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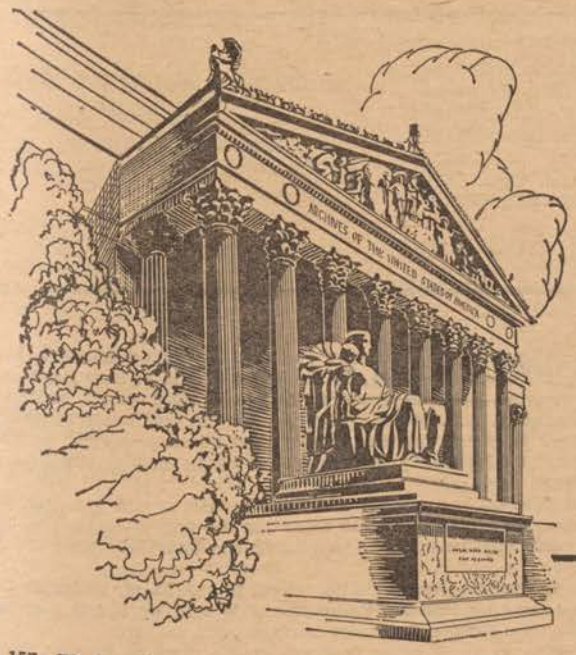

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A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1968, and specifies how they are affected.

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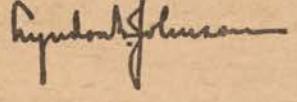
Title 3—THE PRESIDENT

Executive Order 11421

PLACING AN ADDITIONAL POSITION IN LEVEL V OF THE FEDERAL EXECUTIVE SALARY SCHEDULE

By virtue of the authority vested in me by section 5317 of title 5 of the United States Code, as amended, and as President of the United States, section 2 of Executive Order No. 11248 of October 10, 1965, as amended, is further amended by adding thereto the following:

(20) Deputy Assistant Secretary of Defense for Reserve Affairs.



THE WHITE HOUSE,
August 9, 1968.

[F.R. Doc. 68-9751; Filed, Aug. 12, 1968; 9:55 a.m.]

Rules and Regulations

Title 7—AGRICULTURE

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

[Valencia Orange Reg. 250, Amdt. 1]

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

Limitation of Handling

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committtee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interest of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553), because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of Valencia oranges grown in Arizona and designated part of California.

Order, as amended. The provisions in paragraph (b)(1)(ii) of § 908.550 (Valencia Orange Reg. 250, 33 F.R. 10936) are hereby amended to read as follows:

§ 908.550 Valencia Orange Regulation 250.

* * * * *

(b) * * *

(1) * * *

(ii) District 2: 350,000 cartons.

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

Dated: August 8, 1968.

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

[F.R. Doc. 68–9635; Filed, Aug. 12, 1968; 8:48 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 68–SO–58]

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

Alteration of Control Zone and Transition Areas

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

The Augusta control zone is described in § 71.171 (33 F.R. 2058).

The Augusta transition area is described in § 71.181 (33 F.R. 2137) and the Raleigh transition area is described in § 71.181 (33 F.R. 2137 and 6532).

In the descriptions of the Augusta control zone and transition area, reference is made to the Augusta RBN. Since the name of this RBN is being changed to "Emory RBN," effective October 17, 1968, it is necessary to amend the descriptions accordingly.

In the description of the Raleigh transition area, reference is made to the Raleigh-Durham RBN. Since the name of this RBN is being changed to "Leesville RBN," effective October 17, 1968, it is necessary to amend the description accordingly.

Since these amendments are editorial in nature, notice and public procedure hereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit processing and publication of these alterations, these amendments will become effective more than 30 days after publication.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., October 17, 1968, as hereinafter set forth.

In § 71.171 (33 F.R. 2058), the Augusta, Ga., control zone is amended as follows:

"* * * Augusta RBN * * *" is deleted and "* * * Emory RBN * * *" is substituted therefor, wherever it appears.

In § 71.181 (33 F.R. 2137), the Augusta, Ga., transition area is amended as follows:

"* * * Augusta RBN * * *" is deleted and "* * * Emory RBN * * *" is substituted therefor, wherever it appears.

In § 71.181 (33 F.R. 2137), the Raleigh, N.C., transition area (33 F.R. 6532) is amended as follows:

"* * * Raleigh-Durham RBN * * *" is deleted and "* * * Leesville RBN * * *" is substituted therefor, wherever it appears.

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

Issued in East Point, Ga., on August 1, 1968.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 68–9657; Filed, Aug. 12, 1968; 8:49 a.m.]

[Airspace Docket No. 68–WE–54]

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

Alteration of Transition Area

On June 21, 1968, a notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 9178) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations which would alter the description of the Battle Mountain, Nev., transition area. Interested persons were given 30 days in which to submit written comments, suggestions, or objections.

No objections have been received and the proposed amendment is hereby adopted subject to the following change:

In the 16th line of the text of the description of the Battle Mountain transition area delete "* * * the N edge of V–6 N * * *" and substitute "* * * a line 5 miles N of and parallel to the Battle Mountain VORTAC 264° radial * * *" therefor.

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

Effective date. This amendment shall be effective 0901 G.m.t., October 17, 1968.

Issued in Los Angeles, California, on July 31, 1968.

LEE E. WARREN,
Acting Director, Western Region.

In § 71.181 (33 F.R. 2147) the description of the Battle Mountain, Nev., transition area is amended to read as follows:

BATTLE MOUNTAIN, NEV.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Lander County Airport (latitude 40°35'-55'' N., longitude 116°52'25'' W.), and within 8 miles northwest and 5 miles southeast of the Battle Mountain VORTAC 218° radial extending from the VORTAC to 17.5 miles southwest of the VORTAC; that airspace extending upward from 1,200 feet above the surface bounded on the north by a line 5 miles north of and parallel to the Battle Mountain VORTAC 264° and 084° radials, on the west and southwest by an arc of a 23-mile radius circle centered on Battle Mountain VORTAC extending counterclockwise from a line 5 miles N of and parallel to the Battle Mountain VORTAC 264° radial to a line 6 miles southeast of and parallel to the Battle Mountain VORTAC 218° radial, on the southeast by a line 6 miles southeast of and parallel to the Battle Mountain VORTAC 218° radial, on the east by longitude 116°50'30'' W., and that airspace within 9 miles north and 6 miles south of the Battle Mountain 077° and 257° radials extending from 18.5 miles east to 7 miles west of the VORTAC.

[F.R. Doc. 68-9659; Filed, Aug. 12, 1968; 8:49 a.m.]

[Airspace Docket No. 68-WE-55]

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

Designation of Transition Area

On June 28, 1968, a notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 9508) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations which would designate a transition area for the Rio Vista Airport, Calif. Interested persons were given 30 days in which to submit written comments, suggestions, or objections.

No objections have been received and the proposed amendment is hereby adopted subject to the following change:

Correct the geographical coordinates of the Rio Vista Airport to read "(lat. 38°10'20'' N., long. 121°41'20'' W.)".

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

Effective date. This amendment shall be effective 0901 G.m.t., October 17, 1968.

Issued in Los Angeles, Calif., on July 31, 1968.

LEE E. WARREN,
Acting Director, Western Region.

In § 71.181 (33 F.R. 2137) the following transition area is added:

RIO VISTA, CALIF.

That airspace extending upward from 700 feet above the surface within a 3-mile radius of Rio Vista Airport (latitude 38°10'20'' N., longitude 121°41'20'' W.) and within 2 miles each side of the Sacramento VORTAC 202° radial extending from the 3-mile radius area to 8 miles north of the airport.

[F.R. Doc. 68-9660; Filed, Aug. 12, 1968; 8:50 a.m.]

[Airspace Docket No. 68-EA-39]

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

Alteration of Federal Airways and Revocation of Designated Reporting Points

On May 25, 1968, a notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 7727) stating that the Federal Aviation Administration was considering amendments to Part 71 of the Federal Aviation Regulations that would change the name of the Thornhurst, Pa., VORTAC to Wilkes-Barre, Pa., wherever it appears in the descriptions of V-106, V-147, V-149, V-188, V-226 and as a designated low altitude reporting point. It also was proposed to revoke the Thornhurst VORTAC as a designated high altitude reporting point.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective 0901 G.m.t., October 17, 1968, as hereinafter set forth.

1. Section 71.123 (33 F.R. 2009) is amended as follows:

a. In V-106 "Thornhurst, Pa., 237° radials; 12 AGL Thornhurst;" is deleted and "Wilkes-Barre, Pa., 237° radials; 12 AGL Wilkes-Barre;" is substituted therefor.

b. In V-147 "12 AGL Thornhurst, Pa.;" is deleted and "12 AGL Wilkes-Barre, Pa.:" is substituted therefor.

c. In V-149 "12 AGL Thornhurst, Pa.;" is deleted and "12 AGL Wilkes-Barre, Pa.;" is substituted therefor.

d. In V-188 "12 AGL Thornhurst, Pa.;" is deleted and "12 AGL Wilkes-Barre, Pa.;" is substituted therefor.

e. In V-226 "12 AGL Thornhurst, Pa.;" is deleted and "12 AGL Wilkes-Barre, Pa.;" is substituted therefor.

2. Section 71.203 (33 F.R. 2280) is amended as follows:

"Thornhurst, Pa." is deleted and "Wilkes-Barre, Pa." is substituted therefor.

3. Section 71.207 (33 F.R. 2287) is amended as follows:

"Thornhurst, Pa." is deleted.

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

Issued in Washington, D.C., on August 5, 1968.

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

[F.R. Doc. 68-9658; Filed, Aug. 12, 1968; 8:49 a.m.]

[Airspace Docket No. 68-WE-59]

PART 73—SPECIAL USE AIRSPACE

Revocation of Restricted Area/Military Climb Corridor

The purpose of this amendment to Part 73 of the Federal Aviation Regulations is to revoke the Merced, Calif. (Castle AFB) Restricted Area/Military Climb Corridor R-2514.

The United States Air Force has stated that the requirement for this restricted area/military climb corridor no longer exists.

Since this restricted area/military climb corridor was designated solely for use of the military, revocation thereof will reduce the burden on the public. Therefore, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days. In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 73.25 (33 F.R. 2302) R-2514 Merced, Calif. (Castle AFB) Restricted Area/Military Climb Corridor is revoked.

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

Issued in Washington, D.C., on August 5, 1968.

FERRIS J. HOWLAND,
Acting Director, Air Traffic Service.

[F.R. Doc. 68-9663; Filed, Aug. 12, 1968; 8:50 a.m.]

[Airspace Docket No. 68-CE-62]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Area

The purpose of this amendment to Part 73 of the Federal Aviation Regulations is to convert the time of designation for the Upper Lake Huron, Mich., Restricted Area R-4207, from Eastern Standard Time to Greenwich Mean Time.

The Department of the Air Force has requested the time of designation of R-4207 be changed from "0600 to 2200 e.s.t., April 1 through October 31; 0800 to 1600 e.s.t., Thursday through Sunday, November 1 through March 31" to "1100 to 0300 G.m.t., April 1 through October 31; 1300 to 2100 G.m.t., Thursday through Sunday, November 1 through March 31."

Since this action will not increase the time of use of R-4207 and no additional burden is placed on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days. In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 73.42 (33 F.R. 2322) R-4207 Upper Lake Huron, Mich., Restricted Area is amended by deleting "Time of designation. 0600 to 2200 e.s.t., April 1 through October 31; 0800 to 1600 e.s.t., Thursday through Sunday, November 1 through March 31." and substituting therefor "Time of designation. 1100 to 0300 G.m.t., April 1 through October 31; 1300 to 2100 G.m.t., Thursday through Sunday, November 1 through March 31."

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

Issued in Washington, D.C., on August 5, 1968.

FERRIS J. HOWLAND,
Acting Director,
Air Traffic Service.

[F.R. Doc. 68-9662; Filed, Aug. 12, 1968; 8:50 a.m.]

[Airspace Docket No. 68-CE-29]

PART 75—ESTABLISHMENT OF JET ROUTES

Alteration of Jet Routes

On June 8, 1968, a notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 8511); stating that the Federal Aviation Administration was considering an amendment to Part 75 of the Federal Aviation Regulations that would alter segments of Jet Route Nos. 34 and 90.

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

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended effective, 0901 G.m.t., October 17, 1968, as hereinafter set forth.

Section 75.100 (33 F.R. 2349) is amended as follows:

a. Jet Route No. 34 is amended to read: Jet Route No. 34 (Mullan Pass, Idaho, to Herndon, Va.).

From Mullan Pass, Idaho, via Helena, Mont.; Billings, Mont.; Dupree, S. Dak.; Redwood Falls, Minn.; Nodine, Minn.; Milwaukee, Wis.; INT of Milwaukee 098° and Carleton, Mich., 297° radials; Carleton; Cleveland, Ohio; Allegheny, Pa.; Front Royal, Va.; to Herndon, Va.

b. In Jet Route No. 90 all between "Mullan Pass, Idaho;" and "Mason City, Iowa;" is deleted and "Lewistown, Mont.; Miles City, Mont.; Aberdeen, S. Dak.; Redwood Falls, Minn.;" is substituted therefor.

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

Issued in Washington, D.C., on August 6, 1968.

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

[F.R. Doc. 68-9661; Filed, Aug. 12, 1968; 8:50 a.m.]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release IC-5452]

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Ownership of Unregistered Small Business Investment Companies

On April 18, 1968, the Securities and Exchange Commission published notice (Investment Company Act Release No. 5346) [in the FEDERAL REGISTER on April 25, 1968 (33 F.R. 6302)] that it had under consideration the adoption of an amendment to Rule 3c-2 (17 CFR § 270.3c-2) under the Investment Company Act of 1940 ("Act") (15 U.S.C. 80a) and invited all interested persons to submit their views and comments upon the proposal. The Commission has considered the views and comments which it received and has determined to adopt the amendment to Rule 3c-2 as originally proposed and as set forth below.

Section 3(c)(1) of the Act, which is referred to in the Rule (17 CFR § 270.3c-2), excepts from the definition of an investment company any issuer which is not making and does not propose to make a public offering of its securities and whose outstanding securities are beneficially owned by not more than one hundred persons. That section further provides that beneficial ownership by a company shall be deemed beneficial ownership by one person, with the exception that if such company owns 10 percent or more of the outstanding voting securities of the issuer, the beneficial ownership of the issuer shall be deemed to be that of the holders of such company's outstanding securities.

Rule 3c-2 (17 CFR § 270.3c-2) presently provides that, for the purpose of section 3(c)(1) of the Act, beneficial ownership by a company, other than a registered investment company, owning 10 percent or more of the outstanding voting securities of a small business investment company licensed or proposed to be licensed under the Small Business Investment Act of 1958 shall be deemed to be beneficial ownership by one person notwithstanding that such company owning such securities has more than one stockholder, if the value of all securities of small business investment companies owned by such company does not exceed 5 percent of the value of its total assets. The rule (17 CFR § 270.3c-2) also deems beneficial ownership by a company to be beneficial ownership by one person if the owner is a State-wide development corporation created by or pursuant to an act of a State legislature to promote and assist growth and development of the economy of the State, provided that such State development corporation itself is not, or would not become as a result of its investment, an investment company.

The amendment to Rule 3c-2 (17 CFR § 270.3c-2) would delete the phrase "other than a registered investment company" from the Rule (17 CFR § 270.3c-2). The effect of this amendment is to provide an exclusion from the definition of an investment company under section 3(c)(1) of the Act for a small business investment company when a registered investment company owns more than 10 percent of the outstanding voting securities of the small business investment company, if a certain condition is met. This condition is the same as that in the existing Rule (17 CFR § 270.3c-2), i.e., if and so long as the value of all securities of small business investment companies owned by the registered investment company does not exceed 5 percent of the value of its total assets.

The amendment, for example, permits a registered investment company to organize a wholly owned small business investment company which would be excluded under section 3(c)(1) of the Act from the definition of an investment company provided the investment by the registered investment company in the securities of the small business investment company does not exceed 5 percent of the value of the assets of the registered investment company.

Section 6(c) of the Act authorizes the Commission to issue rules which exempt any person from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the Act. Section 38(a) of the Act authorizes the Commission to issue such rules as are necessary or appropriate to the exercise of the powers conferred upon the Commission in the Act.

In the Commission's view, the amendment (17 CFR § 270.3c-2) will tend to effectuate the purposes and objectives of the Small Business Investment Act, and, in view of the prescribed conditions, is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act.

The text of the amendment to Rule 3c-2 (17 CFR § 270.3c-2), adopted by the Commission pursuant to the authority granted to it in sections 6(c) and 38(a) of the Act, is as follows:

Section 270.3c-2 is amended by deleting the phrase ", other than a registered investment company,". As so amended, § 270.3c-2 reads:

§ 270.3c-2. Definition of beneficial ownership in small business investment companies.

For the purpose of section 3(c)(1) of the Act, beneficial ownership by a company owning 10 per centum or more of the outstanding voting securities of any issuer which is a small business investment company licensed to operate under the Small Business Investment Act of 1958, or which has received from the Small Business Administration notice to proceed to qualify for a license, which notice or license has not been revoked, shall be deemed to be beneficial ownership by one person (a) if and so long as the value of all securities of small business investments companies owned by such company does not exceed 5 percentum of the value of its total assets; or (b) if and so long as such stock of the small business investment company shall be owned by a state development corporation which has been created by or pursuant to an act of the State legislature to promote and assist the growth and development of the economy within such State on a state-wide basis provided that such State development corporation is not, or as a result of its investment in the small business investment

company (considering such investment as an investment security) would not be, an investment company as defined in section 3 of the Act.

(Secs. 6(c), 38(a), 74 Stat. 412, 54 Stat. 841, 15 U.S.C. 80a-6(c), 80a-37(a).)

The Commission finds that the foregoing amendment to Rule 3c-2 (17 CFR § 270.3c-2) in effect, grants an exemption from section 8 and the other regulatory provisions of the Act by relaxing the ownership attribution rule set forth in section 3(c)(1) of the Act and that such amendment may be made effective immediately upon publication. Accordingly, the foregoing amendment to Rule 3c-2 is declared effective August 5, 1968.

By the Commission, August 5, 1968.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 68-9632; Filed, Aug. 12, 1968; 8:48 a.m.]

Title 29—LABOR

Subtitle A—Office of the Secretary

PART 11—VOCATIONAL REHABILITATION FOR MIGRANT AGRICULTURAL WORKERS

On page 7695 of the FEDERAL REGISTER of May 24, 1968, there was published a notice of proposed rule making to amend Title 29 of the Code of Federal Regulations by establishing a new Part 11. Interested persons were given 15 days in which to submit written statements of data, views, or argument concerning the proposal. None were received and the new 29 CFR Part 11 is hereby adopted without change and is set forth below.

Effective date. Part 11 shall be effective September 12, 1968.

Signed at Washington, D.C., this 6th day of August 1968.

WILLARD WIRTZ, *Secretary of Labor.*

Sec.
11.1 Purpose.
11.2 Migratory agricultural workers.
11.3 Review.

AUTHORITY: The provisions of this Part 11, issued under Public Law 90-99; 81 Stat. 251.

§ 11.1 Purpose.

The Secretary of Health, Education, and Welfare is authorized under the Vocational Rehabilitation Amendments of 1967 (Public Law 90-99; Approved Oct. 3, 1967) to make grants to any State agency designated pursuant to a State plan approved under section 5 of the Vocational Rehabilitation Act (29 U.S.C. 35) or to any local agency participating in the administration of such a plan, for not to exceed 90 percentum of the cost of pilot or demonstration projects for the provision of vocational rehabilitation services to handicapped individuals who are migratory agricultural workers as determined in accordance with rules prescribed by the Secretary of Labor and to members of their families (whether or not handicapped) who are with them, including maintenance and transportation of such individuals and members of their families where necessary to the rehabilitation of that individual. Accordingly, the definition set forth in § 11.2 has been issued.

§ 11.2 Migratory agricultural workers.

For purposes of the Act a "migratory agricultural worker" is a person who occasionally or habitually leaves his place of residence on a seasonal or other temporary basis to engage in ordinary agricultural operations or in services incident to the preparation of farm commodities for the market in another locality in which he resides during the period of such employment.

§ 11.3 Review.

Any person who is of the opinion that he is a migratory agricultural worker as defined in § 11.2 may request a review for such classification where eligibility has been previously denied by any State agency engaged in the administration of such matters by writing to the Manpower Administrator, U.S. Department of Labor, Washington, D.C. 20210.

[F.R. Doc. 68-9625; Filed, Aug. 12, 1968; 8:47 a.m.]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter II—Forest Service, Department of Agriculture

PART 251—LAND USES

Rights of Grantors

Part 251 of Title 36, Code of Federal Regulations, is amended by revising § 251.17 as follows:

§ 251.17 Grantor's right to occupy and use lands conveyed to the United States.

Except as otherwise provided in paragraph (h) of this section, in conveyances of lands to the United States under authorized programs of the Forest Service, where owners reserve the right to occupy and use the land for the purposes of residence, agriculture, industry, or commerce, said reservations shall be subject to the following conditions, rules and regulations which shall be expressed in and made a part of the deed of conveyance to the United States and such reservations shall be exercised thereunder and in obedience thereto:

(a) The reservation so created shall not be assigned, used or occupied by anyone other than the grantor without the consent of the United States.

(b) All reasonable precautions shall be taken by the grantor and all persons acting for or claiming under him to prevent and suppress forest fires upon or threatening the premises or other adjacent lands of the United States, and any person failing to comply with this requirement shall be responsible for any damages sustained by the United States by reason thereof.

(c) The premises shall not be used or permitted to be used, without the written consent of the United States, for any purpose or purposes other than those specified in the instrument creating the reservation.

(d) The grantor and all persons acting for or claiming under him shall maintain the premises and all buildings and structures thereon in proper repair and sanitation and shall comply with the National Forest laws and regulations and the laws and lawful orders of the State in which the premises are located.

(e) The reservation shall terminate (1) upon the expiration of the period named in the deed; (2) upon failure for a period of more than one calendar year to use and occupy the premises for the purposes named in the deed; (3) by use and occupancy for unlawful purposes or for purposes other than those specified in the deed; and (4) by voluntary written relinquishment by the owner.

(f) Upon the termination of the reservation the owners of personal property remaining on the premises shall remove same within a period of three months, and all such property not so removed shall become the property of the United States except that when such removal is prevented by conditions beyond the control of the owners the period shall be extended in writing by the Forest Service to allow a reasonable time for said removal, but in no event longer than one year.

(g) The said reservation shall be subject to rights-of-way for the use of the United States or its permittees, upon, across, or through the said land, as may hereafter be required for the erection, construction, maintenance and operation of public utility systems over all or parts thereof, or for the construction and maintenance of any improvements necessary for the good administration and protection of the National Forests, and shall be subject to the right of officials or employees of the Forest Service to inspect the premises, or any part thereof, at all reasonable times and as often as deemed necessary in the performance of official duties in respect to the premises.

(h) The conditions, rules, and regulations set forth in paragraphs (a) through (g) of this section shall not apply to reservations contained in conveyances of lands to the United States under the Act of March 3, 1925, as amended (43 Stat. 1133, 64 Stat. 82; 16 U.S.C. 555).

All regulations heretofore issued by the Secretary of Agriculture to govern the exercise of occupancy and use rights reserved in conveyances of lands to the United States under authorized programs of the Forest Service shall continue to be effective in the cases to which they are applicable, but are hereby superseded as to occupancy and use rights hereafter reserved in conveyances under such programs.

(36 Stat. 961, as amended, 16 U.S.C. 513-518, 42 Stat. 465, as amended, 16 U.S.C. 485, 486, and 50 Stat. 525, as amended, 7 U.S.C. 1011, and 70 Stat. 1034, 7 U.S.C. 428a)

Effective date: This revision of § 251.17 shall become effective on the date of its publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 7th day of August 1968.

ALFRED L. EDWARDS,
Acting Assistant Secretary.

[F.R. Doc. 68-9636; Filed, Aug. 12, 1968; 8:48 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 163—COD

Delivery

In § 163.5, paragraph (a) (2) is revised to show the elimination of the provision for charging the local rate of postage when the sender requests redelivery of COD mail.

§ 163.5 Delivery.

(a) *At letter carrier offices.* * * *

(2) When the addressee requests delivery of a COD parcel that was refused when it was first offered for delivery by carrier, the local rate of postage must be collected as postage due if delivery is made. A COD parcel that was not refused when first offered by a carrier for delivery will again be taken out at the addressee's request and no extra postage will be charged. When the sender, on Form 3818, requests another carrier delivery attempt, no additional postage is to be charged.

* * * * *

NOTE: The corresponding Postal Manual section is 163.512.

As the foregoing amendment to Title 39, Code of Federal Regulations relates to a proprietary function of the Government and does not affect substantive rights, advance notice, public rule making procedures, or a delayed effective date are unnecessary.

(5 U.S.C. 301, 39 U.S.C. 501)

AUGUST 8, 1968.

TIMOTHY J. MAY,
General Counsel.

[F.R. Doc. 68-9638; Filed, Aug. 12, 1968; 8:48 a.m.]

Title 49—TRANSPORTATION

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 1002]

PART 1033—CAR SERVICE

Car Distribution Directions—Appointment of Agents

At a session of the Interstate Commerce Commission, Division 3, held in Washington, D.C., on the 5th day of August 1968.

It appearing, that the matter of car service (Section I, Paragraphs 10–17, inclusive of the Interstate Commerce Act) being under consideration, it is the opinion of the Commission that, because the existing car service rules, regulations, and practices of the railroads are inadequate, there is an inequitable distribution of freight cars throughout the country, resulting in the inability of certain carriers to furnish a fair supply of freight cars to shippers located on their lines, an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1002 Service Order No. 1002.

(a) *Car distribution directions—appointment of agents.* In order to meet the needs of shippers in areas having acute car shortages and to insure an equitable distribution of freight cars in all areas of the country, R. D. Pfahler, Director, and N. Thomas Harris, Assistant Director, Bureau of Operations, Interstate Commerce Commission, Washington, D.C., are hereby appointed agents of the Interstate Commerce Commission and vested with authority to issue car distribution directions with respect to the location and relocation of empty cars, and to make such just and reasonable directions with respect to car service without regard to the ownership as between carriers by railroads as in their opinion will best promote the service in the interest of the public and the commerce of the people.

(b) *Rules, regulations and practices suspended.* The operation of all rules, regulations and practices insofar as they conflict with the provisions of this order, is hereby suspended.

(c) *Effective date.* This order shall become effective at 12:01 a.m., August 9, 1968.

(d) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., November 30, 1968, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10–17), 15(4), and, 17(2), 40 Stat. 101, as amended 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2))

It is further ordered, That a copy of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Division 3.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-9640; Filed, Aug. 12, 1968; 8:48 a.m.]

Title 50—WILDLIFE AND FISHERIES

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

PART 10—MIGRATORY BIRDS

Open Seasons, Bag Limits, and Possession; Correction

FEDERAL REGISTER Document 68-8951, published at page 10727 in the issue dated Saturday, July 27, 1968, is corrected by changing footnote 2 of § 10.41(d), to read:

[2] In Arizona, the daily bag and possession limit is 25 white-winged doves. In California and Nevada, the daily bag limit is 10 and the possession limit is 20 white-winged and mourning doves, singly or in the aggregate of both kinds. In New Mexico, the daily bag limit is 12 and the possession limit is 24 white-winged and mourning doves, singly or in the aggregate of both kinds. In Texas, the daily bag limit is 10 and the possession limit is 20 white-winged doves.

This correction is to become effective upon publication in the FEDERAL REGISTER.

JOHN S. GOTTSCHALK,
Director, Bureau of Sport Fisheries and Wildlife.

AUGUST 8, 1968.

[F.R. Doc. 68-9637; Filed, Aug. 12, 1968; 8:48 a.m.]

PART 32—HUNTING

Kofa Game Range, Arizona

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

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

ARIZONA

KOFA GAME RANGE

The public hunting of quail, rabbits, coyotes, gray fox, bobcat, and skunks on the Kofa Game Range, Ariz., is permitted only on the area designated by signs as open to hunting. This open area, comprising 660,041 acres or 100 percent of the total area of the game range, is delineated on a map available at the refuge headquarters, Yuma, Ariz., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, N. Mex. 87103. Hunting shall be in accordance with all applicable State regulations governing the hunting of quail, rabbits, coyotes,

gray fox, bobcat, and skunks subject to the following special condition:

(1) The open season for hunting quail, rabbits, coyotes, gray fox, bobcat and skunks on the refuge extends from October 1 through November 30, 1968, inclusive.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 30, 1968.

CLAUDE F. LARD,
Refuge Manager, Kofa Game Range, Yuma, Ariz.

AUGUST 1, 1968.

[F.R. Doc. 68-9618; Filed, Aug. 12, 1968; 8:46 a.m.]

PART 32—HUNTING

Imperial National Wildlife Refuge, Arizona and California

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

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

ARIZONA AND CALIFORNIA

IMPERIAL NATIONAL WILDLIFE REFUGE

Public hunting of quail, cottontail, and jackrabbits on the Imperial National Wildlife Refuge, Ariz. and Calif., is permitted only on the area designated by signs as open to hunting. This open area, comprising 16,500 acres, is delineated on maps available at refuge headquarters, Yuma, Ariz., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, N. Mex. 87103. Hunting seasons are as follows: Arizona: Quail, October 1, 1968 through January 31, 1969, inclusive; cottontail and jackrabbits, September 1, 1968, through January 31, 1969, inclusive. California: Quail, November 2, 1968, through January 12, 1969, inclusive; cottontail and jackrabbits, September 1, 1968, through January 12, 1969, inclusive.

Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of quail and rabbits subject to the following special condition:

(1) Use of shotguns only.

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 31, 1969.

CLAUDE F. LARD,
Refuge Manager, Imperial National Wildlife Refuge, Yuma, Arizona.

AUGUST 1, 1968.

[F.R. Doc. 68-9620; Filed, Aug. 12, 1968; 8:47 a.m.]

PART 32—HUNTING

Kofa Game Range, Arizona

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.

ARIZONA

KOFA GAME RANGE

Public hunting of bighorn sheep and deer on the Kofa Game Range, Ariz., is permitted only on the area designed by signs as open to hunting. The bighorn sheep season is from December 7 through December 22, 1968, inclusive, and the deer season is from September 6 through September 22, 1968, inclusive, and from October 25 through November 11, 1968, inclusive. The open bighorn sheep and deer hunting area, comprising 660,041 acres, is delineated on maps available at refuge headquarters, Yuma, Ariz., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, N. Mex. 87103.

Hunting shall be in accordance with all applicable State regulations covering the hunting of bighorn sheep and deer subject to the following special condition:

(1) Bighorn sheep limited to 10 permits issued by the Arizona Game and Fish Department.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 22, 1968.

CLAUDE F. LARD,
Refuge Manager, Kofa Game Range, Yuma, Ariz.

AUGUST 1, 1968.

[F.R. Doc. 68-9617; Filed, Aug. 12, 1968; 8:46 a.m.]

PART 32—HUNTING

Imperial National Wildlife Refuge, Arizona and California

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.

ARIZONA AND CALIFORNIA

IMPERIAL NATIONAL WILDLIFE REFUGE

Public hunting of deer and bighorn sheep on the Imperial National Wildlife Refuge, Ariz. and Calif., is permitted only on the area designated by signs as open to hunting. This area, comprising 16,500 acres, is delineated on maps available at refuge headquarters, Yuma, Ariz., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, N. Mex. 87103. Hunting seasons are as follows: Arizona: Deer, September 6 through September 22, 1968, inclusive, and October 25 through November 11, 1968, inclusive; bighorn sheep, December 7 through December 22, 1968, inclusive. California: Deer, September 21 through November 3, 1968, inclusive; bighorn sheep, no open season in California. Hunting shall be in accordance with all applicable State regulations.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 22, 1968.

CLAUDE F. LARD,
Refuge Manager, Imperial National Wildlife Refuge, Yuma, Arizona.

AUGUST 1, 1968.

[F.R. Doc. 68-9619; Filed, Aug. 12, 1968; 8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 31]

CUSTOMHOUSE BROKERS

Notice of Proposed Rule Making

Notice is hereby given pursuant to 5 U.S.C. 553 that it is proposed to revise Part 31 of Title 19 of the Code of Federal Regulations under the authority of sections 624 and 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1624, 1641), R.S. 251 (19 U.S.C. 66).

The proposed revision reflects the reorganization of the Bureau of Customs pursuant to Reorganization Plan No. 1 of 1965 (30 F.R. 7035; 79 Stat. 1317), clarifies the duties and responsibilities of a customhouse broker, and includes practices and intepretations adopted in connection with the present regulations. Changes are proposed in the revision which would:

1. Extend the definition of books and papers to include data processing materials (§ 31.1(e));

2. Require the filing of a power of attorney at each port where an employee is to be empowered to sign documents for a broker (§ 31.3(b));

3. Permit a broker to represent a client before any agency of the Treasury Department in matters concerning the importation or exportation of merchandise and make clear that regulations of other agencies must be complied with (§ 31.4);

4. State affirmatively the basic requirements for obtaining a broker's license (§31.11);

5. Require evidence of authorization of partnership, association, or corporation to engage in business under a trade or fictitious name (§ 31.12);

6. Provide for a uniform written examination for applicant for individual broker's license. The examination will be given 3 times each year (§ 31.13);

7. Make the list of brokers maintained by the district director available to the public (§ 31.15);

8. Require that the reason for denial of a license be given to an applicant in the notice of denial (§31.16);

9. Require brokers to keep copies of supporting papers with the entries (§ 31.21);

10. Require brokers to keep books and papers available for inspection, copying, reproduction, or other official use by customs officers (§ 31.25);

11. Specify time limit for prompt payment of sums due the Government or clients (§ 31.29);

12. Require notification of change in organization (§ 31.30(b));

13. State conflict of interest rule for broker or broker's employee who is an importer (§ 31.31(c));

14. State broker's duty to report client's noncompliance or error or omission (§ 31.39(b)); and

15. Require display of license in each office (§ 31.43).

Numerous changes are also proposed in the regulations governing cancellation, suspension, and revocation of a broker's license, which appear as subpart D of the proposed revision of Part 31. These changes would:

1. State the Commissioner's authority to determine whether charges will be preferred (§§ 31.56 and 31.57);

2. Require that the notice of preliminary proceedings state the right to counsel (§ 31.59(b)(6));

3. Permit the broker to request additional information for his use in the preliminary proceedings (§ 31.60);

4. State the procedure to be followed to complete the preliminary proceedings (§ 31.61);

5. Set out contents of notice of charges (§ 31.62);

6. Provide for additional methods of service of the notice and statement of charges (§ 31.63);

7. Specify the time for the service of notice of hearing (§ 31.64) and permit request for delay (§ 31.65);

8. Require publication of a notice of suspension or revocation of a license (§ 31.74) and of notice vacating or suspending prior notice (§ 31.77); and

9. Authorize reprimands (§ 31.78).

As part of the notice of proposed rule making, there is included a parallel reference table showing the section number in the proposed revision and the corresponding section number in the present regulations.

The proposed revision of Part 31 is as follows:

AUTHORITY: The provisions of this Part 31 issued under R.S. 251, secs. 624, 641, 46 Stat. 759, as amended, sec. 101, 76 Stat. 72; 5 U.S.C. 301, 19 U.S.C. 66, 1624, 1641.

§ 31.0 Scope.

This part sets forth regulations providing for the licensing of persons desiring to transact business as customhouse brokers, the qualifications required of applicants, and the procedure for applying for licenses. This part also prescribes the duties and responsibilities of customhouse brokers, the grounds for revocation or suspension of licenses, and the procedures for such revocation or suspension.

Subpart A—General Provisions

§ 31.1 Definitions.

When used in this part, the following terms shall have the meanings indicated:

(a) *Person.* "Person" includes individuals, partnerships, associations, and corporations.

(b) *Customhouse broker.* "Customhouse broker" means a person who is licensed under this part to transact customs business on behalf of others.

(c) *Broker.* "Broker" means "customhouse broker."

(d) *Treasury Department or any representative thereof.* "Treasury Department or any representative thereof" includes any office, officer, or employee of the Treasury Department, wherever located.

(e) *Books and papers.* "Books and papers" includes all books, accounts, records, papers, documents, data processing materials, and correspondence of a broker relating to his customs business.

(f) *Freight forwarder.* "Freight forwarder" means a person engaged in the business of dispatching shipments on behalf of other persons for a consideration in foreign commerce between the United States, its territories or possessions, and foreign countries, and of handling the formalities incident to such shipments.

(g) *Officer of an association or corporation.* "Officer of an association or corporation" means a person who has been elected, appointed, or designated as an officer of an association or corporation in accordance with statute, the articles of incorporation, articles of agreement, charter, or bylaws of the association or corporation.

§ 31.2 License required.

A person shall obtain the license provided for in this part in order to transact the business of a broker. A separate license is required for each customs district.

§ 31.3 Transactions for which license not required.

A license is not required to engage in the following transactions with the Treasury Department or any representative thereof:

(a) *For one's own account.* An importer or exporter transacting customs business solely on his own account and in no sense on behalf of another is not required to be licensed, nor are his authorized regular employees or officers who act only for him in the transaction of such business.

(b) *Employees of brokers.* An employee of a broker, acting solely for his employer, is not required to be licensed, provided the broker has filed with the district director a statement identifying the employee and the scope of his authorization. Such statement must also be filed at each port within the district where the broker wishes the employee to act for him. A broker must promptly give notice of any change in the authority of any such employee. If a broker wishes to authorize an employee to sign customs documents on his behalf, he shall also file a power of attorney for that purpose with the district director and at each port within the district in which the broker wishes the employee to sign customs documents. Only employees who are residents of the United States may be authorized to sign customs documents.

(c) *Marine transactions.* A person transacting business in connection with entry or clearance of vessels or other regulation of vessels under the navigation laws is not required to be licensed as a broker.

(d) *Transportation in bond by common carrier.* A common carrier transporting merchandise for another may make entry for such merchandise for transportation in bond without being licensed as a broker.

§ 31.4 Representation before Government agencies.

(a) *Agencies within the Treasury Department.* A broker who represents a client in the importation or exportation of merchandise may represent the client before the Treasury Department or any representative thereof on any matter concerning such merchandise except that he shall not represent the client before customs officers in a customs district in which he is not licensed.

(b) *Agencies not within the Treasury Department.* In order to represent a client before any agency not within the Treasury Department, a broker shall comply with any regulations of such agency governing the appearance of representatives before it.

§ 31.5 Prior licenses.

Licenses issued prior to the effective date of the regulations in this part shall continue in force and effect, subject to cancellation, suspension or revocation as provided in subpart D of this part.

Subpart B—Procedure To Obtain License

§ 31.11 Basic requirements.

(a) *Individual.* An individual must:

(1) Be a citizen of the United States, but not an officer or employee of the United States;

(2) Be at least 21 years of age;

(3) Be of good moral character; and

(4) Establish through an examination that he has sufficient knowledge of customs and related laws, regulations, and procedures to render valuable service to importers and exporters. Satisfactory knowledge is established in part by attaining a grade of at least 75 percent on the examination.

(b) *Partnership.* A partnership must:

(1) Have two members of the partnership who are licensed brokers, and

(2) Establish that it will have an office in which its customs transactions will be performed by a licensed member of the partnership, or a qualified employee under the responsible supervision and control of the licensed members.

(c) *Association or corporation.* An association or corporation must:

(1) Be empowered under its articles of association or articles of incorporation to transact customhouse brokerage business;

(2) Have at least two officers who are licensed brokers; and

(3) Establish that it will have an office in which its customs transactions will be performed by a licensed officer or a qualified employee under the responsible supervision and control of the licensed officers.

§ 31.12 Application for license.

(a) *Submission of application.* An application for a broker's license shall be submitted in duplicate to the district director of the district in which the applicant intends to do business. The application shall be under oath and executed on customs Form 3123 (individual), customs Form 3125 (partnership), customs Form 3127 (corporation), or customs Form 3129 (association). The application shall be accompanied by the fee of $150 prescribed in section 24.12 of this chapter and one copy of the attachment required by the application form (Articles of Agreement or an affidavit signed by all partners, Articles of Agreement of the association, or the Articles of Incorporation). If the applicant proposes to operate under a trade or fictitious name in one or more States within the district, evidence of the applicant's authority to use the name in each such State must accompany the application. An application for an individual license must be submitted not later than 30 days before the scheduled examination which the applicant wishes to take.

(b) *Posting notice of application.* Upon receipt of the application the district director shall post a notice that the application has been filed. The notice shall be posted conspicuously for at least two weeks in the customhouse at the headquarters port and at the subports where the applicant proposes to maintain an office. The notice shall give the name and address of the applicant and, if the applicant is a partnership, association or corporation, the names of the members or officers thereof who are licensed as brokers. The notice shall invite written comments or information regarding the issuance of the license.

(c) *Withdrawal of application.* If the applicant advises before the date of an examination that he wishes to withdraw his application, the application shall be treated as withdrawn and the district director shall refund the application fee to the applicant.

§ 31.13 Examination of applicant for individual license.

(a) *Examination.* The written examination shall be designed to determine the applicant's knowledge of customs and related laws, regulations, and procedures and his fitness to render valuable service to importers and exporters. The examination will be prepared and graded in the Bureau headquarters.

(b) *Date and place of examination.* Examinations will be given at each district office on the first Monday in February, June, and October. The district director shall give the applicant notice of the exact time and place where the examination will be given.

(c) *Special examination.* The Commissioner may authorize a special examination for an applicant when a partnership, association, or corporation has less than two licensed members or officers. He may also authorize a special examination for one who will be authorized to continue the business of an individual broker. Application and a statement of the reasons for the necessity of a special examination shall be filed with the district director in accordance with § 31.12(a).

(d) *Failure to appear for examination.* If the applicant fails to appear for a scheduled examination without notification in advance or explanation of the circumstances which made it impossible or impracticable to give such notification, the district director shall notify him that the application is denied because of failure to appear for examination to establish his qualifications for a license. The district director shall refund to the applicant one-half of the application fee.

(e) *Failure to pass examination.* If the applicant does not obtain a grade of at least 75 percent, the Commissioner will notify him and the district director that the application for a license is denied because of failure to pass the examination. The district director shall refund to the applicant one-half of the application fee.

(f) *Passing grade on examination.* If the applicant obtains a passing grade, the Commissioner will return the application to the district director for further processing of the application.

§ 31.14 Investigation of the applicant.

(a) *Individual license—(1) Applicant passing examination.* If the applicant passes the examination, the district director shall refer the application to the customs agent in charge for an investigation and report.

(2) *Applicant licensed in one district.* If the applicant has a license in one district, the district director shall immediately refer the application to the customs agent in charge for an investigation and report.

(b) *Partnership, association or corporation license.* The district director shall immediately refer an application for a partnership, association or corporation license to the customs agent in charge for investigation and report.

(c) *Scope of investigation.* The investigation shall ascertain facts relevant to the question whether the applicant is qualified and shall cover, but need not be limited to:

(1) The accuracy of the statements made in the application;

(2) The business integrity of the applicant; and

(3) When the applicant is an individual (including a member of a partnership or an officer of an association or corporation), the character and reputation of the applicant.

(d) *Report and return of the application.* The customs agent in charge shall return the application with his report and recommendation to the district director who requested the investigation. The district director shall forward the originals of the application and the agent's report to the Commissioner. The district director shall also submit his recommendation for action on the application.

(e) *Additional investigation or examination.* The Commissioner may require further investigation to be conducted if additional facts are deemed necessary to pass upon the application. The Commissioner may also require the applicant (or, in the case of a partnership, association or corporation, one or more of its members or officers) to appear in person before him or before one or more representatives of the Commissioner for the purpose of undergoing additional written or oral examination into the applicant's qualifications for a license.

§ 31.15 Issuance of license.

If the Commissioner finds that the applicant is qualified, he will issue a license. A license for an individual who is a member of a partnership or an officer of an association or corporation will be issued in the name of the individual licensee and not in his capacity as a member or officer of the organization with which he is connected. The license shall be forwarded to the district director, who shall deliver it to the licensee. The district director shall maintain an alphabetical list of brokers licensed in his district which list shall be available to the public.

§ 31.16 Denial of license.

(a) *Notice of denial.* If the Commissioner determines that the application for a license should be denied for any reason, notice of denial shall be given by him to the applicant and to the director of the district in which the application was filed. The notice of denial shall state the reasons why the license was not issued.

(b) *Grounds for denial.* The causes sufficient to justify denial of an application for a license shall include, but need not be limited to:

(1) Any cause which would justify suspension or revocation of the license of a broker under the provisions of §31.53;

(2) The failure to meet any requirement set forth in section 31.11;

(3) A failure to establish the business integrity and good character of the applicant;

(4) Any willful misstatement of pertinent facts in the application;

(5) Any conduct which would be deemed unfair in commercial transactions by accepted standards;

(6) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of such conduct.

§ 31.17 Review of the denial of a license.

(a) *By the Commissioner.* At the written request of the applicant, the Commissioner may allow a further opportunity to the applicant to present information or arguments in support of his application by personal appearance or in writing, or both.

(b) *By the Secretary.* A decision of the Commissioner denying a license, upon the written request of the applicant, will be submitted to the Secretary of the Treasury for such review as the Secretary shall deem appropriate.

§ 31.18 Reapplication for license.

An applicant who has been denied a license may reapply at any time by complying with the provisions of § 31.12.

§ 31.19 Licenses for additional districts.

A license authorizes the transaction of customs business only in the district for which issued. Licenses for additional districts may be obtained by:

(a) Filing with the district director of the district for which a license is desired the application prescribed in § 31.12 (a). Upon receipt of the application, the district director shall follow the procedure set forth in §§ 31.12(b) and 31.14;

(b) Submitting the fee of $150 with the application; and

(c) Establishing upon investigation that the applicant is prepared and qualified to render efficient service in the additional district. This includes a showing that the licensed members of a partnership or the licensed officers of an association or corporation will exercise responsible supervision and control of the proposed office. The licensed members of a partnership and the licensed officers of an association or corporation are not required to be licensed as individuals in the district for which the partnership, association or corporation is applying for an additional license. An individual licensed as a broker in one district may or may not, at the discretion of the Commissioner, be required to take another examination when applying for an additional license.

Subpart C—Duties and Responsibilities of Customhouse Brokers

§ 31.21 Record of transactions.

Each broker shall keep current in a correct, orderly, and itemized manner records of account reflecting all his financial transactions as a broker. He shall keep and maintain on file a copy of each entry made by him with all supporting papers and copies of all his correspondence and other papers relating to his customs business.

§ 31.22 Additional record of transactions.

(a) *Additional requirement.* In addition to the regular records of account required by § 31.21, each broker shall keep current a record of all of his customs transactions on customs Form 3079 (Record of Transactions of Licensed Customhouse Broker) in accordance with the instructions printed on the form unless an exemption has been granted under the authority of paragraph (b) of this section. If a transaction has been handled only in part by the broker, he shall fill in only the appropriate parts of the form.

(b) *Exemption.* If the information required on customs Form 3079 is disclosed in other books and records regularly kept and maintained by a broker and if such information is in a systematic, convenient, and readily available form so that customs field auditors can make an effective and complete inspection thereof, the district director with the concurrence of the director, field audit, may in writing exempt the broker from the requirements of paragraph (a) of this section. A written request for the exemption shall be addressed to the district director and shall include:

(1) A statement of facts as to the records kept; and

(2) An agreement that, if the exemption is granted, no change in the system of books and records or the manner of keeping and maintaining them will be made without prior written approval of the district director and concurrence in the change by the director, field audit.

(c) *Withdrawal of exemption.* Whenever an audit by a customs field auditor indicates that a broker to whom an exemption has been granted as provided for in paragraph (b) of this section is not keeping and maintaining records in conformity with the requirements of the said paragraph (b), the exemption of such broker shall be withdrawn by notice in writing from the district director, and such broker shall thereafter keep and maintain records on customs Form 3079 as required by paragraph (a) of this section.

§ 31.23 Retention of books and papers.

The books and papers, as defined in § 31.1(e) and required by §§ 31.21 and 31.22, to be kept by a broker shall be retained within the customs district to which they relate for at least 5 years.

§ 31.24 Books and papers confidential.

The books and papers referred to in this part and pertaining to the business of the clients serviced by the broker shall be considered confidential, and the broker shall not disclose their contents or any information connected therewith to any persons other than such clients and the director, field audit, the customs agent in charge, or other duly accredited agent of the United States except on subpoena by a court of competent jurisdiction.

§ 31.25 Books and papers shall be available.

During the period of retention, the broker shall maintain his books and papers in such manner that they may readily be examined, and they shall be made available for inspection, copying, reproduction or other official use by customs field auditors or customs agents on demand within the period of retention or within any longer period of time during which they remain in the possession of the broker.

§ 31.26 Interference with examination of books and papers.

A broker shall not refuse access to, conceal, remove, or destroy the whole or any part of any book or paper relating to his transactions as a broker which is being sought, or which the broker has reasonable grounds to believe may be sought, by the Treasury Department or any representative thereof, nor shall he otherwise interfere, or attempt to interfere, with any proper and lawful efforts to procure or reproduce information contained in such book or paper.

§ 31.27 Audit or inspection of books and papers.

The director, field audit, shall make such audit or inspection of the books and papers required by this subpart to be kept and maintained by a broker as may be necessary to enable the district director and other proper officials of the Treasury Department to determine whether or not the broker is complying with the requirements of this part. Furthermore, the director, field audit, and/or the customs agent in charge, may inspect such books and papers to obtain information regarding specific customs transactions for the purpose of protecting importers or the revenue of the United States. The director, field audit, and the customs agent in charge conducting an audit or inspection under this section shall submit a report of the findings to the Commissioner and the district director.

§ 31.28 Responsible supervision.

Every licensed member of a partnership and every licensed officer of an association or corporation, which is licensed as a broker, shall exercise responsible supervision and control over the transaction of the customhouse business of such partnership, association or corporation.

§ 31.29 Diligence in correspondence and paying monies.

Each broker shall exercise due diligence in making financial settlements, in answering correspondence, and in preparing or assisting in the preparation and filing of documents relating to any matter handled by him as a broker. He shall pay over to the Government within 30 days of the due date all sums for the payment of duty, tax, or other debt or obligation owing to the Government, and shall within 60 days account to clients for funds received for them from the Government, or received from a client in excess of the governmental or other charges properly payable in respect to the client's business. He shall account to all other persons within 30 days of receipt for all funds advanced by a client for payment of any charges, debts or obligations due such other persons.

§ 31.30 Change of business address, organization, or name.

(a) *Business address.* When a broker changes his business address, he shall immediately give written notice of his new address to the Commissioner and the district director for the district in which the change of address occurs.

(b) *Organization.* A partnership, association, or corporation shall immediately notify the Commissioner and the district director of the districts where licensed of:

(1) The date on which a licensed member or officer who was one of the qualifying members or officers ceases to be a member or officer and the name of the broker who will succeed him as a qualifying member or officer; or

(2) Any change in the Articles of Agreement, Charter, or Articles of Incorporation.

(c) *Name.* A broker who changes his name, or who proposes to operate under a trade or fictitious name in one or more States within the district in which he is licensed and is authorized by State law to do so, shall submit evidence of his authority to use such name. The name shall not be used until the approval of the Commissioner has been received and a new license has been issued. In the case of a trade or fictitious name, the broker shall affix his own name in conjunction with each signature of the trade or fictitious name when signing customs documents.

§ 31.31 Conflict of interest.

(a) *Former officer or employee of U.S. Government.* A broker who was formerly an officer or employee in the Government service shall not represent a client before the Treasury Department or any representative thereof in any matter to which the broker gave personal consideration or gained knowledge of the facts while in the Government service, except as provided in 18 U.S.C. 207.

(b) *Assisting former officer or employee of U.S. Government.* A broker shall not knowingly assist, accept assistance from, or share fees with a person who has been employed by a client in a matter pending before the Treasury Department or any representative thereof to which matter such person gave personal consideration or gained personal knowledge of the facts or issues thereof while in the Government service.

(c) *Importations by broker or employee.* A broker who is an importer himself shall not act as broker for an importer who imports merchandise of the same general character as that imported by the broker unless the client

has full knowledge of the facts. The same restriction shall apply if a broker's employee is an importer.

§ 31.32 False information.

A broker shall not file or procure or assist in the filing of any claim, or of any document, affidavit, or other paper, known by such broker to be false; nor shall he knowingly give, or solicit or procure the giving of, any false or misleading information or testimony in any matter pending before the Treasury Department or any representative thereof.

§ 31.33 Government records.

A broker shall not procure or attempt to procure, directly or indirectly, information from Government records or other Government sources of any kind to which access is not granted by proper authority.

§ 31.34 Undue influence upon Government employees.

A broker shall not influence or attempt to influence the conduct of any representative of the Treasury Department in any matter pending before the Treasury Department or any representative thereof by the use of a threat, false accusation, duress, or the offer of any special inducement or promise of advantage, or by bestowing any gift or favor or other thing of value.

§ 31.35 Acceptance of fees from attorneys.

With respect to merchandise imported after March 15, 1962, a broker shall not demand or accept from any attorney (whether directly or indirectly, including, for example, from a client as a part of any arrangement with an attorney) on account of any case litigated in any court of law or on account of any other legal service rendered by an attorney any fee or remuneration in excess of an amount measured by or commensurate with the time, effort and skill expended by the broker in performing his services.

§ 31.36 Relations with unlicensed persons.

(a) *Service to others not to benefit unlicensed person.* A broker shall not enter into any agreement with an unlicensed person to transact customs business for others in such manner that the fees or other benefits resulting from the services rendered for others inure to the benefit of the unlicensed person except as provided in paragraph (b) of this section. When a broker is employed for the transaction of customs business by an unlicensed person who is not the actual importer, the broker must transmit to the actual importer a copy of his bill for services rendered, unless the merchandise was purchased for delivery on an all free basis (duty and brokerage changes paid by the unlicensed person).

(b) *Employment by a freight forwarder.* A broker may compensate a freight forwarder for services rendered in obtaining brokerage business, providing:

(1) The importer is notified in advance by the forwarder or broker of the name of the broker selected by the forwarder for the handling of his customs transactions;

(2) The broker transmits directly to the importer:

(i) A true copy of his brokerage charges if the fees and charges are to be collected by or through the forwarder, or

(ii) A statement of his brokerage charges and an itemized list of any charges to be collected for the account of the freight forwarder if the fees and charges are to be collected by or through the broker;

(3) No part of the agreement of compensation between the broker and the forwarder, nor any action taken pursuant thereto, shall forbid or prevent direct communication between the importer and the broker; and

(4) In making the agreement and in all actions taken pursuant thereto, the broker shall be subject to all other provisions of these regulations.

§ 31.37 Misuse of license.

A broker shall not permit his license or his name to be used by or for any unlicensed person, other than his own employees authorized to act for him, or by or for any broker whose license is under suspension in the solicitation, promotion or performance of any customs business or transaction.

§ 31.38 False representation to procure employment.

A broker shall not knowingly use false or misleading representations to procure employment in any customs matter, nor shall he represent to a client or prospective client that he can obtain any favors from the Treasury Department or any representative thereof.

§ 31.39 Advice to client.

(a) *Withholding or false information.* A broker shall not withhold information relative to any customs business from a client who is entitled to the information. He shall exercise due diligence to ascertain the correctness of any information which he imparts to a client, and he shall not knowingly impart to a client false information relative to any customs business.

(b) *Error or omission by client.* A broker who knows that a client has not complied with the law or has made an error in, or omission from, any document, affidavit, or other paper which the law requires such client to execute, shall advise his client promptly of the fact of such noncompliance, error, or omission. If the client refuses or fails to take corrective action within a reasonable time, the broker shall notify the district director of his client's noncompliance, error, or omission.

(c) *Illegal plans.* A broker shall not suggest to a client or a prospective client a plan known to be illegal for evading payment of any duty, tax, or other debt or obligation owing to the Government.

§ 31.40 Appeals to reappraisement and protests.

A broker shall not act in behalf of any person, or attempt to represent any person, in respect of any appeal for reappraisement or protest, unless he shall previously have been specifically or generally authorized to do so by such person.

§ 31.41 Endorsement of checks.

A broker shall not endorse or accept without authority of his client any Government draft, check, or warrant drawn to the order of such client.

§ 31.42 Relations with person who is notoriously disreputable or whose license has been suspended, canceled "with prejudice," or revoked.

A broker shall not knowingly and directly or indirectly:

(a) Accept employment to effect a customs transaction as associate, correspondent, officer, employee, agent, or subagent from any person who is notoriously disreputable or whose license as broker shall have been revoked for any cause, or whose license is under suspension, or who has had his license canceled "with prejudice;"

(b) Assist the furtherance of any customs business or transactions of such person;

(c) Employ, or accept such assistance from, any such person, without the approval of the Commissioner (see § 31.79);

(d) Share fees with any such person, or

(e) Permit any such person directly or indirectly to participate, whether through ownership or otherwise, in the promotion, control, or direction of the business of the broker. Nothing herein shall be deemed to prohibit any broker from acting as a broker for any bona fide importer or exporter, notwithstanding such importer or exporter may have had his license as a customhouse broker revoked or suspended, or may be notoriously disreputable.

§ 31.43 Display of license.

Each broker shall display his license in the principal office within the district so that it may be seen by anyone transacting business in the office. Photocopies of the license shall likewise be posted in each branch office within the district.

Subpart D—Cancellation, Suspension or Revocation of License

§ 31.51 Cancellation of license.

(a) *Without prejudice.* The Commissioner may cancel a broker's license "without prejudice" upon written application by the broker if the Commissioner determines that the application for cancellation was not made in order to avoid proceedings for the suspension or revocation of the license. If he determines that the application for cancellation was made in order to avoid such proceedings, the Commissioner may cancel the license "without prejudice" if authorized by the Secretary of the Treasury.

(b) *With prejudice.* The Commissioner may cancel a broker's license "with prejudice" when specifically requested to do

so by a broker. The effect of a cancellation "with prejudice" is in all respects the same as if the license had been revoked for cause by the Secretary.

§ 31.52 Revocation by operation of law.

A license granted to a partnership, association, or corporation shall be deemed revoked by operation of law, in accordance with the provisions of section 641(a), Tariff Act of 1930, as amended (19 U.S.C. 1641(a)), if for any continuous period of more than 60 days there are not at least two members of such partnership or two officers of such association or corporation who are licensed to transact business as a customhouse broker. When a license is revoked by operation of law, the Commissioner will notify the partnership, association, or corporation of the revocation. A copy of such notice will be sent to the district director.

§ 31.53 Grounds for suspension or revocation.

Failure or refusal to comply with the duties, responsibilities, or requirements specified in Subpart C or elsewhere in this part relating to brokers may be deemed grounds for suspension or revocation of the license of a broker. Such duties, responsibilities, or requirements are not to be considered as exclusive. Conduct not within the purview of any specification of this part may be deemed to be conduct warranting the suspension or revocation of a license under the authority of section 641(b), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)).

§ 31.54 Chief officer of the customs.

The district director shall be the chief officer of the customs within the scope of section 641(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1641(b)). In the case of sickness or absence of the district director, the assistant district director designated by the district director shall be the chief officer of the customs. If the office of district director is vacant or the district director is unable to designate an assistant district director as chief officer of the customs, the Commissioner shall designate one of the assistant district directors to be the chief officer of the customs.

§ 31.55 Investigation of complaints.

Every complaint or charge against a broker which may be the basis for disciplinary action shall be forwarded for investigation to the customs agent in charge of the area in which the broker is located. The customs agent in charge shall submit a report on the investigation to the director of the appropriate district and send a copy of it to the Commissioner.

§ 31.56 Review of report on investigation.

The district director shall review the report of investigation to determine if there is sufficient basis to recommend that charges be preferred against the broker. He shall then submit his recommendation with supporting reasons to the Commissioner for final determination together with a proposed statement of charges when recommending that charges be preferred.

§ 31.57 Determination by Commissioner.

(a) *Determination not to prefer charges.* If the Commissioner determines that charges will not be preferred, he shall notify the district director of his decision.

(b) *Determination to prefer charges.* If the Commissioner determines that charges will be preferred, he may also determine that the complaint or charge, supported by the agent's report of investigation, is of so serious a nature that formal proceedings for suspension or revocation of the license shall be instituted immediately without following the preliminary proceedings prescribed in § 31.59. The Commissioner shall notify the district director of his determinations and instruct him to prepare a proposed statement of charges for review by the Commissioner if not previously submitted.

§ 31.58 Content of statement of charges.

The statement of charges shall give a plain and concise, but not necessarily detailed, description of the facts claimed to constitute grounds for suspension or revocation of the license. A statement of charges which fairly informs the accused of the charges against him so that he is able to prepare his defense shall be deemed sufficient. Different means by which a purpose might have been accomplished or different intents with which acts might have been done so as to constitute grounds for suspension or revocation of license may be alleged in the statement of charges in a single count in the alternative. If the Commissioner has determined that the preliminary proceedings prescribed in § 31.59 shall not be followed, the statement of charges shall recite the Commissioner's determination.

§ 31.59 Preliminary proceedings.

(a) *Opportunity to participate.* Unless the Commissioner, under §31.57, has determined that the preliminary proceedings shall not be followed, the district director shall advise the broker of his opportunity to participate in preliminary proceedings with an opportunity to avoid formal proceedings against his license.

(b) *Notice of preliminary proceedings.* The district director shall serve upon the broker, as set forth in § 31.63, a notice in writing that:

(1) Transmits a copy of the proposed statement of charges;

(2) Informs him that 5 U.S.C. 554 and 558 will be applicable if formal proceedings are necessary;

(3) Invites him to show cause, if he so desires, why the formal proceedings should not be instituted;

(4) Informs him that he may make submissions and demonstrations of the character contemplated by the cited statutory provisions;

(5) Invites any negotiation for settlement of the complaint or charge that the broker deems it desirable to enter into;

(6) Advises him of his right to be represented by counsel; and

(7) Specifies the place where and a reasonable time within which the broker may respond in writing and/or orally.

§ 31.60 Request for additional information.

If, in order to prepare his defense, the broker desires additional information as to the time and place of the alleged misconduct or the means by which it was committed, or any other more specific information concerning the alleged misconduct, he may request such information in writing. He shall set forth his request in what respect the proposed statement of charges leaves him in doubt and describe the particular language of the proposed statement of charges as to which additional information is needed. If in the opinion of the district director such information is reasonably necessary to enable the broker to prepare his defense, he shall furnish the broker with such information.

§ 31.61 Decision on preliminary proceedings.

The district director shall prepare a summary of any oral presentations made by the broker or his attorney and forward it to the Commissioner together with a copy of each paper filed by the broker. The district director shall also give to the Commissioner his recommendation on action to be taken as a result of the preliminary proceedings. If the Commissioner determines that the broker has satisfactorily responded to the proposed charges, and that further proceedings are not warranted he shall so inform the district director who shall notify the broker. If the Commissioner determines that the broker has not satisfactorily responded to the proposed charges, he shall so advise the district director and instruct him to prepare, sign, and serve a notice of charges and the statement of charges. If one or more of the charges in the proposed statement of charges was satisfactorily answered by the broker, the Commissioner shall instruct the district director to omit those charges from the statement of charges.

§ 31.62 Contents of notice of charges.

The notice of charges shall inform the broker that:

(a) Sections 554 and 558, Title 5, United States Code, are applicable to the formal proceedings;

(b) He may be represented by counsel;

(c) He will have the right to cross-examine witnesses;

(d) He will be notified within 10 days after service of this notice of the time and place of a hearing on the charges; and

(e) Prior to the hearing on the charges, he may file, in duplicate with the district director, a verified answer to the charges.

§ 31.63 Service of notice and statement of charges.

(a) *Individual licensee.* The district director shall serve the notice of charges and the statement of charges against an individual licensee as follows:

(1) By delivery to the broker personally;

(2) By certified mail, with demand for a return card signed solely by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the district director; or

(4) If attempts to serve the broker by the above methods are unsuccessful, the district director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(b) *Partnership, association or corporation.* The district director shall serve the notice of charges and the statement of charges against a partnership, association, or corporation as follows:

(1) By delivery to any member of the partnership personally or to any officer of the association or corporation personally;

(2) By certified mail addressed to any such member or officer with demand for a return card signed by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the district director; or

(4) If attempts to serve the broker by the above methods are unsuccessful, the district director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(c) *Certified mail; evidence of service.* When the service is by certified mail, the receipt of the return card duly signed shall be satisfactory evidence of service.

§ 31.64 Service of notice of hearing and other papers.

(a) *Notice of hearing.* Within 10 days after service of the notice and statement of charges, the district director shall serve upon the broker or his attorney, by one of the methods enumerated in § 31.63 or by ordinary mail, a written notice of the time and place of the hearing. The hearing shall be scheduled to take place within 5 days after service of the notice of hearing.

(b) *Other papers.* Other papers relating to the hearing may be served by ordinary mail or by one of the methods set forth in § 31.63 or upon the broker's attorney.

§ 31.65 Extension of time for hearing.

If the broker or his attorney requests in writing a delay in the hearing on the ground that additional time is necessary to prepare a defense, the district director may reschedule the hearing, notifying the broker or his attorney in writing of the extension and the new time for which the hearing has been scheduled.

§ 31.66 Failure to appear.

When an accused broker or his attorney fails to appear for a scheduled hearing, the district director shall proceed with the hearing as scheduled, and shall hear evidence submitted on behalf of the Government. The regulations of this part shall apply as though the broker were present, and the Secretary of the Treasury may issue an order of suspension or revocation if he finds it to be in order.

§ 31.67 Hearing.

(a) *Government representatives.* The hearing shall be before the district director who shall provide a competent reporter to make the record of the hearing. The Commissioner shall designate one or more persons to represent the Government at the hearing. The district director may designate one or more persons to assist in the proceedings.

(b) *Rights of the accused.* The broker or his attorney shall have the right to examine all exhibits offered at the hearing and shall have the right to cross-examine witnesses and to present witnesses who shall be subject to cross-examination by the Government representatives.

(c) *Interrogatories.* Upon the written request of either party, the district director may permit deposition upon oral or written interrogatories to be taken before any officer duly authorized to administer oaths for general purposes or in customs matters. The other party to the hearing shall be given a reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, shall be permitted to cross-examine the witness. The deposition shall become part of the hearing record.

(d) *Transcript of record.* When the record of the hearing has been transcribed by the reporter, the district director shall deliver a copy to the broker and the Government's representative without charge.

§ 31.68 Proposed findings and conclusions.

The district director shall allow the parties a reasonable period of time after delivery of the transcript of record in which to submit proposed findings and conclusions and supporting reasons therefor as contemplated by 5 U.S.C. 557 (c).

§ 31.69 Recommended decision by district director.

After review of the proposed findings and conclusions submitted by the parties pursuant to § 31.68, the district director shall make his recommended decision in the case and certify the entire record to the Secretary of the Treasury. The district director's recommended decision shall conform with the requirements of 5 U.S.C. 557.

§ 31.70 Additional submittals.

Upon receipt of the record, the Secretary of the Treasury will afford the parties a reasonable opportunity to make such additional submittals as required by 5 U.S.C. 557(c) and by the circumstances of the case.

§ 31.71 Immaterial mistakes.

The Secretary of the Treasury will disregard an immaterial misnomer of a third person, an immaterial mistake in the description of any person, thing, or place, or the ownership of any property, any other immaterial mistake in the statement of charges or a failure to prove immaterial allegations in the description of the accused's conduct.

§ 31.72 Dismissal subject to new proceedings.

If the Secretary of the Treasury finds that the evidence produced at the hearing indicates that a proper disposition of the case cannot be made on the basis of the charges preferred, he may instruct the district director to serve appropriate charges as a basis for new proceedings to be conducted in accordance with the procedure set forth in this subpart.

§ 31.73 Partial proof of charges.

If the Secretary of the Treasury finds that one or more of the charges in the statement of charges is not sufficiently proved, he may base his decision on any remaining charges if the facts alleged in the charges are established by the evidence.

§ 31.74 Decision and notice of suspension or revocation.

If the Secretary of the Treasury in the exercise of his discretion issues an order of suspension or revocation of the license of a broker, the Commissioner of Customs will notify the broker and publish a notice of suspension or revocation in the FEDERAL REGISTER and in the Customs Bulletin.

§ 31.75 Appeal from the Secretary's decision.

An appeal from the order of the Secretary of the Treasury suspending or revoking a license may be taken in accordance with the provisions of section 641(b) of the Tariff Act of 1930, as amended 19 U.S.C. 1641(b). The commencement of such proceedings shall, unless specifically ordered by the Court, operate as a stay of the Secretary's order of suspension or revocation.

§ 31.76 Reopening the case.

(a) *Grounds for reopening.* Any person whose license has been suspended or revoked may make written application in duplicate to the district director to have the order of suspension or revocation set aside or modified upon the ground of newly discovered evidence or that important evidence is now available which could not be produced at the original hearing by the exercise of due diligence. The application must set forth specifically the precise character of the evidence to be relied upon and shall state the reasons why the applicant was unable to produce it when the original charges were heard.

(b) *Procedure.* The district director shall forward the application with his recommendation to the Secretary of the Treasury. The Secretary may grant or deny the application for reopening of the case and may order the taking of additional testimony before the district director. The district director shall notify the applicant of the Secretary's decision. If the Secretary grants the application and orders a hearing, the district director shall set a time and place for such hearing and give due notice thereof to the applicant. The procedure governing the

additional hearing and recommended decision of the district director shall be the same as that governing the original proceeding.

§ 31.77 Notice of reinstatement.

If the Secretary of the Treasury issues an order vacating or modifying the prior order of suspension or revocation, the Commissioner will notify the broker and publish a notice of the new order in the FEDERAL REGISTER and the Customs Bulletin.

§ 31.78 Reprimands.

If a broker fails to observe and fulfill the duties and responsibilities of a broker as set forth in this part but such failure is not sufficiently serious to warrant initiation of suspension or revocation proceedings the Commissioner or the district director, with the approval of the Commissioner, may serve the broker with a written reprimand. Such reprimand and the facts on which it is based, may be considered in connection with any future disciplinary proceeding that may be instituted.

§ 31.79 Employment of broker who has lost license.

Five years after the revocation or cancellation "with prejudice" of a license, the ex-broker may petition the Commissioner for authorization to accept employment with or to assist a licensed broker. Such petition shall not be approved unless the Commissioner is satisfied that the petitioner has refrained from all activities in any way violative of the provisions of § 31.42 and that petitioner's conduct has been exemplary during the period of disability. The Commissioner shall also give consideration to the gravity of the misconduct which gave rise to the petitioner's disability. In any case in which such misconduct leads to pecuniary loss to the Government or to any person, the Commissioner shall also take into account whether the petitioner has made reimbursement for the losses incurred.

§ 31.80 Saving provision.

Any proceeding for revocation or suspension of a license instituted prior to the effective date of this section shall be governed by the provisions of this Part 31 in force at the time the proceeding was instituted.

Prior to adoption of the revision, consideration will be given to any relevant data, views, or arguments which are submitted in writing to the Commissioner of Customs, Washington, D.C. 20226, and received not later than 60 days after the date of publication of this notice in the FEDERAL REGISTER. No hearing will be held.

[SEAL] LESTER D. JOHNSON,
Commissioner of Customs.

Approved: August 2, 1968.

JOSEPH M. BOWMAN,
Assistant Secretary of the Treasury.

ANNEX TO NOTICE OF PROPOSED RULE MAKING—REVISION OF PART 31

PARALLEL REFERENCE TABLE

(This table shows the relation of sections in proposed Part 31 to 19 CFR Part 31.)

Proposed Part 31 Section	*19 CFR Section*
31.0	31.1.
31.1(a)	31.3(d).
31.1(b)	31.3(a).
31.1(c)	None.
31.1(d)	31.3(b).
31.1(e)	31.3(e).
31.1(f)	31.3(f).
31.1(g)	None.
31.2	31.2(a).
31.3(a)	31.8(a).
31.3(b)	31.8(d).
31.3(c)	31.8(c).
31.3(d)	31.8(b).
31.4	31.6.
31.5	31.13.
31.11	None.
31.12(a)	31.4(a).
31.12(b)	31.4(b).
31.12(c)	None.
31.13(a)	None.
31.13(b)	None.
31.13(c)	None.
31.13(d)	None.
31.13(e)	31.5(b) and 31.4(a).
31.13(f)	None.
31.14(a)	31.4(e)(1).
31.14(b)	31.4(e)(2).
31.14(c)	31.4(e)(3).
31.14(d)	31.4(e)(4).
31.14(e)	31.4(f).
31.15	31.5(a).
31.16(a)	31.5(b)(3).
31.16(b)(1)	31.5(c)(1).
31.16(b)(2)	31.5(c)(6) and (7).
31.16(b)(3)	31.5(c)(2).
31.16(b)(4)	31.5(c)(3).
31.16(b)(5)	31.5(c)(4).
31.16(b)(6)	31.5(c)(5).
31.17(a)	31.5(b)(2).
31.17(b)	31.5(d).
31.18	None.
31.19	31.7.
31.21	31.9(a).
31.22(a)	31.9(b).
31.22(b)	31.9(c).
31.22(c)	31.9(d).
31.23	31.9(e).
31.24	31.9(h).
31.25	31.9(e).
31.26	31.10(s).
31.27	31.9 (f) and (g).
31.28	31.10(t).
31.29	31.10 (p) and (l).
31.30(a)	31.9(e).
31.30(b)	None.
30.30(c)	31.10(u).
31.31(a)	31.10(f).
31.31(b)	31.10(g).
31.31(c)	None.
31.32	31.10(o).
31.33	31.10(q)
31.34	31.10(r).
31.35	31.10(n).
31.36(a)	31.10(b) (1) and (2).
31.36(b)	31.10(b)(1)(i–iv).
31.37	31.10(a).
31.38	31.10(e).
31.39(a)	31.10 (k) and (j).
31.39(b)	31.10(i).
31.39(c)	31.10(h)
31.40	31.10(d).
31.41	31.10(m).
31.42	31.10(c).
31.43	None.
31.51(a)	31.12(b).
31.51(b)	31.12(c).
31.52	31.12(a).
31.53	31.11(a).
31.54	31.11(b)(1).
31.55	31.11(b)(2).
31.56	31.11(b) (2) and (3).
31.57(a)	None.
31.57(b)	31.11(b)(5).
31.58	31.11(b)(8).
31.59	31.11(b)(6).
31.60	None.
31.61	None.
31.62	31.11(b)(8).
31.63	31.11(b)(7).
31.64	31.11(b)(8).
31.65	None.
31.66	31.11(b)(18).
31.67	31.11(b)(11).
31.68	31.11(b)(12).
31.69	31.11(b)(13).
31.70	31.11(b)(14).
31.71	31.11(b)(16).
31.72	31.11(b)(15).
31.73	31.11(b)(17).
31.74	31.11(b)(19).
31.75	31.14.
31.76	31.11(b)(20).
31.77	31.11(b)(21).
31.78	None.
31.79	31.10(c).
31.80	31.11(b)(22).

[F.R. Doc. 68-9639; Filed, Aug. 12, 1968; 8:48 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 68-SW-55]

CONTROL ZONE AND TRANSITION AREA

Proposed Designation and Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to alter controlled airspace in the Houston, Tex., terminal area. Additional controlled airspace, i.e., designation of a separate control zone at Houston Intercontinental Airport and expansion of the existing Houston, Tex., 700-foot transition area, will be required to accommodate instrument approach/departure procedures associated with the new Houston Intercontinental Airport. It is anticipated this airport will become operational on January 26, 1969.

The designation and/or alteration of additional controlled airspace is also likely to accommodate other procedures which may be subsequently developed to serve the Houston, Tex., terminal complex.

An editorial change is being made in the present description of the William P. Hobby control zone so that all references contained therein relative to the ILS localizer courses are clearly shown to be only those associated with the William P. Hobby ILS localizer courses.

The proposed northerly extension of the Houston Intercontinental control zone is based on utilization of the Humble VORTAC 339° radial (331° magnetic).

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.

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

In § 71.171 (33 F.R. 2058), the following control zone is added:

HOUSTON, TEXAS (INTERCONTINENTAL AIRPORT)

That airspace within a 5-mile radius of Houston Intercontinental Airport (Lat. 29°58'51" N, Long. 95°20'30" W); within 2 miles each side of the Humble VORTAC 339° radial extending from the 5-mile radius zone to 8 miles N of the VORTAC; within 2 miles each side of the Houston Intercontinental Airport ILS localizer W course extending from the 5-mile radius zone to the OM.

In § 71.171 (33 F.R. 2090), the Houston, Tex. (William P. Hobby), control zone is amended in part by deleting "* * * the Houston ILS localizer * * *" and substituting therefor "* * * the Houston William P. Hobby ILS localizer * * *" wherever it appears.

In § 71.181 (33 F.R. 2196), the 700-foot portion of the Houston, Tex., transition area is amended by deleting "* * * Lat. 29°32'00" N, Long. 95°00'00" W, to point of beginning; within a 4-mile radius of Spaceland Airpark * * *" and substituting therefor "* * * Lat. 29°32'00" N, Long. 95°00'00"W, to point of beginning; within an 8-mile radius of Houston Intercontinental Airport (Lat. 29°58'51" N, Long. 95°20'30" W); within a 4-mile radius of Spaceland Airpark * * *."

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 Fort Worth, Tex., on August 2, 1968.

A. L. COULTER,
Acting Director, Southwest Region.

[F.R. Doc. 68-9667; Filed, Aug. 12, 1968; 8:50 a.m.]

[14 CFR Part 71]

[Airspace Docket 68-EA-71]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the Roanoke, Va., control zone and 700-foot floor transition area.

The VOR-1, VOR-2, and NDB (ADF) 1 instrument approach procedures for Roanoke Municipal Airport, Roanoke, Va., have been canceled and new VOR, ILS, and NDB (ADF) instrument approach procedures have been authorized for Runway 33. An alteration of the Roanoke, Va., control zone and 700-foot floor transition area to provide controlled airspace protection for aircraft executing the arrival and departure procedures and for radar vectoring services will therefore be required.

Interested persons may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received within 30 days after publication in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Standards Branch, Eastern Region.

Any data or views 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 Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Roanoke, Va., proposes the airspace action hereinafter set forth:

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Roanoke, Va., control zone and insert in lieu thereof:

Within a 5-mile radius of the center, 37°-19'25" N., 79°58'35" W., of Roanoke Municipal Airport, Roanoke, Va., and within 2 miles each side of the ILS localizer SE course extending from the 5-mile radius zone to 2.5 miles southeast of the OM.

2. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Roanoke, Va., 700-foot transition area and insert in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 12-mile radius of the center 37°19'25" N., 79°58'35" W., of Roanoke Municipal Airport, Roanoke, Va., and within 2 miles each side of the Roanoke VOR 177° radial extending from the 12-mile radius area to 17 miles south of the Roanoke VOR.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Jamaica, N.Y., on July 30, 1968.

WAYNE HENDERSHOT,
Acting Director, Eastern Region.

[F.R. Doc. 68-9664; Filed, Aug. 12, 1968; 8:50 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 68-SW-53]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to alter the Tyler, Tex., transition area.

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.

In § 71.181 (33 F.R. 2265), the Tyler, Tex., transition area 700-foot portion is amended to read:

That airspace extending upward from 700 feet above the surface bounded by a line extending from Lat. 32°05'30" N., Long. 95°17'00" W., to Lat. 32°27'00" N., Long. 95°42'30" W., to Lat. 32°35'30" N., Long. 95°32'30" W., to Lat. 32°13'30" N., Long. 95°07'00" W., to point of beginning;

Alteration of the transition area, as proposed, will accommodate a change in the procedure turn area from the north side to the south side of the final approach course serving runway 31 [AL-622-ILS-RWY 31 (BC)]. This change will permit retention of the 2,000-foot

minimum holding altitude at the Lake Tyler Intersection. Due to an obstruction in the vicinity, it would have otherwise been necessary to increase the minimum holding altitude to 2,100 feet.

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 Fort Worth, Tex., on August 2, 1968.

A. L. COULTER,
Acting Director, Southwest Region.

[F.R. Doc. 68-9665; Filed, Aug. 12, 1968; 8:50 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 68-SW-52]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to alter the Houma, La., transition area. A northerly transition area extension, based on a 360° true (354° magnetic) bearing from the proposed Houma RBN, is proposed to provide airspace protection for aircraft executing a new instrument approach procedure proposed for the Houma Municipal Airport, Houma, La., as well as for a terminal route from Raceland Intersection to the RBN. A minor relocation of the existing southeasterly transition area extension from the Tibby VORTAC 123° true (117° magnetic) radial to the 124° true (118° magnetic) radial is needed to provide airspace protection for aircraft executing an existing instrument approach procedure. The existing northwesterly transition area extension is based on the Tibby VORTAC 123° true (117° magnetic) radial and no change is proposed.

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.

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

In § 71.181 (33 F.R. 2196), the Houma, La., transition area is amended to read:

HOUMA, LA.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Houma Municipal Airport (Lat. 29°34'10" N., Long. 90°39'40" W.), within 2 miles each side of the Tibby VORTAC 123° radial extending from the 5-mile radius area to the VORTAC, within 2 miles each side of the Tibby VORTAC, 124° radial extending from the 5-mile radius area to 27 miles SE of the VORTAC, and within 2 miles each side of a 360° bearing from the Houma RBN (latitude 29°37'01" N., longitude 90°39'39" W.) extending from the 5-mile radius area to 10 miles north of the RBN.

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 Fort Worth, Tex., on August 2, 1968.

A. L. COULTER,
Acting Director, Southwest Region.

[F.R. Doc. 68-9666; Filed, Aug. 12, 1968; 8:50 a.m.]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 211, 302, 399]

[Docket No. 20029]

FILING AND PROCESSING OF CERTAIN APPLICATIONS FOR FOREIGN PERMITS

Supplemental Notice of Proposed Rule Making

The Board, by publication in 33 F.R. 10108 and by circulation of PSDR-21, EDR-140, and PDR-27, dated July 10, 1968, gave notice that it had under consideration amendments to Parts 302, 211, and 399 concerning the filing and processing of certain applications for foreign air carrier permits. Interested persons were invited to participate in the proceeding by submission of twelve (12) copies of written data, views, or arguments pertaining thereto to the Docket Section of the Board on or before August 12, 1968.

Representatives of a number of foreign air carriers have requested extensions of time for comment ranging from October 1, 1968, up to 60 days. The representatives state that additional time is needed because of delays inherent in communicating with their foreign air carrier clients, particularly during the summer vacation period; the possibility that many of the foreign air carriers may wish to consult with their Governments before commenting; and the complexity and novelty of the proposal.

The undersigned finds that good cause has been shown for extension of time to October 1, 1968. Accordingly, pursuant to authority delegated in § 385.20(d) of the Board's Organization Regulations, effective June 21, 1967, the undersigned hereby extends the time for submitting comments to October 1, 1968.

All relevant communications received on or before October 1, 1968, will be considered by the Board before taking action on the proposed rules. Copies of these communications will be available for examination in the Docket Section, Room 712 Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., upon receipt thereof.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324)

By the Civil Aeronautics Board.

[SEAL] ARTHUR H. SIMMS,
Associate General Counsel, Rules and Rates Division.

[F.R. Doc. 68-9652; Filed, Aug. 12, 1968; 8:49 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Treasury Dept. Order 128 (Rev. 3)]

OFFICE OF FOREIGN ASSETS CONTROL

Authority and Functions

Treasury Department Order No. 128 (Revision 2) published in the FEDERAL REGISTER March 2, 1967, 32 F.R. 3472, is hereby amended by the deletion in the introductory paragraph of the words "including section 161 of the Revised Statutes (5 U.S.C. 22)" and the insertion in paragraph (2)(ii) of the words "and Executive Order 11419 of July 29, 1968." As amended, the order reads as follows:

By virtue of the authority vested in me as Secretary of the Treasury I hereby order that:

(1) There is established in the Treasury Department the Office of Foreign Assets Control, successor to Foreign Funds Control. The Office shall function under the immediate supervision of a Director of Foreign Assets Control, who shall be designated, with my approval, by the Assistant Secretary for International Affairs. The Director shall report to the Assistant Secretary for International Affairs through the Assistant to the Secretary (National Security Affairs).

(2) The Director of Foreign Assets Control shall exercise and perform all authority, duties and functions which I am authorized or required to exercise or perform under

(i) Sections 3 and 5(b) of the Trading With the Enemy Act, as amended, and any proclamations, orders, regulations or rulings that have been or may be issued thereunder, and

(ii) Executive Order 11322 of January 5, 1967, and Executive Order 11419 of July 29, 1968, issued pursuant to Section 5 of the United Nations Participation Act of 1945 and all other authority residing in the President.

(3) The Director of Foreign Assets Control shall be assisted in the exercise and performance of such authority, duties and functions by such assistants and other staff as may be appointed or detailed for the purpose.

(4) This order shall take effect immediately.

[SEAL]

JOSEPH W. BARR,
Acting Secretary.

AUGUST 9, 1968.

[F.R. Doc. 68-9728; Filed, Aug. 12, 1968; 8:51 a.m.]

DEPARTMENT OF COMMERCE

Bureau of International Commerce

[File Nos. 23(65)-13, 23(66)-12]

P. T. DAENG TOMPO TRADING CO., AND H. A. E. MANSUR

Order Denying Export Privileges for an Indefinite Period

In the matter of P. T. Daeng Tompo Trading Co., Djakarta and Makassar, Indonesia and H. A. E. Mansur, 8, Djalan Bank, Djakarta-Kota, Indonesia, respondents.

The Director, Investigations Division, Office of Export Control, Bureau of International Commerce, U.S. Department of Commerce, has applied for an order denying to the above-named respondents all export privileges for an indefinite period because the said respondents failed to furnish answers to interrogatories and failed to furnish certain records and other writings specifically requested, without good cause being shown. This application was made pursuant to §382.15 of the Export Regulations (Title 15, Chapter III, Subchapter B, Code of Federal Regulations).

In accordance with the usual practice, the application was reviewed by the Compliance Commissioner, Bureau of International Commerce, who after consideration of the evidence has recommended that the application be granted. The report of the Compliance Commissioner and the evidence in support of the application have been considered.

The evidence presented shows that the respondent P. T. Daeng Tompo Trading Co. is a firm doing business in Indonesia and has offices in Makassar, Djakarta, and Palembang; that the company is engaged in the import-export business and also in manufacturing; that the respondent H. A. E. Mansur is Managing Director of the offices of the firm in Djakarta. The evidence further shows that in October 1964 and July 1965, the respondent Mansur on behalf of the said firm signed export control documents certifying that the company had placed orders with U.S. suppliers and that it intended to import into Indonesia, for use in that country, certain strategic commodities. The said commodities were exported from the United States for delivery to respondent firm in Indonesia.

The said Investigations Division is conducting an investigation relating to the participation of respondents in the said transactions, particularly as to their ordering of the commodities in question, whether the statements in their certifications were true, whether they received the commodities in question, and if so, their disposition of same.

It is impracticable to subpoena the respondents, and relevant and material written interrogatories and requests to furnish certain specific documents relating to the matters under investigation were served on them pursuant to § 382.15 of the Export Regulations. The respondents have failed to furnish answers to the interrogatories and have failed to furnish the documents requested, all as required by said section. They have not shown good cause for such failure. I find that an order denying export privileges to said respondents for an indefinite period is reasonably necessary to protect the public interest and to achieve effective enforcement of the Export Control Act of 1949, as amended. Accordingly: *It is hereby ordered:*

I. All outstanding validated export licenses in which respondents appear or participate in any manner or capacity are hereby revoked and shall be returned forthwith to the Bureau of International Commerce for cancellation.

II. The respondents, their representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or which are otherwise subject to the Export Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) as a party or as a representative of a party to any validated export license application; (b) in the preparation or filing of any export license application or reexportation authorization, or any document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control document; (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data in whole or in part exported or to be exported from the United States; and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondents, but also to any successor of the respondent firm and to respondents' employees and to any person, firm, corporation, or business organization with which respondents now or hereafter may be related by affiliation, ownership, control,

position of responsibility, or other connection in the conduct of trade or services connected therewith.

IV. This order shall remain in effect until the respondents provide responsive answers, written information, and documents in response to the interrogatories heretofore served upon them or give adequate reasons for failure to do so, except insofar as this order may be amended or modified hereafter in accordance with the Export Regulations.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Bureau of International Commerce, shall do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondents or any related party, or whereby the respondents or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) apply for, obtain, transfer or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any exportation, reexportation, transshipment or diversion of any commodity or technical data exported or to be exported from the United States, by, to, or for any such respondent or related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

VI. A copy of this order shall be served on respondents.

VII. In accordance with the provisions of § 382.15 of the Export Regulations, the respondents may move at any time to vacate or modify this Indefinite Denial Order by filing with the Compliance Commissioner, Bureau of International Commerce, U.S. Department of Commerce, Washington, D.C. 20230, an appropriate motion for relief, supported by substantial evidence, and may also request an oral hearing thereon, which, if requested shall be held before the Compliance Commissioner at Washington, D.C., at the earliest convenient date.

This order shall become effective on August 12, 1968.

Dated: August 6, 1968.

RAUER H. MEYER,
Director,
Office of Export Control.

[F.R. Doc. 68-9623; Filed, Aug. 12, 1968; 8:47 a.m.]

Business and Defense Services Administration

DEPARTMENT OF AGRICULTURE

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C. 20230.

Docket No. 68-00523-61-46500. Applicant: U.S. Department of Agriculture, Human Nutrition Research Division, Agricultural Research Center, Beltsville, Md. 20705. Article: Ultramicrotome LKB 8800 Ultrotome III. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used to prepare ultrathin serial sections for study of fruit and vegetable tissues at the cellular and subcellular level. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is designed to cut sections of biological specimens for examination by light and electron microscopy. The most closely comparable domestic instrument is the Model MT-2 ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The following is a comparison of the pertinent characteristics and pertinent specifications of the foreign article as described in the catalogue for the "Ultrotome III" Ultramicrotome (LKB Produkter AB, Stockholm, Sweden, 1965), with similar pertinent characteristics and pertinent specifications of the Sorvall Model MT-2 as described in the catalogue on the "Porter-Blum" MT-2 Ultramicrotome (Ivan Sorvall, Inc., Norwalk, Conn., 1966). (1) The foreign article has a thin-sectioning capability down to 50 Angstroms, whereas the thin-sectioning capability of the Sorvall Model MT-2 is 100 Angstroms. The thinner the section, the more possible it is to take advantage of the ultimate resolving power of the electron microscope for which the section is being prepared. In addition, the applicant requires 50 Angstrom sections for efficient penetration of various chemical reactants to compare the effect on the fine structure of the cell wall the applicant intends to compare. Therefore, the capability of the foreign article to produce sections up to one-half as thick as the thinnest section producible with the Sorvall Model MT-2, is pertinent to the purposes for which the foreign article is intended to be used. (2) For the intended uses, the applicant requires an ultramicrotome that is capable of reproducing a series of ultrathin sections with consistent uniformity and accuracy. We are advised by the Department of Health, Education, and Welfare (HEW), in the memorandum dated June 20, 1968, that this requirement of the applicant can be met only with an ultramicrotome employing a thermal advance. In a prior case relating to the identical model of the foreign article with which this application is concerned (Docket No. 67-00024-33-46500), HEW advised that some backlash and slippage are inherent in the mechanical advance such as is employed in the Sorvall MT-2 and, therefore, the variations in thickness from the preset value is bound to be greater in such mechanical systems than in thermal systems even when each is functioning at its best level of efficiency. Since the thermal advance leads to more efficient serial sectioning, we find that this characteristic is pertinent to the purposes for which the foreign article is intended to be used. (3) The foreign article incorporates an accessory which permits the knife-angle setting to be measured to an accuracy of 1 degree, whereas no similar accessory is specified in the Sorvall catalogue. This is a pertinent characteristic because the thickness of the section is varied by varying the angle and, therefore, the more accurate the setting of the knife-angle, the more accurate will be the thickness of the section.

For the foregoing reasons, we find that the Sorvall Model MT-2 ultramicrotome is not of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 68-9595; Filed, Aug. 12, 1968; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C. 20230.

Docket No.: 68-00574-33-46040. Applicant: U.S. Department of Agriculture, Agricultural Research Center, Beltsville, Md. 20705. Article: Electron microscope, Model EM6B. Manufacturer: Associated Electronic Industries, Inc., United Kingdom. Intended use of article: The article will be used for biological research in the following areas: (1) Cytopathogenesis of intracellular parasitism employing high resolution electron microscopy and both current and experimental methods of cytochemistry. (2) Studies of parasite cell membrane structure, host-parasite

interface, and the aggregations of macromolecules under certain experimental conditions utilizing negative staining technics. (3) Membrane physiology involving development of technics to investigate the structural aspects of transport across the cell membrane of intracellular parasites incorporating tagged simple sugars and animo acids. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: (1) The foreign article has a guaranteed resolution of 5 Angstroms. The only known comparable domestic electron microscope is the Model EMU-4 manufactured by the Radio Corporation of America (RCA), which has a guaranteed resolution of 8 Angstroms. (The lower the numerical rating in terms of Angstrom units, the better the resolving capabilities.) The applicant requires the highest attainable resolution to accomplish the purposes for which the foreign article is intended to be used and, therefore, the additional resolving capabilities of the foreign article are pertinent. (2) The foreign article provides accelerating voltages of 30, 40, 50, 60, and 80 kilovolts, whereas the RCA Model EMU-4 provides only 50 and 100 kilovolt accelerating voltages. It has been experimentally established that the lower accelerating voltages afford optimum contrast for unstained biological specimens and that the accelerating voltages intermediate between 50 and 100 kilovolts afford optimum contrast for negatively stained biological specimens. Since the experimental techniques to be used in the research program include both unstained and negatively stained specimens in order to obtain optimum contrast under varying conditions, the additional accelerating voltages of the foreign article are pertinent.

For the foregoing reasons, we find that the RCA Model EMU-4 is not of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 68-9596; Filed, Aug. 12, 1968; 8:45 a.m.]

BATTELLE NORTHWEST–PACIFIC NORTHWEST LABORATORY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Producer Goods, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 68-00546-33-46500. Applicant: Battelle Northwest–Pacific Northwest Laboratory, Post Office Box 999, Richland, Wash. 99352. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used in studies of ocular development to section embryonic tissues for observation under the electron microscope. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: (1) The purposes for which the foreign article is intended to be used require an ultramicrotome capable of cutting the thinnest possible sections. The foreign article has the capability of cutting sections down to 50 Angstroms (page 6, 1965 catalogue for the "Ultrotome III" Ultramicrotome, LKB Produkter AB, Stockholm, Sweden). The only known comparable domestic ultramicrotome, the Model MT-2 manufactured by Ivan Sorvall, Inc. (Sorvall), has a specified thin-sectioning capability down to 100 Angstroms (page 11, 1966 catalogue for "Porter-Blum" MT-1 and MT-2 ultramicrotomes, Ivan Sorvall, Inc., Norwalk, Conn.). The lower thin-sectioning capability of the foreign article is pertinent because the thinner the section that can be examined under an electron microscope, the more it is possible to take advantage of the ultimate resolving power of the microscope. (2) For is purposes, the applicant requires an instrument capable of reproducing a series of ultrathin sections with consistent accuracy and uniformity. We are advised by the Department of Health, Education, and Welfare (HEW) (memorandum dated June 22, 1968), that only an ultramicrotome equipped with a thermal advance (feed) can meet this requirement. The foreign article incorporates both a thermal advance for ultrathin sections and a mechanical advance for thicker sections. The Sorvall Model MT-2 is equipped only with a mechanical feed. In connection with Docket No. 67-00024-33-46500, which relates to an identical foreign article, HEW advised that ultramicrotomes employing a mechanical system utilize a gear mechanism and inherent in such mechanisms are backlash and slippage. Hence, in mechanical systems, the variation in thickness and uniformity will be greater than in thermal systems when both are functioning at their best. We, therefore, find the thermal advance of the foreign article to be pertinent to the purposes for which such article is intended to be used. (3) The foreign article incorporates a device which permits measuring the knife-angle setting to an accuracy of 1 degree (page 3 of catalogue on "Ultrotome III"), whereas no equivalent device is specified for the Sorvall Model MT-2. The capability of accurately measuring the knife-angle setting is pertinent because the angle at which the knife enters the specimen determines the thickness of the section.

For the foregoing reasons, we find that the Sorvall Model MT-2 ultramicrotome is not of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 68-9597; Filed, Aug. 12, 1968; 8:45 a.m.]

UNIVERSITY OF CHICAGO

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commere, Washington, D.C. 20230.

Docket No. 68-00589-33-54500. Applicant: University of California, School of Optometry, Berkeley, Calif. 94720. Article: Photo slit lamp and accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article will be used to take photographs of segments and sections of the external eye for clinical records and teaching purposes. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is intended to be used for photographing slit images of the anterior portion of the eye, on color film, using a variable aperture which renders visible any very weak opacities of the eye. For this purpose, the applicant requires an apparatus in which the variation in aperture is linearly related to the control

devices. In addition, the apparatus must be adaptable to available microscope viewing equipment so that up to three individuals may simultaneously observe the image through the microscope, as well as to stereoscopic photographic equipment.

The Department of Commerce knows of no instrument or apparatus being manufactured in the United States, which fulfills these pertinent specifications.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 68-9598; Filed, Aug. 12, 1968, 8:45 a.m.]

SOUTHERN ILLINOIS UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 68-00590-00-46500. Applicant: Southern Illinois University, Botany Department, Carbondale, Ill. 62901. Article: Diamond knife for an LKB ultramicrotome. Manufacturer: Friedrich Dehmer, West Germany. Intended use of article: The article will be used in conjunction with an LKB ultramicrotome for education, training, and research. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, was being manufactured in the United States and available to the applicant without unreasonable delay at the time the applicant placed the order for the foreign article. Reasons: The foreign article is to be used by the applicant as an accessory for use with an ultramicrotome which was manufactured by the same company from which the accessory was ordered. Such accessories must fit the ultramicrotome with which they are intended to be used. The diamond knives manufactured as standard items by producers of ultramicrotomes can be used only with ultramicrotomes of their own manufacture. Consequently, knives manufactured in the United States would have to be custom-fitted for use with a foreign-made ultramicrotome. The earliest quoted delivery time for a domestically produced diamond knife to fit the foreign-made ultramicrotome was 12 months, whereas the foreign manufacturer quoted a delivery time of 3 months. The difference of 9 months in delivery time is considered as constituting unreasonable delay in view of normal commercial practice and of the research program in which the applicant intends to use the foreign article.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 68-9599; Filed, Aug. 12, 1968; 8:45 a.m.]

LOYOLA UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C. 20230.

Docket No. 68-00457-33-46040 Applicant: Loyola University, 6363 St. Charles Street, New Orleans, La. 70118. Article: Electron microscope, Model HU-11E. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article will be used for teaching and examining the ultrastructure of the cell surfaces. The cells to be studied include embryonic chick cells and a variety of cancer cells, animal and human. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: (1) The foreign article specifies a guaranteed resolution of 5 Angstroms. The only known comparable domestic electron microscope is the Model EMU-4 manufactured by the Radio Corporation of America (RCA), which has a specified guaranteed resolution of 8 Angstroms. (The lower the numerical rating in terms of Angstroms, the better is the resolving power.) The additional resolving capabilities of the foreign article are pertinent to the purposes for which such article is intended to be used. (2) The foreign article incorporates accelerating voltages of 25, 50, 75, and 100 kilovolts, whereas the RCA Model EMU-4 incorporates only 50 and 100 kilovolt accelerating voltages. It has been experimentally established that the lower accelerating voltage provides optimum contrast for unstained specimens and that the voltage intermediate between 50 and 100 kilovolts provides optimum contrast for negatively stained specimens. Since staining will be used in addition to other fixation methods for preparing specimens, the additional accelerating voltages of the foreign article are pertinent. For the foregoing reasons, we find that the RCA Model EMU-4 is not of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 68-9600; Filed, Aug. 12, 1968; 8:45 a.m.]

MASSACHUSETTS EYE AND EAR INFIRMARY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C. 20230.

Docket No. 68-00497-33-46500. Applicant: Massachusetts Eye and Ear Infirmary, 243 Charles Street, Boston, Mass. 02114. Article: Ultramicrotome, Model LKB 8800A Ultrotome III. Manufacturer: LKB Produkter, AB, Sweden. Intended use of article: The article will be used to produce uniformly thin serialized sections for studying the inner ears of humans and animals to determine the normal ultrastructure and the pathological alterations found in various types of deafness and vestibular disturbances. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is designed to cut sections of tissue, such as bone, muscle, etc., for examination under an electron microscope. The most closely comparable domestic instrument is the Model MT-2 ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The following is a comparison of the pertinent characteristics and pertinent specifications of the foreign article as described in the catalogue for the "Ultrotome III" Ultramicrotome (LKB Produkter, AB, Stockholm, Sweden, 1965), with the similar

pertinent characteristics and pertinent specifications of the Sorvall Model MT–2 as described in the catalogue on the "Porter-Blum" MT–2 Ultramicrotome (Ivan Sorvall, Inc., Norwalk, Connecticut, 1966). (1) The foreign article has a thin-sectioning capability down to 50 Angstroms, whereas the thin-sectioning capability of the Sorvall Model MT–2 is 100 Angstroms. The thinner the section, the more it is possible to take advantage of the ultimate resolving power of the electron microscope for which the section is being prepared. Therefore, the capability of the foreign article to produce sections up to one-half as thick as the thinnest section producible with the Sorvall MT–2, is pertinent to the purposes for which the foreign article is intended to be used. (2) For the intended uses, the applicant requires an ultramicrotome that is capable of reproducing a series of ultrathin sections with consistent uniformity and accuracy. We are advised by the Department of Health, Education, and Welfare (HEW), in the memorandum dated May 21, 1968, that this requirement of the applicant can be met only with an ultramicrotome employing a thermal advance. In a prior case relating to the identical model of the foreign article with which this application is concerned (Docket Number 67–00024–33–46500), HEW advised that some backlash and slippage are inherent in the mechanical advance such as is employed in the Sorvall MT–2 and, therefore, the variations in thickness from the preset value is bound to be greater in such mechanical systems than in thermal systems even when each is functioning at its best level of efficiency. Since the thermal advance leads to more efficient serial sectioning, we find that this characteristic is pertinent to the purposes for which the foreign article is intended to be used. (3) The foreign article incorporates an accessory which permits the knife-angle setting to be measured to an accuracy of 1 degree, whereas no similar accessory is specified in the Sorvall catalogue. This is a pertinent characteristic because the thickness of the section is varied by varying the angle and, therefore, the more accurate the setting of the knife-angle, the more accurate will be the thickness of the section.

For the foregoing reasons, we find that the Sorvall Model MT–2 ultramicrotome is not of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 68–9601; Filed, Aug. 12, 1968; 8:45 a.m.]

MICHIGAN STATE UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897), and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 68–00582–00–77040. Applicant: Michigan State University, East Lansing, Mich. 48823. Article: Inlet system 4735 33 MTE/VIS 150. Manufacturer: Varian Analytical Instrument Division, West Germany. Intended use of article: The article will be used for scientific and educational purposes. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is an accessory to be used with a mass spectrometer now in the possession of the applicant, which was manufactured by the foreign supplier of the accessory to which the application relates.

The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with the foreign article or can be adapted for use with the mass spectrometer with which the foreign article is intended to be used.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 68–9602; Filed, Aug. 12, 1968; 8:45 a.m.]

UNIVERSITY OF NEBRASKA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Producer Goods, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 68–00562–33–46500. Applicant: University of Nebraska, College of Dentistry, 40th and Holdrege Streets, Lincoln, Nebr. 68503. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used to prepare ultrathin sections needed for studying embryonic tooth development. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: (1) The purposes for which the foreign article is intended to be used require an ultramicrotome capable of cutting the thinnest possible sections. The foreign article has the capability of cutting sections down to 50 Angstroms (p. 6, 1965 catalogue for the "Ultrotome III" Ultramicrotome, LKB Produkter AB, Stockholm, Sweden). The only known comparable domestic ultramicrotome, the Model MT–2 manufactured by Ivan Sorvall, Inc. (Sorvall), has a specified thin-sectioning capability down to 100 Angstroms (p. 11, 1966 catalogue for "Porter-Blum" MT–1 and MT–2 ultramicrotomes, Ivan Sorvall, Inc., Norwalk, Connecticut). The lower thin-sectioning capability of the foreign article is pertinent because the thinner the section that can be examined under an electron microscope, the more it is possible to take advantage of the ultimate resolving power of the microscope. (2) For its purposes, the applicant requires an instrument capable of reproducing a series of ultrathin sections with consistent accuracy and uniformity. We are advised by the Department of Health, Education, and Welfare (HEW) (memorandum dated July 3, 1968) that only an ultramicrotome equipped with a thermal advance (feed) can meet this requirement. The foreign article incorporates both a thermal advance for ultrathin sections and a mechanical advance for thicker sections. The Sorvall Model MT–2 is equipped only with a mechanical feed. In connection with Docket No. 67–00024–33–46500, which relates to an identical foreign article, HEW advised that ultramicrotomes employing a mechanical system utilize a gear mechanism and inherent in such mechanisms are backlash and slippage. Hence, in mechanical systems, the variation in thickness and uniformity will be greater than in thermal systems when both are functioning at their best. We, therefore, find the thermal advance of the foreign article to be pertinent to the purposes for which such article is intended to be used. (3) The foreign article incorporates a device which permits measuring the knife-angle setting to an accuracy of 1 degree (p. 3 of catalogue on "Ultrotome III"), whereas no equivalent device is specified for the Sorvall Model MT–2. The capability of accurately measuring the knife-angle setting is pertinent because the angle at which the knife enters the specimen determines the thickness of the section.

For the foregoing reasons, we find that the Sorvall Model MT–2 ultramicrotome is not of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 68–9603; Filed, Aug. 12, 1968; 8:45 a.m.]

OHIO STATE UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 68–00492–33–46500. Applicant: The Ohio State University, Division of Endocrinology, 190 North Oval Drive, Columbus, Ohio 43210. Article: Ultramicrotome, Model LKB 8800A Ultrotome III, Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used for the production of ultrathin sections of mammalian tissue following the in vitro incubation of the tissue in isotopically labeled hormone media. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is designed to cut sections of tissue, such as bone, muscle, etc., for examination under an electron microscope. The most closely comparable domestic instrument is the Model MT–2 ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The following is a comparison of the pertinent characteristics and pertinent specifications of the foreign article as described in the catalogue for the "Ultrotome III" Ultramicrotome (LKB Produkter AB, Stockholm, Sweden, 1965), with the similar pertinent characteristics and pertinent specifications of the Sorvall Model MT–2 as described in the catalogue on the "Porter-Blum" MT–2 Ultramicrotome (Ivan Sorvall, Inc., Norwalk, Conn., 1966). (1) The foreign article has a thin-sectioning capability down to 50 Angstroms, whereas the thin-sectioning capability of the Sorvall Model MT–2 is 100 Angstroms. The thinner the section, the more it is possible to take advantage of the ultimate resolving power of the electron microscope for which the section is being prepared. Therefore, the capability of the foreign article to produce sections up to one-half as thick as the thinnest section producible with the Sorvall MT–2, is pertinent to the purposes for which the foreign article is intended to be used. (2) For the intended uses, the applicant requires an ultramicrotome that is capable of reproducing a series of ultrathin sections with consistent uniformity and accuracy. We are advised by the Department of Health, Education, and Welfare (HEW), in the memorandum dated May 21, 1968, that this requirement of the applicant can be met only with an ultramicrotome employing a thermal advance. In a prior case relating to the identical model of the foreign article with which this application is concerned (Docket No. 67–00024—33–46500), HEW advised that some backlash and slippage are inherent in the mechanical advance such as employed in the Sorvall MT–2 and, therefore, the variations in thickness from the present value is bound to be greater in such mechanical systems than in thermal systems even when each is functioning at its best level of efficiency. Since the thermal advance leads to more efficient serial sectioning, we find that this characteristic is pertinent to the purposes for which the foreign article is intended to be used. (3) The foreign article incorporates an accessory which permits the knife-angle setting to be measured to an accuracy of 1 degree, whereas no similar accessory is specified in the Sorvall catalogue. This is a pertinent characteristic because the thickness of the section is varied by varying the angle and, therefore, the more accurate the setting of the knife angle, the more accurate will be the thickness of the section.

For the foregoing reasons, we find that the Sorvall Model MT–2 ultramicrotome is not of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 68–9604; Filed, Aug. 12, 1968; 8:45 a.m.]

PENNSYLVANIA STATE UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Imporation Act of 1966 (Public Law 89–651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C. 20230.

Docket No. 68–00447–33–46040. Applicant: The Pennsylvania State University, University Park, Pa. 16802. Article: Electron microscope, Model HU–11E. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article will be used for projected research involving the secretion of milk. This will require ultrastructural definition of both milk and the lactating mammary cell from which it is derived. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: (1) The foreign article specifies a guaranteed resolution of five Angstroms. The only known comparable domestic electron microscope is the Model EMU–4 manufactured by the Radio Corporation of America (RCA), which has a specified guaranteed resolution of 8 Angstroms. (The lower the numerical rating in terms of Angstroms, the better is the resolving power.) The additional resolving capabilities of the foreign article are pertinent to the purposes for which such article is intended to be used. (2) The foreign article incorporates accelerating voltages of 25, 50, 75, and 100 kilovolts, where as the RCA Model EMU–4 incorporates only 50- and 100-kilovolt accelerating voltages. It has been experimentally established that the lower accelerating voltage provides optimum contrast for unstained specimens and that the voltage intermediate between 50 and 100 kilovolts provide optimum contrast for negatively stained specimens. Since staining will be used in addition to other fixation methods for preparing specimens, the additional accelerating voltages of the foreign article are pertinent. For the foregoing reasons, we find that the RCA Model EMU–4 is not of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of eqiuvalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 68–9605; Filed, Aug. 12, 1968; 8:45 a.m.]

STANFORD UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C. 20230.

Docket No. 68-00486-33-46500. Applicant: Stanford University, Department of Biological Sciences, Stanford, Calif. 94305. Article: Ultramicrotome, Model LKB 8800 Ultrotome III and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used to prepare ultrathin sections for a variety of studies related to the development of tissues and cells in mammalian embryos. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is designed to cut sections of tissue, such as bone, muscle, etc. for examination under an electron microscope. The most closely comparable domestic instrument is the Model MT-2 ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The following is a comparison of the pertinent characteristics and pertinent specifications of the foreign article as described in the catalogue for the "Ultrotome III" Ultramicrotome (LKB Produkter AB, Stockholm, Sweden, 1965), with the similar pertinent characteristics and pertinent specifications of the Sorvall Model MT-2 as described in the catalogue on the "Porter-Blum" MT-2 Ultramicrotome (Ivan Sorvall, Inc., Norwalk, Conn. 1966).

(1) The foreign article has a thin-sectioning capability down to 50 Angstroms, whereas the thin-sectioning capability of the Sorvall Model MT-2 is 100 Angstroms. The thinner the section, the more it is possible to take advantage of the ultimate resolving power of the electron microscope for which the section is being prepared. Therefore, the capability of the foreign article to produce sections up to one-half as thick as the thinnest section producible with the Sorvall MT-2, is pertinent to the purposes for which the foreign article is intended to be used. (2) For the intended uses, the applicant requires an ultramicrotome that is capable of reproducing a series of ultrathin sections with consistent uniformity and accuracy. We are advised by the Department of Health, Education, and Welfare (HEW), in the memorandum dated May 21, 1968, that this requirement of the applicant can be met only with an ultramicrotome employing a thermal advance. In a prior case relating to the identical model of the foreign article with which this application is concerned (Docket No. 67-00024-33-46500), HEW advised that some backlash and slippage are inherent in the mechanical advance such as is employed in the Sorvall MT-2 and, therefore, the variations in thickness from the preset value is bound to be greater in such mechanical systems than in thermal systems even when each is functioning at its best level of efficiency. Since the thermal advance leads to more efficient serial sectioning, we find that this characteristic is pertinent to the purposes for which the foreign article is intended to be used. (3) The foreign article incorporates an accessory which permits the knife-angle setting to be measured to an accuracy of one degree, whereas no similar accessory is specified in the Sorvall catalogue. This is a pertinent characteristic because the thickness of the section is varied by varying the angle and, therefore, the more accurate the setting of the knife-angle, the more accurate will be the thickness of the section.

For the foregoing reasons, we find that the Sorvall Model MT-2 ultramicrotome is not of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 68-9606; Filed, Aug. 12, 1968; 8:45 a.m.]

UNIVERSITY OF TEXAS

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C. 20230.

Docket No. 68-00467-33-46040. Applicant: The University of Texas, Medical School at San Antonio, 715 Stadium Drive, San Antonio, Tex. 78229. Article: Electron microscope, Model EM6B and accessories. Manufacturer: GEC-AEI Electronics, Ltd., United Kingdom. Intended use of article: The article will be used for biological research in the following areas: a. Ultrastructural studies of steroid-secreting cells with emphasis on enzymatic control of steroidogenesis. b. Studies of catecholamines and indole amines and their localization within cells of the central nervous system. c. Medical student, pre- and post-doctoral training in electron miscroscopy. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: (1) The foreign article has a guaranteed resolution of 5 Angstroms. The only known comparable domestic electron microscope is the Model EMU-4 manufactured by the Radio Corporation of America (RCA), which has a guaranteed resolution of 8 Angstroms. (The lower the numerical rating in terms of Angstrom units, the better the resolving capabilities.) The applicant requires the highest attainable resolution to accomplish the purposes for which the foreign article is intended to be used and, therefore, the additional resolving capabilities of the foreign article are pertinent. (2) The foreign article provides accelerating voltages of 30, 40, 50, 60, and 80 kilovolts, whereas the RCA Model EMU-4 provides only 50- and 100-kilovolt accelerating voltages. It has been experimentally established that the lower accelerating voltages afford optimum contrast for unstained biological specimens and that the accelerating voltages intermediate between 50 and 100 kilovolts afford optimum contrast for negatively stained biological specimens. Since the experimental techniques to be used in the research program include both unstained and negatively stained specimens in order to obtain optimum contrast under varying conditions, the additional accelerating voltages of the foreign article are pertinent.

For the foregoing reasons, we find that the RCA Model EMU-4 is not of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 68-9607; Filed, Aug. 12, 1968; 8:46 a.m.]

VANDERBILT UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of

the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C. 20230.

Docket No. 68–00570–33–46040. Applicant: Vanderbilt University, Nashville, Tenn. 37203. Article: Electron microscope, Model HU–11E–1. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article will be used in molecular biology for defining membrane morphology and to interpret this ultrastructure in terms of the functional components of membranes. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: (1) The foreign article specifies a guaranteed resolution of 5 Angstroms. The only known comparable domestic electron microscope is the Model EMU–4 manufactured by the Radio Corporation of America (RCA), which has a specified guaranteed resolution of 8 Angstroms. (The lower the numerical rating in terms of Angstroms, the better is the resolving power.) The additional resolving capabilities of the foreign article are pertinent to the purposes for which such article is intended to be used. (2) The foreign article incorporates accelerating voltages of 25, 50, 75, and 100 kilovolts, whereas the RCA Model EMU–4 incorporates only 50- and 100-kilovolt accelerating voltages. It has been experimentally established that the lower accelerating voltage provides optimum contrast for unstained specimens and that the voltage intermediate between 50 and 100 kilovolts provides optimum contrast for negatively stained specimens. Since staining will be used in addition to other fixation methods for preparing specimens, the additional accelerating voltages of the foreign article are pertinent. For the foregoing reasons, we find that the RCA Model EMU–4 is not of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 68–9608; Filed, Aug. 12, 1968; 8:46 a.m.]

VETERANS ADMINISTRATION HOSPITAL

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Producer Goods, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 68–00563–33–46500. Applicant: Veterans Administration Hospital, 4801 Linwood Boulevard, Kansas City, Mo. 64128. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used to prepare ultrathin sections for observation in studying pathogenesis of viral infections within cells of animal and tissue culture origin. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: (1) The purposes for which the foreign article is intended to be used require an ultramicrotome capable of cutting the thinnest possible sections. The foreign article has the capability of cutting sections down to 50 Angstroms (p. 6, 1965 catalogue for the "Ultrotome III" Ultramicrotome, LKB Produkter AB, Stockholm, Sweden). The only known comparable domestic ultramicrotome, the Model MT–2 manufactured by Ivan Sorvall, Inc. (Sorvall), has a specified thin-sectioning capability down to 100 Angstroms (p. 11, 1966 catalogue for "Porter-Blum" MT–1 and MT–2 ultramicrotomes, Ivan Sorvall, Inc., Norwalk, Conn.). The lower thin-sectioning capability of the foreign article is pertinent because the thinner the section that can be examined under an electron microscope, the more it is possible to take advantage of the ultimate resolving power of the microscope. (2) For its purposes, the applicant requires an instrument capable of reproducing a series of ultrathin sections with consistent accuracy and uniformity. We are advised by the Department of Health, Education, and Welfare (memorandum dated July 3, 1968), that only an ultramicrotome equipped with a thermal advance (feed) can meet this requirement. The foreign article incorporates both a thermal advance for ultrathin sections and a mechanical advance for thicker sections. The Sorvall Model MT–2 is equipped only with a mechanical feed. In connection with Docket No. 67–00024–33–46500, which relates to an identical foreign article, HEW advised that ultramicrotomes employing a mechanical system utilize a gear mechanism and inherent in such mechanisms are backlash and slippage. Hence, in mechanical systems, the variation in thickness and uniformity will be greater than in thermal systems when both are functioning at their best. We, therefore, find the thermal advance of the foreign article to be pertinent to the purposes for which such article is intended to be used. (3) The foreign article incorporates a device which permits measuring the knife-angle setting to an accuracy of 1 degree (p. 3 of catalogue on "Ultrotome III"), whereas no equivalent device is specified for the Sorvall Model MT–2. The capability of accurately measuring the knife-angle setting is pertinent because the angle at which the knife enters the specimen determines the thickness of the section.

For the foregoing reasons, we find that the Sorvall Model MT–2 ultramicrotome is not of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 68–9609; Filed, Aug. 12, 1968; 8:46 a.m.]

MEDICAL COLLEGE OF VIRGINIA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is also available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C. 20230.

Docket No. 68–00496–33–46500. Applicant: Medical College of Virginia, 1200 East Broad Street, Richmond, Va. 23225. Article: Ultramicrotome, Model LKB 8800A Ultrotome III. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used to section villi for studying the transport of cerebrospinal fluid across the arachnoid villi. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for

the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is designed to cut sections of tissue, such as bone, muscle, etc., for examination under an electron microscope. The most closely comparable domestic instrument is the Model MT–2 ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The following is a comparison of the pertinent characteristics and pertinent specifications of the foreign article as described in the catalogue for the "Ultrotome III" Ultramicrotome (LKB Produkter AB, Stockholm, Sweden, 1965), with the similar pertinent characteristics and pertinent specifications of the Sorvall Model MT–2 as described in the catalogue on the "Porter-Blum" MT–2 Ultramicrotome (Ivan Sorvall, Inc., Norwalk, Conn., 1966). (1) The foreign article has a thin-sectioning capability down to 50 Angstroms, whereas the thin-sectioning capability of the Sorvall Model MT–2 is 100 Angstroms. The thinner the section, the more it is possible to take advantage of the ultimate resolving power of the electron microscope for which the section is being prepared. Therefore, the capability of the foreign article to produce sections up to one-half as thick as the thinnest section producible with the Sorvall MT–2, is pertinent to the purposes for which the foreign article is intended to be used. (2) For the intended uses, the applicant requires an ultramicrotome that is capable or reproducing a series of ultrathin sections with consistent uniformity and accuracy. We are advised by the Department of Health, Education, and Welfare (HEW), in the memorandum dated May 21, 1968, that this requirement of the applicant can be met only with an ultramicrotome employing a thermal advance. In a prior case relating to the identical model of the foreign article with which this application is concerned (Docket No. 67–00024–33–46500), HEW advised that some backlash and slippage are inherent in the mechanical advance such as is employed in the Sorvall MT–2 and, therefore, the variations in thickness from the preset value is bound to be greater in such mechanical systems than in thermal systems even when each is functioning at its best level of efficiency. Since the thermal advance leads to more efficient serial sectioning, we find that this characteristic is pertinent to the purposes for which the foreign article is intended to be used. (3) The foreign article incorporates an accessory which permits the knife-angle setting to be measured to an accuracy of 1 degree, whereas no similar accessory is specified in the Sorvall catalogue. This is a pertinent characteristic because the thickness of the section is varied by varying the angle and, therefore, the more accurate the setting of the knife-angle, the more accurate will be the thickness of the section.

For the foregoing reasons, we find that the Sorvall Model MT–ultramicrotome is not of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 68–9610; Filed, Aug. 12, 1968; 8:46 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

AMERICAN POTATO CO.

Notice of Filing of Petition for Food Additives

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 9A2318) has been filed by American Potato Co., Post Office Box 592, Blackfoot, Idaho 83221 proposing that § 121.1047 *Calcium stearoyl-2-lactylate* (21 CFR 121.1047) be amended to provide for the safe use of calcium stearoyl-2-lactylate as a conditioning agent in dehydrated potatoes in an amount not to exceed 0.5 percent by weight of the dehydrated potatoes.

Dated: August 1, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68–9650; Filed, Aug. 12, 1968; 8:49 a.m.]

DIMETHYL PHOSPHATE OF 3-HYDROXY *N,N* - DIMETHYL - *CIS*-CROTONAMIDE

Notice of Extension of Temporary Tolerances

The Shell Chemical Co., a division of Shell Oil Co., New York, N.Y. 10020, was granted temporary tolerances for residues of the insecticide dimethyl phosphate of 3-hydroxy-*N,N*-dimethyl-*cis*-crotonamide in or on the raw agricultural commodities citrus and safflower seed at 0.25 part per million on June 23, 1967 (notice was published in the FEDERAL REGISTER of June 30, 1967; 32 F.R. 9329), which expired on June 23, 1968.

The firm has requested a 1-year extension of the temporary tolerances to provide for further experimentation to obtain data from a full season's use of the insecticide. The Commissioner of Food and Drugs has determined that such an extension of the temporary tolerances will protect the public health.

A condition under which these temporary tolerances are extended is that the insecticide will be used in accordance with the temporary permit issued by the U.S. Department of Agriculture. Distribution will be under the Shell Chemical Co. name.

These temporary tolerances expire on June 23, 1969.

This action is taken pursuant to the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(j), 68 Stat. 516; 21 U.S.C. 346a(j)) and delegated to the Commissioner (21 CFR 2.120).

Dated: August 1, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68–9651; Filed, Aug. 12, 1968; 8:49 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50–170]

ARMED FORCES RADIOBIOLOGY RESEARCH INSTITUTE

Notice of Proposed Issuance of Facility License Amendment

The Atomic Energy Commission (the "Commission") is considering the issuance of Amendment No. 13, in the form set forth below, to Facility License No. R–84. The license authorizes Armed Forces Radiobiology Research Institute (AFRRI) to operate its TRIGA Mark F tank-type nuclear reactor on the National Naval Medical Center site in Bethesda, Md., at power levels up to 100 kwt. The amendment would authorize AFRRI to operate the reactor at steady-state power levels up to 1000 kwt in accordance with the Technical Specifications and would revise the license in its entirety to (1) consolidate the provisions of various prior amendments, (2) incorporate the Technical Specifications, and (3) amend the reporting and record-keeping requirements. Within 15 days from the date of publication of this notice in the FEDERAL REGISTER, the applicant 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 hearings and petitions to intervene shall be filed in accordance with the provisions of the Commission's regulations (10 CFR Part 2). If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this amendment, see (1) the licensee's application for license amendment dated May 27, 1966, and supplements thereto dated October 7, 1966, December 19, 1966, and November 22, 1967, (2) a related Safety Evaluation prepared by the Division of Reactor Licensing, and (3) the proposed Technical Specifications, all of which

are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of item (2) above may be obtained at the Commission's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 2d day of August 1968.

For the Atomic Energy Commission.

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

PROPOSED AMENDED FACILITY LICENSE

[License No. R-84 Amendment No. 13]

The Atomic Energy Commission (hereinafter "the Commission") has found that:

A. The application for license, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (hereinafter "the Act"), and the Commission's regulations set forth in Title 10, CFR, Chapter 1;

B. The reactor has been constructed in conformity with Construction Permit No. CPRR-61 and will operate in conformity with the application and in conformity with the Act and the rules and regulations of the Commission;

C. There is reasonable assurance that the reactor can be operated at the designated location without endangering the health and safety of the public;

D. The Armed Forces Radiobiology Research Institute (hereinafter "AFRRI") is technically and financially qualified to operate the reactor, to assume financial responsibility for payment of Commission charges for special nuclear material and to undertake and carry out the proposed activities in accordance with the Commission's regulations;

E. The possession and operation of the reactor and the receipt, possession and use of the special nuclear material in the manner proposed in the application will not be inimical to the common defense and security or to the health and safety of the public; and

F. AFRRI is a Federal agency and is therefore exempt from the financial protection requirement of subsection 170a of the Act. AFRRI has executed an indemnity agreement pursuant to 10 CFR Part 140.

Facility License No. R-84, as amended, is hereby amended in its entirety to read as follows:

A. This license applies to the TRIGA Mark F tank-type nuclear reactor (herein "the reactor") which is owned by AFRRI and located on the National Naval Medical Center site in Bethesda, Md., and described in the National Naval Medical Center application for license dated June 24, 1960, and subsequent amendments thereto, including the most recent amendment by AFRRI dated May 27, 1966, and supplements thereto dated October 7, 1966, December 19, 1966, and November 22, 1967 (herein referred to as "the application"), and authorized for construction by Construction Permit No. CPRR-61 originally issued to National Naval Medical Center and later transferred to AFRRI.

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

1. Pursuant to section 104c of the Act and Title 10, CFR, Chapter 1, Part 50, "Licensing of Production and Utilization Facilities," to possess and operate the reactor as a utilization facility at the designated location in Bethesda, Md., in accordance with the procedures and limitations described in the application and in this license;

2. Pursuant to the Act and Title 10, CFR, Chapter 1, Part 70, "Special Nuclear Material," to receive, possess and use 5 kilograms of contained uranium-235 for use in connection with operation of the reactor; and

3. Pursuant to the Act and Title 10, CFR, Chapter 1, Part 30, "Rules of General Applicability to Licensing of Byproduct Material," to receive, possess and use a 3-curie sealed americium-beryllium neutron source for reactor startup; and to possess, but not to separate, such byproduct material as may be produced by operation of the reactor.

C. This license shall be deemed to contain and be subject to the conditions specified in Part 20, section 30.34 of Part 30, sections 50.54 and 50.59 of Part 50 and section 70.32 of Part 70 of the Commission's regulations; is subject to all applicable provisions of the Act and rules, regulations and orders of the Commission now or hereafter in effect, and is subject to the additional conditions specified or incorporated below:

1. *Maximum power level.* AFRRI may operate the reactor at steady-state power levels up to a maximum of 1,000 kilowatts (thermal).

2. *Technical specifications.* The Technical Specifications contained in Appendix A hereto for operation at power levels up to 1,000 kilowatts (thermal) are hereby incorporated in this license. AFRRI shall operate the reactor in accordance with these Technical Specifications. No changes shall be made in the Technical Specifications unless authorized by the Commission as provided in section 50.59 of 10 CFR Part 50.

3. *Records.* In addition to those otherwise required under this license and applicable regulations, AFRRI shall keep the following records:

(a) Reactor operating records, including power levels and periods of operation at each power level.

(b) Records showing radioactivity released or discharged into the air or water beyond the effective control of AFRRI as measured at or prior to the point of such release or discharge.

(c) Records of emergency shutdowns and inadvertent scrams, including reasons therefor.

(d) Records of maintenance operations involving substitution or replacement of reactor equipment or components.

(e) Records of experiments installed including description, reactivity worths, locations, exposure time, total irradiation and any unusual events involved in their handling.

(f) Records of tests and measurements required by the Technical Specifications.

4. *Reports.* In addition to reports otherwise required by applicable regulations:

(a) AFRRI shall inform the Commission of any incident or condition relating to the operation of the reactor which prevented or could have prevented a nuclear system from performing its safety function as described in the Technical Specifications or in the safety analysis report. For each such occurrence, AFRRI shall promptly notify by telephone or telegraph the Director of the appropriate Atomic Energy Commission Regional Compliance Office listed in Appendix D of 10 CFR Part 20 and shall submit within ten (10) days a report in writing to the Director, Division of Reactor Licensing (hereinafter, "Director, DRL"), with a copy to the Regional Compliance Office.

(b) AFRRI shall report to the Director, DRL, in writing within thirty (30) days of its occurrence any substantial variance disclosed by operation of the reactor from performance specifications contained in the safety analysis report or in the Technical Specifications.

(c) AFRRI shall report to the Director, DRL, in writing within thirty (30) days of its occurrence any significant change in the transient or accident analysis as described in the safety analysis report.

D. This license is effective as of the date of issuance and shall expire at midnight, November 8, 1970.

Date of issuance:

For the Atomic Energy Commission.

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

Appendix A—Technical Specifications[1]

[F.R. Doc. 68-9624; Filed, Aug. 12, 1968; 8:47 a.m.]

CIVIL AERONAUTICS BOARD

ALLEGHENY AIRLINES, INC.

Notice of Application for Amendment of Certificate of Public Convenience and Necessity

AUGUST 8, 1968.

Notice is hereby given that the Civil Aeronautics Board on August 7, 1968, received an application, Docket 20085, from Allegheny Airlines, Inc., for amendment of its certificate of public convenience and necessity for route 97 to authorize it to engage in nonstop service between Cincinnati, Ohio, and Philadelphia, Pa.-Camden, N.J.; between Columbus, Ohio, and Philadelphia, Pa.-Camden, N.J.; between Dayton, Ohio, and Philadelphia, Pa.-Camden, N.J.; and between Indianapolis, Ind., and Philadelphia, Pa.-Camden, N.J. The applicant requests that its application be processed under the expedited procedures set forth in Subpart M of Part 302 (14 CFR Part 302).

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 68-9653; Filed, Aug. 12, 1968; 8:49 a.m.]

[Docket No. 19617]

NORTH CAROLINA POINTS SERVICE INVESTIGATION

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on September 17, 1968, at 10 a.m., e.d.s.t., in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner James S. Keith.

In order to facilitate the conduct of the conference interested parties are instructed to submit to the examiner and other parties on or before September 9, 1968, (1) proposed statements of issues; (2) proposed stipulations; (3) requests

[1] This item was not filed with the Office of the Federal Register but is available for inspection in the Public Document Room of the Atomic Energy Commission.

for information; (4) statements of positions of parties; and (5) proposed procedural dates.

Dated at Washington, D.C., August 7, 1968.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[F.R. Doc. 68-9654; Filed, Aug. 12, 1968; 8:49 a.m.]

[Docket No. 20051; Order 68-8-30]

TRANS WORLD AIRLINES, INC.

Order Amending Order Regarding Multi-Carrier Discussions

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 8th day of August 1968.

By Order 68-7-138, July 26, 1968, the Board granted permission for Trans World Airlines, Inc. (TWA), and all other United States and foreign air carriers providing scheduled services to and from New York City, Chicago, Los Angeles, and Washington to meet and discuss possible means of alleviating the air traffic congestion problems at those cities.

On August 5, 1968, TWA filed a telegraphic communication with the Board requesting that the Board interpret or amend Order 68-7-138 to include permission to discuss charter operations of the supplemental and scheduled air carriers and to reach agreements affecting such charter operations, alleging that such operations affect congestion and therefore should be included in the discussions.

The Board interprets its prior order as not encompassing such discussions. However, in light of TWA's request and the matters set forth in Order 68-7-138, the Board has concluded that the public interest would be served by broadening the scope of permissible discussions to include the charter operations conducted to and from New York City, Chicago, Los Angeles, and Washington by U.S. and foreign air carriers under authority of certificates of public convenience and necessity and/or foreign air carrier permits issued by the Board.

Accordingly, it is ordered:

1. That ordering paragraph 1 of Order 68-7-138 be and it hereby is amended to read as follows:

"Trans World Airlines, Inc., is hereby authorized to hold discussions with other U.S. and foreign air carriers holding certificates of public convenience and necessity and foreign air carrier permits issued by the Board and providing scheduled and/or charter services to and from New York City, Chicago, Los Angeles, and Washington concerning possible means of alleviating the air traffic congestion problem at such cities or any of them subject to the following conditions:"

2. A copy of this order shall be served upon all United States certificated air carriers, all foreign air carriers holding permits from the Board, the Departments of Transportation and Justice, the Port of New York Authority, the Department of Aviation of the City of Chicago, the Los Angeles Department of Airports, and the Federal Aviation Administration.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 68-9655; Filed, Aug. 12, 1968; 8:49 a.m.]

FEDERAL MARITIME COMMISSION

MOORE-McCORMACK LINES, INC. AND GRACE LINE, INC.

Notice of Agreements Filed for Approval

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 609; or may inspect agreements at the office of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washintgon, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. D. E. Grimm, vice president and treasurer, Grace Line Inc., 3 Hanover Square, New York, N.Y. 10004.

Agreement No. 9736 is a general passenger agency agreement between Moore-McCormack Lines, Inc., and Grace Line, Inc., whereby Moore-McCormack Lines appoints Grace Line as its worldwide general passenger agent for its ships the SS *Argentina* and SS *Brazil* for cruises between New York, N.Y., and other U.S. ports, and Caribbean, South American, African, and northern European ports under the terms and conditions as set forth in the agreement.

Dated: August 8, 1968.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Assistant Secretary.

[F.R. Doc. 68-9643; Filed, Aug. 12, 1968; 8:48 a.m.]

PORTUGAL/U.S. NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE

Notice of Petition Filed for Approval

Notice is hereby given that the following petition has been filed with the Commission for approval pursuant to section 14b of the Shipping Act, 1916, as amended (75 Stat. 762, 46 U.S.C. 814).

Interested parties may inspect a copy of the current contract form and of the petition, reflecting the changes proposed to be made in the language of said contract, at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 301; or at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to the proposed changes and the petition, including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the petition (as indicated hereinafter), and the comments should indicate that this has been done.

Notice of application to modify an approved exclusive patronage (Dual Rate) contract filed by:

Mr. Guy L. Retournat, secretary, Portugal/U.S. North Atlantic Westbound Freight Conference, 10, Place de la Joliette, Marseilles 2, France.

There has been filed on behalf of the Portugal/U.S. North Atlantic Westbound Freight Conference an application to modify its form of merchant's contract pursuant to section 14b of the Shipping Act, 1916. The proposed modification adds currency devaluation to those conditions beyond the control of the Conference enumerated in Article 14(a) of the merchant's contract upon which it may suspend the effectiveness of the contract or in lieu thereof increase any rate or rates affected thereby upon 15 days' written notice to the merchant who in turn may notify the Conference in writing of his intent to suspend the contract insofar as such increase or increases are concerned.

Dated: August 8, 1968.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Assistant Secretary.

[F.R. Doc. 68-9644; Filed, Aug. 12, 1968; 8:48 a.m.]

SPAIN/U.S. NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE

Notice of Petitioned Filed for Approval

Notice is hereby given that the following petition has been filed with the Commission for approval pursuant to section 14b of the Shipping Act, 1916, as amended (75 Stat. 762, 46 U.S.C. 814).

Interested parties may inspect a copy of the current contract form and of the petition, reflecting the changes proposed to be made in the language of said contract, at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 301; or at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to the proposed changes and the petition, including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the petition (as indicated hereinafter), and the comments should indicate that this has been done.

Notice of application to modify an approved exclusive patronage (Dual Rate) contract filed by:

Mr. Guy L. Retournat, secretary, Spain/U.S. North Atlantic Westbound Freight Conference, 10 Place de la Joliette, Marseille 2, France.

There has been filed on behalf of the Spain/U.S. North Atlantic Westbound Freight Conference an application to modify its form of merchant's contract pursuant to section 14b of the Shipping Act, 1916. The proposed modification adds currency devaluation to those conditions beyond the control of the Conference enumerated in Article 14(a) of the merchant's contract upon which it may suspend the effectiveness of the contract or in lieu thereof increase any rate or rates affected thereby upon 15 days' written notice to the merchant who in turn may notify the Conference in writing of his intent to suspend the contract insofar as such increase or increases are concerned.

Dated: August 8, 1968.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Assistant Secretary.

[F.R. Doc. 68-9645; Filed, Aug. 12, 1968; 8:48 a.m.]

THAILAND/U.S. ATLANTIC & GULF CONFERENCE RUBBER POOL

Notice of Agreement Filed for Approval

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 609; or may inspect agreements at the office of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. R. E. Flynn, chairman, New York Commitee of Inward Far East Lines, 11 Broadway, New York, N.Y. 10004.

Agreement No. 8061-13, between member lines of the Thailand/U.S. Atlantic and Gulf Conference, Agreement 8100, would modify Agreement No. 8061 (Siam Rubber Pool) to reapportion the percentage share of rubber which each carrier is entitled to carry yearly because of the entry of Thai Mercantile Marine, Ltd., into Agreement No. 8100; and to decrease from 36.25 to 34.84 percent the aggregate percentage share of the American flag carriers as a class.

Dated: August 8, 1968.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Assistant Secretary.

[F.R. Doc. 68-9646; Filed, Aug. 12, 1968; 8:49 a.m.]

UNITED STATES GREAT LAKES AND ST. LAWRENCE RIVER PORTS/WEST AFRICA AGREEMENT

Notice of Petition Filed for Approval

Notice is hereby given that the following petition has been filed with the Commission for approval pursuant to section 14b of the Shipping Act, 1916, as amended (75 Stat. 762; 46 U.S.C. 814).

Interested parties may inspect a copy of the current contract form and of the petition, reflecting the changes proposed to be made in the language of said contract at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 301; or at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to the proposed changes and the petition, including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the petition (as indicated hereinafter), and the comments should indicate that this has been done.

Notice of application to modify approved dual rate contract filed by:

Mr. John K. Cunningham, secretary, United States Great Lakes and St. Lawrence River Ports/West Africa Agreement, 80 Broad Street, New York, N.Y. 10004.

There has been filed on behalf of the U.S. Great Lakes and St. Lawrence River Ports/West Africa Agreement No. 9420, as amended, an application to modify its approved merchant's contract.

The proposed contract modification adds the phrase "currency devaluation by governmental action," to those conditions beyond the control of the carriers as outlined in Article 7(a) of the contract pursuant to which the carriers in the trade covered by the agreement may suspend the effectiveness of the contract with respect to the operations affected with notice to Merchant signatories. Under existing Article 7(b), currency devaluation will be one of the conditions beyond the control of the carriers under which they may increase rates on not less than 15 days' written notice to the Merchant who retains the right to notify the carriers in writing of his intent to suspend the contract insofar as such increase is concerned.

Dated: August 8, 1968.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Assistant Secretary.

[F.R. Doc. 68-9647; Filed, Aug. 12, 1968; 8:49 a.m.]

FEDERAL POWER COMMISSION

[Docket No. CP69-16]

ALGONQUIN GAS TRANSMISSION CO., AND TENNESSEE GAS PIPELINE CO.

Notice of Application

AUGUST 6, 1968.

Take notice that on July 31, 1968, Algonquin Gas Transmission Co. (Algonquin), 1284 Soldiers Field Road, Boston, Mass. 02135, and Tennessee Gas Pipeline Co., a division of Tenneco, Inc. (Tenneco), Post Office Box 2511, Houston, Tex. 77001, filed in Docket No. CP69-16 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the exchange delivery of natural gas by Algonquin to Tennessee for sale and delivery to the Connecticut Gas Co. for distribution and resale in its Wallingford service area, and the return by Tennessee to Algonquin of volumes of gas containing an equivalent number of B.t.u.'s at the interconnections between the systems of Algonquin and Tennessee, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicants request authority to abandon the exchange delivery of natural gas, which was authorized in Docket No. G-17392 by the Commission's order dated April 1, 1959 (12 FPC 444). Applicants state that as a result of the Commission's order of May 26, 1967, in Docket No. CP67-211, authorizing Tennessee to replace an existing lateral with a larger size pipe, Tennessee was able to take over direct service on January 16, 1968. As a consequence, the exchange is no longer necessary.

The application states that no abandonment of facilities is contemplated since Applicants propose to maintain the exchange facilities for emergency use.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act 157.10) on or before September 4, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 68-9611; Filed, Aug. 12, 1968; 8:46 a.m.]

[Docket No. CP69-15]

BACA GAS GATHERING SYSTEM, INC.

Notice of Application

AUGUST 6, 1968.

Take notice that on July 29, 1968, Baca Gas Gathering System, Inc. (Applicant), 1818 Republic Bank Building, Dallas, Tex. 75201, filed in Docket No. CP69-15 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to construct and operate a one-half mile extension to its present natural gas pipeline system in Baca County, Colo., and to sell and deliver additional natural gas to Panhandle Eastern Pipe Line Co. (Panhandle) from reserves located in shut-in fields in Baca County, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has entered into a contract dated April 22, 1968, with Panhandle, under which Applicant proposes to gather and transport gas to increase the supplies of gas made available to Panhandle. The total volume of the additional gas which Applicant proposes to supply Panhandle is estimated to be 1 million Mcf, and the daily volume is estimated to be 500 Mcf.

The application states that the price to be paid by Applicant under its contract with the independent producer is 14.60 cents per Mcf at 14.65 p.s.i.a. for 1,000 B.t.u. gas. The gas is to be transported through Applicant's pipeline and sold to Panhandle in Morton County, Kans., at a rate of 18.60 cents per Mcf at 14.65 p.s.i.a. for 1,000 B.t.u. gas.

The total estimated cost of the proposed facilites is $5,000, which cost will be financed from cash on hand.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (157.10) on or before September 3, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-9612; Filed, Aug. 12, 1968; 8:46 a.m.]

[Docket No. CP69-17]

CONSOLIDATED GAS SUPPLY CORP.

Notice of Application

AUGUST 6, 1968.

Take notice that on July 31, 1968, Consolidated Gas Supply Corp. (Applicant), 445 West Main Street, Clarksburg, W. Va. 26301, filed in Docket No. CP69-17 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Natural Gas Pipeline Co. of America from Block 225 and 229 Fields, West Cameron Area, Offshore Louisiana, at a total initial rate of 20 cents per Mcf at 15.025 p.s.i.a., subject to downward B.t.u. adjustment, all as more fully set forth in the application which is 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) and the regulations under the Natural Gas Act (157.10) on or before September 4, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 68-9613; Filed, Aug. 12, 1968; 8:46 a.m.]

[Docket No. CP62-181]

NORTHERN NATURAL GAS CO.

Further Notice of Application

AUGUST 6, 1968.

Take notice that on July 26, 1968, Northern Natural Gas Co. (Applicant), 2223 Dodge Street, Omaha, Nebr. 68102, filed in Docket No. CP62-181 an amendment to its application pending in said docket by seeking a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act for the sale for resale and delivery of natural gas in interstate commerce to Pioneer Natural Gas Co. (Pioneer), all as more fully set forth in the application, as amended, which is on file with the Commission and open to public inspection.

In its application filed in the subject docket on February 6, 1962, Applicant seeks a certificate for the construction and operation of pipeline tap facilities on the "Texas System" of its Permian Basin area transmission facilities for the establishment of new and additional delivery points for the sale of natural gas to Pioneer for resale to Applicant's right-of-way grantors on the "Texas System" for domestic or irrigation use or both. In addition, Applicant also seeks permission and approval pursuant to section 7(b) of the Natural Gas Act for the abandonment by sale to Pioneer of three previously certificated measuring stations located on the "Texas System" in Martin and Gaines Counties, Tex.

Applicant proposes to sell to Pioneer an off peak volume up to 100,000 Mcf of gas per day to be available between April 1 and October 1 and a firm volume up to 3,000 Mcf of gas per day to be available on any day for resale to the right-of-way grantors. Applicant's delivery obligation is limited to 2,500,000 Mcf of gas in any billing year.

Protests or petitions to intervene in the proceeding on the application as amended may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (157.10) on or before September 4, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application, as amended, if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 68-9618; Filed, Aug. 12, 1968; 8:46 a.m.]

[Docket No. CP68-271]

TENNESSEE GAS PIPELINE CO.

Notice of Petition To Amend

AUGUST 6, 1968.

Take notice that on July 26, 1968, Tennessee Gas Pipeline Co., a division of Tenneco, Inc. (Petitioner), Post Office Box 2511, Houston, Tex. 77001, filed in Docket No. CP68-271 a petition to amend the order of the Commission issued in said docket on May 23, 1968, which order authorized Petitioner to render interim natural gas service to 18 of its existing general service customers in New England to whom Liquified Natural Gas (LNG) service is proposed and who are solely dependent on Petitioner for natural gas service and to render gas storage service to one existing contracted demand customer to whom LNG service is also proposed for the interim period October 1, 1968, to October 1, 1969, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By the instant filing, Petitioner seeks amendment of said order by requesting authorization to change the interim natural gas service for six New England general service customers, and to render interim natural gas service to city of Westfield Gas and Electric Light Department (Westfield), all for the interim period October 1, 1968, to October 1, 1969.

Petitioner states that upon issuance of the authorization sought herein, the total of the interim maximum daily quantities that Petitioner will be authorized to deliver will be reduced by 2,446 Mcf per day below that authorized in the order of May 23, 1968. Further, Petitioner states that interim service to Westfield for the winter of 1968-69 will require daily and annual quantities of 982 Mcf and 6,150 Mcf, respectively.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (157.10) on or before September 3, 1968.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 98-9616; Filed, Aug 12, 1968; 8:46 a.m.]

WASHINGTON

Order Partially Vacating Withdrawal of Lands

Correction

In F.R. Doc. 68-7552 appearing at page 9362 of the issue for Wednesday, June 26, 1968, in the land description for Willamette Meridian, Washington, under T. 4 N., R. 9 E., the first entry for sec. 16 should be deleted in its entirety and in lieu thereof insert "Sec. 15, NW¼NE¼, E½NE¼NW¼, W½NW¼, NW¼SW¼, SE¼SW¼, NE¼SE¼, S½SE¼;".

GENERAL SERVICES ADMINISTRATION

[Federal Procurement Regs., Temporary Reg. 17]

HEADS OF FEDERAL AGENCIES

Use of Copper and Copper Substitutes

1. *Purpose.* This regulation cancels FPR Temporary Regulation No. 5, March 23, 1966 (31 F.R. 4976), and FPR Temporary Regulation No. 13, August 3, 1967 (32 F.R. 11587).

2. *Effective date.* This regulation is effective upon publication in the FEDERAL REGISTER.

3. *Expiration date.* This regulation expires 60 days after publication in the FEDERAL REGISTER.

4. *Background.* In early 1966, the demands for copper became increasingly heavy. Acting under (a) of Section 5 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98d), the President released 200,000 short tons of copper on March 21, 1966. On March 23, 1966, FPR Temporary Regulation No. 5 was issued which provided for the avoidance by agencies of procurements of copper and products using copper and for the use of other materials in lieu of copper. The requirements of the regulation were extended by FPR Temporary Regulation No. 13. In a July 8, 1968, letter to the General Services Administration, the Office of Emergency Planning stated that the conditions which led to the release of copper from the stockpile and the use of copper substitutes have been alleviated and that there is no longer any justification for continuing to impose restrictions on the use of copper and copper base alloy mill products.

5. *Effect on other issuances.* FPR Temporary Regulations Nos. 5 and 13 are hereby canceled.

LAWSON B. KNOTT, Jr.,
Administrator of General Services.

AUGUST 8, 1968.

[F.R. Doc. 68-9735; Filed, Aug. 12, 1968; 8:51 a.m.]

OFFICE OF EMERGENCY PLANNING

IOWA

Notice of Major Disaster

Pursuant to the authority vested in me by the President under Executive Order 10427 of January 16, 1953, Executive Order 10737 of October 29, 1957, and Executive Order 11051 of September 27, 1962 (18 F.R. 407, 22 F.R. 8799, 27 F.R. 9683); Reorganization Plan No. 1 of 1958, Public Law 85-763, and Public Law 87-296; by virtue of the Act of September 30, 1950, entitled "An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes" (42 U.S.C. 1855-1855g), as amended; notice is hereby given of a declaration of "major disaster" by the President in his letter dated August 4, 1968, reading in part as follows: I have determined that the damage in those areas of the State of Iowa adversely affected by heavy rains and flooding beginning on or about July 16, 1968, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 81-875.

I do hereby determine the following areas in the State of Iowa to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 4, 1968:

The counties of Blackhaw, Bremer, Buchanan, Butler, Clayton, Clinton, Delaware, Fayette, Franklin Jones, Linn, Wright.

Dated: August 6, 1968.

PRICE DANIEL,
Director,
Office of Emergency Planning.

[F.R. Doc. 68-9621; Filed, Aug. 12, 1968; 8:47 a.m.]

RENEGOTIATION BOARD

PERSONS HOLDING PRIME CONTRACT OR SUBCONTRACT FOR TRANSPORTATION BY WATER AS COMMON CARRIER

Extension of Time for Filing Financial Statements Under the Renegotiation Act of 1951

Every person who held a prime contract or subcontract for transportation by water as a common carrier at any time during the calendar year 1967 is hereby granted an extension of time until October 1, 1968 for filing a financial

statement for such year pursuant to section 105(e)(1) of the Renegotiation Act of 1951, as amended.

Dated: August 7, 1968.

LAWRENCE E. HARTWIG,
Chairman.

[F.R. Doc. 68-9622; Filed, Aug. 12, 1968; 8:47 a.m.]

SECURITIES AND EXCHANGE COMMISSION

ALSCOPE CONSOLIDATED, LTD.

Order Suspending Trading

AUGUST 6, 1968.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Alscope Consolidated, Ltd., Passaic, N.J., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period August 7, 1968, through August 16, 1968, both dates inclusive.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 68-9626; Filed, Aug. 12, 1968; 8:47 a.m.]

[File No. 1-3909]

BSF CO.

Order Suspending Trading

AUGUST 7, 1968.

The capital stock (66⅔ cents par value) and the 5¾ percent convertible subordinated debentures due 1969 of BSF Company being listed and registered on the American Stock Exchange, and such capital stock being listed and registered on the Philadelphia-Baltimore-Washington Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934; and all other securities of BSF Co. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in the said capital stock on such exchanges and in the debenture on the American Stock Exchange, and trading otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period August 8, 1968, through August 17, 1968, both dates inclusive.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 68-9628; Filed, Aug. 12, 1968; 8:47 a.m.]

LEEDS SHOES, INC.

Order Suspending Trading

AUGUST 7, 1968.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Leeds Shoes, Inc., Tampa, Fla., and all other securities of Leeds Shoes, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period August 8, 1968, through August 17, 1968, both dates inclusive.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 68-9629; Filed, Aug. 12, 1968; 8:47 a.m.]

[File No. 2-24477 (22-4051)]

WARNER-LAMBERT PHARMACEUTICAL CO.

Notice of Application and Opportunity for Hearing

AUGUST 7, 1968.

Notice is hereby given that Warner-Lambert Pharmaceutical Co. (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeship of Irving Trust Co. ("Irving Trust") under an indenture dated March 1, 1966 (the "1966 Indenture"), heretofore qualified under the Act, and under a new indenture dated August 1, 1968 (the "New Indenture"), not qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Irving Trust from acting as trustee under such indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in such Section), it shall within 90 days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same obligor are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the same obligor are outstanding, if the obligor shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Company alleges that:

(1) As of July 25, 1968, there were outstanding $15 million principal amount of 4¼ percent guaranteed debentures due 1981, which were issued by its wholly owned subsidiary Warner-Lambert International Capital Corp. ("International") under the 1966 Indenture and guaranteed by the Company;

(2) Its wholly owned subsidiary, Warner-Lambert Overseas, Inc. ("Overseas"), a Delaware corporation, has issued and sold under the New Indenture among the Company, Overseas, and Irving Trust $20 million principal amount of its 4½ percent convertible guaranteed debentures due 1988 (the "New Debentures"), guaranteed by the Company. The New Debentures were not registered under the Securities Act of 1933 and the New Indenture was not qualified under the Act. The underwriters who purchased the New Debentures have agreed not to offer any of the New Debentures in the United States or to nationals or residents thereof;

(3) The 1966 Indenture and the New Indenture are wholly unsecured. The rights of the holders of the debentures issued under the 1966 Indenture and the rights of the holders of the debentures issued under the New Indenture with respect to the guaranty of the Company rank equally with each other. Except for variations as to amounts and interest rate, maturity dates, payment dates of principal and interest, redemption procedures, redemption dates and redemption prices, conversion features, certain covenants relating to United States taxation and other dates (if any) incidental to covenants, there are, with certain exceptions set forth in the application, no material variations between the indentures. No default exists under the 1966 Indenture.

(4) Such differences as exist between the 1966 Indenture and the New Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Irving Trust from acting as trustee under either of said indentures.

The Company has waived notice of hearing, a hearing, and any and all rights to specify procedures under the rules of practice of the Securities and Exchange Commission in connection with the matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than September 4, 1968, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application 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. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission (pursuant to delegated authority).

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 68-9630; Filed, Aug. 12, 1968; 8:47 a.m.]

[File No. 24D-2789]

WEST-CENTRAL AIRLINES, INC.

Order Canceling Hearing and Permanently Suspending Exemption

AUGUST 6, 1968.

West-Central Airlines, Inc. (issuer), 3801 Harney Street, Omaha, Nebr., a Nebraska corporation with offices stated to be located at 3801 Harney Street, Omaha, Nebr., filed with this Commission on May 13, 1968, a notification and offering circular relating to a proposed offering of 65,650 shares of its $2 par value common stock at $4.50 per share, for an aggregate of $295,425.00, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) thereof, and Regulation A promulgated thereunder.

The Commission, on June 21, 1968, temporarily suspended the Regulation A exemption of West-Central Airlines, Inc., stating it had reason to believe from information reported to it by its staff that:

A. The notification and offering circular contain untrue statements of material facts and omit to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, particularly with respect to:

1. The failure to disclose that unless a substantial portion of the offering is subscribed, additional funds will not be available to improve the condition and operations of the issuer but will only be sufficient to liquidate indebtedness of the issuer which will result in an ultimate benefit to officers and directors of the issuer who had guaranteed the indebtedness and conversely in an ultimate detriment to the investors;

2. The failure to disclose that the issuer is insolvent in the bankruptcy and equity sense inasmuch as the aggregate of its property is not at fair valuation sufficient in amount to pay its debts and the issuer is unable to pay its obligations as they mature;

3. In view of the representations concerning the issuer's fleet of aircraft, the failure to disclose that a significant portion of the said aircraft were not in a functionally operable condition to permit the issuer to utilize them in the conduct of its business;

4. In connection with the representation that the issuer is authorized by the CAB to carry U.S. mail, the failure to disclose that the U.S. Post Office Department has in effect regulations which preclude the issuer under its present circumstances from carrying U.S. mail;

5. In connection with the representations concerning the manner in which certain of the issuer's aircraft are equipped, the failure to disclose that various component parts of said aircraft are presently, and have been for sometime in the past, removed from the aircraft rendering the same inoperative;

6. In connection with the representations that certain aircraft "cruise approximately 185 miles per hour," and have certain passenger capacities, the failure to disclose that said aircraft, due to functional inabilities, have not flown nor carried passengers for several months;

7. The failure to disclose that the issuer presently has matters pending before governmental agencies, and that decisions of such agencies in these matters may materially adversely affect its authorization to carry on its business;

8. The failure to disclose adequately and accurately:

a. The net tangible asset value per share of the shares outstanding and the projected net tangible asset value per share of all shares upon the successful completion of the proposed offering;

b. The approximate book value of the issuer's shares upon successful completion of the proposed offering;

c. The dilution that will occur in the equity represented by shares which might be purchased by the public under this notification and the correlative appreciation in the equity represented by the shares held by officers, directors and other present shareholders;

d. The manner in which the offering price was determined;

e. The risk of loss incurred by investors if the offering is not successful or is only partially successful;

f. The risk of loss incurred by investors, even if the offering should be sold;

g. The financial condition of the issuer and the results of its operations. Specifically, assets and net worth are overstated, losses and deficits are understated.

B. The terms and conditions of Regulation A have not been complied with in that:

1. The name and address of each underwriter and the amount of participation by each such underwriter is not disclosed as required by Item 5 of Schedule I.

2. The financial statements included in the offering circular fail to conform to the requirements of Item 11 of Schedule I.

C. The offering would be made in violation of section 17(a) of the Securities Act of 1933, as amended, for the reasons described above.

Issuer on July 12, 1968, filed, pursuant to Rule 7 of the Commission's rules of practice, an answer to the charges set forth in the temporary suspension order and requested a hearing with respect to those charges. On July 29, 1968, the issuer filed a motion withdrawing its request for a hearing.

The Commission has determined to accept West Central's request for withdrawal of the request for hearing and therefore,

It is ordered, On the basis of the temporary suspension order, that the Regulation A exemption with respect to the securities of West-Central Airlines, Inc., be, and it hereby is, permanently suspended.

It is further ordered, That the hearing scheduled for August 12, 1968, be, and it hereby is, canceled.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 68-9631; Filed, Aug. 12, 1968; 8:47 a.m.]

ZIMOCO PETROLEUM CORP.

Order Suspending Trading

AUGUST 6, 1968.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Zimoco Petroleum Corp., New York, N.Y., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period August 7, 1968, through August 16, 1968, both dates inclusive.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 68-9627; Filed, Aug. 12, 1968; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 666]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 8, 1968.

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 2510 (Sub-No. 34 TA), filed August 5, 1968. Applicant: BRUCE MOTOR FREIGHT, INC., 1120 South Division Street, Post Office Box 21164, Indianapolis, Ind. 46221. Applicant's representative: Ferdinand Born, 601 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, livestock, commodities in bulk and those requiring special equipment), serving the Ford Motor Co. plantsite at the intersection of Westwood Road and Murphy Lane, Jefferson County, Ky. (near Louisville, Ky.), as an off-route point in connection with applicant's present authority to serve Louisville, Ky., for 180 days. Supporting shipper: Ford Motor Co., the American Road, Dearborn, Mich. Send protests to: District Supervisor James W. Habermehl, Bureau of Operations, Interstate Commerce Commission, 802 Century Building, 36 South Pennsylvania Street, Indianapolis, Ind. 46204.

No. MC 2986 (Sub-No. 31 TA), filed August 2, 1968. Applicant: I & S-McDANIEL, INC., Post Office Box 491, Vincennes, Ind. 47591. Applicant's representative: John E. Lesow, 3737 North Meridian Street, Indianapolis, Ind. 46208. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (with the usual exceptions), between the Ford Motor Co. plantsite at the intersection of Westport Road and Murphy Lane, Jefferson County, near Louisville, Ky., as an off-route point in connection with applicant's presently authorized regular routes into and out of Louisville, Ky., for 180 days. NOTE: Applicant intends to tack the authority sought herein with its existing authority under MC 2986 and subs at, Cincinnati, Ohio; Indianapolis, Ind.; Evansville, Ind.; Terre Haute, Ind.; Danville, Ill.; and Chicago, Ill. Supporting shipper: Ford Motor Co., the American Road, Dearborn, Mich. Send protests to: District Supervisor James W. Habermehl, Bureau of Operations, Interstate Commerce Commission, 802 Century Building, 36 South Pennsylvania Street, Indianapolis, Ind. 46204.

No. MC 3468 (Sub-No. 156 TA), filed August 5, 1968. Applicant: F. J. BOUTELL DRIVEAWAY COMPANY, INC., 705 South Dort Highway, Flint, Mich. 48503. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trucks*, in truckaway and driveaway service, from Jessup, Md., to points in Virginia, restricted to vehicles which have had an immediate prior movement by rail from Pontiac, Mich., for 180 days. Supporting shipper: GMC Truck & Coach Division, General Motors Corp., 660 South Boulevard East, Pontiac, Mich. 48053. Send protests to: District Supervisor Gerald J. Davis, Bureau of Operations, Interstate Commerce Commission, 1110 Broderick Tower, Detroit, Mich. 48226.

No. MC 46280 (Sub-No. 67 TA), filed August 1, 1968. Applicant: DARLING FREIGHT, INC., 15 Andre Street SE., Grand Rapids, Mich. 49507. Applicant's representative: Robert A. Sullivan, 1800 Buhl Building, Detroit, Mich. 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the Ford Motor Co. plantsite at the intersection of Westport Road and Murphy Lane, Jefferson County, near Louisville, Ky., as an off-route point in connection with carrier's authorized operations to serve Louisville, Ky., for 180 days. NOTE: Applicant intends to tack MC–46280 and interline at Grand Rapids, Muskegon, Lansing, Saginaw, Detroit, Kalamazoo, Jackson, Cadillac, Traverse City, and Benton Harbor, Mich. Supporting shipper: Ford Motor Co., the American Road, Dearborn, Mich. 49504. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 221 Federal Building, Lansing, Mich. 48933.

No. MC 108859 (Sub-No. 48 TA), filed August 2, 1968. Applicant: CLAIRMONT TRANSFER CO., 1803 Seventh Avenue North, Escanaba, Mich. 49829. Applicant's representative: John L. Bruemmer, 121 West Doty Street, Madison, Wis. 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the Ford Motor Co. plantsite at the intersection of Westport Road and Murphy Lane, Jefferson County, near Louisville, Ky., as an off-route point in connection with carrier's regular route operations, for 180 days. NOTE: Applicant intends to tack at Louisville, Ky., with applicant's certificated authority in MC–108859, and interlinking with other common motor carriers is intended at all terminal points. Supporting shipper: Ford Motor Co., the American Road, Dearborn, Mich. 49504. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 221 Federal Building, Lansing, Mich. 48933.

No. MC 116763 (Sub-No. 135 TA), filed August 5, 1968. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, Ohio 45380. Applicant's representative: W. J. Bohman (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned foodstuffs*, from Portland, Maine, to points in Arkansas, Oklahoma, and Texas, and *sardines*, from Bath, Belfast, Eastport, Jonesport, Lubec, Milbridge, North Lubec, Port Clyde, Prospect Harbor, Rockland, Southwest Harbor, Stonington, and Yarmouth, Maine, to points in Arkansas, Oklahoma, and Texas, for 180 days. Supporting shippers: There are approximately (9) statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Emil P. Schwab, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1010 Federal Building, 550 Main Street, Cincinnati, Ohio 45202.

No. MC 120383 (Sub-No. 4 TA), filed August 5, 1968. Applicant: DRUCAS MOVING & STORAGE SERVICE, INC., 1029 Twigg Street, Tampa, Fla. 33602. Applicant's representative: Paul F. Sullivan, Suite 913, Colorado Building, 1314 G Street, Washington, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, restricted to shipments moving in containers, and having an immediately prior or subsequent movement by rail, motor, water or air and moving on through bills of lading of forwarders operating under the section 402(b)(2) exemption, between the ports of Baltimore, Md., Newark, N.J., Norfolk, Va., and Charleston, S.C., on the one hand, and, on the other, points in Florida, for 180 days. NOTE: Applicant intends to interline at Baltimore, Newark, Charleston, or Norfolk with rail, water, air, or motor carriers, as per application. Supporting shippers: Northwest Consolidators, Inc., 427 Third Avenue West, Seattle, Wash. 98119; Door To Door International, Inc., 308 Northwest 72d Street, Seattle, Wash. 98115; Robert M. McCoy, customhouse broker, 1501 Haines Street, Jacksonville, Fla. 32201; Southern Shipping Co., Inc., 3226 Talleyrand Avenue, Jacksonville, Fla. 32201; Thomas L. Watkins, customhouse broker, Post Office Box 1194, Jacksonville, Fla. 32201; Empire Household Shipping Co. of New York, Inc., 160 Broadway, New York, N.Y. 10038; Karevan, Inc., 419 Third Avenue West, Seattle, Wash. 98119; Sunpak Movers, Inc., 534 Westlake Avenue North, Seattle, Wash. 98109. Send protests to: District Supervisor Joseph B. Teichert, Interstate Commerce Commission, Bureau of Oper-

ations, Room 1226, 51 Southwest First Avenue, Miami, Fla. 33130.

No. MC 121256 (Sub-No. 4 TA), filed August 5, 1968. Applicant: BOWEN TRUCKING, INC., Ridge Road, Holley, N.Y. 14470. Applicant's representative: Robert V. Gianniny, 900 Midtown Tower, Rochester, N.Y. 14604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty metal containers*, iron or steel, set up liquid capacity not exceeding 5 gallons, from Cleveland, Ohio, to points in Wayne County, N.Y. (namely, Red Creek, Sodus, Williamson, Marion, Newark, Wolcott, Rose, North Rose, and Clyde), for 180 days. Supporting shipper: Crown Cork & Seal Co., Inc., 9300 Ashton Road, Post Office Box 6208, Philadelphia, Pa. 19136. Send protests to: George M. Parker, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 151 Ellicot Street (Room 518), Buffalo, N.Y. 14203.

No. MC 127705 (Sub-No. 16 TA), filed August 5, 1968. Applicant: KREVDA BROS. EXPRESS, INC., Post Office Box 68, Gas City, Ind. 46933. Applicant's representative: Donald W. Smith, 900 Circle Tower Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers and closures therefor*, from Indianapolis, Ind., to points in the Lower Peninsula of Michigan, Kentucky (except Louisville), New York, Ohio, Pennsylvania, and West Virginia, for 180 days. Supporting shipper: Glass Containers Corp. (formerly Knox Glass, Inc.), Knox, Pa. Send protests to: District Supervisor J. H. Gray, Bureau of Operations, Interstate Commerce Commission, Room 204, 345 West Wayne Street, Fort Wayne, Ind. 46802.

No. MC 129326 (Sub-No. 7 TA), filed August 5, 1968. Applicant: WHITNEY TANK LINES, INC., 5201 Causeway Boulevard, Tampa, Fla. 33619. Applicant's representative: Dan R. Schwartz, 1729 Gulf Life Tower, Jacksonville, Fla. 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer*, from Winter Garden, Fla., to points in South Carolina, for 180 days. Supporting shipper: Na-Churs Plant Food Co., Post Office Box 1105, Winter Garden, Fla. 32787. Send protests to: District Supervisor Joseph B. Teichert, Interstate Commerce Commission, Bureau of Operations, Room 1226, 51 Southwest First Avenue, Miami, Fla. 33130.

No. MC 133059 TA, filed August 2, 1968. Applicant: AGRICULTURAL TRANSPORTATION ASSOCIATION OF TEXAS, doing business as ATA OF TEXAS, 109 Northwest 29th Street, Fort Worth, Tex. Applicant's representative: George Rees (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General commodities (including classes A and B explosives)*, restricted to traffic moving on Government bills of lading for the U.S. Government and agencies thereof, between points in Virginia, Pennsylvania, New York, Ohio, Indiana, Kentucky, Tennessee, Georgia, Florida, Illinois, Minnesota, Missouri, Arkansas, Louisiana, Texas, Oklahoma, Kansas, and Nebraska on the one hand, and, on the other, points in California, Oregon, Washington, Nevada, Utah, and Arizona, for 180 days. Supporting shipper: U.S. Department of Defense, Washington, D.C. Send protests to: Billy R. Reid, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9A27 Federal Building, 819 Taylor Street, Fort Worth, Tex. 76102.

No. MC 133060 TA, filed August 5, 1968. Applicant: WILLARD F. BALZHISER AND HAROLD L. BALZHISER, a partnership, doing business as BALZHISER BROS., 3301 Colerain Avenue, Cincinnati, Ohio 45225. Applicant's representative: Charles Bruce Lester, 8 East Fifth Street, Newport, Ky. 41071. Authority sought to operate as a *contract carrier*, by motor vehicle, over regular routes, transporting: *Women's dresses* and *sportswear*, on hangers and racks, from Cynthiana, Ky., to Cincinnati, Ohio, over U.S. Highway 27, and *hangers and racks* on the return, over the same route, for 180 days. Supporting shippers: Fashion Frocks, Inc., 3301 Colerain Avenue, Cincinnati, Ohio 45225; Wolfson Manufacturing Co., 205 West Fourth Street, Cincinnati, Ohio 45202. Send protests to: Emil P. Schwab, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 1010 Federal Building, 550 Main Street, Cincinnati, Ohio 45202.

By the Commission.

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

[F.R. Doc. 68-9641; Filed, Aug. 12, 1968; 8:48 a.m.]

[Notice 187]

MOTOR CARRIER TRANSFER PROCEEDINGS

AUGUST 8, 1968.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-70585. By order of July 31, 1968, the Transfer Board approved the transfer to Marvel Truck & Dozer Service, Inc., Casper, Wyo., of certificate in No. MC-103019; issued April 8, 1968, to Roy H. Marvel, Wilber D. Marvel, and William F. Marvel, a partnership, doing business as Marvel Truck & Dozer Service, Casper, Wyo., authorizing the transportation of "Mercer Type" commodities, between railheads in Wyoming, on the one hand, and, on the other, points in Wyoming not on railheads, and, from points in Niobrara County, Wyo., to points in Colorado, Montana, South Dakota, and Utah. Robert S. Stauffer, 1510 East 20th Street, Cheyenne, Wyo. 82001, attorney for applicants.

No. MC-FC-70679. By order of July 31, 1968, the Transfer Board approved the transfer to Merle E. Bevis, doing business as Joe and Ed's Towing Service, Cincinnati, Ohio, of certificate No: MC-123137, issue June 21, 1961, to Joseph Morgenthal, Jr., and Edwin Morgenthal, a partnership doing business as Joe and Ed's Towing Service, 9958 Hamilton Avenue, Cincinnati, Ohio 45231, authorizing the transportation of: Wrecked, damaged, or disabled motor vehicles, as excepted, by use of wrecker equipment only, from points in Indiana, Kentucky, and Tennessee, to Cincinnati, Ohio; and replacement vehicles for wrecked, damaged or disabled motor vehicles, in secondary movements, by truckaway method, with wrecker equipment, from Cincinnati, Ohio, to points in Indiana, Kentucky, and Tennessee. Ewing O. Cossaboom, 211 East Fourth Street, Cincinnati, Ohio 45202, attorney for transferee.

No. MC-FC-70686. By order of July 31, 1968, the Transfer Board approved the transfer to Falls City Transfer Co., a corporation, Falls City, Nebr., a portion of the operating rights in certificate No. MC-230 issued May 22, 1950, to Melvin Ernst, doing business as Ernst Transfer Co., Falls City, Nebr., authorizing the transportation of: General commodities, with the usual exceptions, between Falls City, Nebr., and points in Kansas within 50 miles thereof. Earl H. Scudder, Jr., 300 N.S.E.A. Building, 605 South 14th Street, Lincoln, Nebr. 68501, attorney for applicants.

No. MC-FC-70690. By order of July 31, 1968, the Transfer Board approved the transfer to Freight Express Co., a corporation, St. Louis, Mo., of certificate No. MC-44711, issued June 23, 1941, to Arthur Kunz, doing business as A. Kunz Hauling Co., St. Louis, Mo., authorizing the transportation of: General commodities, excluding household goods, commodities, and other specified commodities, between points in the St. Louis, Mo.-East St. Louis, Ill., commercial zone. Austin C. Knetzger, 722 Chestnut Street, St. Louis, Mo. 63101, attorney for applicants.

No. MC-FC-70691. By order of July 31, 1968, the Transfer Board approved the transfer to Eileen J. Carew, doing business as Standard Transfer & Storage, 349 Second Street North, Stevens Point, Wis. 54481, of certificate No. MC-11569, issued September 1, 1965, to Charles D. Carew, doing business as Standard Transfer & Storage, 349 Second Street North, Stevens Point, Wis. 54481, authorizing the transportation of: Household goods, between Stevens Point, Wis., and points within 15 miles thereof, on the one hand, and, on the other, points in Illinois and Minnesota.

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

[F.R. Doc. 68-9642; Filed, Aug. 12, 1968; 8:48 a.m.]

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FEDERAL REGISTER

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Tuesday, August 13, 1968 • Washington, D.C.

PART II

Department of Agriculture

Consumer and Marketing Service

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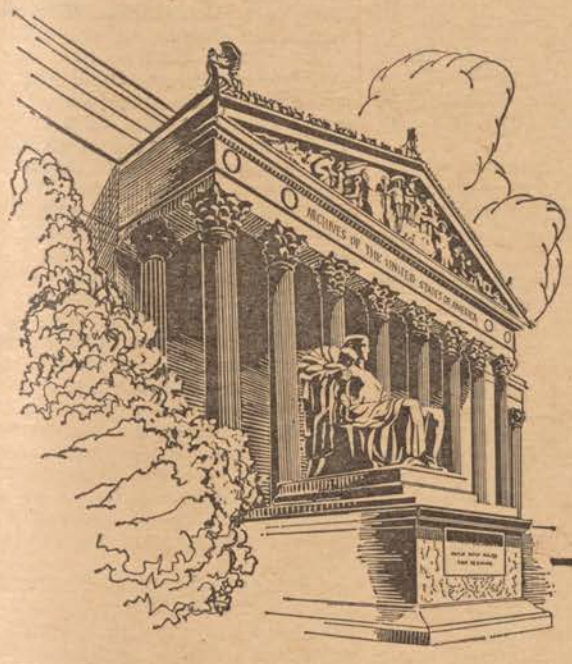
Milk in South Texas and North Texas Marketing Areas

DECISION



DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR PARTS 1121, 1126]

[Docket Nos. AO-364-R01-R02, AO-231-A32-R01-R02]

MILK IN SOUTH TEXAS AND NORTH TEXAS MARKETING AREAS

Decision on Proposed Marketing Agreement and Order and Proposed Amendments to Tentative Marketing Agreement and Order (Partial)

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Houston, Tex., January 30–February 5, 1968, pursuant to notice thereof issued January 10, 1968 (33 F.R. 497), upon a proposed marketing agreement and order and proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the South Texas and North Texas marketing areas, respectively.

This hearing was subsequently reopened February 19, 1968, at Memphis, Tenn., pursuant to a notice thereof issued February 6, 1968 (33 F.R. 2785) and reopened again February 23, 1968, at Memphis, Tenn., pursuant to a notice thereof issued February 6, 1968 (33 F.R. 2784).

The issue upon which the hearing was reopened February 19, 1968 (briefly known as the "filled milk" issue), is reserved for separate decision together with all other milk orders involved.

Action on the issue considered at the February 23, 1968, hearing (temporary pricing provisions) was made effective for the present North Texas order May 1, 1968, pursuant to an amending order issued April 25, 1968 (33 F.R. 6519). The record of this hearing is further considered in this decision with respect to the Class I price of the proposed South Texas order and Class I pricing provisions appropriate for an enlarged North Texas marketing area.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on June 13, 1968 (33 F.R. 8820; F.R. Doc. 68–7184) filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision, containing notice of opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision (33 F.R. 8820; F.R. Doc. 68–7184) are hereby approved, adopted and set forth in full herein subject to the following modifications:

1. Under issue 3(a) "Scope of regulation", subissue "Extent of the marketing area", paragraph eight is changed.

2. Under issue 3(a) "Scope of regulation", subissue "Governmental agencies", paragraph four is changed.

3. Under issue 3(b) "Classification of milk", subissue "Class I milk", paragraph two is changed.

4. Under issue 4(d) "Associated changes—Location differentials to handlers and producers", paragraph two is changed.

The material issues of record relate to:

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

2. Whether marketing conditions show the need for the issuance of a South Texas milk marketing agreement or order which will tend to effectuate the policy of the Act; and

3. If a South Texas order is issued what the provisions of such order should be with respect to:

(a) The scope of regulation;

(b) The classification and allocation of milk;

(c) The determination and level of class prices;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

4. Proposed expansion of the North Texas marketing area;

(a) Interstate commerce;

(b) Need for regulation;

(c) Territory to be added to the marketing area; and

(d) Associated changes in location differentials and pooling provisions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Character of commerce.* All milk to be regulated by the proposed marketing agreement and order for the South Texas area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and its products.

The marketing area specified in the proposed order, hereinafter referred to as the South Texas marketing area, includes all the territory in 30 Texas counties.

Milk handled in the marketing area moves in many forms across State lines. In 1967, a total of 52.5 million pounds of bulk fluid milk was received at South Texas plants located in Houston from dairy farms or plants located in the States of Kansas, Oklahoma, and Minnesota. A part of the milk regulated under the North Texas order, which has previously been determined to be in interstate commerce, is distributed on routes to consumers in the territory proposed to be regulated under the South Texas order in competition with handlers who would become regulated under the proposed South Texas order. Over 1 million pounds of Class I milk is distributed in the proposed South Texas area by North Texas regulated handlers each month. One such handler obtains his entire milk supply from dairy farms or plants located in the States of Kansas, Oklahoma, and Minnesota. A handler regulated by the San Antonio order whose milk supply is received mostly from the State of Kansas also distributes milk in this area. Fluid milk products are delivered to ships from foreign nations at the Port of Houston and are placed on airplanes engaged in interstate and international trade at Houston International Airport.

In 1967, more than 1.5 million pounds of locally produced bulk fluid milk was delivered to manufacturing plants and fluid milk plants in Louisiana and Oklahoma by Milk Producers, Inc., Southern Division. Manufactured dairy products such as nonfat dry milk and butter are received in the proposed South Texas marketing area from sources located in other States. These products compete with similar products made from locally produced milk.

2. *Need for an order.* Marketing conditions in the South Texas marketing area justify the issuance of a marketing agreement and order.

There is no overall plan whereby farmers supplying milk to the South Texas area are assured of payment for their milk in accordance with its use. There is, likewise, no plan whereby South Texas milk dealers may procure their milk supply on a classified use basis.

The Southern Division of Milk Producers, Inc., the cooperative association proposing and supporting regulation of the South Texas area, represents more than 1,000 producers supplying the market. This is a very large percentage of all such producers. Its predecessor, the South Texas Milk Producers Association, for many years has represented producers supplying milk to South Texas handlers. At times practically all such producers have been members of this cooperative association. The prices at which the association supplied member milk to these handlers have been "flat" prices which applied to all milk received by each handler, regardless of the use made of the milk. Under this pricing system handlers could afford to receive only a quantity of milk approximating their needs for fluid sales. The association developed means of supplying handlers with their daily needs and facilities for disposal of member milk that handlers did not need on a daily or seasonal basis. The association operates a dairy product manufacturing plant at Rusk, Tex., at which such milk is converted into manufactured products. The association has returned the proceeds of sales of milk to its member producers by means of a base-excess plan. The base milk of each producer is determined from past production, in a base forming period, adjusted for anticipated sales to handlers in relation to the total production of all member producers in the base forming period.

A certain amount of reserve milk in excess of the fluid needs of the market is necessary to assure an adequate supply of milk at all times. Fluctuations brought on by the seasonal nature of milk production together with a relatively uniform level of consumption, requires that

some of the Grade A milk produced for the market be disposed of in manufacturing channels. This excess milk must be manufactured into cheese, butter, nonfat dry milk, frozen dessert mix, and similar products that are sold in competition with products manufactured from ungraded milk.

Milk disposed of to manufacturing outlets returns considerably less than that disposed of for fluid use. Consequently, a well-defined and uniformly applied plan of use classification with the proper pricing of milk in such uses is necessary to prevent such excess milk from depressing the market price of all Grade A milk. To be successful the classification and payment for milk in accordance with its use requires the full participation of all those engaged in marketing milk in this manner. Orderly marketing of the milk produced for fluid consumption requires uniformity in prices paid by handlers and a means whereby the lower returns resulting from the sale of surplus milk may be shared equitably among producers.

The South Texas Milk Producers Association succeeded in selling a high proportion of its milk as "base" milk to handlers for many years. So long as the Association represented practically all producers supplying the market its plan worked well. Population in this area has been increasing faster than has milk production so that most local production was needed for fluid use. In 1966 almost 90 percent of the association's total milk production was sold as base milk.

More recently, however, some local producers have found it to their advantage to market their milk at a higher utilization than the market average, but at a lower price than the association "base price." In addition, milk from more distant producers has entered the market. Milk can now move longer distances. Since the association handles the milk of its members that handlers do not take on a daily basis, handlers can use other supplies for fluid use and depend upon association milk to balance their daily needs. In 1967, while total deliveries of member milk were 2.5 percent less than in 1966, base sales of member milk were almost 15 percent less, so that 21.5 percent was utilized for surplus uses.

In addition to the independent producers whose milk is delivered to Houston plants, certain producers now deliver their milk to the Tyler plant of a Houston handler for shipment to Houston. Such milk is merely cooled at Tyler in the process of transfer from farm pickup tankers to over-the-road transport equipment. The price paid these farmers ranged from $5.94 to $6.08 per hundredweight for the months of September through December 1967. This was from $1.09 to $1.23 less than the $7.17 association base price for these months. The handler incurred costs of handling at Tyler and transportation costs to Houston, a distance of 199 miles.

This same handler also received milk from a cooperative association delivered to Houston at a price 20 cents less than the association base price (10 cents over the negotiated Class I price effective at Dallas). A plant at Jacksonville which sells most of its milk in the Houston area also received a major portion of its 1967 supply from this cooperative association. The cost of this handler's milk is not shown in the record. The milk delivered to these handlers was not subject to regulation of an order, although the cooperative association represents other producers supplying the North Texas market.

Out-of-State milk delivered to Houston plants increased almost eight million pounds, or 17 percent in 1967 over 1966. Such milk is purchased for fluid use. In addition, direct deliveries from nonmember producers increased substantially to a total estimated by the association at from 5 to 10 million pounds monthly.

While no comparative cost data were provided with respect to the out-of-State shipments, handlers paid nonmember producers for their milk about 30 cents per hundredweight less than the announced base price. The lesser price was attractive to certain producers because it applied to all their milk. Some former association members with low production in the base forming period could increase their returns at a lower price for all their milk. Some producers supplying the North Texas market could also increase their returns, even though they incurred increased hauling costs.

These dairy farmers do not share in the burden of carrying the reserve milk supply. Thus, they are receiving higher net prices than other dairy farmers supplying the market. This situation has created instability in marketing of milk in the area and uncertainty among dairy farmers supplying the South Texas market concerning prices they will receive for their milk.

Handlers purchasing the low-price milk generally depend upon the cooperative association for supplemental supplies when their regular supplies are inadequate for fluid milk needs. This results in dairy farmers who sell their milk through the cooperative receiving lower returns because they maintain the reserve supply for the market while the other dairy farmers whose milk is not sold by the cooperative carry none of the market's reserve supply.

In an effort to regain their former share of the fluid market, the association changed its method of pricing milk to handlers as of January 1, 1968. Since September 1, 1967, its base price had been $7.17 per hundredweight, applicable to all milk received at the handler's plant. Up to that date its price for some years had been the North Texas price, plus 30 cents. The $7.17 price corresponded to 30 cents over a premium price effective September 1 in the North Texas market. As of January 1968, while retaining the $7.17 price, the association applied it to only 80 percent of each handler's receipts, with a $4 price applicable to the remaining 20 percent. The net effect was a reduction of 63.4 cents per hundredweight in the base prices. The effective South Texas base price thus became 33.4 cents less than the North Texas price.

The problems of unstable marketing encountered by producers in the recommended marketing area are not uncommon in fluid milk markets. The problems which have resulted in marketing instability in this area are similar to those characteristic of the fluid milk industry in the absence of regulation or a market-wide classified pricing plan. A marketing order as herein proposed will promote orderly marketing by assuring that producers will receive prices equivalent to those contemplated under the Act.

The weights and butterfat tests of milk delivered by the cooperative association are determined by the purchasing handlers. The cooperative pays its members on the basis of farm weights and butterfat tests determined by the cooperative. Handlers purchase the milk without verification by the cooperative of weights and tests. Such milk is purchased by handlers on various bases, including scale weights and meter measurements. An order is needed to provide assurance of the accuracy of weights and tests of producer milk and to obtain use of a uniform system of payment for milk by handlers to producers.

There is a lack of detailed market information on the procurement and disposition of milk throughout the marketing area. This information is essential to the attainment of orderly marketing. Some of the data on receipts and utilization of milk for fluid and manufacturing uses were made available for the hearing by several handlers and the cooperative association. These data were incomplete regarding the overall receipts and utilization of milk and milk products in the region. The institution of regulation would provide the basis for complete information on receipts and utilization of producer milk.

Instituting a marketing agreement and order for the proposed marketing area will contribute to the improvement of present marketing conditions and will tend to effectuate the declared policy of the Act. Price stability and orderly marketing in the area depend upon the adoption of a classified pricing plan based on audited utilization of milk purchased by handlers from producers and an equitable division among producers of the proceeds from the sale of their milk. In addition, the procedures required by the Agricultural Marketing Agreement Act would afford all interested persons opportunity to take part in determining, thorough public hearing, what the various provisions of the order should be to insure continuous orderly marketing of milk.

3. (a) *Scope of regulation.* It is necessary to designate clearly what milk and which persons would be subject to the provisions of the order. This can be accomplished best by providing specific definitions to describe the area involved and to prescribe the categories of persons, plants, and milk products to which the applicable provisions of the order relate.

Extent of the marketing area. The South Texas marketing area should

include all the territory within the Texas counties of Angelina, Austin, Brazoria, Brazos, Chambers, Colorado, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jackson, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, Walker, Waller, Washington, and Wharton.

The 1966 estimated population of the contiguous 30-county area was approximately 2.7 million. Approximately 2 million people live in the metropolitan areas of Houston, Beaumont, and Galveston, the largest cities in the proposed marketing area. Because a significant portion of sales of fluid milk products by handlers who would be regulated is in rural areas, and because of the relative density of population immediately surrounding the several cities, the marketing area should be defined on the basis of county rather than city boundaries.

Grade A milk products sold for fluid consumption throughout the proposed marketing area must be approved by health authorities who are governed by health ordinances, practices, and procedures patterned after the U.S. Public Health Milk Ordinance and Code. Grade A milk both in bulk and packaged form moves between various locations in the marketing area with the reciprocal approval of the responsible health authorities. Ratings by the U.S. Public Health Service are recognized as a basis for approval of outside sources of milk.

Houston is the principal point at which milk is processed and packaged for distribution throughout this 30-county area. Four major handlers with plants in Houston each distribute in from 10 to 22 of the counties named. One of these handlers also has a plant at Beaumont from which distribution is made in 12 of these 30 counties. A plant at Lufkin in Angelina County distributes milk in 11 of these counties. These handlers compete with other plants from which distribution is more localized. Such plants are located at Houston, Galveston, Port Arthur, Nederland, Bryan, and Cat Spring within the area. While no one plant serves the entire area there is a substantial community of competition throughout the area.

In addition there is milk being sold in two of these counties by plants regulated by the North Texas order and in three others by a plant now regulated by the Corpus Christi order. A plant located outside the area at Jacksonville in Cherokee County will probably be regulated by the order because it sells about 75 percent of its Class I milk in Houston. This plant has some additional distribution in three other counties in the proposed marketing area. A handler who serves 22 counties from his Houston plant also serves three others from his Tyler plant, which would be regulated under the proposed expansion of the North Texas order.

Forty-three Texas counties were proposed for inclusion in the South Texas area. Of these, Anderson, Angelina, Cherokee, Henderson, Houston, Nacogdoches, Sabine, San Augustine, Shelby, and Trinity were alternatively proposed for inclusion in the North Texas marketing area. Angelina, Houston, Nacogdoches, and Trinity are included in the South Texas marketing area.

The additional seven counties of Burleson, Fayette, Lavaca, Lee, Leon, Milam, and Robertson were proposed for inclusion in the South Texas marketing area only, but are omitted from the area provided herein.

The seven counties omitted from the area lie to the west of the 30-county area, in the territory intervening between the proposed area and the Austin-Waco marketing area. For only one of these counties, Fayette, was there evidence that sales are made from plants that will be regulated by the South Texas order. While one Houston handler listed half of the sales in this county as being made by a Houston competitor, the competitor's testimony did not claim any sale in Fayette County. While certain exceptions identified another Houston handler as making these sales, Fayette County cannot be added to the marketing area at this stage of the proceedings without further opportunity for exceptions. The record shows that competition that Houston handlers meet in this county is primarily from milk regulated under other orders.

In the 10-county area proposed for inclusion in either the South Texas order or the North Texas order, milk is sold by handlers from Houston, Beaumont, Tyler, Marshall, Dallas (regulated by the North Texas order), a handler regulated by the San Antonio order, and by two handlers with plants located in the 10-county area.

One of the local plants, located at Jacksonville in Cherokee County, disposes of 75 percent of its packaged fluid milk through a distribution point in Houston. This plant thus may be expected to be regulated by the South Texas order. Its distribution in Cherokee County represents less than one-third of the total sales in that county. While milk from this plant is sold in six of the 10 counties such sales represent only 18 percent of the plant's total sales. An additional 7 percent is sold in four other counties proposed only for the North Texas area.

The other plant located in this area is at Lufkin in Angelina County and has 65 percent of its Class I sales in eight of these 10 counties. It sells another 7.5 percent of its milk in three other counties proposed for inclusion in the North Texas area and 27.5 percent in eight other counties proposed for the South Texas area. It is evident that the regulation of this plant could be affected by the decision concerning these 10 counties.

One handler with plants in both Houston and Tyler serves this 10-county area from his Tyler plant, with sales shown for each county except Trinity. Another, with plants at Houston, Beaumont, Tyler, and Marshall, has sales in these 10 counties from each of these plants. The Houston plant serves one county, the Beaumont, Tyler, and Marshall plants each serve three counties.

One Dallas handler distributes in six of these 10 counties, another in five; four other Dallas handlers serve at least one county each.

In Henderson and Anderson Counties two-thirds to three-fourths of the sales are made from the two presently unregulated plants at Tyler which will become regulated by expansion of the North Texas area to counties north of the 10-county area. In addition, Dallas handlers have from 10 to 20 percent of all sales in these counties. In Cherokee County sales from the two Tyler plants and Dallas plants are approximately 70 percent of total sales. In Shelby County, sales from Tyler, Marshall, and Dallas plants represent about 65 percent of all sales. These four counties should be included in the North Texas area rather than the South Texas area.

In Angelina, Nacogdoches, and Houston Counties, from 30 to 33 percent of the total sales in each county are made by the Lufkin plant located in Angelina County. In Houston County, 55 percent of the sales are made by a Houston plant and the Jacksonville plant which will become regulated by the South Texas order. In both Angelina and Nacogdoches Counties a Beaumont plant and the Jacksonville plant have more sales than do North Texas plants and one of the Tyler plants, but less than half (approximately 37–38 percent). Since the Lufkin plant has more competition in these counties from South Texas handlers, and also has more competition from such handlers in areas outside the 10-county area, it is concluded that these three counties should be included in the South Texas area, which should insure that the Lufkin plant will be regulated by the South Texas order.

There is no evidence that any milk is sold in Trinity County by handlers other than those to be regulated by the South Texas order. It should, therefore, be included in the South Texas area.

Due to their geographic location, Sabine and San Augustine Counties should be included in the same area. All sales in these small counties are from the Lufkin plant and two East Texas plants at Marshall and Tyler. While the sales in Sabine County are equally divided, the Marshall and Tyler plants have the majority in San Augustine County. These counties should, therefore, be included in the North Texas area rather than the South Texas area. Further conclusions with respect to them are included in the discussion of the North Texas area.

A question may arise in the operation of the order as to whether piers, docks, wharves, and any territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or similar establishments located within the marketing area shall be considered as a part of the marketing area. Such facilities constitute regular outlets for milk of handlers who would be regulated. Proposal was made at the hearing to include such areas as a part of the marketing area. So there will be no doubt as to the application of the order definition of marketing area, the marketing area should include such establishments.

There is no basis for making a distinction between fluid milk in such territory and fluid milk sales in other territory within the marketing area.

All producer milk received at regulated plants must be classified and priced under the order regardless of whether it is disposed of inside 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.

Limited quantities (as provided) 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 has been concluded that the application of "partial" regulation to plants having less association than required for market pooling would not jeopardize marketing conditions within the regulated marketing area. Official notice was taken at the hearing of the June 19, 1964, decision (29 F.R. 9213) supporting amendments to several orders, including orders effective in Texas and Oklahoma. The conclusions of this decision are adopted herein as applicable to marketing conditions in the South Texas marketing area.

The operator of the partially regulated plant is 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 an amount not less than the value of all their milk computed on the basis of the classification and pricing provisions of the order (the latter representing an amount equal to the order obligation for milk which is imposed on fully regulated handlers).

While all fluid milk sales of the partially regulated plant are not necessarily priced on the same basis as fully regulated milk, the provisions described are, however, adequate under most circumstances to prevent sales of milk not fully regulated (pooled) from adversely affecting operation of the order and the fully regulated milk.

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 various categories of persons, plants, and milk products to which the applicable provisions of the proposed South Texas order relate.

The minimum class prices of the order should apply to that milk eligible for fluid disposition as Grade A milk which is received from dairy farmers at plants engaged primarily in supplying fluid milk products for sale in the maketing area on retail and wholesale routes. In view of the similarity of health regulations and the free movement of milk in the area, any dairy farmer whose milk is produced in compliance with the Grade A requirements of any duly constituted health authority should share in the marketwide pool if his milk is received at a plant sufficiently associated with the market to qualify as a pool plant.

Any plant, regardless of its location, should have equal opportunity to comply with the standards of regulation and have its producers share in the available Class I sales. Whether the plants and producers choose to supply the South Texas market will depend upon the economic circumstances with which they are confronted such as prices, transportation costs, and alternative outlets.

The specific standards of performance to be used to determine which plants and what milk constitute the regular sources of supply and, therefore, should be fully subject to regulation, may be identified by definitions of plant, route disposition, distributing plant, supply plant, pool plant, nonpool plant, handler, producer-handler, producer, producer milk, fluid milk products, and other source milk.

Certain other miscellaneous definitions such as Act, Secretary, Department, person, cooperative association, and butter price should be included in the order for clarity and brevity in construction of other order provisions. They are self-explanatory and similar to comparable provisions in other Federal orders.

Plant. A plant definition is needed to assist in defining the particular operations which are to be subject to regulation and to simplify the drafting of the other provisions of the order. Under the definition herein provided a plant would mean the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged. A separate facility used only for transferring bulk milk from one tank truck to another would not be a plant under this definition, if the milk can be identified separately as receipts from specific dairy farmers until it is received at a plant. Also, a facility serving only as a distribution point for storing fluid milk products in transit for route disposition should not be considered a plant.

A distributing plant should be one approved by any duly constituted health authority from which any Grade A fluid milk product that is received, processed, or packaged at such plant is distributed during the month on routes in the marketing area.

A supply plant should be any plant approved by an appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area and from which milk is moved to a distributing plant.

Route disposition. To assist in identifying those plants which would be regulated, a definition of route disposition is provided.

The term "route disposition" would mean the delivery (including any delivery by a vendor or disposition at a plant store) of fluid milk products, other than a delivery to a milk plant.

Fluid milk products may be delivered through another milk plant. Such delivery should be considered a route disposition at the location of the wholesale or retail outlet where disposition is made to the ultimate consumer. This will avoid opportunity for a distributing plant to pool solely on the basis of deliveries of fluid milk products classified as Class I to other plants. Each distributing plant should qualify on its minimum percentage in-area route disposition which does not include fluid milk product sales to other plants. The route disposition of a handler should be attributed to the processing and packaging plant from which the fluid milk product is moved to retail or wholesale outlets without intermediate movement to another processing and packaging plant.

Pool plant. It is essential to the operation of the order to distinguish between plants which serve the fluid milk needs of the market and those which do not. It is particularly important to establish minimum performance standards for plants which serve the market to such a degree that they should be included in the marketwide utilization pool which is the means of paying uniform returns for milk to all producers for the market. This distinction is necessary. Otherwise, the proceeds of Class I sales would be dissipated to dairy farmers supplying handlers engaged primarily in business elsewhere. Such distribution of returns would not accomplish the purpose of regulation which is to assure an adequate and dependable supply for the fluid needs of the market.

These performance standards also minimize the effect of regulation on handlers who distribute a minor proportion of their fluid milk products in the marketing area. Such handlers would only be partially regulated as described elsewhere in this decision.

Performance standards are one means of assuring that the regulated market has adequate and dependable supplies of milk. They require that a pool plant either distribute milk in the market or

ship milk to the market. Because of the difference in marketing practices and functions between distributing plants and supply plants, separate performance standards are provided.

Pool distributing plant. A distributing plant would be qualified as a pool plant under this order in any month in which 10 percent or more of the Grade A milk receipts at such plant are disposed of on routes in the marketing area.

The plant's total route disposition both inside and outside the marketing area should be 50 percent or more of its receipts of Grade A milk. Unless a distributing plant disposes of half or more of its Grade A milk on routes, it is not primarily engaged in fluid business. Such a plant should not be pooled as a distributing plant. To qualify for pooling such a plant should meet the supply plant requirements.

It was proposed that if two or more distributing plants operated by the same handler each met the marketing area route disposition requirement and the combined total disposition on routes of such plants was 50 percent or more of Grade A milk receipts, each such plant should be deemed to have met the pool distributing plant requirement. No substantial need was shown for the proposed system qualification of distributing plants. In the absence of such a showing the pooling of each distributing plant should be determined from its individual performance.

A distributing plant from which Class I milk is distributed regularly in the marketing area may under normal conditions be expected to exceed by a reasonable margin the minimum performance standards necessary to qualify as a pool plant.

A distributing plant disposing of more than 90 percent of its receipts outside the marketing area of this order or in nonfluid outlets should not be considered to be essentially associated with this fluid market. It is not advisable to bring such a plant under full regulation because it has a minor share of its business in supplying the fluid needs of the marketing area. Full regulation is not necessary to accomplish the purposes of the order and might well place such plant at a competitive disadvantage in supplying an unregulated market in which its primary sales are made. A minimum performance standard is necessary to assure that a plant is associated with the market in a significant and regular manner. Otherwise, a plant not so associated with the market might qualify for equalization payments and permit dairy farmers delivering to the plant to share in the returns from Class I sales when it was to their advantage to do so.

A handler proposed that in the event a South Texas order became effective and the North Texas marketing area was not expanded that the distributing plant requirements for pooling be increased from 10 percent to 20 percent route disposition of receipts. The establishment of a South Texas order and expansion of the North Texas marketing area in the manner proposed herein makes this proposal moot.

Pool supply plant. To qualify for pool plant status during any month a supply plant should ship to pool distributing plants 50 percent or more of its receipts of Grade A milk from dairy farmers and handlers pursuant to § 1121.12(d) in the form of bulk fluid milk products. A major function of the supply plant pooling standards is to insure that handlers processing and distributing milk for sale in the market may regularly obtain milk from supply plants to meet their fluid milk needs. Supply plant standards should be set at a level which requires that producer milk be available to supply the Class I outlets. A supply plant with a proportionately lesser quantity of its milk disposed of in this manner should not, under present conditions, be considered as associated primarily with the South Texas market.

Currently, milk received directly from dairy farms at distributing plants or cooperative-owned plants is adequate on an annual basis for the fluid milk needs of the market and no supply plants are expected to qualify for pooling under this provision. However, performance standards for supply plants should be provided if milk from such plants is needed at any time.

If there is any demand for milk from supply plants it will be greater in months of seasonally low production. During months of higher production, it would be more economical to leave more distant milk at country points for manufacture while nearby milk is used for fluid needs at distributing plants. The performance standards for supply plants should not require milk to be transported to pool distributing plants in high production months solely to maintain the eligibility of supply plants to remain pooled.

A supply plant which met the pooling requirements by shipping 50 percent or more of its receipts to pool distributing plants in each month of the immediately preceding September through December period shall be a pool plant without further shipments in the following months through August in which it does not otherwise qualify as a pool plant. This automatic pool plant status would not apply if the plant operator elects nonpool plant status for the plant or does not continue to meet the requirements of a duly constituted health authority. If a plant becomes a nonpool plant, such status shall be effective the first month following notice to the market administrator or upon loss of health authority approval and thereafter until the plant again qualifies as a pool plant on the basis of required shipments.

Proponents proposed at the hearing that in order to be pooled during the months of January through August a supply plant qualified in the preceding months of September–December should ship 25 percent of its receipts during the month. The further requirement of 25 percent shipments in each month of January through August is not necessary in this market. Any supply plant that has met the shipping standards for pool plant status in the preceding September–December period by shipping 50 percent of its receipts to pool distributing plants in each month has demonstrated adequately that it is associated with the market at a time when production is low in relation to Class I sales. Placing a further requirement on such supply plants to pool during the high production months could well result in uneconomical movement of milk supplies to the market.

Cooperative association supply plant. Any plant, approved by a duly constituted health authority and receiving Grade A milk from dairy farmers, that is operated by a cooperative association should be designated as a pool plant if 50 percent or more of the milk of member producers of such cooperative is delivered during the month to pool distributing plants of other handlers either by delivery directly from the farm or by transfer from the cooperative association plant.

A cooperative association, Milk Producers, Inc., operates "balancing" or "supply equalization" plants at Houston and Rusk, Tex. This cooperative supplies a substantial portion of the milk which would be pooled under the order. Its Rusk plant has facilities for processing milk in excess of handlers' requirements into manufactured dairy products. The cooperative assumes the responsibility for marketing such excess milk.

The supply equalization plants assist the cooperative in providing other handlers with whom it has arrangements for marketing member milk the precise amounts of milk which such handlers require and disposing of any excess. Handlers' needs vary widely during a week. Supply requirements increase on heavy bottling days and diminish on other days, such as during weekends, when little or no milk is bottled. The cooperative association generally delivers direct to handlers' plants the milk needed each day, and receives at their equalization plants the remainder of the association's supply.

Permitting a cooperative, under certain conditions, to pool the returns of milk which is received at its plant will contribute to orderly marketing. The equalization plants of the major cooperative are an integral part of the entire supply arrangement for the South Texas market. Their operation assists all producers in realizing the best utilization of available milk supplies. However, their receipts and shipments fluctuate so that they probably could not meet minimum pooling requirements for a supply-type plant.

Because of their important function in serving the market such plants should be qualified for pooling. Milk received directly at these plants from farms represents a small portion of the total supply of the cooperative. Most of the milk supply is moved by bulk tank delivery to handlers' processing plants. The cooperative should have opportunity to pool the milk at its plants on the basis of the cooperative's total function in supplying the market. Milk moved by the cooperative directly from farms of members to pool distributing plants of other handlers should count toward qualification of the cooperative supply equalization plants along with milk moved from such plants

as a transfer to such pool distributing plants. This treatment will recognize the total performance of the cooperative association as the basis for pooling its plant.

Plant subject to regulation under other orders. Some milk may be distributed in the marketing area from plants which are fully subject to the classification and pricing provisions of other Federal milk orders. It is not necessary to extend full regulation under an order to such plants which dispose of a major portion of their receipts in another regulated marketing area. To do so would subject such plants to duplicate regulation. However, so that the market administrator may be fully apprised of the continuing status of such a plant the operator thereof would be required to file reports of receipts and utilization with respect to the plant and allow verification of such reports as the market administrator may require even though the plant would be exempt otherwise from this order.

Distributing plants sometimes meet the pooling requirements of more than one Federal order. The general rule should be that such a plant shall be regulated under the order for the marketing area in which it has the greater route disposition. Provision should be made, however, that a plant regulated by one order shall not become regulated under another until the third consecutive month in which its distribution in the other order area is the larger. Supply plants shall be regulated under the order to which greater shipments are made, except during the January–August period of automatic pooling for qualified plants.

Provisions to this effect are in the North Texas, San Antonio, and Austin-Waco orders. Official notice is hereby taken of the decisions issued on February 23, 1962, by the Assistant Secretary of Agriculture with respect to the North Texas order (27 F.R. 1908) and on January 9, 1962, with respect to the San Antonio and Austin-Waco orders (27 F.R. 417). The conclusions contained therein with respect to the regulation of plants under those orders are equally applicable to the means for determining regulation under the South Texas order.

Nonpool plant. The definition of "nonpool plant" is provided to facilitate construction of the various provisions of the order as they apply to such a plant. A nonpool plant means a plant (except a pool plant) which receives milk from dairy farmers or is a milk manufacturing or processing plant. This definition is the same as comparable definitions in presently effective orders. Specific categories of nonpool plants would be defined as follows:

"Other order plant" is a plant that is fully subject to the pricing and pooling provisions of another Federal order issued pursuant to the Act. Such plants would not be regulated under this order except for the reports described elsewhere with respect to any route disposition in the South Texas marketing area.

"Producer-handler plant" means a plant operated by a producer-handler as defined in any order including this part issued pursuant to the Act.

"Partially regulated distributing plant" means a nonpool plant that is a distributing plant but is not an other order plant, a producer-handler plant, or an exempt plant of a governmental agency.

"Unregulated supply plant" is a nonpool plant that is a supply plant but is not an other order plant, a producer-handler plant, or an exempt plant of a governmental agency.

Handler. 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. The primary impact of regulation under the order is on handlers. As herein provided, the definition includes (a) any person in his capacity as the operator of a pool plant, (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 its account, (d) any cooperative association which delivers milk of its producers from the farm directly to pool plants of other handlers in a tank truck owned and operated by or under contract to such association, (e) any person in his capacity as an operator of an other order plant with route disposition in the marketing area, or (f) a producer-handler.

The above provisions are common to most Federal orders. The specified responsibility of each type of handler is described in the applicable order provisions.

The handler who receives milk from producers at a pool plant is responsible for reporting receipts and utilization of such milk and for proper payment to producers and to the pool. A producer-handler is defined as a handler to require that he submit reports so that the market administrator may determine whether continued exemption from pooling is met.

The operator of a partially regulated distributing plant is defined as a handler so that the market administrator may receive data upon which to ascertain the status of the plant under the order and the money obligation to the equalization fund, if any, of the operator of the plant.

Cooperative associations should be handlers under the order with respect to milk of producers which they divert for their account to nonpool plants. In this capacity, the cooperative is responsible for reporting the identity of each producer whose milk is diverted, the quantity of milk and butterfat for each producer, and the disposition of such milk. In performing the function of diverting under the order rules, the cooperative association will be balancing supplies according to individual handlers' needs and disposing of market reserves. In this capacity, the cooperative association should be considered to be the handler paying into, or receiving money from, the producer-settlement fund so that producers whose milk is diverted may receive the uniform price. The association should be responsible for the payment of administrative expense on such diverted milk.

Cooperative associations in this market often taken responsibility for delivery of milk from producers' farms to regulated plants. Such delivery is provided in tank trucks. Each truckload of milk usually contains the production of several farmers.

When milk is picked up by tank trucks under the control of the cooperative association and milk of several producers is commingled in one load, the cooperative association is in control of the information as to the quantities of milk from each individual producer. The cooperative association should be required, therefore, to report to the market administrator the quantity of milk received from each producer. The association should also be responsible for obtaining samples at the farm for the purpose of butterfat testing, the testing of such samples, and reporting to the market administrator the quantities of butterfat received from producers.

If the association is assuming responsibility for collection of dairy farmers' milk in tank trucks and delivering such milk from the farm to pool plants, it should be defined as the handler on such milk for the purpose of reporting the farm weights and tests of milk received from dairy farmers and the quantities delivered to pool plants. In addition, the association should be accountable to the producer-settlement fund for any differences in the quantities of milk received from producers, based on farm measurements, and the quantities of milk which purchasing handlers claim as received at their plants from the association. This is necessary to assure that cooperative handlers, like other handlers, account for all milk received from producers. For pricing purposes, the milk would be considered as received by the cooperative association at the location of the plant to which delivered. The association would account to and pay the administrative expense assessment on the quantity of milk involved in any difference between milk received from farms and that delivered to pool plants.

The pool plant handler would be responsible to the producer-settlement fund and for administrative assessment on milk it received from the cooperative. Also, the pool plant handler would pay the cooperative association handler the minimum uniform price for such milk received from the cooperative who was the handler of the bulk tank milk. Since only the cooperative association is in control of the information as to the quantities of milk received from individual dairy farmers and since it may deliver partial loads of milk to different handlers, only the cooperative is in a position to make payments to the individual producers involved. Consequently, it is necessary under such circumstances for the cooperative to settle with the individual producers according to the quantity received from each of them as determined by the weights and tests made by the cooperative.

As provided under the classification of shrinkage, the pool plant handler who accounts for milk received from the cooperative association on the basis of farm weights and tests may account for 2 percent of such receipts in Class II as shrinkage, but if the quantity of such receipts is determined otherwise the allowable Class II shrinkage is 1.5 percent. Alternative methods of determining the weights and tests of such receipts must, of course, be such that they enable the market administrator to check the accuracy of the quantities for which the handler is responsible.

Producers proposed that cooperative associations should be handlers on bulk tank deliveries only at their option and that payment for such milk should be at class prices with classification determined on the same basis as transfers between pool plants. For the reasons set forth above, cooperative associations should be defined as handlers whenever they are performing the functions described above, rather than on an optional basis. The proposed payment to the cooperative association at the order uniform price, with the pool operator responsible for equalization with the pool, relieves the cooperative association of this responsibility and simplifies adjustments based upon audit of the handlers' records.

Governmental agencies. A governmental agency which operates a plant that processes or packages milk distributed in the marketing area should be exempt from the South Texas order. Texas A&M University operates a plant at College Station, Tex., which may qualify for such exemption.

The university plant is operated for the purposes of carrying out a recognized function of the State of Texas. The Texas A&M University plant and the plant of any other governmental agency similarly situated should be exempt from regulation. From time to time excess milk is available at such plant and at times supplemental supplies are required. Providing that excess milk moved from such exempt plant to pool plants be classified as Class II and that purchases from pool plants of supplemental milk for use at the exempt plant be classified as Class I will adequately protect producer returns in this market.

It is not necessary that a governmental agency operating an exempt plant be defined as a handler. To do so would provide only a duplication of reports and records that are properly the responsibility of the pool handler buying or selling milk to such exempt plant.

A proposal was made to define a milk broker as a handler for the purpose of requiring reports to the market administrator and to allow verification of records maintained by the broker. This is not necessary because the responsibility lies with the handler pooling the milk to make full reports on all sources of the milk he receives. The pool handler has the burden of maintaining and making available records that substantiate the receipts and utilization of milk handled and payments to producers. Should records of a third party be required for this purpose, it becomes the responsibility of the pool handler to make them accessible to the market administrator. Definition of a broker as a handler would only provide a source of information that should be available to the market administrator through the pool handler.

Producer. "Producer" should mean any person except a governmental agency which operates a plant exempt pursuant to § 1121.62, or 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 any 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 any person with respect to milk produced by him that is physically received at a pool plant as diverted milk from an other order plant, if the other order designates such person as a producer under that order, and the handler under the other order diverting such milk and the operator of the pool plant each have requested Class II classification of such milk in their respective reports filed with their respective market administrators. This provision will contribute to orderly marketing by facilitating the movement of milk for manufacturing purposes from an other order plant to a pool plant. Similarly, persons whose milk is diverted under this order to other order plants may retain South Texas producer status on such milk unless the other order requires that they be defined as producers under the other order with respect to such milk.

Producer milk. Producer milk should be defined so as to specify the milk for which each handler is responsible for accounting to the pool with respect to utilization and equalization. At each pool plant producer milk includes receipts of milk directly from producers and from cooperative association bulk tank handlers, and milk diverted to nonpool plants for the account of the handler operating the pool plant. In addition, producer milk of a cooperative association would include milk diverted for its account from pool plants of other handlers, and milk received as a bulk tank handler from producers in excess of that delivered to pool plants of other handlers. The producer milk of all handlers includes all milk that is fully priced and pooled under the order.

The proposed order would, as does the North Texas order, permit diversions of producer milk for manufacturing (Class II) use, if the handlers involved requested and so reported such use classification of diversions. When milk is not needed in the order for Class I purposes, the movement of such milk to nonpool plants including other order plants for Class II use should be facilitated. Diversions to pool plants under this order of producer milk under another order for manufacturing use by handler agreement should be accommodated in similar manner. Many plants providing outlets for reserve milk are pool plants under regulation by some other order.

Because of the exempt status provided by the order for a governmental agency and a producer-handler, receipts of milk at a pool plant from such handlers would not be considered a receipt of producer milk. To do otherwise would permit surplus milk to share in the pool at blend prices and dissipate returns to producers associated regularly with the market.

The proposed South Texas order should provide that proprietary plant operators and cooperatives in their capacity as handlers may divert producer milk from a pool plant to a nonpool plant. Unlimited diversion is neither necessary nor desirable in this market when much of the producer milk is necessary to fill Class I milk needs.

The order provisions should accommodate the efficient handling of milk excess to Class I needs since the day-to-day market requirements vary widely, particularly on such occasions as weekends or holidays. The diversion provision adopted should promote economical handling at a lesser hauling cost of the milk not needed at times at pool plants by permitting it to be diverted to nonpool plants; many of which are located nearer the milk production area than are the pool plants where the milk is customarily received.

A cooperative would be permitted to divert for its account a quantity of milk not in excess of one-third of its total member milk received at all pool plants in the month. A handler operating a pool plant similarly may divert for his account milk of producers who are not cooperative association members a quantity of milk not in excess of one-third of the milk at such pool plant from producers who are not members of a cooperative which is diverting milk for its own account.

Diversions in excess of the aforesaid quantities would not be producer milk. Each diverting handler shall designate the dairy farmers whose milk is ineligible as producer milk. Producer milk status shall be forfeited with respect to all milk diverted by a handler if he fails to specify the dairy farmers whose milk is overdiverted.

Diverted producer milk should be priced at the location of the nonpool plant to which diverted. The applicable prices would be that resulting from the pricing provisions of the proposed order adjusted to the nonpool plant location as if such plant were a pool plant. This will assist in removing any incentive a handler might have for associating a quantity of milk with the pool which would be intended for manufacturing uses. Otherwise, there would be potential for distant producers to receive the blend price at nearby plants when their milk actually would be diverted on a regular basis to distant plants for manufacturing uses. Pricing diverted milk at the location to which diverted will insure that producers

generally do not bear transportation expenses that are not incurred when such milk is diverted to manufacturing plants located near the farms on which it is produced.

Producer-handler. A producer-handler should be defined as any person who produces milk, operates a distributing plant, but who during the month receives no milk from other dairy farmers and disposes of no other source milk as Class I milk on routes.

A producer-handler would be permitted to receive from pool plants not more than 5,000 pounds of milk during the month or 5 percent of his own Class I disposition, whichever is less. Also, the producer-handler would be required to provide proof satisfactory to the market administrator that the maintenance, care, and management of the dairy animals and other resources necessary to produce milk handled (excluding transfers from pool plants and nonfat solids used to fortify Class I products) and the operation of the processing, packaging, and distribution business are his personal enterprise and risk.

The order is not intended to establish minimum prices for such operators 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 provisions for exempt status.

Proponents of the order proposed in the notice of hearing no limits upon the quantity of milk that producer-handlers might receive from pool plants without pooling their own production. At the hearing, however, they supported a handler's proposal that the producer-handler exemption from pricing and pooling his production and sales should apply only if no milk were received from pool plants and Class I disposition would not exceed 35,000 pounds monthly.

There are no extensive producer-handler operations in the South Texas market. Only one person was identified as operating in such a manner that he would likely qualify as a producer-handler. Two handlers have own-farm production, but buy from other producers a substantial volume of milk for their Class I sales.

The exemption from pricing and pooling should be limited to bona fide producer-handlers. A producer-handler, as distinguished from a handler who operates a pool plant, distributes to retail or wholesale outlets milk which is mostly from his own-farm production. A handler operating a pool plant markets milk received from producers or from other pool plants. The producer-handler maintains control of his milk from its source at the farm until its ultimate disposition. Therefore, he is in a position to adjust his farm production closely to his fluid milk business needs and assumes the burden of maintaining the reserve supply of milk for his fluid milk operations.

The situation in this market makes it appropriate that the producer-handler's exemption from pooling and pricing be contingent upon his meeting certain conditions. Such requirements are necessary to assure that the sale of his milk will not have a disruptive effect on the orderly marketing of producer milk in the South Texas market.

Exemption from regulation as a producer-handler should be limited to a person whose own-farm production is the primary source of milk for his Class I disposition, except for nonfat solids used to fortify Class I products. This may be accomplished by limiting his supplemental receipts of fluid milk products from pool plants under the South Texas order to an amount not exceeding 5,000 pounds per month or 5 percent of his Class I disposition, whichever is less. Such a limit will not permit a producer-handler to depend upon pool sources for regular supplies to meet substantial changes in the relationship of his supplies to his demand for milk. Any supplemental supplies of milk which may be obtained from pool plants may, by virtue of the type of operation involved, be presumed to be for fluid use and should be classified at the pool plant as Class I milk. Any milk which a handler receives from a producer-handler may be considered to be surplus to the producer-handler's operation and should be allocated as other source milk to the lowest class utilization at the pool plant of a handler and priced as Class II.

The proposal that a producer-handler with Class I disposition of 35,000 pounds or more in a month should lose his exemption from regulation should not be adopted. This record provides no basis for determining that Class I disposition of 35,000 pounds monthly is the level at which a producer-handler's operations would substantially disrupt the operation of the South Texas order to the detriment of producers supplying the market.

If producer-handlers were permitted to purchase fluid milk products from other sources without becoming fully regulated, it would give them an undue competitive advantage over other handlers in the market. This is so because they would be able to obtain full value of their Class I sales without assuming the burden of their own surplus. However, as long as they produce their own Class I needs with limited supplemental supplies from pool plants, maintain their necessary reserves, and handle their own excess milk, producer-handlers will not have a significant advantage over regulated handlers under present marketing conditions.

Fluid milk products. "Fluid milk products" should mean milk, skim milk, buttermilk, flavored milk, flavored milk drinks, sour cream, and sour cream products labeled Grade A; cream, or any mixture in fluid form of cream and milk or skim milk, concentrated milk or skim milk. The definition would not include eggnog, frozen dessert mixes, yogurt, aerated cream products, evaporated milk, condensed milk, or skim milk and sterilized products in hermetically sealed metal or glass containers. The items designated as fluid milk products pursuant to this definition are those products, which when disposed of by handlers are considered as Class I milk.

The proposed fluid milk products definition differs from that proposed at the hearing. These differences are discussed later herein under the findings with respect to classification.

Other source milk. Other source milk should be defined as all skim milk or butterfat contained in, or represented by fluid milk products received at a pool plant during the month, except fluid milk products from other pool plants, and producer milk from a cooperative in its capacity as a handler on bulk tank milk. Other source milk would include all fluid milk products from plants other than pool plants. It would also include manufactured dairy products from any source which are reprocessed or converted into another product or which are not otherwise accounted for at the plant.

A regulated plant may have several types of receipts which may be intermingled. It, therefore, becomes necessary to reconcile all receipts with disposition records of the plant to arrive at the classification of producer milk. Thus, an other source milk definition is needed.

(b) *Classification of milk.* Producer milk received by handlers should be classified in two classes, according to use. Class I milk should include those forms of disposition intended for the fluid market. The quality requirements for Grade A milk to be used for fluid consumption, as compared to milk for manufacturing use, are specified in sanitary regulations of State and local governmental authorities. The extra cost of producing such higher quality milk and delivering it to market requires that the price for milk used in Class I be considerably above the manufacturing milk price. The definition of Class I use of milk in the manner described, therefore, provides the means of returning to producers the higher price according to the quantity of milk so used.

Class II milk, on the other hand, is that milk which is in excess of Class I needs. It must be disposed of outside the fluid market, primarily in the form of manufactured dairy products. In such uses milk from producers competes with ungraded milk from other sources and has only a manufacturing milk value. Therefore, to assure its orderly disposition outside the fluid market, such milk must be classified and priced competitively with ungraded milk used in manufacturing.

In conformance with these objectives, milk and milk products received by handlers should be classified on the basis of the form in which, or the purpose for which used or disposed of by the handlers. The skim milk and butterfat received in milk and milk products should be classified separately since the proportion of skim milk and butterfat in products disposed of varies.

Furthermore, milk is received by handlers from various sources, including dairy farmers, other regulated handlers, and unregulated sources. In many instances 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 of the various sources of supply in order to establish the classification of producer

milk and to apply the classified pricing plan.

Class I milk. The milk product dispositions included in Class I milk are those in the form of fluid milk products as previously defined, with limited exceptions which are discussed under the heading "Class II milk". These are the uses for which Grade A milk is required under the ordinances applicable in the marketing area.

It was proposed that fluid milk products should include egg nog, all sour cream, whether labeled Grade A or not, and ice cream and mellorine mixes in 5-gallon or smaller containers. The recommended decision concluded that these products should not be included in the fluid milk products to be classified as Class I when disposed of to trade outlets because the record showed that such products were not required to be from Grade A sources. Certain exceptions claim that health regulations of the State of Texas have since been amended, effective September 1, 1968, to require certain of these products be made from Grade A milk and carry a Grade A label. To take official notice of any such change in regulations at this stage of this proceeding would require issuance of a revised recommended decision with opportunity for exceptions. It is concluded that the importance of the classification of these products does not justify the delay in issuance of a South Texas order that would be involved. Accordingly, such products are omitted from the fluid milk product definition.

The actual weight of the product leaving a handler's plant is normally the quantity accounted for as Class I disposition. Fortified milk products prepared by the addition of nonfat solids require a modification of this procedure. Such products should be classified as Class I only to the extent of the weight of a like volume of unmodified product of the same butterfat content. To maintain uniform accounting, the added solids should be converted to their skim milk equivalent, but that in excess of the quantity classified as Class I should be classified as Class II milk. The addition of the solids used in fortification does not displace producer milk in Class I except to the minor extent that the volume of product is increased.

Concentrated milk, from which water has been removed, when disposed of for fluid consumption in consumer packages should be accounted for as Class I in a quantity equal to the skim milk and butterfat used to produce it. The consumer may restore this product to its original volume by restoring the water removed. The restored volume thus competes with a like volume of products delivered in their original form.

Class I milk should also include inventories of fluid milk products in packaged form at the end of the month. Such packaged products have been prepared for disposition early in the following month. Administrative feasibility has generally required that fluid milk products accounted for as inventory under milk orders be limited to those physically located in the plant where processed. Packaged milk moved to distribution points has thus been classified as Class I disposition even though it may be on hand at the distribution point at the end of the month. If packaged inventories are classified as Class I milk the monetary importance of their exact location in the distribution system will be minimized.

The packaged inventories classified as Class I will be allocated to the plant's Class I disposition in the following month. Likewise, the packaged fluid milk products on hand at the effective date of the order will be allocated to the first month's Class I sales. The proposal to provide a different allocation for the first month of regulation is not necessary in the institution of a new order, as is the case in which classification is changed under an existing order.

Provision should be made to adjust the value of the packaged inventories allocated to the following month's Class I disposition to compensate for any change in Class I prices between the 2 months. This will insure uniform costs to handlers for all Class I disposition in each month, regardless of the extent to which they have accumulated inventories.

Class II milk. Class II milk would include all skim milk and butterfat used to produce any product other than a fluid milk product. It thus would include milk used in manufactured products such as ice cream, ice cream mix, frozen desserts, cottage cheese, evaporated and condensed milk, nonfat dry milk, butter, and cheese.

Butterfat and skim milk used to produce Class II products should be considered disposed of when so used. Handlers will need to maintain production records of such products to establish use in Class II.

Besides use in manufactured dairy products, which compose the bulk of Class II use, Class II milk would also include shrinkage within certain limits, disposal in fluid form for livestock feed and in bulk fluid form to commercial food processing establishments at which it is used in food products composed principally of nondairy ingredients prepared for consumption off the premises, fluid milk products dumped with opportunity for verification, and bulk fluid milk products in inventory at the end of the month.

Producers proposed that milk in excess of Class I be divided into two classes. Basically, this proposal would have classified as Class II milk, skim milk and butterfat used to produce ice cream, other frozen desserts, cottage cheese, and deliveries to commercial food processing plants. Remaining uses in excess of Class I would have been classified as Class III milk. The price for Class II milk would have been 25 cents per hundredweight higher than for Class III milk.

While this proposal purported to apply the higher classification and pricing to all skim milk and butterfat used to produce ice cream and frozen dessert mixes, the proponents testified that they did not intend it to apply to condensed milk or nonfat dry milk processed from producer milk and subsequently used to produce ice cream. These are forms in which the nonfat milk solids content of ice cream mix is brought to the desired level. Since the proposed increased price would have applied only to the skim milk component, a major portion of the milk solids used in ice cream and frozen desserts would not have been affected.

South Texas handlers do not now produce cottage cheese in their fluid milk plants from fresh fluid skim milk. One such handler produces his cottage cheese at a manufacturing plant from milk diverted for manufacturing use. Another handler produces cottage cheese for sale from his Houston plant at a plant in the North Texas area. Still another buys dry curd from a plant at Springfield, Mo. No evidence was presented concerning the source of the cottage cheese sold by other major handlers.

No evidence was presented concerning the extent to which milk to be regulated by the order is used in commercial food processing plants, nor the forms in which it is used.

Neither the North Texas nor San Antonio order provides a separate class for the uses to which the proposed Class II would apply. Several South Texas handlers have plants under one or both of these orders.

In view of these circumstances it is concluded that the proposed Class II classification should not be adopted on the basis of this record. Such classification would not have a uniform application to the varied operations of the handlers to be regulated.

Fluid milk products in bulk form on hand at the end of the month should be classified as Class II milk. It is probable that they will be used in the production of nonfluid Class II products. If such products in inventory are needed for Class I use in the following month, provision is made in the allocation system for assignment to Class I, with a reclassification charge to bring the handlers' cost to the Class I value in that month.

Other Class II disposition. In addition to the previously described Class II milk dispositions, certain other dispositions in the form of fluid milk products would also be included in Class II milk, specifically (1) fluid milk products dumped if the market administrator has been notified in advance and afforded the opportunity to verify such dumping; (2) fluid milk products disposed of for livestock feed; and (3) fluid milk products disposed of in bulk to commercial food processors and used in a food product prepared for consumption off the premises.

Class II classification of dumpage and animal feed recognizes that such disposition of fluid milk products represents a value considerably less than normal fluid milk disposition on routes to retail and wholesale outlets.

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 skim milk and butterfat dumped, provided that the market administrator is notified in advance and afforded the opportunity to verify the dumping.

It would be expected that in most instances fluid milk products disposed of for animal feed would be primarily nonsalvageable route returns. In some instances, however, there may be small quantities of skim milk and butterfat in fluid milk products which during processing become nonsalable for human consumption. It is reasonable that these quantities also be classified as Class II if disposed of for livestock feed. A plant operator should maintain sufficient records to establish in every instance the quantities of skim milk and butterfat involved, and show a written receipt for every disposition as livestock feed.

Fluid milk products disposed of to commercial food processing establishments for use in preparation of food products also should be Class II milk. A Class II classification of such fluid milk products will price them competitively with alternative supplies, such as nonfat dry milk and condensed milk, which are also used for the manufacture of such food products.

Proof of class use. Except for the quantities of Class II shrinkage provided for in the order, all skim milk and butterfat for which a handler cannot establish utilization must 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. The burden of proof should be on the handler to establish the utilization of any milk as being other than Class I milk.

Shrinkage. Shrinkage is the loss of skim milk and butterfat experienced in plant operations. Since shrinkage represents disappearance of milk for which the handler must account but for which no return is realized, it should be considered Class II milk to the extent that the amount is reasonable, and is not the result of incomplete or faulty records.

The maximum shrinkage allowance in Class II at each pool plant should be 2 percent of receipts directly from producers, plus 1.5 percent of receipts from a cooperative association as a bulk tank handler (2 percent if the plant accepts the milk at farm weights). The allowance would also include 1.5 percent of receipts (except cream) from other pool plants. One and a half percent of receipts from other order plants and unregulated supply plants would be included except when such receipts were designated for Class II use. The allowance would be reduced by 1.5 percent of bulk fluid milk products (except cream) disposed of to other milk plants, except that the reduction would be 2 percent on diversions to plants on the basis of farm weights.

Provision is also made that cooperative associations may account as Class II for up to one-half percent of the milk received from producers, if farm weights are not used as the basis of receipt at the plant to which delivered, and any such milk not delivered to pool plants and nonpool plants.

The 2 percent maximum shrinkage allowance and the division of shrinkage are included in the North Texas order and many other Federal orders. They are considered reasonable under normal circumstances. The division of shrinkage recognizes that part of the handling in which shrinkage occurs has taken place prior to receipt at the plant of ultimate disposition. Milk collected at the farm in bulk tank trucks is measured at the farm. Some loss would normally occur during the transfer operation between the farm and the plant. If a cooperative association is the handler when such loss occurs and the plant operator is not accounting for the milk at farm weights the cooperative association would be the handler responsible for the classification of such lost milk. A shrinkage allowance of one-half percent to be classified as Class II milk should be provided.

To provide equitable application of shrinkage provisions to all handlers who may have various kinds of milk receipts, the rate of 1.5 percent shrinkage allowance should apply to all receipts of bulk fluid milk products, whether from other pool plants, unregulated plants, or other order plants. Exceptions to this rule should be made with respect to other source receipts for which Class II utilization is requested, and receipts of cream from other pool plants. No limit need be placed upon shrinkage of other source milk so designated for Class II use. When cream is separated in the plant of first receipt, losses are larger than those incurred in other operations. *It is, therefore, provided,* That when bulk cream is moved between South Texas pool plants or from a South Texas pool plant to any other plant the first plant will retain the entire 2 percent allowance.

In computing a handler's total shrinkage allowance, 1.5 percent of bulk fluid milk products (except cream) disposed of to other milk plants should be deducted. If the transferee plant is a pool plant it will be allowed Class II shrinkage in this amount.

To assure an equitable assignment of total shrinkage between those categories of receipts on which the prescribed limits apply and other receipts in bulk form for which shrinkage limits do not apply, a proration procedure which recognizes the relative limits provided for receipts of various kinds and the reduction for dispositions to other plants should be used. This is provided by using in such proration a quantity of milk equal to that for which the total shrinkage allowance of the plant would represent two percent.

Transfers and diversions. Milk transferred from a pool plant to another plant should be classified in accordance with specific rules. These generally relate to the assignment to utilization in the plant to which transferred. The rules of classification herein provided would likewise apply to milk diverted from the farm to nonpool plants as well as to transfers from pool plants to such plants.

Fluid milk products transferred from a pool plant to another pool plant should be classified as Class I milk unless utilization as Class II milk is claimed by both handlers on their monthly reports of utilization. Sufficient Class II use must also be available at the transferee plant after allocation of nonpool receipts. Certain limitations are also provided if the transferee plant has received unregulated milk or other order milk to be assigned Class I use at that plant. These are designed to avoid high-utilization plants serving as a conduit for assignment of such milk to a higher utilization than it would have received by direct delivery to the second plant. Transfers to a producer-handler are classified as Class I milk. Since a producer-handler does not share his Class I sales with producers, any such transfers should be at the Class I price.

Transfers or diversions to a nonpool plant that is not regulated by another order should be classified as Class I milk unless claimed in another class by the transferor handler and the operator of such nonpool plant maintains adequate records of receipts and utilization and makes them available to the market administrator. In such case the skim milk and butterfat transferred is first assigned to Class I disposition of the nonpool plant in regulated areas, and thereafter to other Class I usage in excess of receipts from dairy farmers regularly furnishing milk to the nonpool plant, and any remainder to Class II use of the plant. Provision is made for sharing the Class I utilization in the case of transfers to the same nonpool plant from other regulated plants. No limit is placed upon the distance to which fluid milk products may be transferred to a nonpool plant under these conditions.

This method of classifying transfers and diversions of milk to nonpool plants promotes equitable treatment for milk priced under this and other orders that may be transferred to the same nonpool plant. It gives priority to dairy farmers directly supplying a nonpool plant with respect to sales outside regulated areas. At the same time, it allows orderly disposition of milk supplies which cannot be handled economically at pool plants.

The rules for classification of transfers of fluid milk products to plants regulated by other orders provide that such milk shall be classified in the utilization to which assigned in the transferee plant. The findings with respect to allocations cover the rules for such assignment.

Allocation. The value of producer milk is established on the basis of its classification and the class prices. Since handlers may receive milk from several sources besides producers, the order must provide a method of assignment of receipts from all sources during the month to Class I and Class II.

The system of allocating handlers' receipts to the two classes should be similar to that adpoted in the Assistant Secretary's June 19, 1964, decision for 76 milk orders (which included the nearby Texas 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. Official notice was taken of that decision (29 F.R. 9213). 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. Proponents testified that the method adpoted as a result of the June 19, 1964, decision is appropriate in this area and will coordinate these regulations with respect to the treatment of unregulated milk and other order milk with comparable regulations under other Federal orders. Consequently, they adopted the findings and conclusions contained in that decision as their own justification for incorporating these provisions. There was no opposition and no proposal to alter the provisions in any way.

The aforesaid decision sets forth the standards for dealing with unregulated milk under Federal orders generally and the system of allocation to be included in all orders. It describes the appropriate treatment of other order milk received at pool plants so as to coordinate the applicable regulations on all movements of milk between Federal order markets. This record indicates that the findings and conclusions of the aforesaid decision are equally applicable under current conditions in the proposed marketing area and, accordingly, are adopted in their entirety as if set forth in full herein.

Under these allocation provisions the aggregate utilization of milk in all pool plants of a handler operating two or more such plants is used to determine the quantity of certain receipts of other source milk to be assigned to each class. Proponents had proposed that allocation be made on a plant by plant basis with certain adjustments of utilization between plants whenever proration on the basis of such aggregate utilization would assign to the other source milk utilization in any class in excess of that available in the plant at which it was received. Such adjustments distort the resulting charges computed with respect to receipts at individual plants. An identical total charge for the handler is computed if receipts and utilization of all his pool plants are combined (eliminating utilization based on movements of milk between such plants) for allocation whenever there are receipts of the type of other source milk involved. The market administrator can assist the handler in dividing the total charge between plants, if requested. The allocation provisions in the attached order use system allocation under the conditions described.

(c) *Class prices.* Minimum class prices should be established in the proposed order which will assure the maintenance of an adequate, but not excessive, supply of Grade A milk for the fluid market, and the orderly disposition of the necessary reserve supply for such fluid market sales.

Class I price. The South Texas Class I price for the initial 18-month period of operation of the order should be established by adding $2.48 to a basic formula price equal to the average price paid in the preceding month for manufacturing grade milk in the States of Minnesota and Wisconsin, adjusted to a 3.5 percent butterfat basis. For the period through April 1969, an additional 20 cents should be included in the computation and the basic formula price should be not less than $4.33.

These pricing provisions would result in a South Texas Class I price 36 cents in excess of the North Texas order price under the present provisions of that order. Class I prices of several other Texas orders are based upon the Class I price of the North Texas order, with addition of amounts based upon mileage from Dallas, the principal city of the North Texas area, to the pricing point based in the respective orders. The rate used in these computations is 1.5 cents per 10 miles. For instance, the San Antonio order price is the North Texas price plus 42 cents; San Antonio is 272 miles from Dallas; the Austin-Waco price is 15.5 cents over the Dallas price at Waco, 93 miles from Dallas; 30.5 cents over the Dallas price at Austin, 194 miles from Dallas, and 38 cents over the Dallas price at New Braunfels, the pricing point of the Austin-Waco order, 242 miles from Dallas. The Corpus Christi order price at Corpus Christi, 379 miles from Dallas, is 66 cents above the Dallas price.

The distance from Dallas to Houston, the principal city of the South Texas market, is 241 miles, so that a 36-cent differential above the North Texas price at Dallas corresponds closely to the pricing relationships of these other orders.

Various South Texas handlers offered testimony in favor of lower prices. One such handler wanted the Houston price to be the same as the Dallas price, another claimed it should be 7.5 cents over the Dallas price, and another suggested 23 cents over the Dallas price. The operator of a Beaumont plant suggested Dallas plus 14 cents as an appropriate price for plants at Beaumont.

The proponent of the Dallas price believed regulation of the South Texas area should be accomplished by extension of the North Texas marketing area. He furnished little data to support a price equal to Dallas in the Houston area, regardless of the regulation under which it applied.

Other handlers attempted to use mileages from Chicago to various points to support their proposals. The principal alternative sources of supply for the South Texas area are, however, the other Texas orders in this area. As shown earlier, North Texas milk is sold in the South Texas area. It is also sold in the Austin-Waco, San Antonio, and Corpus Christi areas.

Furthermore, several South Texas handlers operate plants regulated by one or more of the other Texas orders. The Borden Company, with South Texas plants at Houston and Beaumont, operates a North Texas pool plant in Dallas, a San Antonio pool plant in San Antonio, and a plant regulated under the Corpus Christi order; it also operates presently unregulated plants at Tyler and Marshall for which regulation under the North Texas order is under consideration of this hearing; it also operates plants regulated under other Texas orders (Central West Texas, Texas Panhandle, Lubbock-Plainview). The Carnation Co. operates a plant regulated by the San Antonio order, the Southland Corp. operates a Dallas plant and a Fort Worth plant each regulated under the North Texas order, and a presently unregulated plant at Tyler which makes sales in the South Texas marketing area. Schepps Dairy, Inc., with a plant at Jacksonville, Tex., to be regulated by the South Texas order also operates a Dallas plant regulated by the North Texas order.

To provide a Class I price under the South Texas order based upon a substantially lower basis of relationship to the North Texas prices than the prices now provided for the Austin-Waco, San Antonio, and Corpus Christi orders would encourage shifting of sales from plants regulated under these other orders to plants subject to the South Texas order operated by the same handlers. Likewise, a higher price in relationship to the North Texas price than in the other orders would encourage movement of South Texas sales to plants under other orders.

While the South Texas "base" price was only 30 cents over the North Texas Class I price, it applied to plant requirements rather than being restricted only to Class I usage. The proposal of producers for a 36-cent differential should be adopted for the initial period of operation of the South Texas order. It is provided that this price should expire at the end of 18 months from the effective date of the order.

It makes little difference, under present conditions, whether the pricing mechanism is stated as North Texas plus 36 cents or by use of a basic formula (Minnesota-Wisconsin series) plus $2.48 Class I differential. Official notice is hereby taken that as of April 1, 1968 (33 F.R. 5200) the North Texas order was amended to remove supply-demand provisions, inoperative since January 1967, but which could have modified that price upon the basis of supplies and sales. For the initial 18-month period it is concluded that a basic formula and Class I differential should be used.

Consideration of temporary additional pricing provisions was given at a public hearing held February 23, 1968, at Memphis, Tenn. As a result of that hearing, a temporary 20-cent increase in Class I differentials under the North Texas and other Federal milk orders using basic formulas was made effective through April 1969, and provision was made through the same date that the basic formula price used in computing Class I prices should not be less than $4.33. Official notice is hereby taken of the decision of the Assistant Secretary of Agriculture issued April 15, 1968 (33 F.R. 6016) with respect to such orders. The findings and

conclusions of this decision are equally applicable to the proposed South Texas marketing area. It is hereby concluded that for the period from the effective date of the order through April 1969 an additional 20 cents should be added to the basic formula price, which should be not less than $4.33.

Class II price. The price for Class II milk should be the basic formula price for the month, but not to exceed a butter-powder formula price plus 10 cents.

The proponent association proposed that what is to be included in Class II milk be divided into two classes. For the lower-priced class they proposed use of the higher of a butter-powder formula price or a cheese formula price for the months of July through March and the butter-powder formula price less 14 cents for the months of April, May, and June. For milk used in certain ice cream mixes and for production of cottage cheese, they proposed a price 25 cents per hundredweight higher.

Milk disposed of in manufactured (Class II) uses must be priced under the order at a level which will result in the orderly marketing of such milk. Within this concept, the price level should be that which will return the highest possible return to all producers in the market.

A Class II price based on the Minnesota-Wisconsin manufacturing milk price series, not to exceed a limit related to butter and nonfat dry milk values, should adequately meet these pricing objectives. The desirability of using a competitive pay price is based on the premise that in the highly competitive dairy industry average prices which are paid in areas where there is substantial competition for manufacturing milk provide as good a measure of its value as can be obtained. The Minnesota-Wisconsin price series is representative of prices paid to farmers for about one-half of the manufacturing grade milk sold in the United States. In Minnesota about 84 percent of the milk sold off farms is of manufacturing grade and in Wisconsin, about 58 percent. (Official notice is taken of "Prices Received by Farmers for Manufacturing Grade Milk in Minnesota and Wisconsin, 1961–66" SRS–11 issued November 1967 by the Crop Reporting Board, Statistical Reporting Service, USDA). There are many plants in these States which are competing for such milk supplies. This price series reflects a price level determined by competitive conditions which are affected by demand in all of the major uses of manufactured dairy products. Further, it reflects the supply and demand of manufactured dairy products within a highly coordinated marketing system which is national in scale. Milk products which are manufactured by South Texas handlers compete within this system.

As of January 1, 1968, the Minnesota-Wisconsin price series was used to price milk in manufacturing classes in 50 Federal milk orders. In 16 of these orders, provision is made that the price shall not exceed a price computed from the market prices of butter and nonfat dry milk solids by more than 10 cents. This has proved to be a satisfactory basis of providing an appropriate price during periods when, for any reason, the Minnesota-Wisconsin price deviates significantly from its normal relationship to the values of these products.

The butter-powder formula price used for this purpose contains substantially the same yield factors and "make allowances" as that proposed by the proponents for pricing Class III milk in the months of July through March. They proposed, however, a formula under which a price for milk of 40 percent butterfat would be computed to be reduced to a 3.5 percent basis by the Class II butterfat differential. In the formula price proposed herein as a limiting factor on the Minnesota-Wisconsin price, the yield factors are adopted to produce a price for 3.5 percent milk.

In the year 1967 the provisions proposed herein would have resulted in an average Class II price of $3.92 per hundredweight, 7 cents less than the Minnesota-Wisconsin average of $3.99. The provisions proposed by producers for their Class III price would have averaged $3.784 for the year, or a total of 20.6 cents per hundredweight below the Minnesota-Wisconsin price. Since the record contains no data from which it may be determined how the milk included in Class II as proposed would have been divided in the separate classes proposed by producers, no comparison can be made with the average returns for Class II and Class III milk under their proposals.

The price for Class II milk in the South Texas market should be more closely aligned with the prices paid for manufacturing milk in other areas than would result from use of the producer Class III price proposal as a means of pricing Class II milk. While the proponent's proposed Class III price is identical with the Class II price of the North Texas order, other orders under which the same cooperative association markets member milk price Class II milk at the Minnesota-Wisconsin price. Some such orders use the butter-powder limit proposed herein, while others do not. It is hereby concluded that the pricing provisions described above should be used to price Class II milk under the South Texas order.

Butterfat differentials. The class prices established for milk of 3.5 percent butterfat content should be adjusted by appropriate butterfat differentials to reflect the actual butterfat content used in each class. Combinations of skim milk and butterfat utilized in each class may contain percentages of butterfat other than 3.5 percent.

Such butterfat differentials should be determined from the Chicago butter price. The Class I differential should be 0.125 times the butter price for the preceding month; the Class II differential should be 0.115 times the butter price for the current month.

The North Texas and San Antonio orders use a 0.125 factor in computing the Class I butterfat differential. A factor of 0.12 is used in the Austin-Waco and Corpus Christi orders. In view of the more substantial competition with milk priced under the North Texas and San Antonio orders, it is concluded that producer's proposal for use of the 0.125 factor should be adopted. There was no testimony in opposition to this proposal.

The factor of 0.115 is one generally used in most other orders for computing the Class II differential. It has proved satisfactory for this purpose in these other orders. It, therefore, should be used in the South Texas order.

Location differentials. Location adjustments should apply to Class I milk received at plants located in places more than 60 miles from the nearer of the city halls in Houston or Beaumont, Tex. (outside of Zone I). The same adjustment rates should apply to the uniform blend price for milk received at such plants.

Fluid milk products, because of their bulky, perishable nature, incur a relatively high transportation cost. In the case of producer milk received at a plant distant from the sales area, the handler must incur the transportation cost in moving the milk from such plant to the area where it is sold. The producer who delivers his milk to such plant saves the additional cost of having his milk hauled to the distant city market. Hence, to achieve uniform prices for handlers and producers it is necessary to apply location differentials to both the Class I price and the blend price.

Milk expected to be priced under the South Texas order is presently being received at plants outside Zone I at Bryan, 96 miles from Houston, Lufkin, 119 miles from Houston, Rusk, 160 miles from Houston and Jacksonville, 174 miles from Houston. These points lie generally to the north. In addition, distribution in the marketing area is made by plants located at Tyler and Marshall, 197 and 220 miles, respectively, from Houston. In the absence of expansion of the North Texas area, it is probable that plants at this location would be subject to regulation of the South Texas order.

Producers proposed that minus location adjustments should apply to Class I and blend prices at points north of U.S. Highway 90 and outside of Zone 1. They proposed that at 60, but less than 100 miles from the city hall in Houston, the rate of adjustment be 12 cents; at distances 100 to 150 miles 18 cents was proposed, and at 150 to 225 miles, 26 cents would apply. They proposed that plus adjustments apply at plants south of Highway 90 and at the same rates for 60–100- and 100–150-mile zones. Beyond the specified zones for which these rates would apply, adjustments at 1.5 cents per 10 miles from the Houston city hall were proposed for both plus and minus locations.

The proposal for minus locations for plants north of Zone I and plus locations south of Zone I follows the general direction of pricing under Texas orders. The only potential application of the plus differentials shown on the record affects a plant at Victoria, Tex., presently regulated under the Corpus Christi order. Victoria was not proposed for inclusion in the marketing area. Should this plant extend its sales into the marketing area

and have greater sales than in the Corpus Christi marketing area, the location adjustments proposed would result in a South Texas price approximating that applicable under the Corpus Christi order.

Location adjustment zones of 60–100 miles at 12 cents, 100–140 miles at 18 cents, 140–180 miles at 22 cents and 180–225 miles at 26 cents will more appropriately adjust the competitive situation of the Lufkin, Rusk, Jacksonville, Tyler, and Marshall plants than the zones proposed. In addition, the use of Highway 90 as the dividing line between plus and minus differentials should be modified to apply only minus adjustments in Fayette County. This will avoid substantial price differentials that otherwise would result at Schulenberg and La-Grange. While South Texas pool plants were not operated at these points at the time of the hearing, a nonpool plant to which producer milk is diverted is located at Schulenberg, and the major cooperative association owns a plant at La Grange which has in the past been used to serve the market.

To insure that milk will not be moved between plants at producer's expenses for Class II use, the order should provide a limit on the quantity of milk transferred between some plants that may receive Class I location differential credit. Such credit should be allowed only to the extent to which 95 percent of producer milk receipts at the transferee plant are less than the Class I disposition (after allowance for any Class I disposition allocated to receipts from other order plants or unregulated supply plants). If milk is received from more than one pool plant the assignment should be made in sequence to shipping plants having the same price, to those having a higher price, and then successively to those having a lower price in the order in which the highest price applies. This will provide an equitable basis for pricing the milk which moves between pool plants.

Use of equivalent prices. If for any reason a price quotation required by the order for computing class prices or for other purposes is not available in the manner described, the market administrator should use a price quotation or price factor determined by the secretary to be equivalent to that required. Including such provision in the order will leave no uncertainty with respect to the procedure which shall be followed in the absence of any pricing factors which are customarily used and thereby will prevent any unnecessary interruption in the operation of the order.

(d) *Distribution of proceeds to producers.* The proposed order should provide for a marketwide equalization pool to implement a system of distributing to producers the payments made by handlers for milk at class prices. The provisions should specify the terms under which such payments will be made and administrative means of accomplishing the payments which must be made for milk regulated by the order.

Under a marketwide pool, the total money obligation of all handlers in the market is combined to compute a uniform price for producer milk to be paid producers for the market. This means of pooling proceeds from the sale of milk assures each producer supplying the order market that he will receive a return based on his pro rata share of the Class I and reserve milk uses in the market. To accomplish this, a producer-settlement fund will be established by the market administrator to exchange monies among handlers so that a uniform price adjusted for location of the milk and its butterfat content is returned to each producer equitably.

Under marketwide pooling, each producer will receive a uniform price for his milk reflecting the average utilization of all pool plants under the order. Each handler pays for milk in accordance with his own use at class prices. A handler will pay into the producer-settlement fund any plus difference in the value of his producer milk at class prices over its value at the market uniform price. Conversely, a handler will receive payment from the fund for any lesser value his producer milk has at class prices than the market uniform price. Thus, each handler is enabled to pay his producers the uniform price. Marketwide pooling is necessary in the South Texas market to obtain an equal sharing of the burden of market reserve milk by all producers.

The facilities in the several plants in this area for handling producer milk in excess of Class I needs vary considerably. A number of the plants are almost exclusively Class I operations and others have extensive manufacturing facilities. A large part of the milk supply for handlers in this market is furnished by cooperative associations. Without marketwide pooling the burden of the reserve supplies would be carried by the cooperatives for which only a Class II sale is available generally. However, handling of a sufficient reserve supply is necessary to insure an adequate supply for the market at all times.

Marketwide pooling will result in equitable distribution among all producers of the low returns from Class II milk. It will contribute thereby toward market stability and attainment of an adequate and dependable producer milk supply for the proposed marketing area.

Payments to producers. Each handler under the order should pay each producer for milk received from him for which payment is not made to a cooperative association at not less than the uniform price computed for the month adjusted by butterfat and location differentials. Provision is also made for partial payments for milk received during the first 15 days of each month.

A proposal included in the notice of hearing would have required handlers to pay the market administrator at the applicable class prices for producer milk. He, in turn, would have been charged with distribution of such monies to producers through payments at the uniform price. This proposal was abandoned by the proponent and was not supported by anyone. Accordingly, no further discussion of it is required. The proposed payment provisions in the attached order should be similar to those which are commonly included in Federal milk orders.

A partial payment at not less than the Class II price for the preceding month, without hauling deduction, would be required on or before the 25th day of the month for milk delivered by a producer during the first 15 days of such month. A final payment by handlers would be required on or before the 15th day after the end of the month in which the producer milk is received at the applicable uniform price for the month, less partial payments, and authorized deductions.

The Act provides for the payment by handlers to cooperatives for milk delivered by them and permits the blending of all proceeds from the sale of members' milk. Provision should be made for a cooperative to receive payment for member producers' milk. Taking title to milk of its members and blending the proceeds from the sale of such milk will tend to promote the orderly marketing of milk and will assist a cooperative in discharging its responsibility to its members and the market. Handlers would pay a cooperative collecting for its members 2 days prior to the dates of payment to individual producers. This will enable cooperatives to pay producers for whom they market milk on the same date other producers are paid by handlers.

Each handler would pay a cooperative association in its capacity as a handler on bulk tank milk delivered to a pool plant on the basis of uniform prices. Handlers would pay a cooperative in its capacity as the operator of a pool plant at the applicable class prices.

A cooperative as a diverting handler would be responsible for pooling milk of its members that is diverted to nonpool plants. In this capacity it would have the same responsibility for paying its members as a pool plant operator has in paying for producer milk received at his plant.

In making payments to producers, the handler would be required to furnish each producer (or his cooperative association) a supporting statement. This statement should show the pounds and the butterfat tests of milk received from such producer, the rate of payment for such milk, and the nature of any deductions claimed by the handler.

Producer-settlement fund. The necessary exchange of monies between handlers whose obligations at class prices exceed the amount to be paid producers and those whose obligations to producers exceed their costs of milk is facilitated by use of a producer-settlement fund. Provision for the establishment and maintenance of the producer-settlement fund as set forth in the attached order is similar to that contained in all other Federal orders with marketwide pools.

For efficient functioning of the producer-settlement fund, a reasonable reserve should be set aside at the end of each month. This is necessary to provide for such contingencies as the failure of a handler to make payment of his monthly billing to the fund or the payment to a handler from the fund by reason of an

audit adjustment. The reserve, which would be operated as a revolving fund and adjusted each month, is maintained in the attached order by deductions of not less than four nor more than 5 cents per hundredweight of producer milk in the pool for each month, with at least one-fourth of the pool reserve included in the computations of each month's uniform price.

Any payments on partially regulated milk received by the market administrator from any handler would be deposited in the producer-settlement fund. Money thus deposited would be included in the uniform price computation and thereby be distributed to all producers on the market.

Marketing services. Provision should be made in the order for marketing services to producers, such as verifying the tests and weights of producer milk and furnishing market information. These services should be provided by the market administrator and the cost should be borne by producers for whom the services are rendered. If a cooperative association is performing such services for its member-producers and is approved for such activity by the Secretary, the market administrator shall accept this in lieu of his own service.

Milk produced on a handler's own farm should be exempt from marketing service deductions, even though it is subject to the other provisions of the order. There are no payments to producers to verify on such milk and, therefore, no need to provide the same marketing services as are provided other producers.

There is need for a marketing service program in connection with the administration of the order in this area. Orderly marketing will be promoted by assuring individual producers that they have obtained accurate weights and tests of their milk. Complete verification requires that butterfat tests and weights of individual producer deliveries reported by the handler are accurate.

An additional phase of the marketing service program is to furnish producers with correct market information. Efficiency in the production, utilization, and marketing of milk will be promoted by providing for the dissemination of current market information on a market-wide basis to all producers.

To enable the market administrator to furnish these marketing services, provision should be made for a maximum deduction of 5 cents per hundredweight with respect to receipts of milk from producers for whom he renders such marketing services. Producers' proposal for marketing services would provide a maximum deduction of 7 cents per hundredweight. North Texas, however, contains a maximum deduction of 5 cents. Comparison of the number of producers involved and the expected volume of milk with that of other markets indicates that a 5-cent rate is reasonable and should provide the funds necessary to conduct the program. If later experience indicates that marketing services can be performed at a lesser rate, provision is made whereby the Secretary may adjust the rate downward without the necessity of a hearing.

Administration expense. Each handler should be required to pay the market administrator as his proportionate share of the cost of administration not more than 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe on producer milk (including such handler's own production) and on other source milk allocated to Class I (except milk so assessed under another Federal order). This assessment would not apply on milk handled at an exempt plant of a governmental agency. This deduction would apply to producer milk from a cooperative association handler pursuant to § 1121.12(d).

The maximum rate of administrative assessment of 4 cents per hundredweight proposed herein is the same maximum rate currently effective under the North Texas order. Proponents proposed a maximum administration assessment of 5 cents. Handlers opposed such higher rate.

The 4-cent rate should be adequate to assure that the market administrator will have sufficient funds to enable him to administer the order. Any lesser maximum rate would not give this assurance. In view of the anticipated volume of milk involved and the cost of administering orders in comparable markets, an initial rate of 4 cents per hundredweight is necessary to meet administration expenses under the proposed South Texas order. However, provision is made so that the Secretary may reduce the amount of the actual assessment at any time without the necessity of amending the order. Such action should be taken at any time experience indicates that a lower rate will provide sufficient revenue to administer the order properly.

The Act provides that the cost of administering an order shall be financed through an assessment on handlers. A principal duty of a market administrator is to verify the receipts and disposition of milk from all sources. Equity in sharing the cost of administration of the order among handlers will be achieved by applying the administrative assessment on the basis of Grade A milk received from dairy farmers at a plant and on other source milk allocated to Class I.

The order provides that a cooperative may act as the handler for milk produced by its members which is delivered directly from the farm to pool plants of other handlers. The cooperative is considered the handler for such milk only for the purpose of accounting to its individual producers. The milk is producer milk at the plant of the receiving handler and is treated the same as any other direct receipts from producers. Therefore, the pool plant operator who receives the milk should pay the administrative assessment on it. The cooperative would be liable for administrative assessment only on milk representing any difference in farm weights and weights at the plant for which the pool plant operator may disclaim responsibility.

The order specifies minimum performance standards which must be met to obtain regulated status. With certain specified exceptions, operators of plants not meeting such standards would, under the provisions proposed in this decision, be required to either make specified payments into the producer-settlement fund on route distribution in the marketing area in excess of offsetting purchases of Federal order Class I milk or otherwise pay into such fund or to his dairy farmers, an amount not less than the full classified use value of receipts (computed as though such plant were a fully regulated plant).

The market administrator, in administering an order as it applies to the nonpool route distributor, must incur expenses in essentially the same manner as in applying the order to pool handlers. Partial regulation (as described) of such distributor does not, however, provide the same benefits to such handler as accrue to the fully regulated handler; i.e., the privilege of participation in the market pool and assurance of uniform price payments to his dairy farmers. If the nonpool route distributor elects to make a payment on his in-area sales at the difference between the Class I price and the uniform price for the market, the expenses incurred by the market administrator in administering the terms of the order on such handler are nominal and payment of the administrative assessment on his in-area sales reasonably would constitute his pro rata share of administrative expense.

In the situation where such a distributor for any reason actually pays his dairy farmers the full use value for their milk (computed at order prices), it has in the past on the basis of substantial record evidence in promulgation hearings, been found necessary in many areas to require payment by such distributor of an administrative assessment on his total receipts of milk in order to defray the costs of complete plant auditing to verify the utilization and payments as claimed. In large measure, such a distributor's operations are more comparable to those of a fully regulated handler and such assessment is substantially the same as for a fully regulated handler. There is reason to believe, however, that in some instances such an assessment might make possible a financial obligation under the order in excess of his total obligation through the alternative of electing to make payment into the producer-settlement fund. From the financial standpoint such a situation provides little practical alternative to such handler but to pay the required pool payment. In order to give more meaningful effect to the choice of an alternative, the pro rata share of the administrative expense of the order should be the regular assessment rate applied to such milk as is actually disposed of as Class I in the regulated area that exceeds Class I milk received from other regulated plants or other order plants, irrespective of whether the option to pay into the producer-settlement fund is elected by the unregulated distributor.

In the case of unregulated milk which enters the market through a fully regulated plant for Class I use, it is the

regulated handler who utilizes the unregulated milk as well as all other milk received and utilized. Also, the receipts and utilization of all milk at his plant are subject to verification by the market administrator. It is concluded, therefore, that the regulated handler should be responsible for payment of the administrative assessment with respect to such unregulated milk.

Interest payments on overdue accounts. Provision is made for the payment of interest on amounts due from handlers to the market administrator and from the market administrator to handlers for each month or portion thereof that such obligation is overdue.

Prompt payment of amounts due is essential to the operation of the order. Interest charges will encourage payment of amounts due on or before the specified date. The half percent per month rate provided herein is reasonable to compensate for the cost of borrowing money in accord with normal business practices.

(e) *Administrative provisions.* Provisions should be included in the order with respect to the administrative steps necessary to carry out the proposed regulation.

In addition to the definitions discussed earlier in this decision, which define the scope of the regulation, certain other terms and definitions are desirable in the interest of brevity and to assure that each usage of the term denotes the same meaning. Such terms as are defined in the attached order are common to many other Federal milk orders.

Market Administrator. Provision should be made for the appointment by the Secretary of a market administrator to administer the order. The powers and duties essential to the proper functioning of the market administrator's office are also defined.

Records and reports. Provisions should be included in the order requiring handlers to maintain adequate records of their operations and to make reports necessary to establish classification of producer milk and payments due therefore. Such reports are necessary for the computation of the uniform price and determination of each plant's continuing status under the order. The maintenance of adequate records is necessary to enable the market administrator to verify receipts and utilization as reported by the handlers and to verify that the several financial obligations arising under the order are fully discharged.

Handlers should maintain and make available to the market administrator all records and accounts of their operations, together with facilities which are necessary to determine the accuracy of information reported to the market administrator or any other information upon which the classification of producer milk depends. The market administrator must likewise be permitted to check the accuracy of weights and tests of milk and milk products received and handled, and to verify all payments required under the order.

Detailed reports to the market administrator and complete records available for his inspection by all handlers would be used to determine whether the plants of such handlers qualify as pool plants. Reports of handlers operating nonpool plants from which fluid milk products are distributed in the marketing area would also be used by the market administrator to compute the amounts payable to the producer-settlement fund on such unpriced milk.

A cooperative association having authority to market milk for member producers should have available to it information on the use of such milk by individual handlers in order that member milk may be directed to those handlers needing Class I milk. This will promote orderly marketing by enabling the efficient allocation among handlers of available milk supplies, permit the market to be serviced with smaller reserve supplies and assist producers in maximizing their returns. A provision therefore should be included to authorize the market administrator to provide this information when it is requested by such an association. For the purpose of this report, the utilization of member milk in each handler's plant would be prorated to each class in the same ratio as all producer milk is allocated to each class during the month.

It is necessary that handlers retain records to prove the utilization of milk and that proper payments were made therefor. Since books and records of all handlers cannot be completely audited immediately after receipt of the milk, it becomes necessary to keep such records for a reasonable period of time.

The order should provide limitations on the period of time handlers shall be required to retain books and records and on the period of time in which obligations under the order shall terminate. Provision made in this regard is identical in principle with the general amendment (made to all milk orders which were in operation on July 30, 1947), following the Secretary's decision of January 26, 1949 (14 F.R. 444). That decision, covering the retention of records and limitation of claims, was officially noticed at the hearing. It is equally applicable in this situation and is adopted as a part of this decision.

(4) *Expansion of the North Texas marketing area.* The 16-county marketing area comprising the North Texas marketing area should be expanded to include an additional 29 counties.

(a) *Interstate commerce.* The handling of milk in the territory proposed for inclusion in the North Texas marketing area is in the current of, burdens, obstructs, or affects interstate commerce in milk and its products. Milk produced in the State of Texas is commingled with milk received from dairy farmers or plants located outside Texas. Unregulated handlers in the area compete for fluid milk sales with handlers regulated under the North Texas order and the San Antonio order who procure milk from out-of-State sources. In the past, milk has been received at plants in the Marshall-Tyler area from plants in Missouri and Kansas. In addition, there is competition for sales in the proposed area from plants in Texarkana which receive milk from dairy farmers located outside the State of Texas.

Manufactured dairy products move across state lines and are received at plants in the proposed additional territory for the North Texas marketing area. Such products compete with similar products made in local plants from locally produced milk. These locally manufactured dairy products are sold in other States.

(b) *Need for regulation.* There is need for regulation of the handling of milk in an "East Texas" area adjoining the present North Texas marketing area. This should be accomplished by extension of the North Texas area.

North Texas handlers, particularly those who have plants in the Dallas area, distribute substantial volumes of milk in the "East Texas" area lying generally between the present North Texas marketing area and the Louisiana State line. For July 1967, route sales of North Texas handlers in such East Texas area totaled 3.5 million pounds. This was 5.7 percent of total Class I utilization for the market. One major North Texas handler disposes of more than 25 percent of the Class I sales from his Dallas plant in this general area.

The principal handlers with whom North Texas dealers must compete for sales in this general area operate unregulated plants at Tyler, Tex., and Marshall, Tex. There are two such plants at Tyler, each operated by a handler who also has a plant or plants regulated by the North Texas order. The Marshall plant is operated by the same handler as one of the Tyler plants. There are also two unregulated plants at Texarkana, Tex., operated by the same two handlers, which confine their major distribution to areas in which North Texas milk is not sold. Another Dallas handler now operates an unregulated plant at Jacksonville, Tex., from which he also competes for sales in the East Texas area, although his major sales are in the vicinity of Houston. A Lufkin handler who gets his milk supply from the Southern Division of Milk Producers, Inc., also extends his routes into this area.

The handlers operating the Tyler and Marshall plants are not required to pay for their milk supply at class prices in accordance with its use as are North Texas handlers. These plants have exceedingly high Class I utilization. The operator of one such plant claimed to operate on three percent "surplus". Cream products and cottage cheese are received from affiliated plants. Seasonal surpluses are transferred to affiliated South Texas plants for fluid use.

The operator of one Tyler plant contracts with individual producers to pay them in relation to the North Texas uniform or blend price. Under this contract he buys milk for 10 cents over the North Texas blend price in March through June, and 15 cents over such price in other months. For 1967, the prices he paid averaged 64.3 cents per hundredweight less than the North Texas Class I order price. The prices paid at the Marshall plant were also shown to be

higher than the North Texas blend price but averaged 46.3 cents per hundredweight less than the Class I price of the order. Pay prices of the second Tyler plant were not given for the record. This plant uses a base-excess plan similar to that of the Marshall plant, and was using an identical base price as of December 1967. Premiums which North Texas handlers paid in addition to the Class I price during certain months increased their 1967 average cost of Class I milk by an additional 20 cents per hundredweight.

Unregulated milk thus has a substantial price advantage over regulated milk in an area in which considerable volumes of regulated milk are sold. Independent estimates of the proportion of sales made by each handler in each county were presented by a handler selling North Texas milk and the operator of one of the Tyler plants. For a 14-county area these show that regulated milk represents from 35 to 40 percent of total sales. A small part of this is by a handler regulated by the San Antonio order.

It is claimed that additional sales formerly made by North Texas handlers but now supplied by unregulated handlers total as much as 2.5 million pounds monthly. In part this is attributed to the shifting of route sales from North Texas pool plants to unregulated East Texas facilities operated by the same North Texas handlers.

Some years ago a North Texas handler purchased a distributing plant located at Tyler and shifted Class I sales from his pool plant in Dallas to the unregulated Tyler plant. Later, another North Texas handler with route sales from his Dallas plant acquired the business of this handler, including the plant at Tyler. Class I sales previously distributed in East Texas from two pool plants in Dallas were thus transferred to the unregulated Tyler plant.

Late in 1965 another handler regulated under the North Texas order began to operate an unregulated plant in East Texas and shifted Class I sales distributed in East Texas from his pool plant at Dallas to the unregulated plant. Other multiple plant operators are in a position to take similar action because they operate both pool and nonpool plants.

Additional Class I sales in East Texas have been lost by North Texas regulated handlers. Pool plants at Fort Worth and at Greenville have ceased to distribute Class I milk in East Texas within the past year.

The principal advantage gained at an unregulated plant is the ability to buy milk from farmers at a blend price and sell virtually all of such milk for fluid purposes. A handler operating both regulated and unregulated plants probably can exploit these advantages more completely at his unregulated plant than an independent unregulated handler since the independent handler does not own a source of supplemental milk.

These unregulated milk dealers have maintained an advantage in paying the dairy farmers delivering milk to their unregulated plants because they have shifted surplus milk to pool plants under the North Texas order. This has resulted in reduced returns to producers delivering to the regulated plants and has lowered the prices which the handlers are obligated to pay. Hence, effectiveness of regulation is critically impaired by the shifting of Class I sales to unregulated plants and the shifting of surplus milk to the North Texas pool.

Multiple plant operators maintain a sufficient supply of producer milk at their regulated plants to supply not only their Class I sales from such plants but also to supply cottage cheese and supplemental milk to the unregulated plants. As reserve supplies of the regulated market increase for any reason, the competitive advantage at which unregulated plants procure their milk supplies likewise increase. This is because the increase in reserve supplies increases the difference between the Class I price regulated handlers pay and the uniform price upon which unregulated handlers base their paying price.

The Tyler and Marshall plants are supplied by approximately 150 independent producers. Many of these producers are located in the same areas as producers supplying the North Texas market. Many of the Tyler producers are located in Hopkins County, the county of heaviest production for the North Texas market. The disparity in prices paid to the independent producers and to North Texas producers has caused unstabilized marketing conditions. North Texas producers have been given incentive to seek higher prices by obtaining a market for their milk at the unregulated plants. Such conditions have caused disorderly and inefficient marketing of milk in the area.

As indicated elsewhere in this decision, it is expected that the Jacksonville and Lufkin plants will become regulated under the South Texas order. The Tyler and Marshall plants distribute some milk in areas proposed for regulation under the South Texas order. The areas proposed for the South Texas order, however, do not include the major distribution area of these plants. Since these plants are operated by handlers who also have other South Texas plants, it is probable that these plants would not become regulated under that order. They should be regulated under the North Texas order which prices the milk with which these plants compete in their major distribution areas.

It is necessary to expand the North Texas marketing area to cover the East Texas area to achieve stable and orderly marketing conditions in the distribution of fluid milk products. The extension of regulation will eliminate inequity between dairy farmers supplying such area and producers presently in the North Texas market who are carrying the burden of reserve milk supplies for the unregulated plants in the East Texas part of the proposed expanded area.

(c) *Territory to be added to marketing area.* The present 16-county North Texas marketing area, containing principally the cities of Dallas and Fort Worth, should be expanded to include the additional 29 Texas counties of Anderson, Bosque, Camp, Cherokee, Erath, Franklin, Freestone, Gregg, Harrison, Henderson, Hill, Hood, Limestone, Marion, Morris, Navarro, Panola, Rains, Red River, Rusk, Sabine, San Augustine, Shelby, Smith, Somervell, Titus, Upshur, Van Zandt, and Wood.

All these counties, plus Jack and Wise Counties, were proposed for inclusion in the expanded North Texas marketing area by the cooperative representing a majority of producers in the North Texas market, except for Morris County. Four additional counties, Angelina, Houston, Nacogdoches, and Trinity, were proposed for inclusion in either the North Texas or the South Texas area. A handler with a plant regulated under the North Texas order proposed the addition of Morris County wherein sales are made from his plant. The cooperative supported his proposal.

The 29-county area adjoins the present North Texas marketing area on the south and east and abuts the northern boundary of the proposed South Texas marketing area. Distribution throughout the 29 counties is primarily from presently regulated plants under the North Texas order and from plants which would become regulated there by virtue of their distribution in the proposed expanded area.

The 1960 census population of the 29 counties proposed herein for addition to the North Texas marketing area was 625,000. For the total expanded area of 45 counties recommended, the 1960 population was in excess of 2.5 million. The population of Dallas and Fort Worth, the largest cities in the present marketing area, was 680,000 and 356,000, respectively. Longview, Tyler, and Marshall are the principal population centers in the proposed additional area with populations ranging from 24,000 to 51,000. There are substantial sales in rural areas in the counties proposed for inclusion in the area. Therefore, the marketing area should be defined on the basis of county boundaries.

The expanded North Texas marketing area will conform more closely to the sales territory of handlers regulated by this order. Handlers under this order and nearby orders have route distribution throughout the territory recommended for addition to the North Texas marketing area. It is more practicable to include this additional territory in the North Texas marketing area than in that of any other order. This will provide a contiguous geographical marketing area in which handlers who would be regulated by the order are the principal distributors.

Fluid milk products sold by all handlers who would be regulated by the proposed amended order are distributed under a Grade A label and must be approved by local and state health authorities who are governed by health ordinances, practices and procedures patterned after the U.S. Public Health Ordinance and Code. Movements of Grade A milk, both in bulk and packaged form, between various localities in the marketing area take place through reciprocal approval of the responsible health authorities.

There is extensive competition for milk sales in the East Texas counties proposed for addition to the North Texas marketing area. North Texas regulated handlers distribute about 3 million pounds of milk per month in the Tyler-Marshall area in competition with more than 5 million pounds of milk distributed by presently unregulated handlers with route disposition in the area. In addition, a handler now regulated by the San Antonio order sells in 12 of the 29 counties and a handler regulated under the Austin-Waco order distributes milk in Limestone, Freestone, and Hill Counties.

A handler with a distributing plant in Tyler distributes milk in 22 counties around Tyler proposed for addition to the North Texas marketing area. He also distributes in six counties that would be in the proposed South Texas marketing area. Another handler distributes fluid milk from his Tyler plant in 10 counties surrounding Tyler and from his Marshall plant in an additional 13 counties proposed for the North Texas marketing area.

From a distributing plant at Lufkin, expected to be regulated under the South Texas order, milk is distributed in seven counties proposed for the North Texas area. A Jacksonville plant has less than 25 percent of its sales in the East Texas counties proposed for the North Texas marketing area. The remainder is sold through a Houston distribution point.

The counties of Erath, Hood, Bosque, Somervell, Hill, Navarro, Limestone, and Freestone are served primarily by presently regulated North Texas handlers. They lie between the present North Texas area and the Austin-Waco marketing area. With the exception of a dairy farmer who processes and distributes his own-farm production in Erath County all milk in the counties would be regulated under the North Texas or another nearby order. Some sales are made from plants in East Texas in four of these eight counties. The eight counties should be added to the proposed North Texas expanded marketing area.

In each of the 29 counties proposed for inclusion in the North Texas marketing area, the majority of sales are made by handlers who would be or are now regulated by the North Texas order. The remaining sales are made by handlers who would be regulated under the proposed South Texas or other nearby orders except for the counties of Harrison, Marion, and Morris where Texarkana plants have some distribution amounting to 3 percent of the total sales in Harrison and about 30 percent in Marion and Morris.

For the reasons set forth in connection with the determination of the South Texas marketing area, the counties of Anderson, Cherokee, Henderson, Shelby, Sabine, and San Augustine should be included in the North Texas marketing area. The remaining counties jointly proposed for the two areas, Angelina, Houston, Nacogdoches, and Trinity, should not be included in the North Texas area.

The counties of Jack and Wise lying between the present North Texas marketing area and the Red River Valley marketing area should not be added to the proposed North Texas marketing area. The record indicates that Red River Valley handlers have 55 percent and North Texas handlers have 45 percent of the total fluid milk sales in Jack County. There were no data given for the proportion of milk distributed in Wise County by various handlers. However, all milk sold in the two counties is subject to regulation and no showing was made that marketing conditions are disorderly in the two counties. Therefore, they should not be included in the expanded North Texas marketing area on the basis of this record.

Sales to any territory occupied by government installations or similar establishments located in the counties proposed for addition to the North Texas marketing area should be subject to regulation. The present North Texas marketing area definition in this respect (as slightly modified for modernization) is equally applicable to the proposed extended marketing area.

(d) *Associated changes—Location differentials to handlers and producers.* The Class I price applicable at plants to be newly regulated or partially regulated under the expanded North Texas marketing area should be 10 cents per hundredweight higher than the price presently applicable at pool plants within the present marketing area. Blend prices to producers supplying newly regulated plants should be increased a like amount above those applicable to milk delivered to plants within the present marketing area.

A 10-cent higher Class I price at the Tyler and Marshall plants will tend to more nearly equate the cost of milk delivered to East Texas points by handlers whose plants are located in the Dallas-Fort Worth area and those in the Tyler-Marshall area. In addition to paying the Class I prices f.o.b. their plants, the Dallas-Fort Worth handlers must pay greater transportation costs to the points at which they compete for sales with the Tyler and Marshall handlers.

Handlers operating plants at Tyler and Marshall excepted to such pricing. However, as pointed out in the discussions of need for regulation and the territory to be added, the flow of milk has been eastward from the Dallas-Fort Worth area in the direction of Tyler and Marshall.

The 10-cent differential will also provide Class I prices at Tyler and Marshall equal to those that would apply under the South Texas order at these points. As pointed out elsewhere in this decision, the Tyler and Marshall plants compete with South Texas handlers within both the proposed South Texas area and the proposed North Texas area.

Location adjustment to producers should likewise reflect the 10-cent Class I price differential. Producers supplying these plants have been accustomed to receiving returns for their milk slightly above the North Texas blend price.

In addition to the plants at Tyler and Marshall, which will become fully regulated, two plants at Texarkana may become partially regulated by virtue of sales in the expanded area. Provision should also be made to apply the same Class I price in computing obligations of such plants as for the Tyler and Marshall plants.

The North Texas order presently provides that minus location adjustment apply at plants 110 miles or more from the Dallas city hall. Under this provision, there are no pool plants in the current 16-county marketing area at which location adjustments apply. The application of the 10-cent addition can best be accomplished by requiring that plants at which minus adjustments apply be outside the marketing area or Bowie and Cass Counties or the city of Texarkana, Ark., and 110 miles from Dallas. Two pricing zones should then be established to divide the area in which minus adjustments do not apply. Zone I would consist of the present 16-county marketing area and the counties of Bosque, Erath, Freestone, Hill, Hood, Limestone, Navarro, and Somervell to be added. No milk plants are located in these counties adjoining the present area to the south. The remaining 21 counties to be added to the marketing area and Bowie and Cass Counties, and Texarkana, Ark., would constitute Zone II within which the Class I price would be 10 cents higher than in Zone I.

Pooling provisions. A handler with plants in Dallas, Fort Worth, Tyler, and Texarkana testified that his Texarkana plant might possibly be subject to full regulation of the order if Morris and Marion Counties were included in the marketing area. He proposed that in the event these counties were included in the marketing area that the percentage of a distributing plant's receipts of Grade A milk to be distributed in the area be increased from 10 to 20 percent. The record fails to show either the percentage of its receipts that the Texarkana plant disposes of in the proposed area or the potential effect of the proposal upon other plants now being pooled under the order. It should not be adopted on the basis of this record.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or to reach such conclusions are denied for the reasons previously stated in this decision.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that

the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reason previously stated in this decision.

GENERAL FINDINGS—SOUTH TEXAS

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

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order 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 proposed marketing agreement and order will regulate the handling of milk in the same manner as, and will be applicable to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the South Texas Marketing Area", and "Order Regulating the Handling of Milk in the South Texas Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the attached order which will be published with this decision.

REFERENDUM ORDER; DETERMINATION OF REPRESENTATIVE PERIOD; AND DESIGNATION OF REFERENDUM AGENT

It is hereby directed that a referendum be conducted among producers to determine whether the issuance of the attached order regulating the handling of milk in the South Texas marketing area, is approved or favored by the producers, as defined under the terms of the proposed order, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of May 1968 is hereby determined to be the representative period for the conduct of such referendum.

A. T. Radigan and Edward T. Coughlin are hereby designated agents of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (7 CFR 900.300 et seq.), such referendum to be completed on or before the 30th day from the date this decision is issued.

GENERAL FINDINGS—NORTH TEXAS

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

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

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

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

MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the North Texas Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the North Texas Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

REFERENDUM ORDER; DETERMINATION OF REPRESENTATIVE PERIOD; AND DESIGNATION OF REFERENDUM AGENT

It is hereby directed that a referendum be conducted to determine whether the issuance of the attached order, as amended and as hereby proposed to be amended, regulating the handling of milk in the North Texas marketing area, is approved or favored by the producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of May 1968 is hereby determined to be the representative period for the conduct of such referendum. C. E. Dunham is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (7 CFR 900.300 et. seq.), such referendum to be completed on or before the 30th day from the date this decision is issued.

Signed at Washington, D.C., on August 8, 1968.

JOHN A. SCHNITTKER,
Under Secretary.

Order [1] Regulating the Handling of Milk in the South Texas Marketing Area

DEFINITIONS

MARKET ADMINISTRATOR

REPORTS, RECORDS AND FACILITIES

CLASSIFICATION

MINIMUM PRICES

APPLICATION OF PROVISIONS

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, governing proceedings to formulate marketing agreements and marketing orders have been met.

Sec.
1121.61 Obligation of handler operating a partially regulated distributing plant.
1121.62 Governmental agencies.
1121.63 Producer-handler.

DETERMINATION OF UNIFORM PRICE

1121.70 Computation of the net pool obligation of each pool handler.
1121.71 Computation of aggregate value used to determine uniform price.
1121.72 Computation of uniform price.

PAYMENTS

1121.80 Time and method of payment.
1121.81 Butterfat differentials to producers.
1121.82 Location adjustments to producers.
1121.83 Producer-settlement fund.
1121.84 Payments to the producer-settlement fund.
1121.85 Payments out of the producer-settlement fund.
1121.86 Adjustment of accounts.
1121.87 Marketing services.
1121.88 Expense of administration.
1121.89 Termination of obligation.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

1121.90 Effective time.
1121.91 Suspension or termination.
1121.92 Actions after suspension or termination.
1121.93 Liquidation.

MISCELLANEOUS PROVISIONS

1121.100 Agents.
1121.101 Separability of provisions.

AUTHORITY: The provisions of this Part 1121 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1121.0 Findings and determinations.

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

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

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

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

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

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to:

(i) Producer milk (including that pursuant to § 1121.14(a)(2) and such handler's own production);

(ii) Other source milk allocated to Class I pursuant to § 1121.46(a) (4) and (8) and the corresponding steps of § 1121.46(b); and

(iii) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the South Texas marketing area shall be in conformity to, and in compliance with, the following terms and conditions:

The provisions of §§ 1121.0 to 1121.101, both inclusive, of the proposed order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on June 13, 1968 (33 F.R. 8820; F.R. Doc. 68–7184) shall be and are the terms and conditions of this order and are set forth in full herein subject to the following revisions:

Changes are made in §§ 1121.41 and 1121.86.

DEFINITIONS

§ 1121.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1121.2 Secretary.

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

§ 1121.3 Department.

"Department" means the U.S. Department of Agriculture.

§ 1121.4 Person.

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

§ 1121.5 Cooperative association.

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

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

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

§ 1121.6 South Texas marketing area.

"South Texas marketing area", hereinafter called the "marketing area", means all territory, including all piers, docks, and wharves connected therewith, and all craft moored thereat, and territory occupied by Goverment (municipal, State or Federal) reservations, installations, institutions, or other similar establishments, within the boundaries of the following counties, all in the State of Texas:

Angelina.	Liberty.
Austin.	Madison.
Brazoria.	Matagorda.
Brazos.	Montgomery.
Chambers.	Nacogdoches.
Colorado.	Newton.
Fort Bend.	Orange.
Galveston.	Polk.
Grimes.	San Jacinto.
Hardin.	Trinity.
Harris.	Tyler.
Houston.	Walker.
Jackson.	Waller.
Jasper.	Washington.
Jefferson.	Wharton.

§ 1121.7 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed and/or packaged. Separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant. Facilities used only as a distribution point for storing fluid milk products in transit on routes shall not be a plant under this definition.

§ 1121.8 Distributing plant.

"Distributing plant" means a plant approved by any duly constituted State or municipal health authority, or acceptable to any agency of the State or Federal Government for the disposition of Grade A fluid milk products in the marketing area, at which milk products are received, processed and/or packaged, and from which fluid milk products are disposed of on routes in the marketing area.

§ 1121.9 Supply plant.

"Supply plant" means any plant approved by an appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area and from which milk is moved to a distributing plant.

§ 1121.10 Pool plant.

"Pool plant" means:

(a) Any distributing plant, except a producer-handler plant or an other order plant, from which during the month:

(1) The disposition of fluid milk products on routes within the marketing

area is 10 percent or more of the receipts of Grade A milk at such plant; and

(2) The total disposition of fluid milk products on routes is 50 percent or more of the receipts of Grade A milk at such plant;

(b) A supply plant:

(1) During any month in which 50 percent or more of the receipts of Grade A milk from dairy farmers and handlers pursuant to § 1121.12(d) at such plant is moved as fluid milk products in bulk to pool distributing plants; or

(2) During each of the months of January through August, if such plant was a pool plant pursuant to subparagraph (1) of this paragraph during each of the immediately preceding months of September through December, unless the operator of such plant has filed with the market administrator before the first day of any month written request that such plant not be a pool plant for each month through August during which it does not otherwise qualify as a pool plant; or

(c) Any plant operated by a cooperative association which has been approved by any duly constituted State or municipal health authority and at which milk is received from dairy farmers holding permits or authorization from such health authority, and at least 50 percent or more of the producer milk of members of such cooperative association is physically received during the month at pool plants of other handlers described in paragraph (a) of this section or is transferred to such pool plants from a plant of the cooperative association.

§ 1121.11 Nonpool plant.

"Nonpool plant" means any milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another Federal order issued pursuant to the Act.

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

(c) "Unregulated supply plant" means a nonpool plant from which fluid milk products eligible for distribution as Grade A milk in the marketing area are moved to a pool plant during the month but which is neither an other order plant nor a producer-handler plant.

(d) "Partially regulated distributing plant" means a nonpool plant that is neither another order plant nor a producer-handler plant, from which fluid milk products labeled Grade A in consumer-type packages or dispenser units are distributed on routes (other than to pool plants) in the marketing area during the month.

§ 1121.12 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(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 of another handler to a nonpool plant for the account of such cooperative association;

(d) Any cooperative association with respect to milk of its producer members which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association;

(e) Any person in his capacity as the operator of an other order plant from which route disposition of fluid milk products is made in the marketing area; or

(f) A producer-handler.

§ 1121.13 Producer.

(a) "Producer" means any person, except a governmental agency which operates a plant exempt pursuant to § 1121.62, or a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk approved for consumption as Grade A milk by any duly constituted State or municipal health authority, which is:

(1) Received at a pool plant; or

(2) Diverted by a handler for his account from a pool plant to a nonpool plant, subject to the provisions of § 1121.14.

(b) "Producer" shall not include:

(1) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and the handler under the other order diverting such milk and the operator of the pool plant each have requested Class II classification of such milk in the reports of receipts and utilization filed with their respective market administrators; and

(2) Any person with respect to milk produced by him which is diverted to an other order plant if such person is designated as a producer under the other order with respect to such milk.

§ 1121.14 Producer milk.

"Producer milk" means skim milk and butterfat for each handler's account in milk from producers as follows:

(a) With respect to operations of a pool plant:

(1) Received directly from such producers;

(2) Received from a cooperative association handler pursuant to § 1121.12 (d); and

(3) Diverted by the operator of such pool plant to a nonpoool plant for his account, subject to the conditions of paragraph (c) of this section.

(b) With respect to additional receipts by a cooperative association handler:

(1) Diverted by such cooperative association from the pool plant of another handler to a nonpool plant for the account of such cooperative association, subject to the conditions of paragraph (c) of this section; and

(2) Received by such cooperative association from producers' farms as a handler pursuant to § 1121.12(d) in excess of the quantity delivered to pool plants pursuant to paragraph (a)(2) of this section.

(c) With respect to diversions to nonpool plants:

(1) A cooperative association may divert for its account a total quantity of milk not in excess of one-third of the total producer milk of its members received at all pool plants during the month. Diversions in excess of such quantity shall not be producer milk and the diverting cooperative shall specify the dairy farmers whose diverted milk is ineligible as producer milk. If the cooperative association fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by such cooperative association;

(2) A handler operating a pool plant may divert for his account milk of producers other than members of a cooperative association diverting milk pursuant to subparagraph (1) of this paragraph, in a total quantity not in excess of one-third of the milk at such pool plant during the month from producers who are not members of such a cooperative association. Milk diverted in excess of such quantity shall not be producer milk and the diverting handler shall specify the dairy farmers whose diverted milk is ineligible as producer milk. If a handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by such handler and;

(3) For the purposes of location adjustments pursuant to §§ 1121.53 and 1121.82, diverted milk shall be priced at the location of the nonpool plant to which diverted.

§ 1121.15 Producer-handler.

"Producer-handler" means any person who:

(a) Produces milk and operates a distributing plant;

(b) Receives no milk from other dairy farmers;

(c) Disposes of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk;

(d) Receives from pool plants not more than a total of 5,000 pounds of milk during the month or 5 percent of his Class I disposition, whichever is less; and,

(e) Furnishes satisfactory proof to the market administrator that the maintenance, care and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprise of and at the personal risk of such person.

§ 1121.16 Fluid milk products.

"Fluid milk products" mean milk, skim milk, buttermilk, flavored milk, flavored milk drinks; sweet cream, cultured sour cream and sour cream products labeled

Grade A; any mixture in fluid form of milk or skim milk and cream; concentrated milk or skim milk. Eggnog, frozen dessert mixes, yogurt, aerated cream products, evaporated milk, condensed milk or skim milk and sterilized products in hermetically sealed metal or glass containers shall not be fluid milk products pursuant to this section.

§ 1121.17 Other source milk.

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

(a) Receipts at a pool plant during the month of fluid milk products except (1) fluid milk products received from other pool plants, (2) producer milk; and

(b) Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month, and any disappearance of products other than fluid milk products which are in a form in which they may be converted into fluid milk products or used to make Class II products and which are not otherwise accounted for pursuant to § 1121.33.

§ 1121.18 Route disposition.

"Route disposition", or "disposed of on routes", means any delivery (including any delivery by a vendor or disposition at a plant store) of fluid milk products, other than a delivery to a milk plant.

§ 1121.19 Butter price.

"Butter price" means the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter at Chicago as reported by the Department during the month.

MARKET ADMINISTRATOR

§ 1121.20 Designation.

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

§ 1121.21 Powers.

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

(a) To administer its terms and provisions;

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

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

(d) To recommend to the Secretary amendments to this part.

§ 1121.22 Duties.

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

(a) Within 45 days following the date on which he enters upon his duties or such lesser period as may be described 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 satisfactory surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 1121.88 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 1121.87) necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

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

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

(g) Verify all reports and payments of each handler by audit of such handler's records and the records of any other handler or person upon whose disposition of milk such handler claims classification of skim milk and butterfat and by such investigation as the market administrator deems necessary;

(h) Publicly announce at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1121.30 to 1121.32, has not maintained adequate records and facilities pursuant to § 1121.33, or made payments pursuant to §§ 1121.80, 1121.84, 1121.86, and 1121.88;

(i) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate and notify each handler in writing:

(1) On or before the fifth day of each month, the minimum price for Class I milk computed pursuant to § 1121.51(a), and the Class I milk butterfat differential computed pursuant to § 1121.52(a) both for the current month, and the minimum price for Class II milk computed pursuant to § 1121.51(b) and the butterfat differential for Class II milk computed pursuant to § 1121.52(b), both for the previous month; and

(2) On or before the 12th day after the end of each month the uniform price computed pursuant to § 1121.72; and the butterfat differential computed pursuant to § 1121.81;

(j) On or before the 12th day after the end of each month, mail to each handler at his last known address, a statement showing for such handler the amount and value of producer milk in each class and the totals thereof; and

(k) Prepare and make available for the benefit of producers, consumers and handlers such general statistics and such information concerning the operations hereof as are necessary and essential to the proper functioning of this part.

(l) On or before the 12th day after the end of each month report to each cooperative association, upon request by such association, the percentage of producer milk caused to be delivered by such association which was used in each class by each handler receiving such milk; for the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

(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 classifications to which such receipts are allocated pursuant to § 1121.46 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report; and

(n) Furnish to each handler who operates a pool plant (including a cooperative association in its capacity as a handler pursuant to § 1121.12(c)) and 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.

(o) Whenever required for purpose of allocating receipts from other order plants pursuant to § 1121.46(a)(9) and the corresponding step of § 1121.46(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

REPORTS, RECORDS AND FACILITIES

§ 1121.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, reports of receipts and utilization for such month shall be made to the market administrator as follows in the detail and on forms prescribed by the market administrator:

(a) Each handler operating a pool plant shall report for each of his pool plants:

(1) Receipts of skim milk and butterfat in or represented by:

(i) Producer milk, showing separately receipts from producers and from each cooperative association bulk tank handler;

(ii) Receipts of fluid milk products from other pool plants; and

(iii) Other source milk, with the identity of each source.

(2) Inventories of fluid milk products at the beginning and end of the month:

(i) In packaged form; and

(ii) In bulk form.

(3) The utilization or disposition of all quantities required to be reported, showing separately:

(i) Total route disposition;

(ii) Route disposition in the marketing area;

(iii) Transfers to other pool plants;

(iv) Transfers to other order plants;

(v) Transfers to nonpool plants; and

(vi) Diversion to nonpool plants.

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

(b) Each cooperative association shall report with respect to milk for which it is the handler pursuant to § 1121.12 (c) or (d):

(1) Receipts of skim milk and butterfat from producers;

(2) The quantities delivered to each pool plant and to each nonpool plant;

(3) The utilization of all such milk not delivered to a pool plant; and

(4) Such other information as the market administrator may require.

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section except that receipts of Grade A milk from dairy farmers shall be reported in lieu of receipts of producer milk. Such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area.

§ 1121.31 Payroll reports.

On or before the 20th day of each month, each handler operating a pool plant(s), each cooperative association which is a handler pursuant to § 1121.12 (c) or (d), and each handler operating a partially regulated distributing plant and making payments pursuant to § 1121.61(a), shall submit to the market administrator his producer payroll (or in the latter case, his payroll for dairy farmers delivering Grade A milk) for deliveries made in the preceding month which shall show:

(a) The total pounds and the average butterfat test of milk received from each producer and cooperative association, the number of days, if less than the entire month for which milk was received from such producer;

(b) The amount of payment to each producer and cooperative association; and

(c) The nature and amount of any deductions or charges involved in such payments.

§ 1121.32 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler operating an other order plant with route disposition in the marketing area shall report such disposition to the market administrator on or before the seventh day after the end of the month.

(c) Each handler who causes milk to be diverted for his account directly from producers' farms to a nonpool plant shall, prior to such diversion, report to the market administrator and to the cooperative association of which such producer is a member his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

§ 1121.33 Records and facilities.

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

(a) The receipts and utilization of all receipts of producer milk and other source milk;

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

(c) Payments to producers and cooperative associations; and

(d) The pounds of skim milk and butterfat contained in fluid milk products on hand at the beginning and end of each month.

§ 1121.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such books and records, pertain: *Provided*, That, if within such 3-year period, the market administrator notifies the handler in writing that the retention of such books and records or of specified books and records is necessary in connection with a proceeding under section 8c–(15)(A) of the Act or a court action specified in such notice the handler shall retain such books and records, or specified books, and records, until further 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

§ 1121.40 Basis of classification.

The skim milk and butterfat which are required to be reported pursuant to § 1121.30 shall be classified by the market administrator, subject to the provisions of §§ 1121.41 through 1121.46, inclusive. If any of the water contained in the milk from which a product is made has been removed, before it is utilized or disposed of by the handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids, contained in such product, plus all the water originally associated with such solids.

§ 1121.41 Classes of utilization.

Subject to the conditions set forth in §§ 1121.43 and 1121.44, the classes of utilization shall be as follows:

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

(1) Disposed of in the form of a fluid milk product except as provided in subparagraphs (2), (3), (4), (5), or (6) of paragraph (b) of this section, subject to the following:

(i) Any such product in fluid form fortified with added milk solids shall be Class I milk in an amount equal only to the weight of an equal volume of a like unmodified product of the same butterfat content; and

(ii) Any such product in concentrated form shall be Class I only when disposed of for fluid consumption in consumer packages and in an amount equal to the skim milk and butterfat used to produce the quantity so disposed of.

(2) In inventory of fluid milk products in packaged form on hand at the end of the month; and

(3) Not specifically accounted for as Class II utilization.

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

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

(2) Contained in any fluid milk product which has been fortified with additional milk solids not fat which is in excess of the pounds classified as Class I milk pursuant to paragraph (a)(1) of this section;

(3) In frozen cream stored in a public warehouse and not moved within 30 days after date of storage;

(4) In fluid milk products disposed of for livestock feed;

(5) In fluid milk products dumped by a handler after notification to and opportunity for verification by the market administrator;

(6) In bulk milk, skim milk or cream disposed of to commercial food processing establishments (other than milk plants) and used at such establishments in food products composed principally of nondairy ingredients prepared for consumption off the premises;

(7) In inventory of bulk fluid milk products on hand at the end of the month;

(8) In actual shrinkage at each plant but not in excess of the following limitations:

(i) Two percent of receipts directly from producers; plus

(ii) 1.5 percent of receipts from a cooperative association handler pursuant to § 1121.12(d), except that if the handler operating the pool plant files notice with the market administrator that he is accounting for such milk on the basis of farm weights determined by the cooperative association, the applicable percentage shall be two percent; plus

(iii) 1.5 percent of bulk fluid milk products (except cream) received from other pool plants; plus

(iv) 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 operator of such plant and the handler; plus

(v) 1.5 percent of bulk fluid milk products received from unregulated supply plants, exclusive of the quantity for which Class II utilization was requested by the handler; less

(vi) 1.5 percent of bulk fluid milk products (except cream) disposed of to other milk plants, except, in the case of milk diverted to a nonpool plant, if the operator of the plant to which the milk is diverted accounts for such milk on the basis of farm weights, the applicable percentage shall be 2 percent.

(9) In shrinkage of skim milk and butterfat, respectively, in other source milk assigned pursuant to § 1121.42(b); and

(10) In shrinkage of skim milk and butterfat, respectively, resulting from milk for which a cooperative association is the handler pursuant to § 1121.12 (c) or (d) not being delivered to pool plants and nonpool plants, but not in excess of one-half percent of the quantity received from producers, exclusive of receipts for which farm weights are used as the basis of receipt at the plant to which delivered.

§ 1121.42 Assignment of shrinkage.

The market administrator shall prorate the total shrinkage of skim milk and butterfat, respectively, computed at each pool plant between the following:

(a) Skim milk and butterfat in amounts, respectively, equal to 50 times the maximum quantities that may be computed pursuant to § 1121.41(b)(8); and

(b) The skim milk and butterfat, respectively, in other source milk received as bulk fluid milk products, exclusive of the other source milk specified in § 1121.41(b)(8).

§ 1121.43 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat to be classified pursuant to this part shall be classified as Class I milk unless the handler who first receives such skim milk and butterfat establishes to the satisfaction of the market administrator that it should be classified otherwise. With respect to milk received for delivery to a pool plant by a cooperative association handler pursuant to § 1121.12(d), the operator of the pool plant shall have the burden of proving the classification of the skim milk and butterfat defined in § 1121.14(a)(2);

(b) Milk received by a handler operating a pool plant from a cooperative association handler pursuant to § 1121.12 (d) shall be classified according to use or disposition at the receiving plant and the value thereof at class prices shall be included in the receiving handler's net obligation pursuant to § 1121.70; and

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

§ 1121.44 Transfers.

Skim milk or butterfat shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred in the form of fluid milk products from a pool plant to another pool plant 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 computations pursuant to § 1121.46(a)(9) and the corresponding step of § 1121.46(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1121.46(a)(4) and the corresponding step of § 1121.46(b), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1121.46(a)(8) or (9) and the corresponding steps of § 1121.46(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of other source milk received at the transferee plant;

(b) As Class I milk, if transferred in the form of bulk fluid milk products from a pool plant to a producer-handler or a plant exempt pursuant to § 1121.62;

(c) As Class I milk, if transferred or diverted in the form of bulk milk, skim milk, or cream to a nonpool plant that is not an other order plant, producer-handler plant, or a plant exempt pursuant to § 1121.62, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph;

(1) The transferring handler claims classification pursuant to the assignment set forth in subparagraph (3) of this paragraph in his report submitted to the market administrator pursuant to § 1121.30 for the month within which such transaction occurred;

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

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any Class I utilization disposed of on routes in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred from pool plants, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of Grade A milk for such nonpool plants;

(ii) Any Class I utilization disposed of on routes in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; 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.

(d) On the basis of the conditions and the allocation procedure described in paragraph (c) of this section at a second nonpool plant, that is neither an other order plant, nor a producer-handler plant, when transferred or diverted from the pool plant as milk or skim milk in bulk to a nonpool plant that is neither an other order plant nor a producer-handler plant, and from which all receipts of milk or skim milk are moved in bulk to such second nonpool plant for further processing;

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

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in 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 transferor handler and the operator of the other order plant so request in their report of receipts and utilization filed with their respective market administrators, transfers and diversions in bulk form shall be classified as Class II to the extent of the Class II utilization (or comparable utilization under the other order) available for such assignment pursuant to the allocation provisions of the other 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) 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 § 1121.41.

§ 1121.45 Computation of the skim milk and butterfat in each class.

(a) For each month the market administrator shall correct for mathematical and other obvious errors the reports of receipts and utilization submitted pursuant to § 1121.30 for each pool plant of each handler, and compute the pounds of skim milk and butterfat in each class for such plant;

(b) If no fluid milk products to be assigned pursuant to § 1121.46(a) (8) or (9) were received at any of his pool plants, allocations pursuant to § 1121.46 and computation of obligations pursuant to § 1121.70 shall be made separately for each pool plant of a handler with two or more pool plants;

(c) Unless the conditions specified in paragraph (b) of this section apply, the market administrator shall combine the receipts and utilization (exclusive of utilization based upon movements between such plants) at all pool plants of such handler for purposes of allocation pursuant to § 1121.46 and computation of obligation pursuant to § 1121.70; and

(d) The market administrator shall determine the classification, allocation and pool obligation with respect to producer milk for which a cooperative association is accountable pursuant to § 1121.12 (c) and (d) separately from the operations of any pool plant operated by such cooperative association. The pounds of skim milk and butterfat so determined in each class shall be used for computation pursuant to § 1162.46 (c).

§ 1121.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1121.45, the market administrator shall determine the classification of producer milk for each handler (or pool plant, if applicable) as follows:

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

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk classified as Class II milk pursuant to § 1121.41(b) (8);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract from the remaining pounds of skim milk in Class I milk the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class in series beginning with Class II milk, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products for which Grade A certification is not established, or which are from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal order or from a plant exempt pursuant to § 1121.62;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II milk but not in excess of such quantity:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant;

(*a*) For which the handler requests Class II milk utilization; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool plants and receipts in bulk from other order plants; and

(ii) Receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, if Class II milk utilization was requested by the operator of such plant and the handler;

(6) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II milk, the pounds of skim milk in inventory of bulk fluid milk products on hand at the beginning of the month;

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

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraph (5)(i) of this paragraph;

(9) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraph (5)(ii) of this paragraph:

(i) In series beginning with Class II milk, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II milk utilization of skim milk announced for the month by the market administrator pursuant to § 1121.22(m) or the percentage that Class II milk utilization remaining is of the total remaining utilization of skim milk of the handler; and

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

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other handlers (or other pool plants, if applicable) according to the classification assigned pursuant to § 1121.44(a); and

(11) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II milk. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section and § 1121.45(d) for each class and determine the weighted average butterfat content of producer milk in each class.

MINIMUM PRICES

§ 1121.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis by a butterfat differential, rounded to the nearest one-tenth cent, computed at 0.12 times the butter price for the month. The basic formula price shall be rounded to the nearest full cent. For the purpose of computing Class I prices from the effective date hereof through April 1969, the basic formula price shall not be less than $4.33.

§ 1121.51 Class prices.

Subject to the provisions of §§ 1121.52 and 1121.53, the minimum prices per hundredweight to be paid by each handler for milk received at his pool plant from producers during the month shall be as follows:

(a) *Class I price.* For the 18-month period from the effective date of this order the Class I milk price applicable to Zone I plants shall be the basic formula price for the preceding month plus $2.48, and plus 20 cents through April 1969.

(b) *Class II price.* The Class II milk price shall be the basic formula price for the month, but not to exceed by more than 10 cents the sum of the plus values pursuant to subparagraphs (1) and (2) of this paragraph:

(1) From the butter price for the month, subtract 3 cents and multiply by 4.2;

(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 in the Chicago area, as published for the period from the 26th day of the 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.

§ 1121.52 Butterfat differentials to handlers.

If the average butterfat content of the milk of any handler allocated to any class pursuant to § 1121.46 is more or less than 3.5 percent, there shall be added to the respective class price, computed pursuant to § 1121.51, for each one-tenth of 1 percent that the average butterfat content of such milk is above 3.5 percent, or subtracted for each one-tenth of 1 percent that such average butterfat content

is below 3.5 percent an amount equal to the butterfat differential computed by multiplying the butter price for the appropriate month by the applicable factor listed below and rounding to the nearest one-tenth cent:

(a) *Class I milk.* Multiply such price for the preceding month by 0.125; and

(b) *Class II milk.* Multiply such price for the current month by 0.115.

§ 1121.53 Location differential to handlers.

(a) For that milk which is received from producers at a pool plant located north of U.S. Highway 90 or in Fayette County, Tex., and outside Zone I and which is transferred to another pool plant in the form of fluid milk products and assigned Class I disposition at the transferee plant pursuant to paragraph (c) of this section, or which is otherwise classified as Class I milk, and for other source milk for which Class I location adjustment credit is applicable, the price specified in § 1121.51(a) shall be reduced at the rate specified below for the applicable distance that such plant is located from the Houston city hall by shortest hard-surfaced highway distance, as determined by the market administrator:

Miles from city hall in Houston, Tex.	*Rate per hundredweight (cents)*
60 miles but less than 100 miles	12
100 miles but less than 140 miles	18
140 miles but less than 180 miles	22
180 miles but less than 225 miles	26

For plants located beyond the 225 miles distance from the city hall in Houston, Tex., the rate of adjustment will be increased 1.5 cents for each 10 miles or fraction thereof that such plant is located more than 225 miles from the city hall in Houston, Tex., by shortest hard-surfaced highway distance, as determined by the market administrator:

(b) For that milk which is received from producers at a pool plant located south of U.S. Highway 90 and outside of Zone I or Fayette County, Tex., and which is transferred to another pool plant in the form of fluid milk products and assigned Class I disposition at the transferee plant pursuant to paragraph (c) of this section, or which is otherwise classified as Class I milk and for other source milk for which a Class I location adjustment credit is applicable, the price specified in § 1121.51(a) shall be increased at the rate specified below for the applicable distance that such plant is located from the Houston city hall by the shortest highway distance, as determined by the market administrator.

Miles from city hall in Houston, Tex.	*Rate per hundredweight (cents)*
60 miles but less than 100 miles	12
100 miles but less than 140 miles	18

For plants located beyond the 140 miles distance from the city hall in Houston, Tex., the rate of adjustment will be increased at the rate of 1.5 cents for each 10 miles or fraction thereof that such plant is located more than 140 miles from the city hall in Houston, Tex., by the shortest hard-surfaced highway distance, as determined by the market administrator;

(c) For purposes of calculating such location adjustments transfers between pool plants shall be assigned Class I disposition at the transferee plant, in excess of the sum of 95 percent of receipts at such plant from producers and cooperative associations pursuant to § 1121.12(d), plus the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor plants having the same Class I price, next to transferor plants having a higher Class I price and then in sequence to plants having a lower Class I price, beginning with the plant at which the highest Class I price would apply.

§ 1121.54 Pricing zone.

Zone I will consist of all the territory located within 60 miles of the nearer of the city halls in Beaumont and Houston, Tex.

§ 1121.55 Use of equivalent prices.

If for any reason a price quotation required by this order for computing class prices or for any other purpose is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 1121.60 Plants subject to other Federal orders.

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

(a) A plant meeting the requirements of § 1121.10(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order.

(b) A plant meeting the requirements of § 1121.10(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines a greater quantity of Class I milk is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

(c) A plant meeting the requirements of § 1121.10(b) which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of January through August, if such plant retains automatic pooling status under this part.

§ 1121.61 Obligation 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 §§ 1121.30 and 1121.31 the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1121.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfer 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 § 1121.70(e) and a credit computed at the uniform price with respect to receipts from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph.

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1121.30 and 1121.31 similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1121.9, with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of (i) the gross payments made by such handler for Grade A milk received during the month

from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph, and (ii) any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(4) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class II price).

§ 1121.62 Governmental agencies.

A plant owned and operated by a governmental agency or establishment which processes or packages milk distributed in the marketing area, shall be exempt from all provisions of this part. Fluid milk products received at a pool plant from such agencies shall be treated on the same basis as though received from a producer-handler. Fluid milk products disposed of by a handler to such agencies shall be classified on the same basis as though disposed of to a producer-handler.

§ 1121.63 Producer-handler.

Sections 1121.40 through 1121.46, 1121.50 through 1121.55, 1121.70 through 1121.72, and 1121.80 through 1121.89 shall not apply to a producer-handler.

DETERMINATION OF UNIFORM PRICE

§ 1121.70 Computation of the net pool obligation of each pool handler.

The net pool obligation of each pool handler (at each pool plant, if applicable) during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1121.46(c), by the applicable class prices (adjusted pursuant to §§ 1121.52 and 1121.53);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1121.46(a)(11) and the corresponding step of § 1121.46(b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1121.46(a)(6) and the corresponding step of § 1121.46(b);

(d) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class II price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1121.46(a)(4) and the corresponding step of § 1121.46(b);

(e) Add an amount equal to the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received with respect to skim milk and butterfat subtracted from Class I pursuant to § 1121.46(a)(8) and the corresponding step of § 1121.46(b); and

(f) Add an amount determined by multiplying the difference between the Class I price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1121.46(a)(3) and the corresponding step of § 1121.46(b). If the Class I price for the current month is less than the Class I price for the preceding month, the result shall be a minus amount.

§ 1121.71 Computation of aggregate value used to determine uniform price.

For each month the market administrator shall compute an aggregate value from which to determine the uniform price per hundredweight for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1121.70 for all handlers who made the reports prescribed in § 1121.30 and who made the payments pursuant to § 1121.80 for the preceding months;

(b) Add not less than one-fourth of the unobligated cash balance on hand in the producer-settlement fund;

(c) Subtract, if the average butterfat content of the milk specified in § 1121.72(a) is greater than 3.5 percent or add, if such average butterfat content is less than 3.5 percent, an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 1121.81 and multiplying the resulting figure by the total hundredweight of such milk; and

(d) Add the aggregate of the values of the minus location differentials pursuant to § 1121.82, and subtract the aggregate of the value of the plus location differentials pursuant to § 1121.82.

§ 1121.72 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight applicable for milk of 3.5 percent butterfat content at pool plants at which no location differential applies as follows:

(a) Divide the aggregate value computed pursuant to § 1121.71 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 § 1121.70(e); and

(b) Subtract not less than 4 cents nor more than 5 cents.

PAYMENTS

§ 1121.80 Time and method of payment.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the uniform price for such month computed pursuant to § 1126.72, adjusted by the butterfat differential computed pursuant to § 1121.81 and the location differential computed pursuant to § 1121.82 and less the amount of payment made pursuant to paragraph (b) of this section. If by such date such handler has not received full payment for such month pursuant to § 1121.85, he may reduce his total payments to all producers uniformly by not more than the amount of reduction in payments from the market administrator. He shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator.

(b) On or before the 25th day of each month, to each producer (1) for whom payment is not made pursuant to paragraph (c) of this section, and (2) who has not discontinued delivery of milk to such handler, a partial payment for milk received from such producer during the first 15 days of such month computed at not less than the Class II price for 3.5 percent milk of the preceding month, without deduction for hauling.

(c) On or before the 13th and 23d days of each month, in lieu of payments pursuant to paragraphs (a) and (b) of this section respectively, to a cooperative association which so requests, with respect to producers for whose milk such cooperative association is authorized to collect payments, an amount equal to the sum of the individual payments otherwise payable to such producers. Such payment shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 1121.31.

(d) As follows, to each cooperative association for milk for which it is the handler pursuant to § 1121.12(d):

(1) On or before the 23d day of the month, a partial payment for milk received during the first 15 days of such month, at not less than the amount specified in paragraph (b) of this section; and

(2) On or before the 13th day of the following month, in final settlement, the value of such milk received during the month, at the applicable uniform price, less the amount of payment made pursuant to subparagraph (1) of this paragraph.

(e) On or before the 13th day after the end of the month, for milk received from the pool plant of a cooperative association, to such cooperative association not less than the value of such milk at the applicable price(s) for the class(es) at which transferred pursuant to § 1121.44(a).

§ 1121.81 Butterfat differentials to producers.

In making payments to producers pursuant to § 1121.80, the uniform price shall be increased or decreased for each one-tenth of 1 percent which the butterfat content of such milk is above or below 3.5 percent, respectively, at the rate determined by multiplying the total pounds of butterfat in the producer milk allocated to Class I and Class II milk during the month pursuant to § 1121.46 by the respective butterfat differentials in each class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resultant figure to the nearest one-tenth of a cent.

§ 1121.82 Location adjustments to producers.

In making payments pursuant to § 1121.80, the uniform price computed pursuant to § 1121.72 to be paid for such milk received at a pool plant at which a location differential pursuant to § 1121.53 (a) or (b) applies will be subject to a location differential (plus or minus) equal to that specified in such section.

§ 1121.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund", into which he shall deposit all payments made by handlers pursuant to §§ 1121.61, 1121.84, and 1121.86, and out of which he shall make all payments to handlers pursuant to §§ 1121.85 and 1121.86.

§ 1121.84 Payments to the producer-settlement fund.

On or before the 13th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a) of this section exceed the amounts specified in paragraph (b) of this section:

(a) The total of the net pool obligation computed pursuant to § 1121.70 for such handler;

(b) The sum of:

(1) The value of such handler's producer milk at the applicable uniform price computed pursuant to § 1121.72, 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) with respect to other source milk for which a value is computed pursuant to § 1121.70 (e).

§ 1121.85 Payments out of the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1121.84(b) exceeds the amount computed pursuant to § 1121.84(a). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. Any amount due a handler pursuant to this section may be reduced by the amount of any unpaid balances due the market administrator from such handler, pursuant to § 1121.84, § 1121.86, § 1121.87, or § 1121.88.

§ 1121.86 Adjustment of accounts.

(a) *Payments.* Whenever verification by the market administrator of any handler's reports, books, records, accounts, or payments discloses errors resulting in money 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 amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

(b) *Overdue accounts.* Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1121.84, 1121.85, 1121.87, 1121.88, or paragraph (a) (1) and (2) of this section shall be increased one-half of one 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.

§ 1121.87 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1121.80, shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such monies shall be used by the market administrator to sample, test, and check the weights of milk received and to provide producers with market information.

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

§ 1121.88 Expense of administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that pursuant to § 1121.14(a)(2) and such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1121.46(a) (4) and (8) and the corresponding steps of § 1121.46(b); and

(c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

§ 1121.89 Termination of obligation.

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

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall 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 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 month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

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

the handler against whom the obligation is sought to be imposed.

(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 setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1121.90 Effective time.

The provisions of this part or any amendment hereto shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 1121.91.

§ 1121.91 Suspension or termination.

The Secretary may suspend or terminate this subpart or any provision of this part whenever he finds this part or any provision hereof obstructs or does not tend to effectuate the declared policy of the Act. This part shall terminate in any event whenever the provisions of the Act authorizing it cease to be in effect.

§ 1121.92 Actions after suspension or termination.

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

§ 1121.93 Liquidation.

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

MISCELLANEOUS PROVISIONS

§ 1121.100 Agents.

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

§ 1121.101 Separability of provisions.

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

Order[1] Amending the Order Regulating the Handling of Milk in the North Texas Marketing Area

§ 1126.0 Findings and determinations.

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

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

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

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

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

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

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to:

(i) Receipts from producers (including such handler's own production);

(ii) Receipts from cooperative associations in their capacity as a handler pursuant to § 1126.12 (c) and (d);

(iii) Other source milk allocated to Class I pursuant to § 1126.46(a) (3) and (7) and the corresponding steps of § 1126.46(b); and

(iv) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the North Texas marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on June 13, 1968, and published in the FEDERAL REGISTER on June 18, 1968 (33 F.R. 8820; F.R. Doc. 68-7184), shall be and are the terms and provisions of this order, and are set forth in full herein:

1. Section 1126.6 is revised to read as follows:

§ 1126.6 North Texas marketing area.

"North Texas marketing area", hereinafter called the marketing area, means all territory, including all municipal corporations, Federal military reservations, facilities, and State institutions, within the following counties, all in the State of Texas:

Anderson.	Henderson.
Bosque.	Hill.
Camp.	Hood.
Cherokee.	Hopkins.
Cooke.	Hunt.
Collin.	Johnson.
Dallas.	Kaufman.
Delta.	Lamar.
Denton.	Limestone.
Ellis.	Marion.
Erath.	Morris.
Fannin.	Navarro.
Franklin.	Panola.
Freestone.	Parker.
Grayson.	Rains.
Gregg.	Red River.
Harrison.	Rockwall.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Rusk.
Sabine.
San Augustine.
Shelby.
Smith.
Somervell.
Tarrant.
Titus.
Upshur.
Van Zandt.
Wood.

2. The introductory text of § 1126.51 is revised to read as follows:

§ 1126.51 Class prices.

Subject to the provisions of §§ 1126.52, 1126.53, and 1126.55, the minimum prices per hundredweight to be paid by each handler for milk received from producers during the month shall be as follows:

* * * * *

3. Section 1126.53(a) is revised to read as follows:

§ 1126.53 Location differentials to handlers.

(a) For that milk which is received from producers at a pool plant outside the marketing area or Bowie or Cass Counties, Tex., or the city of Texarkana, Ark., and 110 miles or more from the city hall in Dallas, Tex., and which is transferred to another pool plant in the form of fluid milk products and classified as Class I milk, or which is otherwise classified as Class I milk and for other source milk for which a Class I location adjustment credit is applicable, the price specified in § 1126.51(a) shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof that such plant is located from the Dallas city hall by shortest hard-surfaced highway distance, as determined by the market administrator; and

* * * * *

4. A new § 1126.55 is added as follows:

§ 1126.55 Pricing zones.

(a) *Zone I.* Zone I shall include all territory within the following Texas counties in the marketing area:

Bosque.
Cooke.
Collin.
Dallas.
Delta.
Denton.
Ellis.
Erath.
Fannin.
Freestone.
Grayson.
Hill.
Hood.
Hopkins.
Hunt.
Johnson.
Kaufman.
Lamar.
Limestone.
Navarro.
Parker.
Rockwall.
Somervell.
Tarrant.

The price applicable to milk received at plants located in Zone I and classified as Class I milk shall be the price specified in § 1126.51(a).

(b) *Zone II.* Zone II shall include all territory in the marketing area outside of Zone I and all territory in Bowie and Cass Counties, Tex., and the city of Texarkana, Ark. The price applicable to milk received at plants located in Zone II and classified as Class I milk shall be the price specified in § 1126.51(a) plus 10 cents per hundredweight.

5. Section 1126.71(d) is revised to read as follows:

§ 1126.71 Computation of aggregate value used to determine uniform price.

* * * * *

(d) Add the aggregate of the values of minus location adjustments and subtract the aggregate of all plus location adjustments pursuant to § 1126.91(b).

6. Section 1126.91(b) is revised to read as follows:

§ 1126.91 Butterfat and location differentials to producers.

* * * * *

(b) *Location adjustments.* (1) In making payments to producers pursuant to § 1126.90 (a) or (c) the applicable uniform price computed pursuant to § 1126.72 to be paid for producer milk received at a pool plant should be adjusted according to the location of the pool plant at the rate set forth in § 1126.53 or § 1126.55.

(2) For purposes of computation pursuant to §§ 1126.93 and 1126.94 the uniform prices should be adjusted at the rates set forth in §§ 1126.53 and 1126.55 applicable at the location of the nonpool plant from which the milk was received.

[F.R. Doc. 68-9648; Filed, Aug. 12, 1968; 8:45 a.m.]

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PART III

Department of the Interior

Bureau of Land Management

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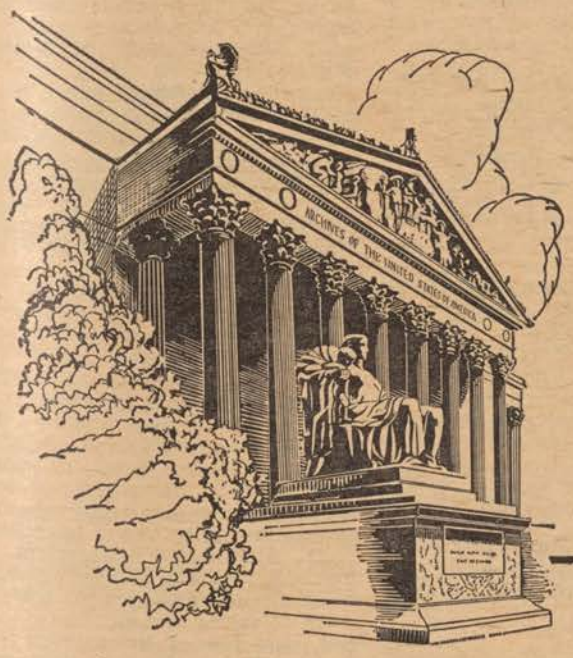
Grazing Administration

43 CFR PART 4120



Title 43—PUBLIC LANDS: INTERIOR

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

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular 2245]

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS AND EXCLUSIVE OF ALASKA); GENERAL

On August 1, 1967, there was published in the FEDERAL REGISTER, as proposed rule-making, the text of amendments and revisions in the regulations governing grazing on public lands not included within officially designated grazing districts. The notice provided opportunity for public comment until November 28, 1967, which period was later extended to March 1, 1968, in view of the extensive interest shown and the desire of interested parties to analyze the proposed regulations in detail.

The comments received were numerous and varied. After extensive consideration, which included public meetings in areas particularly affected and further review by an advisory committee made up of range users and other qualified persons, several modifications have been made in the proposed regulations, as follows:

1. Section 4120.2(d) *Authorized officer.* This section has been clarified to specify District Manager or Area Manager.

2. Section 4121.1–2 *Effect of transfer arising through operation of law.* This section has been added to protect the private preference lands and grazing leases for a period of 2 years when the preference lands have been acquired by an unqualified person through operation of law or testamentary disposition.

3. Section 4121.2–1(a) *Land resource consideration.* This section has been modified to state that availability of livestock forage will be considered in conjunction with other uses. Although not intended, the original language could have been read to mean that availability of forage for livestock would be considered after other uses.

4. Section 4121.2–1(d)(2)(vi) *Conflicting applications.* A footnote has been added to this section to insure understanding that, where a right-of-way easement is offered as a factor for obtaining a lease, the United States shall be fully responsible to the extent authorized by law.

5. Section 4122.1–1 *Multiple use.* This section has been expanded to explain that access is a function of multiple use management.

6. Sections 4122.1–2 and 4122.1–3 *Management plans.* The existing section on management plans has been replaced by two sections. They make clear that management plans will be used only for areas of high multiple use values and set forth procedures.

7. Section 4125.1–1(a)(2) *Service fee.* This section has also been rewritten to make clear that no service fee will be charged for regular renewal of an existing lease.

8. Section 4125.1–1(m)(2) *Crossing permits.* A statement has been added specifying that no crossing fee will be charged where the trail to be used is so limited that no substantial amount of forage will be consumed in transit. The regulations, modified as set forth below, are hereby adopted to become effective upon publication of this notice in the FEDERAL REGISTER.

Subpart 4120—Grazing Administration (Outside Grazing Districts and Exclusive of Alaska); General

Sec.

AUTHORITY: The provisions of this Part 4120 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a, R.S. 2478; 43 U.S.C. 1201.

Subpart 4120—Grazing Administration (Outside Grazing Districts and Exclusive of Alaska); General

§ 4120.1 Authority.

(a) Section 15 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1275, as amended, 43 U.S.C. 315m) vests discretionary authority in the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands in the continental United States, exclusive of Alaska, which are not within established grazing districts.

(b) Section 4 of the O&C Act of August 28, 1937 (50 Stat. 875; 43 U.S.C. 1181d) vests in the Secretary of the Interior discretionary authority to lease for grazing purposes any revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in the State of Oregon, hereafter referred to as O&C lands, which may be so used without interfering with the production of timber or other purposes specified in section 1 of the Act, and to formulate rules and regulations for the use, protection, improvement, and rehabilitation of such grazing lands.

(c) The Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986 as amended; 43 U.S.C. 1411–1418) expressly authorizes the Secretary of the Interior to determine which of the lands exclusively administered by him through the Bureau of Land Management are suitable for retention and management under the principles of multiple use and sustained yield. Section 5 of the Act (78 Stat. 987; 43 U.S.C. 1415) defines multiple use and sustained yield.

§ 4120.2 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized agent.

(b) "Director" means the Director of the Bureau of Land Management or his authorized agent.

(c) "State Director" means the supervisory Bureau of Land Management official for the state in which the particular range lies, or his authorized agent.

(d) "Authorized Officer" means the Bureau of Land Management District Manager or Area Manager, to whom has been delegated the authority to take action.

(e) "District Office" means the Office of the Bureau of Land Management having direct management responsibility and administrative jurisdiction over the specific public lands involved.

(f) "Animal unit month" means the amount of forage necessary for the sustenance of one cow, or its equivalent for a period of 1 month.

(g) "Grazing capacity" means the total animal unit months of forage available from a tract or tracts of forage land during a given period.

(h) "Management area" means a designated tract or geographic area of land capable of being properly managed as a unit for multiple-use to ensure a sustained yield of forage without jeopardy to other resources or uses of the land. Such a management area may require joint use by two or more lessees.

(i) "Allotment management plan" means a program of action designed to reach specific management goals.

(j) "Grazing system" means a specified sequence of livestock grazing by designated area to accomplish management objectives.

(k) "Preference land" means the privately owned or controlled land upon which the issuance of a grazing lease is based.

(l) "Contiguous land" means land that borders upon or touches upon public land.

Subpart 4121—Awards of Grazing Leases

§ 4121.1 Qualifications of applicants.

§ 4121.1–1 Minimum qualification requirements.

An applicant for a grazing lease is qualified if:

(a) He is a person engaged in the livestock business, has a need for the grazing use of the land, and is a citizen of the United States [1] or;

(b) It is a group or association authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, all members of which are qualified under paragraph (a) of this section, provided that the agreement or articles of association under which the association has been formed are approved by the State Director, or;

(c) It is a corporation, the controlling interest in which is vested in persons qualified under paragraph (a) of this section and which is authorized to do business under the laws of the State in which grazing privileges sought are to be exercised: *Provided*, That the articles of incorporation have been approved by the Authorized Officer.

§ 4121.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in preference land by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding lease, or preclude the renewal of a lease based upon such land, for a period of 2 years after such acquisition. Upon the failure of such person to qualify within the 2-year period, the lease will be subject to cancellation in accordance with § 4125.1–1(h).

§ 4121.2 Adjudication of applications for grazing leases.

§ 4121.2–1 Minimum requirements, rating and classification of lease land.

(a) *Land resource consideration.* The Authorized Officer will determine the availability of public land for grazing leases and the amount of forage available for use by livestock in conjunction with considerations of forage reservations for watershed protection, wildlife, and other multiple uses.

(b) *Grazing capacity, seasons of use, and maximum annual period of use.* The Authorized Officer will establish the grazing capacity, determine the kind and class of livestock use to be proper for each management area and classify each area for the proper seasons of use and for the maximum period of time for which the lessee will be allowed to use the leased land therein during any one year, except that where the leased land consists chiefly of isolated or fragmented tracts of land which are not proposed for long-term retention and management, the Authorized Officer may establish the grazing capacity only.

(c) *Applicants.* Grazing leases may be issued to qualified applicants to the extent that public land is available in the following order and amounts:

(1) To applicants who are the owners, lessees, or other lawful occupants of contiguous private lands to the extent necessary to permit proper use of such contiguous lands. When the public land consists of an isolated or disconnected tract embracing 760 acres or less, owners, lessees, or other lawful occupants of lands contiguous thereto or cornering thereon shall have a preference right to lease the whole of such tract, upon terms and conditions prescribed by the Secretary: *Provided*, That the preference right must be asserted during a period of 90 days after such tract is offered for lease.

(2) To applicants owning, leasing, or lawfully occupying noncontiguous lands to the extent necessary to permit the proper use of such noncontiguous lands.

(3) To other applicants.

(d) *Conflicting applications.* (1) When more than one qualified applicant applies for the same public land and it appears that a division of the area may be made and will not result in improper land use, the Authorized Officer will allow the applicants an opportunity, within a specified time limit which he shall set, to agree to a division of the lands. A division of the lands may be made either by agreement between the conflicting applicants which is acceptable to the Authorized Officer, or by determination of the Authorized Officer where no acceptable agreement is reached. However, where it appears that a division of the land would result in improper land use, or where proper land use management will be advanced thereby, the Authorized Officer may require that joint use be made of the management area.

(2) The Authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (i) Historical use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands under application [2] (where access is not presently available), and (vii) other land use requirements.

§ 4121.2–2 Leases of withdrawn or reserved lands, preference right leases for lands restored from withdrawal.

(a) The Authorized Officer may issue grazing leases for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[3] if the use of the land for grazing is consistent with the purposes of the withdrawal. Lands included in stock driveway and public water reserve withdrawals may be leased in accordance with subpart 2321 of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed for the protection and use of the land for the purpose for which it was withdrawn or reserved.

(b) Where public lands are restored from a withdrawal and the Authorized Officer determines that a grazing lease for the lands may be issued, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the land immediately prior to their restoration, shall have a superior preference right to lease the restored public lands previously used by him. The preference right must be asserted by an application for a grazing lease (see § 4125.1–1(a)(1)), and must be filed within 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior grazing lease, license, permit or other authority upon which the superior preference claim is based.

§ 4121.3 Adjustments of grazing use.

§ 4121.3–2 Increases.

Increases in grazing capacity, when determined by the Authorized Officer, will be apportioned in a manner that will assist in the stabilization of the livestock operations after consideration of other land uses.

§ 4121.3–3 Decreases.

(a) Downward adjustments in authorized grazing use may be imposed during the term of a grazing lease where, for example, the lease erroneously includes lands not subject to lease, or authorizes use in excess of the grazing capacity of the leased land, or where a downward adjustment is required to facilitate other proper multiple uses on the area, or similar situations.

(b) Adjustments to balance authorized use with the proper stocking rate of the management area will be apportioned

[1] See 43 CFR 1811.1 regarding evidence of citizenship status.

[2] Where the United States obtains such a right-of-way, it will assume responsibility therefor to the full extent authorized by law.

[3] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of Feb. 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with principles of section 15 leases, under authority of subsection (I) of section 4, Act of Dec. 5, 1924 (43 Stat. 703, 43 U.S.C. sec. 501). Those lands withdrawn for reclamation purposes which are not subject to the cooperative agreement of Feb. 28, 1945, will upon restoration from the reclamation withdrawal, become subject to the provisions of paragraph (b) of this section.

equitably or as agreed to among the lessees and the Authorized Officer. Such adjustments may be made by authorizing fewer livestock, or a shorter grazing season, or by both methods as determined by the Authorized Officer.

(c) The Authorized Officer will notify each affected lessee by certified mail of his decision to make an adjustment in authorized use to reach the proper stocking rate of any leased area. The notice will state the manner in which the adjustment is to be made and will allow 30 days from receipt thereof in which the lessee may file an appeal in accordance with § 4125.1–3. If no appeal is filed within the 30-day period, the adjustment will be made in accordance with the decision and no further appeal will be allowed. If a timely appeal is filed, the adjustment under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the final decision will be applied to its full extent for the grazing season immediately following the effective date of the decision.

(d) Public lands under a grazing lease issued pursuant to this part are subject to classification, withdrawal, or other disposal under the Taylor Grazing Act, the O&C Act, or other applicable public land laws. Reasonable notice of a pending or proposed classification, withdrawal, or disposal which might result in a diminution of the area of the leased land will be given to the lessee, consistent with Subpart 2411 of this chapter and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Part 1840 of this chapter.

Subpart 4122—Management Practices

§ 4122.1 Management considerations.

§ 4122.1–1 Multiple use.

All use and management practices, include grazing and the issuance of grazing leases, shall be in conformance with the concepts of multiple use and sustained yield (see 43 CFR 2410.0–5 (o) and (p)). Any public lands leased under the regulations of this part which are suitable for multiple use shall be managed for multiple use to the fullest extent possible, including provision of adequate access for the various multiple users. The Authorized Officer will negotiate for such access with the appropriate applicant(s) or lessee(s), utilizing Department of the Interior easement or acquisition procedures. Should negotiations prove ineffective, the United States will acquire the necessary access by appropriate legal procedures.

§ 4122.1–2 Areas of limited multiple use values.

On areas of public land with limited multiple use values the Authorized Officer may issue leases based on grazing capacity of the area only, or may include livestock numbers and season and time of use. Grazing leases based on the criteria of this section are usually for isolated and fragmented tracts of public land. However, the multiple use values involved, not size of the public land area, will be the determining factor.

§ 4122.1–3 Areas of important multiple use values.

(a) On areas of public land with important multiple use values in addition to livestock grazing or where the primary use is for sustained livestock grazing, the Authorized Officer may, before the grazing lease is issued, or where an existing lease provides for the issuance of an allotment management plan, develop in cooperation with the lease applicant or lessee an allotment management plan. Such plan shall be incorporated into the lease as a part of the terms and conditions of the lease. The plan shall provide for the proper use and conservation of the public lands, at the same time providing for the lessee the maximum possible operations flexibility. The management plan will identify objectives for the allotment, a grazing system and procedures for evaluation of management.

(b) In the absence of mutual agreement between the lessee and the Authorized Officer on an allotment management plan, the Authorized Officer may, in lieu of such plan, stipulate as a condition of the lease grazing system requirements necessary to assure proper management of the public land and its resources. In such cases the Authorized Officer may issue short-term leases until such time as he determines that the grazing system requirements are adequate to assure proper multiple use management of the public land.

§ 4122.2 Designations of grazing areas for exclusive use by specified classes of animals.

When necessary for the proper use or orderly administration of a lease area, the Authorized Officer may designate certain areas for use exclusively by a certain kind or class of livestock or wildlife.

§ 4122.3 General rules of the range.

The acts prohibited and rules of fair range practice as detailed in § 4112.3–1 and § 4112.3–2 of this chapter shall apply to all leases issued under the regulations in Part 4120.

Subpart 4123—Supervision and Inspection

§ 4123.1 Procedures for enforcement of rules and regulations.

A grazing lease may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the grazing lease, or for a violation of the Taylor Grazing Act or of the O&C Act or of any of the provisions of this Part. (See § 9239.3–1 of this chapter for detailed regulations). The lease of public lands for livestock grazing under these regulations in no way limits the Bureau's authority to protect the lands against unauthorized use or occupancy.

Subpart 4124—Local Associations

§ 4124.1 Local associations of stockmen.

Grazing associations formed by lessees will be recognized in accordance with regulations detailed in § 4114.4.

Subpart 4125—Records and Administrative Procedures

§ 4125.1 Procedures.

§ 4125.1–1 Leasing procedures; requirements and conditions.

(a) *Filing and action on lease applications.* (1) An application for a grazing lease shall be executed on a form approved by the Director and filed in the District Office of the Bureau of Land Management having management responsibility over the public lands applied for in the application. Proof of ownership or control of contiguous lands may be required by the Authorized Officer where the applicant seeks to assert a preference right.

(2) A service fee of $10 will be charged for all applications to lease public lands including initial applications and those made pursuant to assignments and consolidations. However, no fee will be charged for consolidations requested by the Authorized Officer or for a regular renewal of an existing lease.

(3) Applications to lease lands included in existing grazing leases, including lease renewals, must be filed not less than 30 days nor more than 90 days prior to the expiration of the current lease. An application not filed within this period may be rejected by the Authorized Officer as not timely filed. Applications for lands not under lease may be filed at any time.

(4) A timely filed application for renewal of an existing grazing lease does not confer on the lessee any right to a renewal but will authorize the continued grazing use of the lands by the lessee in accordance with the provisions of the existing lease pending final action on the application for renewal. The fee for such extended use shall be consistent with the then current fee schedule.

(5) An application for a grazing lease must describe the lands applied for by one of the following methods: (i) By legal subdivisions, or (ii) by metes and bounds description, or (iii) by designated management area.

(6) An application for a grazing lease may include O&C lands or public lands or combinations thereof.

(b) *No right is conferred by application prior to lease.* Since the issuance of a grazing lease is discretionary, the filing of an application for lands not then under lease does not create any right in the applicant to use the lands applied for pending the issuance of a grazing lease.

(c) *Action on defective and nonallowable applications.* (1) The Authorized Officer may require any defects in an application be corrected or additional information to be furnished. The Authorized Officer may reject any application if the applicant fails to correct defects in the application or fails to provide the additional information within the time

allowed, which period shall not be less than fifteen (15) days from the date of receipt by the applicant of notice of such defects or required information.

(2) The Authorized Officer shall reject the application if the land applied for (i) is in an allowed entry, (ii) is otherwise appropriated or reserved and not subject to lease under the Taylor Grazing Act or the O&C Act, (iii) is not public land, (iv) is under existing grazing lease, or (v) is of such character that livestock grazing would be detrimental to the resources or other uses of the land.

(d) *Consolidations.* A consolidation of leases held by a lessee may be requested by the lessee on a renewal application or may be required by the Authorized Officer on his own motion. The term of the consolidated lease shall be determined through negotiation between the lessee and the Authorized Officer.

(e) *Protests and appeals*—(1) *Protests.* A protest against the approval of an application for a lease should be filed in the same office where the application for a grazing lease was filed; it should describe the lands involved, contain a complete disclosure of all facts upon which the protest is based, and be accompanied by evidence of service on the applicant of a copy of the protest. The Authorized Officer will consider the protest, and will serve a copy of his decision on the affected parties in person or by certified mail, and in accordance with § 4125.1–3 will advise the protestant and other parties of their right to appeal to the Director.

(2) *Appeal by applicant.* The lease will be executed by the Authorized Officer and transmitted to the lessee only after final action action is taken on any protest or appeals which may have been filed. The applicant's signature to the lease shall constitute his acceptance of the lease as executed by the Authorized Officer. Nonacceptance of the lease does not prejudice the applicant's right to appeal.

(f) *Additional requirements and stipulations.* In addition to the provisions set forth in the standard Grazing Lease Form, the lease will provide for the multiple use requirements of the area, the number of livestock to be grazed, proper grazing seasons, allotment management plan, grazing system, reservation for authorized trailing, and any other conditions or requirements which the Authorized Officer may deem necessary and proper, except as provided under §§ 4121.2–1(b), 4122.1–2, and 4122.1–3.

(g) *Subleases.* No part of the lease land may be subleased by the lessee. The grazing on the lease area of livestock not owned or controlled by the lessee with or without the lessee's consent is prohibited.

(h) *Cancellation or reduction of leases; show cause, appeal to Director.* Leases are subject to cancellation or reduction for the lessee's failure to comply with the terms of the lease or the provisions of this part of the regulations, or in any case that a lease confers use in excess of that properly allowable. In any such case the Authorized Officer will notify the lessee that the lease is being held for cancellation or reduction in whole or in part, and will allow the lessee fifteen (15) days from receipt of the notice within which to show cause why such action should not be taken. The notice will fully set forth the reasons for the proposed action, specifically referring to the pertinent provisions of the regulations, and will be served on the lessee personally or by certified mail. The Authorized Officer will consider any cause shown and, if not satisfied as to its sufficiency, or if no cause is shown, he will notify the lessee personally or by certified mail that the lease has been cancelled or reduced as the case may be. Such decision is subject to appeal to the Director in accordance with § 4125.1–3.

(i) *Terms and conditions.* The issuance and continued effectiveness of all grazing leases will be subject to the following terms and conditions.

(1) A grazing lease will authorize grazing use not in excess of the grazing capacity available for use by livestock as determined by the Authorized Officer in accordance with § 4121.2–1(b).

(2) Grazing leases will provide for the grazing of livestock on the leased land only during that part or parts of the year for which the area has been classified as proper for use, except as provided in § 4121.2–1(b).

(3) Upon the diminution of the public land used under any grazing lease due to withdrawal, appropriation, selection, or otherwise, the lease will be adjusted proportionately to the reduced grazing capacity and the grazing fee will be adjusted accordingly commencing with the ensuing lease year.

(4) The grazing lease will be terminated in whole or in part because of loss of control by the lessee of non-Federal lands that have been recognized as the basis for a grazing lease.

(5) The area of the leased land may be reduced if it is determined that the land is required for the protection of forest plantations or sources of community water supply; or for recreation facilities, wildlife habitat, stock driveways, roads, trails, townsites; or for other public purposes. When it is determined by the Authorized Officer that the leased land is excessive to the lessee's need or that the lessee is not making substantial use of the leased land, the Authorized Officer may cancel the lease, reduce the acreage of the grazing lease, or reduce the grazing use allowed in accordance with the provisions of § 4125.1–1(h). In the case of any such acreage reduction a proportionate fee adjustment will be made. If the entire grazing lease is cancelled, the Director may refund any portion of the grazing fees paid for the cancelled lease term.

(6) The Authorized Officer may establish the size and boundaries of a grazing lease area to facilitate the proper and effective management of the resources. In so doing, he will give consideration to seasons of use, topography, and establishment of systems of grazing and any other pertinent factors. He may determine that two or more applicants shall be authorized to use the public land within a management area.

(7) The Authorized Officer may make adjustments in grazing leases at any time when necessary to comply with these regulations for the public lands.

(8) If necessary to rehabilitate the vegetative resources on the public land, the Authorized Officer may temporarily close the leased land to grazing or reduce livestock use whenever vegetal cover is depleted due to drought, epidemic, fire or any other cause, or for rehabilitation of the area. Such action will not exclude the closed area from the grazing lease.

(9) Authorized grazing use of the leased land may be adjusted by the Authorized Officer to conform to needed refinements in the allotment management plan as a result of more accurate determinations of grazing capacity, season and area of use, class of livestock, etc. Proportionate adjustment will be made in the annual grazing fee for the subsequent grazing season.

(10) The issuance of a grazing lease does not alter or restrict the authorized public use of the leased land including, but not limited to, hunting, fishing, camping, or hiking on such lands in accordance with the laws of the United States or of the State in which the lands are located, nor may the lessee interfere in any manner with the proper exercise of such rights. Neither shall the lessee maintain locked gates, signs, or other devices which prevent or interfere with public use of the leased land. Nor shall the lessee restrict or limit prospecting, locating, developing, mining, or patenting the mineral resources in the public land; miners, prospectors, and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased land for all lawful purposes.

(11) The Authorized Officer may require the lessee, as a condition to the granting and continued effectiveness of grazing leases, to fence or to contribute an equitable share to the cost of fencing the allotted areas and the maintenance of such fences.

(j) *Change in grazing seasons.* Any lessee who desires to use the leased land for a period or periods other than those authorized by his lease may, upon written approval of the Authorized Officer and prior to his annual billing notice, be allowed to use the amount of his authorized grazing use during any other period of time for which the lease area is classified as proper for use: *Provided*:

(1) Adjustment in season, time, or numbers does not result in an increase in the number of animal unit months utilized;

(2) Such use will not be detrimental to the resources of the leased area; and

(3) Such use will not adversely affect other lessees.

(k) *Interest of Members of Congress prohibited.* No Member of or delegate to Congress shall be admitted to any share or part of any grazing lease issued or to derive any benefit to arise therefrom (41 U.S.C. sec. 22; 18 U.S.C. sec. 431–433).

l) *Exchange-of-use agreements.* The Authorized Officer may enter into an

exchange-of-use agreement with any applicant having ownership or control of non-Federal land interspersed with and normally grazed in conjunction with the surrounding public land. The grazing use authorized, will be without payment of fees, and will not exceed the grazing capacity of such non-Federal land.

(m) *Fees for grazing leases and crossing permits*—(1) *Lease rates.* Each holder of a grazing lease will be charged annual grazing fees for the animal unit months (AUM's) authorized by the grazing lease, at a rate per animal unit month (AUM). All grazing fee billings shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock six (6) months of age or over allowed on the leased area will be considered as a part of the total number for which a lease has been issued. No fees will be charged for livestock under 6 months of age.

(i) A minimum annual charge of $10 will be made on all leases.

(ii) The rate or rates per AUM for the fee year, beginning March 1 and ending the last day of February, will be established by the Director, and notice thereof shall be published in the FEDERAL REGISTER. The rate or rates will become effective as of the date of such publication and will be applied to all billing notices issued thereafter.

(2) *Crossing permits.* Upon application filed with the Authorized Officer by any person showing the necessity for crossing the public lands with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of 1 cent per head per day for cattle, 2 cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited that no substantial amount of forage will be consumed in transit.

(3) *Payment of rental fees and effect of failure to pay.* No grazing lease or renewal thereof shall be executed by the Authorized Officer until payment of all fees due the United States under the regulations in this part has been made. The first grazing fee payment must be made within 15 days of receipt of billing; if not paid within that time, the lease shall not be issued by the Authorized Officer. Upon timely payment of the first grazing fee payment, the lease will be executed and forwarded to the lessee. Subsequent annual grazing fee payments are due the United States upon receipt of the billing notice and are payable in advance of the first grazing period for the full amount as indicated on the fee notice. No lease shall be effective to authorize grazing use thereunder until such advance payment has been made. A lease may be canceled pursuant to § 4125.1–1 (h) for failure to make timely payment.

(4) *Refunds.* No refunds of grazing fees properly paid in accordance with the regulations in this part and the terms of the grazing lease will be made because of the lessee's failure to make full grazing use as authorized by the lease. However, during periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of livestock disease during the life of the grazing lease, the Director on proper application may remit, refund, reduce in whole or in part, or postpone the payment of grazing fees for such period of depletion or general epidemic as he may determine. No part of the grazing fee paid will be refunded because of cancellation, relinquishment, or assignment, except as provided in § 4125.1–1(i) (3), (5), (8), and (9).

(n) *Period of lease.* A grazing lease or lease renewal may be issued for any period not in excess of 10 years and may be limited by the Authorized Officer to the term of a lease or control of lands that have been recognized as the basis for the grazing lease.

§ 4125.1–2 Assignment and relinquishment of grazing lease.

(a) *Assignment of grazing lease.* The lessee may assign a grazing lease only with the consent of the Authorized Officer; provided that the assignee has control of preference lands. The Authorized Officer will require the assignee to furnish proof of ownership or control of preference lands. The proposed assignment must be made on a form approved by the Director and must be filed with the Authorized Officer within 90 days from date of its execution. It must contain all the terms and conditions agreed upon between the parties and will be made effective only for the unexpired period of the assignor's lease. The assignment, properly executed and signed by the assignor, and the new application signed by the assignee will constitute the assignee's acceptance of the terms of the grazing lease. No assignment will be recognized or confer on the assignee any right to use the leased area until approved by the Authorized Officer. Advance grazing fees paid by the assignor may be credited to the assignee. All cooperative agreements and permits to construct or maintain range improvements on the leased land must be assigned at the time of the grazing lease assignment.

(b) *Relinquishment of grazing lease.* Upon written request, the Authorized Officer may accept a grazing lease relinquishment, in whole or in part, provided that all fees and charges then due have been paid.

§ 4125.1–3 Appeals.

Any applicant or lessee whose interest is adversely affected by a final decision of the Authorized Officer may appeal to the Director, and from the Director to the Secretary, in accordance with the procedure for appeals and contests set forth in Part 1840 of this chapter.

§ 4125.1–4 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the leased lands*—(1) *Qualifications of applicant for range improvement permit.* An applicant for a permit to construct or maintain range improvements, or to use and maintain range improvements constructed and owned by a prior occupant of the leased land, must be qualified under § 4121.1–1 and hold a valid lease.

(2) *Applications.* Applications for permits must be approved prior to construction. Applications for permits must be filed with the Authorized Officer on a form approved by the Director. Construction of range improvements without an approved permit may result in cancellation of the grazing lease as provided in § 4125.1–1(h).

(3) *Appeals.* The Authorized Officer will act on the application and such action shall be final unless the applicant appeals in accordance with § 4125.1–3.

(4) *Assignments.* Assignments of range improvement permits must be be filed with the Authorized Officer on a form approved by the Director and are not effective until approved by the Authorized Officer.

(5) *Permit standards.* The Authorized Officer will specify the minimum Bureau of Land Management standards and design for all range improvements. Failure to comply with the standards and design may result in cancellation of the range improvement permit and/or the grazing lease as provided in § 4125.1–1(h).

(6) *Cooperative agreements.* A lessee may enter into a cooperative agreement with the Authorized Officer to construct and maintain range improvements upon the leased land. Failure to comply with the terms of such an agreement within a reasonable time, as allowed by the Authorized Officer, may result in the cancellation of the agreement and/or the grazing lease as provided in § 4125.1–1(h). A cooperative agreement for range improvements shall be made on a form approved by the Director.

(7) *Removal of improvements; compensation for loss of improvements.* (i) When a grazing lease expires or is terminated, the Authorized Officer may require an applicant for a subsequent lease to agree to compensate the prior lessee for the current value of his share of the cost of authorized permanent improvements placed on the leased land. The prior lessee must file a written application for compensation within 30 days after the date of termination or expiration of his lease or the date of the final decision terminating it. The amount of compensation shall be determined in accordance with § 4125.1–4(a)(8)(i). The failure of the new lessee to pay the prior lessee in accordance with such agreement shall be cause for cancellation of the new grazing lease.

(ii) The leasee will be allowed ninety (90) days from the date of expiration or termination of the grazing lease within which to remove improvements not disposed of in the manner set forth in subdivision (i) of this subparagraph; if not removed or otherwise disposed of within the said period or any extension thereof granted by the Authorized Officer, such improvements shall become the property of the United States. No improvements may be removed if the lessee is in default with respect to the grazing lease.

(8) *Leased land subject to disposition; compensation for loss of improvements.* (i) Ordinarily, before an application for disposal of leased lands under the public land laws is allowed, the applicant must agree to compensate the lessee or other party for any authorized range improvements in which the lessee or other party has a financial investment. If the parties are unable to agree to the amount, manner, and time for compensation for such improvements, such matters shall be determined by the Authorized Officer. The failure of the applicant to comply with the agreement or the conditions fixed by the Authorized Officer shall be cause for cancellation of any right or interest in the land acquired by the applicant by reason of the allowance of the application. If improvements have been constructed in whole or in part with Federal funds, are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), the application may be allowed in the discretion of the Authorized Officer without compensation to the United States for its share of the value of the improvements. In such cases, the Authorized Officer shall determine whether the grazing improvements are needed by the United States and whether the probable salvage value is sufficient to warrant removal of the salvageable materials.

(b) *Contributions for administration, protection, and improvement of public lands.* The Authorized Officer may accept contributions, made under section 9 of the Taylor Grazing Act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction.

(1) Any individual, association, corporation, State or local body or private group, may enter into an agreement with the Authorized Officer with respect to such contribution.

§ 4125.1–5 Pledge of leases as security for loans.

(a) A grazing lease may be pledged as security for a loan from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may obtain from the Authorized Officer a written statement concerning the status of the grazing lease and related information. A service charge of $10 will be made for searching the records, except that Federal and State lending agencies shall be exempt from such charge.

(b) A borrower-lessee desiring an extension of the grazing lease term may file a request therefor with the Authorized Officer, setting forth the name of the lending agency, purpose and amount of the loan, and the need for an extension of the grazing lease. If the Authorized Officer determines that an extension will not conflict with the applicable laws and is not contrary to the public interest, he may issue a new grazing lease for a period up to 10 years from the date of the loan but not to exceed the period of the loan.

(c) If the preference land of a lessee is acquired by a lending agency through foreclosure or otherwise, the agency, its grantees and lessees, or parties authorized by it to occupy the preference lands, may, if qualified, file an application for the issuance of a new grazing lease. If, in selling the property, the lending agency takes back the mortgage on the property, the agency will receive the same administrative consideration as in the case of an original loan.

(d) Where a lending agency files notice with the Authorized Officer that it has made a loan and has accepted a grazing lease as security, such agency will be advised of any adverse action taken affecting the lease. The failure of the Bureau of Land Management to give timely notice of any such adverse action shall impose no liability or obligation on the Bureau of Land Management or any of its employees.

STEWART L. UDALL,
Secretary of the Interior.

AUGUST 9, 1968.

[F.R. Doc. 68–9727; Filed, Aug. 12, 1968; 8:51 a.m.]

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PART IV

Department of the Treasury

Office of Foreign Assets Control

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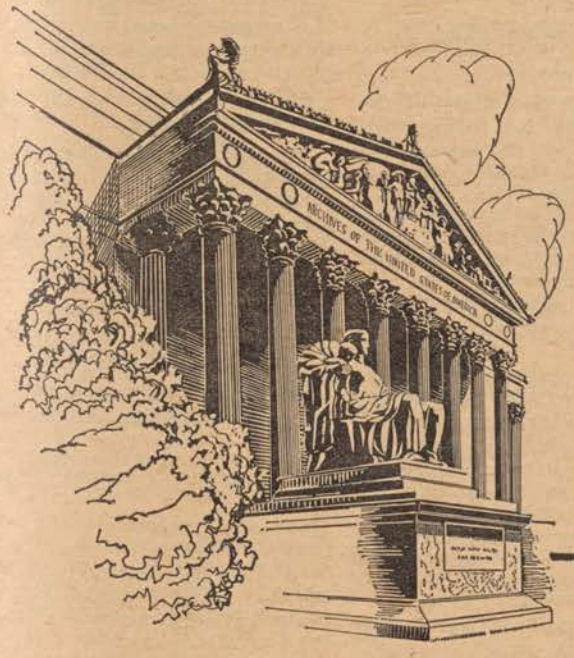
RHODESIAN SANCTIONS REGULATIONS



31 CFR PART 530

Title 31—MONEY AND FINANCE: TREASURY

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

PART 525—RHODESIAN TRANSACTION REGULATIONS

PART 530—RHODESIAN SANCTIONS REGULATIONS

Part 525 of Title 31 of the Code of Federal Regulations is hereby superseded by the following new Part 530.

Subpart A—Relation of This Part to Other Laws and Regulations

AUTHORITY: The provisions of this Part 530 issued under E.O. 11322, January 5, 1967; E.O. 11419, July 29, 1968; sec. 5, 59 Stat. 620, sec. 3, 63 Stat. 735, 22 U.S.C. 287c.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 530.101 Relation of this part to other laws and regulations.

(a) The Rhodesian Transaction Regulations (Part 525 of this title) issued as of January 5, 1967, as amended, are revoked and the regulations in this Part 530 are adopted in place thereof controlling certain financial and commercial transactions involving Southern Rhodesia or business nationals thereof: *Provided*, That the revocation of the Rhodesian Transaction Regulations shall not be deemed to authorize any unlicensed importation, transaction or transfer prohibited by the Rhodesian Transaction Regulations and all penalties, forfeitures, and liabilities under such regulations or any other applicable laws or regulations shall continue and may be enforced as if such revocation had not been made.

(b) A license or authorization contained in or issued pursuant to this part does not authorize any transaction that is prohibited by the provisions of any law, statute or regulation other than section 5 of the United Nations Participation Act of 1945, Executive Order 11322 issued January 5, 1967, thereunder, Executive Order 11419, issued July 29, 1968, thereunder, and the regulations contained in this part.

Subpart B—Prohibitions

§ 530.201 Prohibitions.

(a) All of the following direct or indirect transactions by any person subject to the jurisdiction of the United States are prohibited, except as authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him), by means of regulations, rulings, instructions, general or specific licenses or otherwise:

(1) The importation into the United States of merchandise of Southern Rhodesian origin;

(2) Transfers of property which involve merchandise outside the United States of Southern Rhodesian origin;

(3) Transfers of property which involve merchandise destined to Southern Rhodesia or to or for the account of business nationals thereof;

(4) Other transfers of property to Southern Rhodesia, the authorities thereof, or to any other person therein; and

(5) The importation into the United States of ferrochrome produced in any country from chromium ore or concentrates of Southern Rhodesian origin.

(b) Any transaction for the purpose or which has the effect of evading or avoiding any of the prohibitions set forth in paragraph (a) of this section is prohibited.

(c) The effective date of this section is 11:59 p.m., e.s.t., July 29, 1968.

Subpart C—General Definitions

§ 530.301 Person.

The term "person" means an individual, partnership, association, corporation, or other organization.

§ 530.302 Transfer.

The term "transfer" includes, but not by way of limitation, any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest, with respect to any property and without limitation upon the foregoing shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; and the appointment of any agent, trustee, or other fiduciary.

§ 530.303 License.

Except as otherwise specified, the term "license" shall mean any license or authorization contained in or issued pursuant to this part.

§ 530.304 General license.

A general license is any license or authorization the terms of which are set forth in this part.

§ 530.305 Specific license.

A specific license is any license or authorization issued pursuant to this part but not set forth in this part.

§ 530.306 United States; continental United States.

The term "United States" means the United States and all areas under the jurisdiction or authority thereof including the Panama Canal Zone and the Trust Territory of the Pacific Islands. The term "continental United States" means the States of the United States and the District of Columbia.

§ 530.307 Person subject to the jurisdiction of the United States.

(a) The term "person subject to the jurisdiction of the United States" includes:

(1) Any person, wheresoever located, who is a citizen or resident of the United States;

(2) Any person actually within the United States;

(3) Any corporation organized under the laws of the United States or of any State, territory, possession, or district of the United States; and

(4) Any partnership, association, corporation, or other organization organized under the laws of, or having its principal place of business in, Southern Rhodesia which is owned or controlled by

persons specified in subparagraph (1), (2), or (3) of this paragraph.

§ 530.308 Property.

The term "property" includes, but not by way of limitation, money, checks, drafts, bullion, bank deposits, savings accounts, any debts, indebtedness obligations, notes, debentures, stocks, bonds, coupons, any other financial securities, bankers' acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, real estate and any interest therein, leaseholds, ground rents, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks, copyrights, contracts or licenses affecting or involving patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 530.309 Merchandise.

The term "merchandise" means all goods, wares, and chattels of every description without limitation of any kind.

§ 530.310 Business national.

(a) The term "business national" of Southern Rhodesia means:

(1) Any business enterprise in Southern Rhodesia;

(2) Any person outside Southern Rhodesia to the extent such person is acting for or on behalf of or for the benefit of a business enterprise in Southern Rhodesia;

(3) Any person outside Southern Rhodesia owned or controlled by a business enterprise in Southern Rhodesia.

(b) The term "business enterprise" includes an individual to the extent he engages in business activities.

Subpart D—Interpretations

§ 530.401 Reference to amended sections.

Reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended unless otherwise so specified.

§ 530.402 Effect of amendment of sections of this part or of other orders, etc.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Secretary of the Treasury pursuant to Executive Order 11322 or Executive Order 11419 shall not unless otherwise specifically provided be deemed to affect any act done or omitted to be done, or any suit or proceeding had or commenced in any civil or criminal case, prior to such amendment, modification, or revocation, and all penalties, forfeitures, and liabilities under any such section, order, regulation, ruling, instruction, or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 530.403 Transactions between principal and agent.

A transaction between any person within the United States and any principal, agent, home office, branch, or correspondent outside the United States of such person is a prohibited transaction to the same extent as if the parties to the transaction were in no way affiliated or associated with each other.

§ 530.404 Officers and directors of foreign firms.

Section 530.201 prohibits persons subject to the jurisdiction of the United States who are officers, directors, or principal managerial personnel of business enterprises in foreign countries from being involved in any transaction subject to § 530.201. Such persons are involved in transactions when they authorize or permit the foreign business enterprise to engage in a transaction subject to § 530.201, even if they do not themselves actively engage in the transaction.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 503.501 Effect of subsequent license or authorization.

No license or other authorization contained in this part or otherwise issued by or under the direction of the Secretary of the Treasury pursuant to Executive Order 11322, or Executive Order 11419 shall be deemed to authorize or validate any transaction effected prior to the issuance thereof, unless such license or other authorization specifically so provides.

§ 530.502 Exclusion from licenses and authorizations.

The Secretary of the Treasury reserves the right to exclude from the operation of any license or from the privileges therein conferred, or to restrict the applicability thereof with respect to, particular persons, transactions or property or classes thereof. Such action shall be binding upon all persons receiving actual notice or constructive notice thereof.

§ 530.503 Certain transactions with respect to merchandise affected by § 530.201.

(a) With respect to merchandise the importation of which is prohibited by § 530.201 all U.S. Customs transactions are authorized except the following:

(1) Entry for consumption (including any appraisement entry, and entry of goods imported in the mails, regardless of value, and any other informal entries);

(2) Entry for immediate exportation;

(3) Entry for transportation and exportation;

(4) Withdrawal from warehouse;

(5) Transfer or withdrawal from a foreign-trade zone; or

(6) Manipulation or manufacture in a warehouse or in a foreign-trade zone.

(b) Paragraph (a) of this section is intended solely to allow certain restricted disposition of merchandise which is imported without proper authorization. Paragraph (a) of this section does not authorize the purchase or importation of any merchandise.

§ 530.504 [Reserved]

§ 530.505 Merchandise exported prior to May 29, 1968.

(a) Specific licenses will be issued authorizing transactions involving merchandise subject to § 530.201(a) (1) and (2) when the Office of Foreign Assets Control is satisfied that the merchandise was exported from Southern Rhodesia prior to May 29, 1968.

(b) Such licenses will not be issued if the merchandise is listed below, unless the Office of Foreign Assets Control is satisfied that such merchandise was exported from Southern Rhodesia prior to December 16, 1966. Merchandise affected by this subparagraph is:

Commodity	
Asbestos, crudes, fibers, stucco, sand and refuse	Schedule 5, Part 1, Subpart F, item 518.11.
Chromium:	
Ore and concentrates thereof	Schedule 6, Part 1, item 601.15.
Ferrochromium and ferro-silico-chromium	Schedule 6, Part 2, subpart B, items 607.30, 607.31 and 607.55.
Copper:	
Ore and concentrates thereof	Schedule 6, Part 1, items 602.25 and 602.30.
Copper prdoucts	Schedule 6, Part 2, subpart C, and Part 3.
Iron:	
Ore and concentrates thereof	Schedule 6, Part 1, items 601.24.
Pig iron, cast iron and spiegeleisen	Schedule 6, Part 2, subpart B, item 607.15, 607.18, 607.20 and 607.21.
Hides, skins and leather	Schedule 1, Part 5, subpart A.
Meat and meat products	Schedule 1, Part 2.
Sugar, syrups, and molasses, confectionery	Schedule 1, Part 10, subparts A and C.
Tobacco and tobacco products	Schedule 1, Part 13.

§ 530.506 Supply of certain commodities to Southern Rhodesia.

Specific licenses may be issued authorizing transactions involving the supply from any foreign country to Southern Rhodesia of:

(a) Merchandise intended for medical purposes;

(b) Educational equipment and material for use in schools and other educational institutions;

(c) Publications and news material; and

(d) Foodstuffs in special humanitarian circumstances.

§ 530.507 Pensions.

Specific licenses will be issued authorizing remittances of pensions payable to persons in Southern Rhodesia.

§ 530.508 Remittances for medical, educational and humanitarian purposes.

Specific licenses will be issued authorizing remittances to persons in Southern Rhodesia when the Office of Foreign Assets Control is satisfied that the proceeds will be used for medical, humanitarian, or educational purposes.

§ 530.509 Remittances for news material.

(a) Remittances by news gathering agencies to persons in Southern Rhodesia in payment for news material and importations of such material are hereby authorized.

(b) Specific licenses will be issued to other persons authorizing remittances to persons in Southern Rhodesia when the Office of Foreign Assets Control is satisfied the remittances are bona fide payments for news material.

§ 530.510 Publications and films of Southern Rhodesian origin.

All transactions incidental to the importation into the United States of publications and documentary or news films of Southern Rhodesian origin are hereby authorized. This paragraph does not authorize any transfer of property prohibited by § 530.201(a) (3) or (4).

§ 530.511 Exportations to Southern Rhodesia.

All transactions ordinarily incident to the exportation of goods, wares and merchandise from the United States to any person within Southern Rhodesia are hereby authorized provided the exportation is licensed or otherwise authorized by the Department of Commerce under the provisions of the Export Control Act of 1949, as amended (50 U.S.C. App. Sec. 2023).

Subpart F—Reports

§ 530.601 Records.

Every person engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each such transaction engaged in by him, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least 2 years after the date of such transaction.

§ 530.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required by the Secretary of the Treasury or any person acting under his direction or authorization complete information relative to any transaction subject to the provisions of this part. The Secretary of the Treasury or any person acting under his direction may require that such reports include the production of any books of account, contracts, letters, or other papers, connected with any such transaction in the custody or control of the persons required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Secretary of the Treasury may, through any person or agency, investigate any such transaction or any violation of the provisions of this part regardless of whether any report has been required or filed in connection therewith.

Subpart G—Penalties

§ 530.701 Penalties.

(a) Attention is directed to section 5(b) of the United Nations Participation Act of 1945 (22 U.S.C. sec. 287(c)), which provides in part:

> Any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to subsection (a) of this section shall, upon conviction be fined not more than $10,000, or, if a natural person, be imprisoned for not more than 10 years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States. (Dec. 20, 1945, ch. 583, sec. 5, 59 Stat. 620; Oct. 10, 1949, ch. 660, sec. 3, 63 Stat. 735.)

This section of the United Nations Participation Act of 1945 is applicable to violations of any provisions of this part and to violations of the provisions of any license, ruling, regulation, order, direction or instruction issued pursuant to this part or otherwise under section 5 of the United Nations Participation Act, Executive Order 11322, and Executive Order 11419.

(b) Attention is also directed to 18 U.S.C. 1001 which provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

Subpart H—Procedures

§ 530.801 Licenses.

(a) *General licenses.* General licenses may be issued authorizing, under appropriate terms and conditions, types of transactions subject to the prohibitions contained in subpart B of this part. All such licenses are set forth in subpart E of this part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses are required to file reports and statements in the form and in accordance with the instructions specified in the licenses.

(b) *Specific licenses*—(1) *General course of procedure.* Transactions subject to the prohibitions contained in Subpart B of this part which are not authorized by general license may be effected only under specific license. Form TFAC–26, Revised, is the specific license form. The specific licensing activities of the Office of Foreign Assets Control are performed by the central organization and the Federal Reserve Bank of New York. When an unusual problem is presented, the proposed action is cleared with the Director of Foreign Assets Control or such person as the Director may designate.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transaction prohibited by or pursuant to this part are to be filed in duplicate on Form TFAC–25, revised, with the Federal Reserve Bank of New York. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing the effecting of such transaction, and there is no requirement that any other person having an interest in such transaction shall or should join in making or filing such application.

(3) *Information to be supplied.* Applicants must supply all information specified by the respective forms and instructions. Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Control. If an applicant or other party in interest desires to present additional information or discuss or argue the application, he may do so at any time before or after decision. Arrangements for oral presentation should be made with the Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition upon the issuance of any license, the licensee may be required to

file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or by the Federal Reserve Bank of New York, acting in accordance with such regulations, rulings, and instructions as the Secretary of the Treasury or the Office of Foreign Assets Control may from time to time prescribe, in such cases or classes of cases as the Secretary of the Treasury or the Office of Foreign Assets Control may determine, or licenses may be issued by the Secretary of the Treasury acting directly or through any person, agency, or instrumentality designated by him.

§ 530.802 [Reserved]

§ 530.803 Decision.

The Office of Foreign Assets Control or the Federal Reserve Bank of New York will advise each applicant of the decision respecting applications filed by him. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

§ 530.804 Records and reporting.

(a) Records are required to be kept by every person engaging in any transaction subject to the provisions of this part, as provided in § 530.601.

(b) Reports may be required from any person with respect to any transaction subject to the provisions of this part as provided in § 530.602.

§ 530.805 Amendment, modification, or revocation.

The provisions of this part and any rulings, licenses, authorizations, instructions, orders, or forms issued thereunder may be amended, modified, or revoked at any time. In general, the public interest requires that such amendments, modifications, or revocations be made without prior notice.

§ 530.806 Rule making.

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of the Office of Foreign Assets Control or by the Director of the Office of Foreign Assets Control. Except to the extent that there is involved any military, naval, or foreign affairs function of the United States or any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts, and except when interpretative rules, general statements of policy, or rules of agency organization, practice, or procedure are involved or when notice and public procedure are impracticable, unnecessary or contrary to the public interest, interested persons will be afforded an opportunity to participate in rule making through submission of written data, views, or argument, with oral presentation in the discretion of the Director. In general, rule making by the Office of Foreign Assets Control involves foreign affairs functions of the United States. Whenever possible, however, it is the practice to hold informal consultations with interested groups or persons before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of Foreign Assets Control in writing for the issuance, amendment or repeal of any rule.

§ 530.807 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 11322 and Executive Order 11419 may be taken by the Director of the Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

§ 530.808 Customs procedures; merchandise specified in § 530.201.

(a) With respect to merchandise specified in § 530.201, whether or not such merchandise has been imported into the United States, district directors of customs shall not accept or allow any:

(1) Entry for consumption (including any appraisement, entry, any entry of goods imported in the mails, regardless of value, and any other informal entries);

(2) Entry for immediate exportation;

(3) Entry for transportation and exportation;

(4) Withdrawal from warehouse;

(5) Transfer or withdrawal from a foreign-trade zone; or

(6) Manipulation or manufacture in a warehouse or in a foreign-trade zone, unless either:

(i) The merchandise was imported prior to July 29, 1968, and in the case of merchandise listed in § 530.505(b) was imported prior to January 5, 1967,

(ii) An applicable general license appears in subpart E hereof,

(iii) A specific license issued pursuant to this part is presented, or

(iv) Instructions from the Office of Foreign Assets Control, either directly or through the Federal Reserve Bank of New York, authorizing the transaction are received.

(b) Whenever a specific license is presented to a district director of customs in accordance with this section, one additional legible copy of the entry, withdrawal or other appropriate document with respect to the merchandise involved shall be filed with the district director of customs at the port where the transaction is to take place. Each copy of any such entry, withdrawal, or other appropriate document, including the additional copy, shall bear plainly on its face the number of the license pursuant to which it is filed. The original copy of the specific license shall be presented to the district director in respect of each such transaction and shall bear a notation in ink by the licensee or person presenting the license showing the description, quantity, and value of the merchandise to be entered, withdrawn, or otherwise dealt with. This notation should be so placed and so written that there will exist no possibility of confusing it with anything placed on the license at the time of its issuance. If the license in fact authorizes the entry, withdrawal or other transaction with regard to the merchandise the district director, or other authorized customs employee, shall verify the notation by signing or initialing it after first assuring himself that it accurately describes the merchandise it purports to represent. The license shall thereafter be returned to the person presenting it and the additional copy of the entry, withdrawal, or other appropriate document shall be forwarded by the district director to the Office of Foreign Assets Control.

(c) Whenever a person shall present an entry, withdrawal, or other appropriate document affected by this section and shall assert that no specific Foreign Assets Control license is required in connection therewith, the district director of customs shall withhold action thereon and shall advise such person to communicate directly with the Federal Reserve Bank of New York to request that instructions be issued to the district director to authorize him to take action with regard thereto.

§ 530.809 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Department issued under 5 U.S.C. 552 and published as Part 1 of this Title 31 of the Code of Federal Regulations, 32 F.R. 9562, July 1, 1967.

(b) Form TFAC–25, revised, and any other form used in connection with the Rhodesian Sanctions Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220, or the Foreign Assets Control Division, Federal Reserve Bank of New York, 33 Liberty Street, New York, N.Y. 10045.

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

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