased or decreased for each one-tenth percent that the butterfat content of such milk, is above or below 3.5 percent, respectively, at the rate (rounded to the nearest one-tenth cent) determined by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1036.45 by the respective butterfat differential for each class and dividing the sum of the resulting amounts by the total pounds of butterfat in producer milk.

### § 1036.72 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk shall be adjusted as follows:

(1) At all plants, reduced according to the location of the pool plant at the rates set forth in § 1036.53; and

(2) Additionally, at plants at which the Pittsburgh district Class I price is applicable, increased 10 cents.

(b) For the purpose of computations pursuant to § 1036.74(b), adjustments pursuant to this section shall be computed according to the location of the nonpool plant from which other source milk was received.

### § 1036.73 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments pursuant to §§ 1036.62 and 1036.74 and out of which he shall make all payments pursuant to § 1036.75: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

### § 1036.74 Payments to the producer-settlement fund.

On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a) of this section exceed the amounts specified in paragraph (b) of this section:

(a) The net pool obligation pursuant to § 1036.60 for such handler; and

(b) The sum of:

(1) The value of such handler's producer milk at the applicable uniform price; and

(2) The value at the uniform price applicable at the location of the plant(s) from which received (not to be less than the value at the Class II price) of other source milk for which a value is computed pursuant to § 1036.60(e).

### § 1036.75 Payments from 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 § 1036.74(b) exceeds the amount computed pursuant to § 1036.74(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

### § 1036.76 Marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 16th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and to provide producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 16th day after the end of each month, pay over such deductions to the association rendering such services.

### § 1036.77 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 16th day after the end of the month 3 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1036.45(a) (3) and (7) and the corresponding steps of § 1036.45(b); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

### § 1036.78 Adjustment of accounts.

(a) *Payments*. Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due (1) the market administrator from such handler, (2) such handler from the market administrator, or (3) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the fifth day after such notice.

(b) *Overdue accounts*. Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1036.74, 1036.75, 1036.76, 1036.77, or paragraph (a) of this section shall be increased one-half of 1 percent on the first day of the calendar month next following the due date of such obligation and, on the first day of each calendar month thereafter until such obligation is paid.

### § 1036.79 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 calendar month during which the market administrator receives the handlers' utilization report on the milk involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

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

(3) If the obligation is payable to one or more producers or to an association of producers; the name of such producers(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 to run until the first day of the calendar month following the months during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

## Effective Time, Suspension, or Termination

### § 1036.90 Effective time.

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

### § 1036.91 Suspension or termination.

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

### § 1036.92 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons or agency as the Secretary may designate.

(b) The market administrator or such other person as the Secretary may designate shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand together with the books and records of the market administrator, or such other person, to such person as the Secretary shall direct; and (3) if so directed by the Secretary, execute such assignment or other instruments necessary or appropriate to vest in such person full title to all funds, property and claims vested in the market administrator or such other person pursuant thereto.

**§ 1036.93 Liquidation after suspension or termination.**

Upon the suspension or termination of any or all provisions of this part, the market administrator, or such person as the Secretary may designate shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet the outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

**§ 1036.100 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.

**§ 1036.101 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.

Signed at Washington, D.C., on November 16, 1967.

JOHN C. BLUM,
*Deputy Administrator,*
*Regulatory Programs.*

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