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PART I

(Part II begins on page 959)

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FEDERAL REGISTER

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List of CFR Parts Affected

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

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1969, and specifies how they are affected.

Presidential Documents

Title 3—THE PRESIDENT

Proclamation 3886

EFFECTIVE DATE OF PUBLIC LAW 90–635, AN ACT FOR IMPLEMENTING CONVENTIONS FOR FREE ADMISSION OF PROFESSIONAL EQUIPMENT AND CONTAINERS, AND FOR ATA, ECS, AND TIR CARNETS

By the President of the United States of America

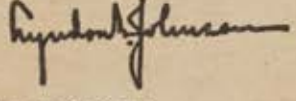
A Proclamation

WHEREAS Section 4 of Public Law 90–635, an Act for implementing Conventions for Free Admission of Professional Equipment and Containers, and for ATA, ECS, and TIR Carnets (82 Stat. 1351), provides that each of sections 1 through 3 of the Act shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on and after a date which shall be proclaimed by the President, which date shall be consonant with the entering into force for the United States of the customs convention or conventions which such section implements; and

WHEREAS all the customs conventions which sections 1 through 3 implement will enter into force for the United States on March 3, 1969.

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including Section 4 of Public Law 90–635, an Act for implementing Conventions for Free Admission of Professional Equipment and Containers, and for ATA, ECS, and TIR Carnets, do proclaim that sections 1 through 3 of that Act shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on and after March 3, 1969.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of January in the year of our Lord nineteen hundred and sixty-nine, and of the Independence of the United States of America the one hundred and ninety-third.



[F.R. Doc. 69–897; Filed, Jan. 21, 1969; 10:31 a.m.]

Proclamation 3887

ENLARGING THE ARCHES NATIONAL MONUMENT, UTAH

WHEREAS, the Arches National Monument in Utah was established by Proclamation No. 1875 of April 12, 1929, and enlarged by Proclamation No. 2312 of November 25, 1938, and its boundary adjusted by Proclamation No. 3360 of July 22, 1960, to reserve and set apart areas containing extraordinary examples of wind-eroded sandstone formations and other features of geological, historic and scientific interest; and

WHEREAS, it would be in the public interest to add to the Arches National Monument certain adjoining lands which encompass a variety of additional features which constitute objects of geological and scientific interest to complete the geologic story presented at the monument; and

WHEREAS, under section 2 of the act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), the President is authorized "to declare by public proclamation * * * objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected:"

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States, under the authority vested in me by section 2 of the act of June 8, 1906, *supra*, do proclaim that, subject to valid existing rights, (1) the lands owned or controlled by the United States within the exterior boundaries of the following described area are hereby added to and made a part of the Arches National Monument, and (2) the State-owned and privately owned lands within those boundaries shall become and be reserved as parts of that monument upon acquisition of title thereto by the United States:

SALT LAKE MERIDIAN, UTAH

T. 23 S., R. 20 E.,
Sec. 11;
Sec. 12, N½;
Sec. 14;
Sec. 24, S½;
Secs. 25 and 26;
Sec. 27, E½;
Secs. 35 and 36.
T. 24 S., R. 20 E.,
Sec. 1.
T. 23 S., R. 21 E.,
Sec. 7, N½;
Sec. 8, S½;
Sec. 15, S½;
Sec. 19, S½;
Sec. 20, SW¼;
Sec. 23, S½;
Secs. 25, 29, 30, 31, 32, 33, and 36.
T. 24 S., R. 21 E.,
Sec. 3, S½;
Secs. 4, 5, 6, 8, 9, and 10;
Sec. 11, W½ and SE¼;
Secs. 14, 15, 16, 17, 20, 21, 22, 28, 29, 30, 31, and 32;
Sec. 36, S½.
T. 25 S., R. 21 E.,
Secs. 1 and 2;
Sec. 6, E½;
Sec. 7, E½;
Secs. 11, 12, 13, and 14;
Sec. 18, NE¼;
Sec. 23;
Secs. 24, 25 and 26—those portions lying north of the right bank of the Colorado River.

T. 23 S., R. 22 E.,
Sec. 31;
Sec. 32, W½ and SE¼;
Sec. 33, S½.
T. 24 S., R. 22 E.,
Sec. 4, E½;
Sec. 9, E½;
Secs. 10 and 11;
Sec. 12, S½;
Secs. 13, 14, 15, and 16;
Sec. 17, E½ and E½NW¼;
Sec. 20, NE¼, N½SE¼, and SE¼SE¼;
Secs. 21, 22, 23, and 24;
Secs. 25, 26, 27, and 28—those portions lying north of the right bank of the Colorado River;
Sec. 29, NE¼NE¼;
Sec. 31, S½;
Sec. 32, that portion of the S½ lying west and north of the right bank of the Colorado River;
Sec. 33, that portion lying west and north of the right bank of the Colorado River.
T. 25 S., R. 22 E.,
Sec. 5, that portion lying west of the right bank of the Colorado River;
Secs. 6 and 7;
Secs. 8, 9, 10, 15, 16, and 17—those portions adjoining the right bank of the Colorado River;
Sec. 18;
Secs. 19 and 20—those portions lying north of the right bank of the Colorado River.
T. 24 S., R. 23 E.,
Sec. 18, SW¼;
Sec. 19, W½;
Sec. 30, lots 3 to 7, inclusive and lots 11 and 12;
Containing 48,943 acres, more or less.

Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

Any reservations or withdrawals heretofore made which affect the lands described above are hereby revoked.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January in the year of our Lord nineteen hundred and sixty-nine and of the Independence of the United States of America the one hundred and ninety-third.

Lyndon B. Johnson

[F.R. Doc. 69-898; Filed, Jan. 21, 1969; 10:31 a.m.]

Proclamation 3888

ENLARGING THE CAPITOL REEF NATIONAL MONUMENT, UTAH

WHEREAS, the Capitol Reef National Monument in Utah was established by Proclamation No. 2246 of August 2, 1937, and enlarged by Proclamation No. 3249 of July 2, 1958, to set aside and reserve certain areas possessing significant features and objects of geological and scientific interest; and

WHEREAS, it would be in the public interest to add to the Capitol Reef National Monument certain adjoining lands which encompass the outstanding geological feature known as Waterpocket Fold and other complementing geological features, which constitute objects of scientific interest, such as Cathedral Valley; and

WHEREAS, under section 2 of the act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), the President is authorized "to declare by public proclamation * * * objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected:"

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States, under the authority vested in me by section 2 of the act of June 8, 1906, supra, do proclaim that, subject to valid existing rights, (1) the lands owned or controlled by the United States within the exterior boundaries of the following described area are hereby added to and made a part of the Capitol Reef National Monument, and (2) the State-owned and privately owned lands within those boundaries shall become and be reserved as parts of that monument upon acquisition of title thereto by the United States:

SALT LAKE MERIDIAN, UTAH

T. 26 S., R. 5 E.,
Secs. 25 to 29, inclusive, partly unsurveyed;
Secs. 32 to 36, inclusive, partly unsurveyed.
T. 27 S., R. 5 E.,
Secs. 1 to 4, inclusive;
Secs. 9 to 16, inclusive;
Secs. 21 to 28, inclusive;
Secs. 33 to 36, inclusive.
T. 28 S., R. 5 E.,
Secs. 1 to 3, inclusive, partly unsurveyed;
Secs. 10 to 15, inclusive, unsurveyed;
Secs. 22 to 27, inclusive, partly unsurveyed.
T. 26 S., R. 6 E.,
Secs. 27 to 34, inclusive, partly unsurveyed.
T. 27 S., R. 6 E.,
Secs. 3 to 5, inclusive, partly unsurveyed;
Secs. 8 to 10, inclusive, unsurveyed;
Secs. 15 to 17, inclusive, partly unsurveyed;
Secs. 20 to 22, inclusive, unsurveyed;
Secs. 27 to 29, inclusive, unsurveyed;
Secs. 32 to 36, inclusive, partly unsurveyed.
T. 28 S., R. 6 E., that portion not previously included in the monument, partly unsurveyed.
T. 29 S., R. 6 E.,
Secs. 7, 8, and 17, those portions not previously included in the monument;
Sec. 18, NE¼, unsurveyed;
Secs. 20 and 21, partly unsurveyed;
Sec. 27, unsurveyed, those portions not previously included in the monument;
Secs. 28, 29, and 34, partly unsurveyed;
Sec. 35, those portions not previously included in the monument.
T. 30 S., R. 6 E.,
Secs. 2 and 11;
Sec. 12, W½;
Sec. 13.
T. 27 S., R. 7 E.,
Secs. 31 and 32, partly unsurveyed.

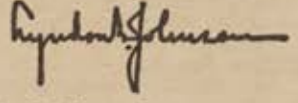
T. 28 S., R. 7 E.,
Secs. 2 to 11, inclusive, partly unsurveyed;
Secs. 14 to 23, inclusive, partly unsurveyed;
Secs. 26 to 35, inclusive, partly unsurveyed.
T. 29 S., R. 7 E.,
Secs. 1 to 4, inclusive, partly unsurveyed;
Secs. 9 to 12, inclusive, unsurveyed;
Secs. 13 and 14, that portion north of State of Utah Route 24, unsurveyed;
Secs. 15, 16, 21, and 22, partly unsurveyed;
Sec. 24, that portion north of State of Utah Route 24, unsurveyed;
Secs. 27, 28, 33, and 34, unsurveyed.
T. 30 S., R. 7 E.,
Secs. 3 and 10, unsurveyed;
Secs. 18, 19, 20, and 29, those portions not previously included in the monument;
Secs. 30, 31, and 32.
T. 31 S., R. 7 E.,
Secs. 3 to 11, inclusive, partly unsurveyed;
Secs. 14 to 23, inclusive, partly unsurveyed;
Secs. 27 to 33, inclusive;
Sec. 34, W½.
T. 32 S., R. 7 E.,
Secs. 1 to 18, inclusive;
Secs. 22 to 27, inclusive;
Secs. 35 and 36.
T. 33 S., R. 7 E.,
Secs. 1 and 2;
Secs. 11, 12, 13, 24, and 25, unsurveyed.
T. 32 S., R. 8 E.,
Secs. 6, 7, 18, and 19;
Secs. 29 to 32, inclusive.
T. 33 S., R. 8 E.,
Secs. 5 to 8, inclusive, partly unsurveyed;
Secs. 16 to 21, inclusive, partly unsurveyed;
Secs. 28 to 34, inclusive, partly unsurveyed.
T. 34 S., R. 8 E.,
Secs. 3 to 11, inclusive, partly unsurveyed;
Secs. 13 to 36, inclusive, partly unsurveyed.
T. 35 S., R. 8 E.,
Secs. 1 to 5, inclusive, partly unsurveyed;
Secs. 8 to 16, inclusive, partly unsurveyed;
Secs. 22 to 26, inclusive, unsurveyed;
Sec. 36.
T. 34 S., R. 9 E.,
Sec. 19, unsurveyed;
Secs. 30 to 32, inclusive, partly unsurveyed.
T. 35 S., R. 9 E.,
Secs. 5 to 8, inclusive, unsurveyed;
Secs. 16 to 21, inclusive, partly unsurveyed;
Secs. 28 to 33, inclusive, partly unsurveyed.
T. 36 S., R. 9 E.,
Secs. 4 to 9, inclusive, unsurveyed;
Secs. 16, 17, and 21, partly unsurveyed.
Containing 215,056 acres, more or less.

Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

Any reservations or withdrawals heretofore made which affect the lands described above are hereby revoked.

Nothing herein shall prevent the movement of livestock across the lands included in this monument under such regulations as may be prescribed by the Secretary of the Interior and upon driveways to be specifically designated by said Secretary.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January in the year of our Lord nineteen hundred and sixty-nine and of the Independence of the United States of America the one hundred and ninety-third.



[F.R. Doc. 69-899; Filed, Jan. 21, 1969; 10:31 a.m.]

Proclamation 3889

ESTABLISHING MARBLE COUNTY NATIONAL MONUMENT, ARIZONA

WHEREAS, the Marble Canyon of the Colorado River in Arizona, a northerly continuation of the world-renowned Grand Canyon, possesses unusual geologic and paleontologic features and objects and other scientific and natural values; and

WHEREAS, it appears that the public interest would be promoted by reserving the federally owned lands encompassing Marble Canyon in order to permanently protect such features and objects; and

WHEREAS, the Advisory Board on National Parks, Historic Sites, Buildings and Monuments, in April 1967, endorsed the preservation and protection of Marble Canyon as a part of the National Park System; and

WHEREAS, under section 2 of the act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), the President is authorized "to declare by public proclamation * * * objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of lands, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected:"

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States, under the authority vested in me by section 2 of the act of June 8, 1906, *supra*, by the act of June 29, 1906 (34 Stat. 607, 16 U.S.C. 684), and by the act of June 4, 1897 (30 Stat. 34, 16 U.S.C. 473), do proclaim that, subject to valid existing rights, (1) federally owned or controlled lands within the exterior boundaries of the following described area are hereby reserved from all forms of appropriation under the public land laws and set apart as the Marble Canyon National Monument and (2) State-owned lands within those boundaries shall become and be reserved as parts of that monument upon acquisition of title thereto by the United States:

GILA AND SALT RIVER, MERIDIAN, ARIZONA

Beginning at a point in the NE¼NE¼ of sec. 29, T. 34 N., R. 5 E., unsurveyed, said point being the intersection of the boundary of the Grand Canyon National Park and the west rim line of Marble Canyon;

Thence in a generally northerly direction along the rims of Marble Canyon, Saddle Canyon, Buck Farm Canyon, South Canyon and Bedrock Canyon, to a point on the south line of sec. 18, T. 36 N., R. 5 E.;

Thence easterly along the south lines of secs. 18 and 17 to a point on the south line of sec. 17, 500′ north of the rim of Bedrock Canyon and approximately 725′ west of the south quarter corner of said sec. 17;

Thence in a generally northerly direction parallel to and 500′ from the rims of Bedrock Canyon, Marble Canyon and North Canyon, to a point where the monument boundary intersects the east line of sec. 18, T. 37 N., R. 6 E., approximately 500′ south of the NE corner thereof;

Thence northerly along the east lines of secs. 18 and 7 to a point on the east line of said sec. 7, 500′ north of the rim of North Canyon and approximately 935′ south of the east quarter corner thereof;

Thence in a generally northerly direction parallel to and 500′ above the rims of North Canyon, Marble Canyon and Rider Canyon to a point where the monument boundary intersects the east line of sec. 28, T. 38 N., R. 6 E.;

Thence northerly along the east lines of secs. 28 and 21 to a point on the east line of said sec. 21, 500′ north of the rim of Rider Canyon and approximately 200′ south of the east quarter corner thereof;

Thence in a generally northerly direction parallel to and 500′ above the rims of Rider Canyon and Marble Canyon to a point where the monument boundary intersects the north south center line of sec. 36, T. 39 N., R. 6 E., approximately 300′ north of the south quarter corner thereof;

Thence northerly along the north south center line of sec. 36 to the quarter corner common to secs. 36 and 25;

Thence easterly along the south line of sec. 25 to the SE corner thereof;

Thence northerly along the east line of sec. 25 to a point 500′ north of the rim of Marble Canyon, said point being approximately 260′ north of the SE corner thereof;

Thence in a generally northerly direction parallel to and 500′ above the rims of Marble Canyon and Badger Canyon to a point where the monument boundary intersects the west line of sec. 17, T. 39 N., R. 7 E., approximately 1200′ south of the west quarter corner thereof;

Thence northerly along the west line of sec. 17 to a point 500' north of the rim of Badger Canyon, said point being approximately 830' north of the west quarter corner thereof;

Thence in a generally northerly direction parallel to and 500' above the rims of Badger Canyon, Marble Canyon and an unnamed canyon to a point where the monument boundary intersects the north south center line of sec. 9, approximately 500' south of the north quarterly corner thereof;

Thence northerly along the north south center line of secs. 9 and 4 to a point 500' north of the rim of the aforesaid unnamed canyon, said point being approximately 830' north of the south quarter corner thereof;

Thence in a generally northerly direction parallel to and 500' above the rims of the aforesaid unnamed canyon and Marble Canyon to a point where the monument boundary intersects the east line of sec. 4 approximately at the east quarter corner of said sec. 4;

Thence northerly along the east line of sec. 4 to the SE corner of the NE¼NE¼ thereof;

Thence easterly along the south line of the NW¼NW¼ of sec. 3 to the SE corner thereof;

Thence northerly along the east line of the NW¼NW¼ of sec. 3 to the NE corner thereof;

Thence easterly along the north line of T39N, R7E, to its intersection with the western boundary of the Navajo Indian Reservation as prescribed by the act of June 14, 1934 (48 Stat. 960).

Thence in a generally southerly direction along the western boundary of the Navajo Indian Reservation (which is described by the act of June 14, 1934, as the south bank of the Colorado River to its confluence with the Little Colorado River, excluding from the reservation all lands designated by the Secretary of the Interior pursuant to section 28 of the Arizona Enabling Act of June 20, 1910 (36 Stat. 575), as being valuable for water-power purposes and all lands withdrawn or classified as power site lands), to its intersection with the eastward extension of the boundary line of the Grand Canyon National Park in the SW¼SW¼ of sec. 27, T34N, R5E, unsurveyed;

Thence westerly along the said eastward extension of the boundary line and the existing boundary of the Grand Canyon National Park to the Point of Beginning, containing approximately 26,080 acres.

The easterly boundary of the monument shall be conterminous with the westerly boundary of the Navajo Indian Reservation.

Any of the above-described lands which lie within the boundaries of the Kaibab National Forest, Arizona, as are by this proclamation included within the monument are hereby excluded and eliminated from the Kaibab National Forest and the boundaries of that national forest are revised accordingly.

Such parts of the Grand Canyon National Game Preserve, designated under authority of the act of June 29, 1906, *supra*, as are by this proclamation included within the monument are hereby excluded and eliminated from the Game Preserve.

Any reservations or withdrawals heretofore made which affect the lands described above are hereby revoked; however, the easternmost limits of the lands within such reservations and withdrawals shall be the easterly boundary of the monument.

Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

The national monument hereby established shall be administered pursuant to the act of August 25, 1916 (39 Stat. 535, 16 U.S.C. 1, 2–4), and acts supplementary thereto or amendatory thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January in the year of our Lord nineteen hundred and sixty-nine and of the Independence of the United States of America the one hundred and ninety-third.

Lyndon B. Johnson

[F.R. Doc. 69-900; Filed, Jan. 21, 1969; 10:31 a.m.]

Proclamation 3890

ENLARGING THE KATMAI NATIONAL MONUMENT, ALASKA

WHEREAS, the Katmai National Monument in Alaska was established by Proclamation No. 1487 of September 24, 1918, to preserve an area that is of significant importance in the study of volcanism and the monument was subsequently enlarged to include other areas containing features and objects of historical and scientific interest; and

WHEREAS, only a part of Naknek Lake is included within the present boundaries of the monument and the inclusion of all of such lake and its shores is necessary for the protection of the ecological and other scientific values of this lake and the existing monument; and

WHEREAS, under section 2 of the act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), the President is authorized "to declare by public proclamation * * * objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected:"

NOW, THEREFORE, I, Lyndon B. Johnson, President of the United States, under the authority vested in me by section 2 of the act of June 8, 1906, *supra*, do proclaim that, subject to valid existing rights, the lands owned or controlled by the United States within the following described boundary are hereby added to and made a part of the Katmai National Monument:

SEWARD MERIDIAN, ALASKA

Beginning at a point on the westerly boundary of the Katmai National Monument at its intersection with the southerly line of T18S, R41W, (unsurveyed);

Thence westerly along said township line through Rs. 41, 42 and 43 W, (unsurveyed), to the southwest corner of T18S, R43W, (unsurveyed);

Thence northerly along the west line of Tps. 18 and 17 S, R43W, (unsurveyed), to the northwest corner of-T17S, R43W, (unsurveyed);

Thence easterly along the north line of T17S, R43W, (unsurveyed), and the south line of T16S, R43W, (unsurveyed), to the southwest corner of sec. 34, T16S, R43W, (unsurveyed);

Thence northerly along the west line of said sec. 34 to the northwest corner thereof;

Thence easterly along the north line of secs. 34, 35 and 36, T16S, R43W, (unsurveyed), secs. 31 through 36, T16S, R42W, (unsurveyed), and secs. 31, 32, 33 and 34, T16S, R41W, (unsurveyed), to its intersection with the westerly line of Katmai National Monument;

Thence southwesterly and southeasterly along the westerly boundary of the Katmai National Monument to the Point of Beginning, containing approximately 94,547 acres.

Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

Any reservations or withdrawals heretofore made which affect the lands described above are hereby revoked. This proclamation shall not affect any claims, as described in section 4 of the Alaska Statehood Act (72 Stat. 339), of Alaska natives to the lands within the monument area.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January in the year of our Lord nineteen hundred and sixty-nine and of the Independence of the United States of America the one hundred and ninety-third.

Lyndon B. Johnson

[F.R. Doc. 69-901; Filed, Jan. 21, 1969; 10:31 a.m.]

Proclamation 3891

FRANKLIN DELANO ROOSEVELT MEMORIAL PARK

By the President of the United States of America

A Proclamation

Because of the deep debt of gratitude of the American people to Franklin Delano Roosevelt for his leadership in America's struggle for peace, well-being, and human dignity, the Congress established the Franklin Delano Roosevelt Memorial Commission, by the Act of August 11, 1955, 69 Stat. 694, for the purpose of considering and formulating plans for the design, construction, and location of a permanent memorial to Franklin Delano Roosevelt in the City of Washington, District of Columbia, or in its immediate environs.

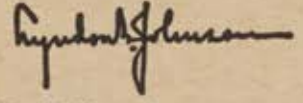
In furtherance of the objectives of that Act, the Act of September 1, 1959, 73 Stat. 445, reserved, for the erection of a memorial to Franklin Delano Roosevelt, a site comprising that portion of West Potomac Park in the District of Columbia which lies between Independence Avenue and the inlet bridge, being twenty-seven acres, more or less, and also provided for a competition for the design of such memorial.

Although the Commission has not yet reported to the Congress its selection of an appropriate memorial, it is desirable that the site be maintained, pending the Commission's final determination, as a park dedicated to the memory of Franklin Delano Roosevelt.

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States of America, do proclaim that the following described land reserved by the Act of September 1, 1959, be designated as the Franklin Delano Roosevelt Memorial Park area of the West Potomac Park:

That portion of West Potomac Park, in the District of Columbia, which lies between Independence Avenue and the inlet bridge, being twenty-seven acres, more or less.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January, in the year of our Lord nineteen hundred and sixty-nine, and of the Independence of the United States of America the one hundred and ninety-third.



[F.R. Doc. 69-902; Filed, Jan. 21, 1969; 10:31 a.m.]

Executive Order 11448

ESTABLISHING THE MERITORIOUS SERVICE MEDAL

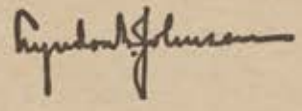
By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

SECTION 1. There is hereby established a Meritorious Service Medal, with acompanying ribbons and appurtenances, for award by the Secretary of a military department or the Secretary of Transportation with regard to the Coast Guard when not operating as a service in the Navy, or by such military commanders, or other appropriate officers as the Secretary concerned may designate, to any member of the armed forces of the United States who has distinguished himself by outstanding meritorious achievement or service to the United States.

SEC. 2. The Meritorious Service Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense, and shall be awarded under such regulations as the Secretary concerned may prescribe. Such regulations shall, so far as practicable, be uniform, and those of the military departments shall be subject to the approval of the Secretary of Defense.

SEC. 3. No more than one Meritorious Service Medal shall be awarded to any one person, but for each succeeding outstanding meritorious achievement or service justifying such an award a suitable device may be awarded to be worn with the medal as prescribed by appropriate regulations.

SEC. 4. The Meritorious Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of the department concerned.



THE WHITE HOUSE,
January 16, 1969.

[F.R. Doc. 69-839; Filed, Jan. 17, 1969; 1:30 p.m.]

Executive Order 11449

PARTICIPATION IN THE INTERNATIONAL COFFEE ORGANIZATION

By virtue of the authority vested in me by the Constitution of the United States of America, the International Coffee Agreement Act of 1968 (Title III of Public Law 90-634, approved October 24, 1968, 82 Stat. 1348), hereinafter referred to as the Act, the International Coffee Agreement, 1962, as continued by the International Coffee Agreement, 1968, ratified November 1, 1968 and proclaimed November 18, 1968 (hereinafter referred to as the Agreement), section 301 of title 3 of the United States Code, and section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and as President of the United States, it is ordered as follows:

SECTION 1. *Secretary of State.* Subject to the provisions of this order, the powers of the President involved in the participation of the United States of America in the Agreement, including so much of the functions conferred upon the President by the Act as is neither reserved nor delegated to other officers herein, are hereby delegated to the Secretary of State.

SEC. 2. *Secretary of the Treasury.* The functions conferred upon the President by subsections (1) (A) and (B) and (2) of section 302 of the Act, together with the authority to issue and enforce such rules and regulations as may be necessary to perform those functions, are hereby delegated to the Secretary of the Treasury.

SEC. 3. *Secretaries of State, the Treasury, Agriculture, Commerce, and Labor.* The functions conferred upon the President by subsection (3) of section 302 of the Act, together with the authority to issue and enforce such rules and regulations as may be necessary to perform those functions, are hereby delegated to the Secretaries of State, the Treasury, Agriculture, Commerce and Labor, severally.

SEC. 4. *Functions reserved.* There are hereby reserved to the President the functions conferred upon him by sections 304, 305, 306 and subsections (1) (C) and (4) of section 302 of the Act.

SEC. 5. *Coordination.* The functions assigned by the provisions of this order shall be performed under effective coordination. The measures of coordination hereunder shall include the following:

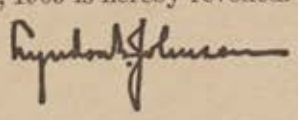
(1) In effecting and carrying out the participation of the United States of America in the Agreement, the Secretary of State shall consult with the appropriate heads of Federal agencies, including the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of Labor.

(2) The delegates under section 3 of this order shall use the functions delegated thereunder as they and the Secretary of State shall mutually agree.

SEC. 6. *Redelegation.* Each Secretary mentioned in this order is hereby authorized to redelegate within his Department the functions hereinabove assigned to him.

SEC. 7. *Prior orders.* (a) Executive Order No. 11225 of May 22, 1965 shall continue in force subject to the following amendment: Insert the phrase "as continued by the International Coffee Agreement, 1968" after the phrase "TIAS 5055)".

(b) Executive Order No. 11229 of June 14, 1965 is hereby revoked.



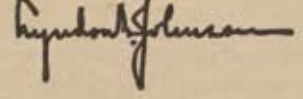
THE WHITE HOUSE,
January 17, 1969.

[F.R. Doc. 69-856; Filed, Jan. 17, 1969; 3:36 p.m.]

Executive Order 11450

DESIGNATION OF THE SECRETARY OF THE TREASURY TO AUTHORIZE ASSOCIATIONS TO ISSUE TIR CARNETS AND TO ACT AS GUARANTORS UNDER THE CUSTOMS CONVENTION ON THE INTERNATIONAL TRANSPORT OF GOODS UNDER COVER OF TIR CARNETS

By virtue of the authority vested in me as President of the United States, I hereby designate the Secretary of the Treasury to take all action required of the United States under paragraph 1 of Article 5 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention) ratified by the President on May 3, 1967 (TIAS 6633), and to exercise his authority hereunder subject to the conditions set forth in paragraph 2 of said Article 5. The Secretary of the Treasury is authorized to delegate his authority and functions hereunder, including the authority to subdelegate such authority and functions, as he shall deem appropriate.



THE WHITE HOUSE,
January 18, 1969.

[F.R. Doc. 69-895; Filed, Jan. 21, 1969; 10:31 a.m.]

Executive Order 11451

ESTABLISHING THE PRESIDENT'S COMMISSION ON PERSONNEL INTERCHANGE

WHEREAS close cooperation between the Government and the private sector is essential to the future progress of our Nation;

WHEREAS both the Government and the private sector will be enriched if the most promising young executives in each sector are given an opportunity to work in the other sector in challenging and responsible positions; and

WHEREAS the President's Advisory Panel on Personnel Interchange has recommended establishment of a President's Commission on Personnel Interchange to implement a formal program of executive interchange:

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

SECTION 1. *Establishment of the Commission.* (a) There is hereby established the President's Commission on Personnel Interchange (hereinafter referred to as the Commission).

(b) The Commission shall be composed of such officials in the Federal departments and agencies and such persons from the private sector as the President may from time to time appoint. The Chairman shall be designated by the President. The members of the Commission and the Chairman shall serve two-year terms at the pleasure of the President.

(c) Members of the Commission who are officers or employees of the Federal Government shall receive no additional compensation by reason of this order, and members who are not such officers or employees shall serve without compensation, but shall be provided with travel expenses, including per diem in lieu of subsistence, as authorized by law.

SEC. 2. *Functions of the Commission.* The Commission shall:

(a) Develop an Executive Interchange Program under which promising young executives from the Federal departments and agencies and the private sector will be selected as Interchange Executives and placed in positions offering challenge and responsibility in the other sector.

(b) Develop an education program designed to place the work experience of the Interchange Executives in the broader context of Government and the private sector.

(c) Supervise and review the operation of the Program, and make recommendations to the President as to ways of promoting interchange between the Government and the private sector.

SEC. 3. *Federal Departments and Agencies.* (a) Each Federal department and agency shall cooperate with the Commission and shall furnish it with such assistance as the Chairman may request in connection with the Program.

(b) The head of each Federal department and agency shall designate a presidential appointee who is not a member of the Commission to serve as liaison to the Commission.

(c) The Civil Service Commission shall provide the Commission with administrative services, staff support, and travel expenses, as authorized by law.

Lyndon B. Johnson

THE WHITE HOUSE,
January 19, 1969.

[F.R. Doc. 69-896; Filed, Jan. 21, 1969; 10:31 a.m.]

Rules and Regulations

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 8900; Amdt. 99-8]

PART 99—SECURITY CONTROL OF AIR TRAFFIC

Alteration of Atlantic Coastal Air Defense Identification Zone

The purpose of this amendment to Part 99 of the Federal Aviation Regulations is to alter the description of the boundary of the Atlantic Coastal Air Defense Identification Zone (ACADIZ) to permit the designation of a new transition area to facilitate the radar vectoring of departures from Kennedy International Airport to overseas destinations.

A requirement exists for additional controlled airspace within Warning Areas W-105 and W-106 to permit radar vectoring of JFK departures en route to overseas destinations. This amendment is a required ancillary action to accommodate this proposed Transition Area.

The matter of changing the ACADIZ boundary has been coordinated with NORAD Headquarters, and will not adversely affect the NORAD mission.

Since the ACADIZ boundary change involves airspace outside of the United States, the FAA has consulted with the Secretary of State and the Secretary of Defense, in accordance with the provisions of Executive Order 10854.

This amendment is ancillary to an airspace rule making action (Docket No. 68-EA-14) which requires redefining the coordinates of the ACADIZ. Since this amendment relieves a burden on the public and is editorial in nature, I find it unnecessary to comply with the notice and public procedure requirements of 5 U.S.C. 553.

In consideration of the foregoing, Part 99 of the Federal Aviation Regulations is amended, effective March 6, 1969, as follows: Section 99.45(a) is amended by striking out "40°11′ N., 73°00′ W.; 40°22′ N., 72°50′30″ W.;" and inserting "39°55′ N., 73°00′ W.; 40°32′ N., 72°15′ W.," in place thereof.

(Secs. 307, 1110, 1202, Federal Aviation Act of 1958; 49 U.S.C. 1348, 1510, 1522; Executive Order 10854; 24 F.R. 9565; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c)).

Issued in Washington, D.C., on January 14, 1969.

OSCAR BAKKE,
For the Acting Administrator.

[F.R. Doc. 69-751; Filed, Jan. 21, 1969; 8:45 a.m.]

Title 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture

[Import Reg. 1, Rev. 4, Amdt. 1]

PART 6—IMPORT QUOTAS AND FEES

Subpart—Section 22 Import Quotas

LICENSES FOR IMPORTATION OF CERTAIN CHEESE AND OTHER PRODUCTS

Proclamation 3870, dated September 24, 1968, and Proclamation 3884, dated January 6, 1969, amended the provisions proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act by placing limitations on the products described below, which may be imported in a quota year.

The following changes in Import Regulation 1, Revision 4, are made to provide for the issuance of licenses for the products which under such provisions may be entered only pursuant to license issued by or under the authority of the Secretary of Agriculture.

1. A new § 6.32 is added to read as follows:

§ 6.32 Licenses for the importation of cheese and other products subject to import quotas provided for in items 950.09B, 950.10B, 950.10C, and 950.10D of Part 3 of the Appendix to the Tariff Schedules of the United States.

(a) *General.* The provisions of this section shall apply for the period January 1, 1969, through June 30, 1969, with respect to the issuance of licenses for the articles described in Groups IV and V of Appendix 1, as amended. The provisions of §§ 6.20 to 6.31 of Import Regulation 1, Revision 4 (32 F.R. 20801), shall apply with respect to the licenses issued for such articles, except to the extent that they are inconsistent herewith.

(b) *Licenses for importation of cheese and other products*—(1) *Historical licensees.* Licenses shall be issued to persons who have established eligibility, in accordance with the provisions of the notice published in the FEDERAL REGISTER of November 5, 1968 (33 F.R. 16163), for quota shares of any products shown in Groups IV and V of Appendix 1, as amended. The provisions of the first proviso of § 6.26(b), which limits the historical quota share of any person for any type of cheese to 30 percent of the amount which may be imported during any quota year from a particular country of origin, shall not be applicable in determining the quota share of historical licensees for the products to which this section is applicable.

(2) *Nonhistorical licensees*—(i) *Eligibility.* Any person who is not historically eligible to import a product listed in Groups IV or V of Appendix 1, as amended, may apply for a license to import a quota share of such product. Each application must state the type of product, the country of origin from which importation is to be made, and the port or ports of entry at which importations are to be made. Records satisfactory to the Licensing Authority must be submitted on or before February 15, 1969, evidencing the fact that such person was, during the 1968 quota year, operating an independent business of importing cheese or a cheese product and in such period had made a commercial importation in his own name of a cheese or cheese product, and who certifies that he is not a part of or an affiliate of the business of any persons eligible for an import license for any cheese listed in Appendix 1, as amended, and is not an officer, member, partner, associate, or employee of such business. Records should be sent to the Chief, Import Branch, Foreign Agricultural Service, United States Department of Agriculture, Washington, D.C. 20250.

(ii) *Quota share.* The quantity of each category of product set forth in Groups IV and V, specified as being set aside for new business, shall be divided among eligible applicants: *Provided,* That the annual nonhistorical quota share of any person for any product listed in Groups IV and V shall not exceed 5,000 pounds: *Provided further,* That any unallocated amounts shall be made available for distribution to historical licensees.

2. Appendix 1 to Import Regulation 1, Revision 4, is hereby amended by adding the following to the table.

APPENDIX 1—COMMODITIES SUBJECT TO IMPORT REGULATION 1, REVISION 4 AND ANNUAL QUOTAS FOR EACH QUOTA YEAR

Commodity	Base period	Annual import quota (pounds)	New business set aside (pounds)
• • •	• • •	• • •	• • •
Group IV:	Jan. 1, 1965, to Dec. 31, 1967.		
Cheese and substitutes for cheese containing, or processed from Edam and Gouda cheese (item 950.09P):			
Denmark		1,714,000	171,400
Ireland		331,000	33,100
Netherlands		169,000	16,900
Norway		368,000	36,800
West Germany		513,000	51,300
Other		56,000	5,600
Group V:	Jan. 1, 1967, to Dec. 31, 1967.		
Swiss or Emmenthaler cheese with eye formation; Cruyere-process cheese; and cheese and substitutes for cheese containing, or processed from, such cheese; all the foregoing, if shipped otherwise than in pursuance to a purchase, or if having a purchase price under 47 cents per pound.			
Swiss or Emmenthaler cheese with eye formation (item 950.10B):			
Austria		972,000	97,200
Denmark		609,000	60,900
Finland		1,843,000	184,300
Norway		367,000	36,700
Switzerland		200,000	20,000
West Germany		124,000	12,400
Other		156,000	15,600
Other than Swiss or Emmenthaler with eye formation (item 950.10C):			
Austria		483,000	48,300
Denmark		119,000	11,900
Finland		1,516,000	151,600
Switzerland		10,000	1,000
West Germany		1,078,000	107,800
Other		83,000	8,300
Cheese and substitutes for cheese provided for in items 117.75 and 117.85, part 4C, schedule 1 of the Tariff Schedules of the United States (except cheese not containing cow's milk; cheese except cottage cheese, containing no butterfat or not over 0.5 percent by weight of butterfat, and articles within the scope of other import quotas provided for in Part 3 of the Appendix to the Tariff Schedules of the United States); all the foregoing, if shipped otherwise than in pursuance to a purchase, or if having a purchase price under 47 cents per pound (item 950.10D):			
Belgium		207,000	20,700
Denmark		8,966,000	896,600
Finland		1,124,000	112,400
France		931,000	93,100
Iceland		560,000	56,000
Ireland		151,000	15,100
Netherlands		56,000	5,600
Norway		222,000	22,200
Poland		2,064,000	206,400
Sweden		1,535,000	153,500
Switzerland		34,000	3,400
United Kingdom		274,000	27,400
West Germany		989,000	98,900
Other countries		388,000	38,800
• • •	• • •	• • •	• • •

It is hereby determined that the foregoing amendment 1 of Import Regulation 1, Revision 4, is necessary and must be made effective January 1, 1969, since beginning on such date licenses are required for the importation of articles described in Groups IV and V of Appendix 1, as amended. Therefore, it is found upon good cause that compliance with the notice, public procedure and 30 day effective date requirements of section 4 of the Administrative Procedure Act (5 U.S.C. 553) is impracticable, unnecessary, and contrary to the public interest and that the amendment shall be effective January 1, 1969.

Proposals for amendment or modification of this amendment are invited. They may be addressed to the Chief, Import Branch, Foreign Agricultural Service, Washington, D.C. 20250. All proposals should be accompanied by a written statement in explanation and support of such proposal.

(Sec. 3, 62 Stat. 1248, as amended; 7 U.S.C. 624; Proclamation, Part 3 of the appendix to the Tariff Schedules of the United States, 19 U.S.C. 1202)

Issued at Washington, D.C., this 6th day of January 1969.

RAYMOND A. IOANES,
Administrator,
Foreign Agricultural Service.

[F.R. Doc. 69-796; Filed, Jan. 21, 1969; 8:49 a.m.]

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 7]

PART 722—COTTON

Subpart—Acreage Allotments for 1968 and Succeeding Crops of Upland Cotton

MISCELLANEOUS AMENDMENTS

Basis and purpose. This amendment is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.). Included in this amendment are the following:

1. Paragraph (k) of § 722.404 is amended to include 1970 and subparagraph (2) thereof is amended for 1969 and 1970 to provide that the farm history will not be adjusted for farms qualifying for a payment under § 722.801.

2. Section 722.409 is expanded for 1970 and succeeding crop years to provide that the farm's preliminary allotment shall be the preceding year's allotment if the farm qualified for a payment under § 722.801.

3. Paragraph (e) of § 722.411 is amended to include 1970.

Since this amendment is technical in nature and farmers need to know its effect in connection with plans for 1969, it is hereby determined that compliance with the notice, public procedure, and 30-day effective date requirements of 5 U.S.C. 553 is unnecessary.

The Subpart—Acreage Allotments for 1968 and Succeeding Crops of Upland Cotton of Part 722, Subchapter B of Chapter VII, Title 7 (33 F.R. 895, 4451, 5532, 6705, 7564, 17346, and 19823) is amended as follows:

1. Section 722.404(k) is amended by changing the figures "1966–69" in the first sentence to read "1966–70", by amending subparagraph (1)(iv) to delete "or 1969", and revising subparagraph (2) to read as follows:

§ 722.404 Definitions.

• • • • • •

(k) *History acreage of cotton on the farm during the base period.* • • •

(2) No adjustment of history acreage under subparagraph (1) of this paragraph shall be made for a farm if:

(i) For 1968 the farm qualified for the price support payment under § 722.801 for 1968, or

(ii) For 1969 and 1970 the farm qualified for a payment (price support or small farm) under § 722.801 for that year.

• • • • • •

2. Section 722.409 is amended by adding a new subparagraph (a)(6) to read as follows:

§ 722.409 **Establishment of preliminary allotments.**

(a) *Preliminary allotment is preceding year's allotment.* * * *

(6) For purposes of the 1970 and succeeding year's farm allotment determination, in the preceding year the farm qualified for a payment (price support or small farm) under § 722.801.

* * * * *

§ 722.411 [Amended]

3. Section 722.411(e) is amended by changing the figures "1968 and 1969" to read "1968–1970".

(Secs. 344, 375, 63 Stat. 670, as amended, 52 Stat. 66, as amended, 7 U.S.C. 1344, 1375)

Effective date: Date of publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on January 14, 1969.

E. A. JAENKE,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 69–761; Filed, Jan. 21, 1969; 8:46 a.m.]

SUBCHAPTER C—SPECIAL PROGRAMS

[Amdt. 12]

PART 751—LAND USE ADJUSTMENT PROGRAMS

Subpart—Cropland Adjustment Program for 1966 Through 1969

PAYMENT OF INTEREST

Basis and purpose. This amendment is issued pursuant to section 602(q) of the Food and Agriculture Act of 1965 for the purpose of clarifying the rules for the payment of interest under the Cropland Adjustment Program.

Section 751.124(d) of the regulations governing the program provides that where an agreement is terminated because of noncompliance, the producers must refund all adjustment and cost-share payments made under the agreement. Section 751.132(b) of the regulations provides that an agreement may be terminated by the county committee at the request of all the parties to the agreement upon forfeiture of all adjustment and cost-share payments under the agreement and repayment of any such payments previously made.

In cases where an agreement is terminated because of noncompliance or at the producers' request, it is deemed appropriate that the producers, having had the use of the Government's money, should pay—as a reasonable measure of damage—interest at the rate of 6 per centum per annum on the amount of the payments they have received from the dates of the payments to the date they are refunded.

A new paragraph (d) is being added to § 751.134 of the regulations to require such payment of interest with respect to all cases of noncompliance resulting in the termination of an agreement which occur after the publication of this amendment. Section 751.132(b) is being amended to provide that a county committee's approval of the termination of an agreement at the producers' request shall be conditioned upon the producers' paying such interest.

The regulations governing the 1966–69 Cropland Adjustment Program, 31 F.R. 3483, as amended, are further amended as follows:

1. Section 751.132 is amended by changing paragraph (b) thereof to read as follows:

(b) The agreement may be terminated by the county committee upon request by all parties to the agreement upon forfeiture of all adjustment and cost-share payments under the agreement and repayment of any such payments previously made with interest at the rate of 6 per centum per annum from the dates of the payments to the date repayment is made.

2. Section 751.134 is amended by adding at the end thereof the following new paragraph (c):

(c) Notwithstanding any other provision of this section, with respect to noncompliance occurring after the date of publication of this amendment which results in the termination of the agreement under the provisions of § 751.124 (d), interest shall be payable at the rate of 6 per centum per annum from the dates of the payments made under the agreement to the date such payments are refunded.

(Sec. 602(q), 79 Stat. 1210; 7 U.S.C. 1838(q))

Effective date: Upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on January 14, 1969.

E. A. JAENKE,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 69–762; Filed, Jan. 21, 1969; 8:46 a.m.]

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

[Orange Reg. 62, Amdt. 2]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, 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 of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, except Temple and Murcott Honey oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication 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 oranges, except Temple and Murcott Honey oranges, grown in Regulation Area II of Florida.

Order. In § 905.512 (Orange Regulation 62; 33 F.R. 18227; 34 F.R. 246), the provisions of paragraph (a)(2)(ii) are amended to read as follows:

§ 905.512 **Orange Regulation 62.**

(a) * * *

(2) * * *

(ii) Any oranges, except Temple and Murcott Honey oranges, grown in Regulation Area II, which do not grade at least U.S. No. 1 Golden;

* * * * *

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

Dated, January 16, 1969, to become effective January 20, 1969.

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

[F.R. Doc. 69–793; Filed, Jan. 21, 1969; 8:49 a.m.]

[Tangerine Reg. 36, Amdt. 3]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, 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 of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that 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 tangerines grown in Florida.

(a) *Order.* In § 905.511 (Tangerine Regulation 36, 33 F.R. 18226; 34 F.R. 246, 428) the provisions of paragraph (a)(2)(ii) are amended to read as follows:

§ 905.511 Tangerine Regulation 36.

(a) * * *

(2) * * *

(ii) Any tangerines, grown in the production area, which are smaller than 2 1/16 inches in diameter, except that a tolerance of 10 percent, by count, of tangerines smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in the United States Standards for Tangerines: *Provided,* That during any week of the period January 20 through July 31, 1969, any handler may ship a quantity of tangerines which are smaller than the size prescribed in this subdivision (ii) if (*a*) the number of standard packed boxes of such smaller tangerines does not exceed 50 percent of the total standard packed boxes of all sizes of tangerines shipped by such handler during the same week; and (*b*) such smaller tangerines are of a size not smaller than 2 3/16 inches in diameter, except that a tolerance of 10 percent, by count, of tangerines smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said United States Standards for Tangerines.

* * * * *

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

Dated, January 16, 1969, to become effective January 20, 1969.

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

[F.R. Doc. 69–794; Filed, Jan. 21, 1969; 8:49 a.m.]

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIF., AND IN ALL COUNTIES IN OREGON EXCEPT MALHEUR COUNTY

Expenses and Rate of Assessment

Notice of rule making regarding the proposed expenses and rate of assessment to be effective under Marketing Agreement No. 114, as amended, and Order No. 947, as amended (7 CFR Part 947), regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties in Calif., and in all counties in Oregon except Malheur County, was published in the December 10, 1968, FEDERAL REGISTER (33 F.R. 18282). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The notice afforded interested persons an opportunity to file written data, views, or arguments pertaining thereto not later than 15 days following publication in the FEDERAL REGISTER. None was filed.

After consideration of all relevant matters, including the proposals set forth in the aforesaid notice which were recommended by the Oregon-California Potato Committee, established pursuant to the said marketing agreement and order, it is hereby found and determined that:

§ 947.221 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period beginning July 1, 1968, and ending June 30, 1969, by the Oregon-California Potato Committee for its maintenance and functioning, and for such purposes as the Secretary determines to be appropriate, will amount to $28,250.00.

(b) The rate of assessment to be paid by each handler in accordance with the marketing agreement and this part shall be three-tenths of 1 cent ($0.003) per hundredweight of potatoes handled by him as the first handler thereof during said fiscal period.

(c) Unexpended income in excess of expenses for the fiscal period ending June 30, 1969, may be carried over as a reserve.

(d) Terms used in this section have the same meaning as when used in the said marketing agreement and this part.

It is hereby found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), in that: (1) the relevant provisions of said marketing agreement and this part require that rates of assessment fixed for a particular fiscal period shall be applicable to all assessable potatoes from the beginning of such period, and (2) the current fiscal period began July 1, 1968, and rate of assessment herein fixed will automatically apply to all assessable potatoes begining with such date.

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

Dated: January 15, 1969.

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

[F.R. Doc. 69–763; Filed, Jan. 21, 1969; 8:46 a.m.]

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

[Milk Order 2]

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

Order Amending Orders

Correction

In F.R. Doc. 68–6495 appearing at page 8201 in the issue of Saturday, June 1, 1968, in § 1002.3 insert the county "Otsego" in the alphabetical listing of New York counties.

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

SUBCHAPTER A—PROCEDURES AND RULES OF PRACTICE

[Docket No. C–1467]

PART 13—PROHIBITED TRADE PRACTICES

Alvic Fabrics Corp. et al.

Subpart—Misbranding or mislabeling: § 13.1185 *Composition.* 13.1185–80 Textile Fiber Products Identification Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212–80 Textile Fiber Products Identification Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 *Composition:* 13.1845–70 Textile Fiber Products Identification Act; § 13.1852 *Formal regulatory and statutory requirements:* 13.1852–70 Textile Fiber Products Identification Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 72 Stat. 1717; 15 U.S.C. 45, 70) [Cease and desist order, Alvic Fabrics Corp. et al., New York, N.Y., Docket C–1467, Dec. 10, 1968]

In the Matter of Alvic Fabrics Corp., a Corporation, and Ellis R. Nichols and Victor Kurnit, Individually and as Officers of Said Corporation

Consent order requiring a New York City converter of greige textile fabrics to cease misbranding its textile fiber products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Alvic Fabrics Corp., a corporation, and its officers, and Ellis R. Nichols and Victor Kurnit, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or

the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding such products by:

1. Failing to affix a stamp, tag, label, or other means of identification to each such product showing in a clear, legible, and conspicuous manner each element of information required to be disclosed by section 4(b) of the Textile Fiber Products Identification Act.

2. Using a fiber trademark in conjunction with the required information on labels affixed to said textile fiber products without the generic name of the fiber appearing on said labels in immediate conjunction therewith and in type or lettering of equal size and conspicuousness.

3. Using a fiber trademark on any label, without a full and complete fiber content disclosure being made in accordance with the Act and regulations, the first time the fiber trademark appears on the label.

4. Failing to label samples, swatches, or specimens of textile fiber products subject to the Act, and which are used to promote or effect sales of such textile fiber products, in such a manner as to show their respective fiber contents and other required information.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Issued: December 10, 1968.

By the Commission.

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

[F.R. Doc. 69-769; Filed, Jan. 21, 1969; 8:46 a.m.]

[Docket No. C-1466]

PART 13—PROHIBITED TRADE PRACTICES

Corinna Furs, Inc., et al.

Subpart—Furnishing false guaranties: § 13.1053 *Furnishing false guaranties:* 13.1053-35 Fur Products Labeling Act. Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1185 Composition: 13.1185-30 Fur Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-30 Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-35 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Corinna Furs, Inc., et al., New York, N.Y., Docket C-1466, Dec. 9, 1968.]

In the Matter of Corinna Furs, Inc., a Corporation, and Sol Cohen and Jack Manne, Individually and as Officers of Said Corporation

Consent order requiring a New York City manufacturing furrier to cease misbranding, falsely invoicing, and deceptively guaranteeing its fur products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Corinna Furs, Inc., a corporation, and its officers, and Sol Cohen and Jack Manne, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation, or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Representing, directly or by implication, on labels that the fur contained in any such fur product is natural when the fur contained therein is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

2. Failing to affix labels to fur products showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Representing, directly or by implication, on invoices that the fur contained in the fur products is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered, That respondents Corinna Furs, Inc., a corporation, and its officers, and Sol Cohen and Jack Manne, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Issued: December 9, 1968.

By the Commission.

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

[F.R. Doc. 69-770; Filed, Jan. 21, 1969; 8:46 a.m.]

[Docket No. C-1468]

PART 13—PROHIBITED TRADE PRACTICES

Imperial Sales Co. et al.

Subpart—Shipping, for payment demand, goods in excess of or without order: § 13.2195 *Shipping, for payment demand, goods in excess of or without order.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Sam Seskin doing business as Imperial Sales Co., etc., Hollywood, Fla., Docket C-1468, Dec. 11, 1968.]

In the Matter of Sam Seskin, an Individual doing business as Imperial Sales Company, and The Forward Company.

Consent order requiring a Hollywood, Fla., distributor of "Una-Trim," a weight-reducing product, to cease making unordered shipments to retail druggists and naming them in advertising without their prior approval.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That the respondent Sam Seskin, an individual doing business as Imperial Sales Co. or as The Forward Co. or under any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of the product "Una-Trim" or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Shipping or sending any merchandise to any drugstore or retail establishment without having previously obtained the written and express authorization or

consent to the complete terms and conditions of sale or consignment, and resale, of any merchandise by the person, company or corporation to whom such merchandise is sent.

2. Placing any newspaper advertisement, or causing the dissemination of an advertisement in any other manner, for the purpose of publicizing such product, which advertisement uses the name of any drugstore or retail establishment without having previously obtained the written and express authorization or consent of the druggist or retail establishment whose name appears in the advertisement.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this order.

Issued: December 11, 1968.

By the Commission.

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

[F.R. Doc. 69-771; Filed, Jan. 21, 1969; 8:47 a.m.]

]Docket No. C-1470]

PART 13—PROHIBITED TRADE PRACTICES

Sylvan R. Tron and Tron Furs

Subpart—Advertising falsely or misleadingly: § 13.30 *Composition of goods:* 13.30-30 Fur Products Labeling Act; § 13.73 *Formal regulatory and statutory requirements:* 13.73-10 Fur Products Labeling Act. Subpart—Concealing, obliterating or removing law required and informative marking: § 13.512 *Fur Products tags or identification.* Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.-1185-30 Fur Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-30 Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 *Composition:* 13.1845-30 Fur Products Labeling Act; § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-35 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Sylvan R. Tron trading as Tron Furs, Kansas City, Mo., Docket C-1470, Dec. 16, 1968]

In the Matter of Sylvan R. Tron, an Individual trading as Tron Furs

Consent order requiring a Kansas City, Mo., manufacturing furrier to cease misbranding, falsely invoicing and deceptively advertising its fur products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondent Sylvan R. Tron, individually and trading as Tron Furs, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or the manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

2. Failing to set forth the term "natural" as part of the infomation required to be disclosed on a label under the Fur Products Labeling Act and the rules and regulations promulgated thereunder to describe such fur product which is not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Failing to disclose that such fur product contains or is composed of second-hand used fur.

4. Affixing to such fur product a label that does not comply with the minimum size requirements of 1¾ inches by 2¾ inches.

5. Setting forth information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder mingled with nonrequired information on a label affixed to such fur product.

6. Setting forth information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in handwriting on a label affixed to such fur product.

7. Failing to set forth information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder on a label affixed to such fur product in the sequence required by Rule 30 of the aforesaid rules and regulations.

8. Failing to set forth separately on a label affixed to such fur product composed of two or more sections containing different animal fur the information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder with respect to the fur comprising each section.

9. Failing to set forth on a label the item number or mark assigned to such fur product.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed in each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Setting forth on the invoices pertaining thereto, any false or deceptive information with respect to the name or designation of the animal or animals that produced the fur contained in such fur products.

3. Setting forth information required under section 5(b)(1) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form.

4. Failing to set forth the term "natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and rules and regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, or otherwise artificially colored.

5. Failing to disclose that fur products contain or are composed of second-hand used fur.

C. Falsely or deceptively advertising any fur product through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale of such fur product, and which:

1. Fails to set forth in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(a) the Fur Products Labeling Act.

2. Fails to set forth the term "natural" as part of the information required to be disclosed in advertisements to describe such fur product which is not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Falsely or deceptively identifies any such fur product as to the name or designation of the animal or animals that produced the fur contained in the fur product.

4. Falsely or deceptively identifies such fur product as to the country of origin.

It is further ordered, That respondent Sylvan R. Tron, individually and trading as Tron Furs, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from removing or causing or participating in the removal of, prior to the time any fur product subject to the provisions of the Fur Products Labeling Act is sold and delivered to the ultimate consumer, any label required by the said Act to be affixed to such fur products, without substituting therefor labels conforming to section 4 of said Act and the rules and regulations promulgated thereunder, and in the manner prescribed by section 3(e) of said Act.

It is further ordered, That respondent Sylvan R. Tron, individually and trading as Tron Furs, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other

device, in connection with the introduction, sale, advertising or offering for sale, in commerce, or the processing for commerce, of fur products; or in connection with the selling, advertising, offering for sale, or processing of fur products which have been shipped and received in commerce, do forthwith cease and desist from:

1. Misbranding fur products by substituting for the labels affixed to such fur products pursuant to section 4 of the Fur Products Labeling Act labels which do not conform to the requirements of the aforesaid Act and the rules and regulations promulgated thereunder.

2. Failing to keep and preserve the records required by the Fur Products Labeling Act and the rules and regulations promulgated thereunder in substituting labels as permitted by section 3(e) of the said Act.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this order.

Issued: December 16, 1968.

By the Commission.

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

[F.R. Doc. 69-722; Filed, Jan. 21, 1969; 8:47 a.m.]

[Docket No. C-1469]

PART 13—PROHIBITED TRADE PRACTICES

Tuftwick Carpet Mills, Inc. and Edward P. Chamberlain

Subpart—Advertising falsely or misleadingly: § 13.30 *Composition of goods:* 13.30-75 Textile Fiber Products Identification Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-80 Textile Fiber Products Identification Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-80 Textile Fiber Products Identification Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-70 Textile Fiber Products Identification Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 72 Stat. 1717; 15 U.S.C. 45, 70) [Cease and desist order, Tuftwick Carpet Mills, Inc., et al., Cartersville, Ga., Docket C-1469, Dec. 11, 1968.]

In the Matter of Tuftwick Carpet Mills, Inc., a Corporation, and Edward P. Chamberlain, Individually and as an Officer of Said Corporation

Consent order requiring a Cartersville, Ga., carpet manufacturer to cease misbranding and falsely advertising its textile fiber products and failing to keep required fiber content records.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Tuftwick Carpet Mills, Inc., a corporation, and its officers, and Edward P. Chamberlain, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product, which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name or amount of the constituent fibers contained therein.

2. Failing to affix a stamp, tag, label, or other means of identification to each such product showing in a clear, legible, and conspicuous manner each element of information required to be disclosed by section 4(b) of the Textile Fiber Products Identification Act.

3. Failing to affix labels to samples, swatches, or specimens of textile fiber products used to promote or effect the sale of such textile fiber products showing in words and figures plainly legible all the information required to be disclosed by section 4(b) of the Textile Fiber Products Identification Act.

B. Falsely and deceptively advertising textile fiber products by making any representations, directly or by implication, as to the fiber content of any textile fiber product in any written advertisement which is used to aid, promote or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product, unless the same information required to be shown on the stamp, tag, or label or other means of identification under sections 4(b) (1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, in the manner and form required except that the percentages of the fibers present in the textile fiber product need not be stated.

C. Failing to maintain and preserve proper records showing the fiber content of the textile fiber products manufactured by said respondents, as required by Section 6 of the Textile Fiber Products Identification Act and rule 39 of the regulations promulgated thereunder.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Issued: December 11, 1968.

By the Commission.

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

[F.R. Doc. 69-773; Filed, Jan. 21, 1969; 8:47 a.m.]

SUBCHAPTER D—TRADE REGULATION RULES

PART 418—DECEPTIVE ADVERTISING AND LABELING AS TO LENGTH OF EXTENSION LADDERS

The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, et seq., and the provisions of Part 1, Subpart B of the Commission's procedures and rules of practice, 16 CFR 1.11 et seq., has conducted a proceeding for the promulgation of a Trade Regulation Rule regarding deceptive advertising and labeling as to length of extension ladders. Notice of this proceeding, including a proposed rule, was published in the FEDERAL REGISTER on August 1, 1968 (33 F.R. 10948). Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views and arguments and to appear and orally express their views as to the proposed rule and to suggest amendments, revisions and additions thereto.

The Commission has now considered all matters of fact, law, policy and discretion, including the data, views and arguments presented by interested parties in response to the notice and has determined that the adoption of the Trade Regulation Rule and statement of its basis and purpose set forth herein is in the public interest.

STATEMENT OF BASIS AND PURPOSE

AUTHORITY: The provisions of this Part 418 issued under 38 Stat. 717, as amended; 15 U.S.C. 41-58.

STATEMENT OF BASIS AND PURPOSE

§ 418.1 Basis of the proceeding.

This proceeding was initiated by the Commission after consideration of complaints by the consuming public and advertising of extension ladders wherein the sizes of such ladders were represented in terms of the total length of the sections thereof.

§ 418.2 Purpose of the rule.

The purpose of the rule is to inform all members of the industry and other interested or affected parties of the Commission's position with respect to the practice in question and to aid the Commission in the prevention of practices violative of section 5 of the Federal Trade Commission Act on an equitable and industrywide basis.

§ 418.3 The practice involved.

The record in this proceeding shows that marketers of extension ladders represent the sizes or lengths of their products in terms of the total length of the sections thereof, e.g., a "20-foot" or "20-foot size" extension ladder consists of two 10-foot sections. With few exceptions, no other representation as to size is made in marking, labeling or advertising. It is also shown that in fully extending an extension ladder for use there must be an overlapping of the sections thereof for strength and safety purposes. As a result, footage is lost in such overlapping. Consequently, the maximum working or useful length of an extension ladder is invariably less than the total length of the component sections.

§ 418.4 Data, views and arguments concerning the rule.

(a) Some marketers have argued that deception does not result from the use of unqualified size or length representations solely in terms of the total length of the component sections. In support of this they assert that the practice in question dates back over 100 years as a result of marketing ladders on a per-foot price basis and that such practice has been codified by numerous standards and safety codes employed by government and industrial users.

(b) Some marketers also argue that consumers are informed through labels, catalogs, and point-of-sale material, that overlapping is necessary in positioning an extension ladder for use. Not all members of the industry utilize such informative material in connection with the sale of their products. Frequently such information, when provided, is in small print or otherwise so inconspicuous as to be ineffective in informing purchasers of the actual safe useful length.

§ 418.5 Deceptive character of the practice.

(a) Due to rising costs in home care and improvements, the number of do-it-yourself consumers has increased sharply. These users need extension ladders in cleaning gutters, painting, cleaning and for other household maintenance or repair purposes. Although the practice of representing extension ladder lengths in terms of the total of the lengths of the sections thereof has been followed for a substantial period of time and may be understood by tradesmen and industrial and governmental purchasers, there is no showing in this proceeding that this method of representing extension ladder lengths or sizes has acquired a secondary meaning among other consumers of such products. To the contrary, the Commission believes that this method of representing sizes is not understood by the average consumer. The Commission concludes that the present industry practice of representing extension ladder sizes or lengths tends to mislead the general consuming public into the erroneous belief that such represented sizes or lengths are the maximum working or useful lengths of the products so described.

(b) Although it appears that some industry members provide overlapping figures, it is shown that such disclosures are usually inadequate or so inconspicuous as to be of no value in curing the inherent deceptive tendency present when the primary emphasis in size or length representations is on the total length of the component sections.

(c) On the basis of the entire record and the Commission's accumulated experience with size or length representations the Commission concludes that the practice of representing the lengths of extension ladders solely in terms of the total length of the component sections thereof is deceptive and tends to divert business from competitors who conspicuously disclose the working or usable length of their products. The Commission also concludes that such practice is violative of section 5 of the Federal Trade Commission Act and that the public interest in preventing this practice is specific and substantial.

(d) The Commission further concludes that the deception resulting from the use of unqualified size or length representations in terms of the total length of the component sections of an extension ladder would be removed and the public interest fully protected by a statement clearly and conspicuously showing the basis of such length calculation when accompanied by a clear and conspicuous disclosure of the maximum working or useful length of the ladder so described.

THE RULE

§ 418.6 The rule.

Accordingly, for the purpose of preventing such unlawful practice, the Commission hereby promulgates, as a Trade Regulation Rule, its conclusion and determination that in connection with the sale of extension ladders in commerce, as "commerce" is defined in the Federal Trade Commission Act, it is an unfair method of competition and an unfair or deceptive act or practice to represent, directly or by implication, the size or length of any such product in terms of the total length of the component sections thereof, in advertising, labeling marking or otherwise, unless—

(a) Such size or length representation is accompanied by the words "total length of sections" or words or terms of similar import clearly indicating the basis of the representation; and

(b) Such size or length representation is accompanied by a statement, in close connection and conjunction therewith, clearly and conspicuously showing the maximum length of such product when fully extended for use (i.e., excluding footage lost in overlapping), and by an explanation of the basis for such representation.

Examples of proper length representations when the product consists of two ten foot sections are—

"maximum working length 17', total length of sections 20' "
or
"17' extension ladder".

Effective date of the rule. The Commission has carefully considered requests by affected parties that a reasonable period of time be allowed after promulgation to afford them an opportunity to bring their labeling, advertising and promotional material into conformity with the provisions of the Rule. Accordingly, with respect to labeling and all forms of advertising and sales promotional material, the Rule will become effective on January 22, 1970.

Adopted: December 20, 1968.

By the Commission.

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

[F.R. Doc. 69-790; Filed, Jan. 21, 1969; 8:49 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER A—GENERAL

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

Exemption of Corn Products From Certain Labeling Requirements

In the matter of exempting corn meal, corn flour, and corn grits from certain labeling requirements of the regulations (21 CFR Part 1) for the enforcement of the Fair Packaging and Labeling Act:

A notice of proposed rulemaking in the above-identified matter was published in the FEDERAL REGISTER of July 11, 1968 (33 F.R. 9960), based on a petition submitted by the American Corn Millers' Federation, Washington, D.C.

Two comments were received in response to the proposal. One State agency agrees that there are sufficient differences in size between 5-, 10-, 25-, 50-, and 100-pound packages of the subject products to preclude consumer misunderstanding as to weight. That agency, however, opposes the exemption for 2-pound packages on the grounds that corn products are sold at retail in 1-, 1¼-, and 1½-pound packages as well as 2-pound packages, and due to the similarity of the container sizes, an exemption for the 2-pound size could foster consumer confusion. The Commissioner concludes that the comment in opposition is valid and that for adequate protection of consumers, the proposed exemption for the 2-pound containers should not be adopted.

A city Department of Markets commented that the arguments presented are too weak and unsubstantiated to warrant approval of the petition and that the requirements are not so onerous as to create a hardship for the industry. The Commissioner concludes that this comment is not valid because it does not address itself to the question of whether or not dual declaration and lower 30 percent placement of the quantity of contents declaration is necessary for the adequate protection of consumers. Because of packaging controls exercised over the subject products and consumer recognition of these package sizes, the Commissioner concludes that full compliance is not necessary.

The Commissioner also concludes that since there was no opportunity for corn products manufacturers to make label changes during the pendency of the exemption proposal, any label changes for corn products made necessary by the regulations under the Fair Packaging and Labeling Act (21 CFR Part 1) should be made before July 1, 1969.

Accordingly, pursuant to the provisions of the Fair Packaging and Labeling Act (secs. 5(b), 6(a), 80 Stat. 1298, 1299; 15 U.S.C. 1453, 1455) and the Federal Food, Drug, and Cosmetic Act (sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 371), and under authority delegated to the Commissioner (21 CFR 2.120): *It is ordered*, That § 1.1c(a) be amended by adding thereto a new subparagraph, as follows:

§ 1.1c Exemptions from required label statements.

* * * * *

(a) *Foods.* * * *

(12) Corn flour and related products, as they are defined by §§ 15.500 through 15.514 of this chapter, packaged in conventional 5-, 10-, 25-, 50-, and 100-pound bags are exempt from the placement requirement of § 1.8b(f) that the declaration of net contents be located within the bottom 30 percent of the area of the principal display panel of the label.

* * * * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing, and such objections must be supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in six copies.

Effective date. This order shall become effective 60 days from the date of its publication in the FEDERAL REGISTER, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Secs. 5(b), 6(a), 80 Stat. 1298, 1299; 15 U.S.C. 1458, 1455; sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 371)

Dated: January 9, 1969.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 69-787; Filed, Jan. 21, 1969; 8:48 a.m.]

SUBCHAPTER C—DRUGS

PART 148e—ERYTHROMYCIN

Erythromycin Estolate Oral Suspension

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), § 148e.34(a)(1) is revised to read as follows to provide for certification of an additional concentration (50 milligrams of erythromycin per milliliter) of the subject antibiotic suspension:

§ 148e.34 Erythromycin estolate oral suspension.

(a) *Requirements for certification—(1) Standards of identity, strength, quality, and purity.* Erythromycin estolate oral suspension is erythromycin estolate with suitable and harmless buffer substances, dispersing agents, diluents, colorings, and flavorings. It contains the equivalent of 25 or 50 milligrams of erythromycin per milliliter. Its pH is not less than 3.5 and not more than 6.5. The erythromycin estolate used conforms to the standards prescribed by § 148e.5(a)(1). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

This order provides for certification of an additional concentration of the subject antibiotic drug for which adequate information has been submitted establishing its safety and efficacy. Since it is in the public interest not to delay in providing for such certification and there are no points of controversy involved, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: January 10, 1969.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 69-788; Filed, Jan. 21, 1969; 8:48 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6997]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Information Returns With Respect to Certain Foreign Corporations

On November 15, 1968, notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 16645) regarding the amendment to modify the requirements with respect to Form 2952, and to make certain conforming and other changes, in the Income Tax Regulations (26 CFR Part 1) under sections 6038 and 6046 of the Internal Revenue Code of 1954. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment (except for the amendment of paragraphs (e) and (f)(10) of § 1.6038-2) of the regulations as proposed is hereby adopted. The proposed amendment of paragraphs (e) and (f)(10) of § 1.6038-2 is hereby withdrawn.

(Sec. 7805 of the Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved: January 15, 1969.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

In order to modify the requirements with respect to Form 2952, and to make certain conforming and other changes, in the Income Tax Regulations (26 CFR Part 1) under sections 6038 and 6046 of the Internal Revenue Code of 1954, such regulations are amended as follows:

PARAGRAPH 1. Section 1.6038-2 is amended by revising paragraphs (a), (d), and example (1) of paragraph (k)(2). These amended provisions read as follows:

§ 1.6038-2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

(a) *Requirement of return.* Every U.S. person shall make a separate annual information return on Form 2952 with respect to each annual accounting period (described in paragraph (e) of this section) beginning after December 31, 1962, of each foreign corporation which that person controls (as defined in paragraph (b) of this section) for an uninterrupted period of 30 days or more during such annual accounting period. Such information shall not be required to be furnished, however, with respect to a corporation defined in section 1504(d) of the Code which makes a consolidated return for the taxable year.

* * * * *

(d) *U.S. person.* For purposes of section 6038 and this section, the term "United States person" has the meaning assigned to it by section 7701(a)(30) of the Code, except that—

(1) With respect to a corporation organized under the laws of the Commonwealth of Puerto Rico, such term does not include an individual who is a bona fide resident of Puerto Rico, if a dividend received by such individual during the taxable year from such corporation would, for purposes of section 933(1), be treated as income derived from sources within Puerto Rico,

(2) With respect to a corporation organized under the laws of the Virgin Islands, such term does not include an individual who is a bona fide resident of the Virgin Islands and whose income tax obligation under subtitle A (relating to income taxes) of the Code for the taxable year is satisfied pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands, approved July 22, 1954 (48 U.S.C. 1642), by paying tax on income derived from all sources both within and outside the Virgin Islands into the treasury of the Virgin Islands, and

(3) With respect to a corporation organized under the laws of any possession of the United States (other than Puerto Rico or the Virgin Islands), such term does not include an individual who is a bona fide resident of such possession and whose income derived from sources within any possession of the United States is not, by reason of section 931(a), includible in gross income under subtitle A (relating to income taxes) of the Code for the taxable year.

The provisions of paragraph (b), (c), or (d), respectively, of § 1.957–4 shall apply for purposes of determining whether an individual is excepted under subparagraphs (1), (2), or (3), respectively, of this paragraph from being a U.S. person with respect to a corporation described in such subparagraph.

* * * * *

(k) *Two or more persons required to submit the same information.* * * *

(2) *Persons excepted from furnishing information.* * * *

Example (1). A, a U.S. person owns 100 percent of the stock of M, a domestic corporation. A also owns 100 percent of the stock of N, a foreign corporation organized under the laws of foreign country Y. A, in filing the information return required by this section with respect to N Corporation, in fact furnishes all of the information required of M Corporation with respect to N Corporation. M Corporation need not file the information.

* * * * *

PAR. 2. Section 1.6046–1 is amended by revising paragraph (a)(1), the text of paragraph (a)(2)(i) preceding (*a*) thereof, the text of paragraph (b) preceding subparagraph (1) thereof, paragraph (b)(2), the text of paragraph (c)(1) preceding subdivision (i) thereof, paragraph (c)(2), paragraph (c)(3)(i), the text of subdivision (ii)(*d*) of paragraph (c)(3) preceding (1) thereof, paragraph (c)(3)(iii), and paragraph (e)(4) and (5), and by adding new subparagraphs (3) and (4) to paragraph (f). These amended and added provisions read as follows:

§ 1.6046–1 Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock, on or after January 1, 1963.

(a) *Officers or directors*—(1) *When liability arises on January 1, 1963.* Each U.S. citizen or resident who is on January 1, 1963, an officer or director of a foreign corporation shall make a return on Form 959 showing the name, address, and identifying number of each U.S. person who, on January 1, 1963, owns 5 percent or more in value of the outstanding stock of such foreign corporation.

(2) *When liability arises after January 1, 1963*—(i) *Requirement of return.* Each U.S. citizen or resident who is at any time after January 1, 1963, an officer or director of a foreign corporation shall make a return on Form 959 setting forth the information described in subdivision (ii) of this subparagraph with respect to each U.S. person who, during the time such citizen or resident is such an officer or director—

* * * * *

(b) *Returns required of U.S. persons when liability to file arises on January 1, 1963.* Each U.S. person who, on January 1, 1963, owns 5 percent or more in value of the outstanding stock of a foreign corporation, shall make a return on Form 959 with respect to such foreign corporation setting forth the following information:

* * * * *

(2) The name, business address, and employer identification number, if any, of the foreign corporation, the name of the country under the laws of which it is incorporated, and the name of the country in which is located its principal place of business;

(c) *Returns required of U.S. persons when liability to file arises after January 1, 1963*—(1) *U.S. persons required to file.* A return on Form 959, containing the information required by subparagraph (3) of this paragraph, shall be made by each U.S. person when at any time after January 1, 1963—

* * * * *

(2) *Shareholders who become U.S. persons.* A return on Form 959, containing the information required by subparagraph (3) of this paragraph, shall be made by each person who at any time after January 1, 1963, becomes a U.S. person while owning 5 percent or more in value of the outstanding stock of such foreign corporation.

(3) *Information required to be shown on return*—(i) *In general.* The return on Form 959, required to be filed by persons described in subparagraph (1) or (2) of this paragraph, shall set forth the same information as is required by the provisions of paragraph (b) of this section except that where such provisions require information with respect to January 1, 1963, such information shall be furnished with respect to the date on which liability arises to file the return required under this paragraph.

(ii) *Additional information.* * * *

(*d*) If a return is filed by reason of the organization or reorganization of the foreign corporation on or after January 1, 1963, the following information with respect to such organization or reorganization:

* * * * *

(iii) *Exclusion of information previously furnished.* In any case where any identical item of information required to be filed under this paragraph by a shareholder with respect to a foreign corporation has previously been furnished by such shareholder in any return made in accordance with the provisions of this section, such shareholder may satisfy the requirements of this paragraph by filing Form 959, identifying such item of information, the date furnished, and stating that it is unchanged.

* * * * *

(e) *Special provisions.* * * *

(4) *Persons excepted from filing returns*—(i) *Return required of officer or director under paragraph (a)(1).* Notwithstanding paragraph (a)(1) of this section, any U.S. citizen or resident required to make a return under such paragraph with respect to shareholders of a foreign corporation, need not make such return if, on January 1, 1963, three or fewer U.S. persons own 95 percent or more in value of the outstanding stock of such foreign corporation and file a return or returns with respect to such corporation under paragraph (b) of this section.

(ii) *Return required of officer or director under paragraph (a)(2).* Notwithstanding paragraph (a)(2) of this section, any U.S. citizen or resident required to make a return under such paragraph with respect to a person acquiring stock of a foreign corporation in an acquisition described in subdivision (i) (*a*) or (*b*) of such paragraph need not make such return, if—

(*a*) As a result of such acquisition of stock of such foreign corporation, a U.S. person files a return as a shareholder under paragraph (c)(1) of this section, and

(*b*) Immediately after such acquisition of stock, three or fewer U.S. persons own 95 percent or more in value of the outstanding stock of such foreign corporation.

(iii) *Return required by reason of attribution rules.* Notwithstanding paragraph (b) or (c) of this section, any person required to make a return under such paragraph with respect to a foreign corporation need not make such return, if—

(*a*) Such person does not directly own an interest in the foreign corporation,

(*b*) Such person is required to furnish the information solely by reason of attribution of stock ownership from a U.S. person under paragraph (i) of this section, and

(*c*) The person from whom the stock ownership is attributed furnishes all of the information required under paragraph (b) or (c) of this section of the person to whom such stock ownership is attributed.

(iv) *Return required of officer or director with respect to person described in subdivision (iii).* Notwithstanding paragraph (a) of this section, any U.S. citizen or resident required to make a return under such paragraph with respect to a person exempted under subdivision (iii) of this subparagraph from making a return need not make a return with respect to such person.

(5) *Persons excepted from furnishing items of information.* Any person required to furnish any item of information under paragraph (b) or (c) of this section with respect to a foreign corporation, may, if such item of information is furnished by another person having an equal or greater stock interest (measured in terms of value of such stock) in such foreign corporation, satisfy such requirement by filing a statement with his return on Form 959 indicating that such liability has been satisfied and identifying the return in which such item of information was included.

(f) *Meaning of terms.* * * *

(3) *U.S. person.* For purposes of section 6046 and this section the term "United States person" has the meaning assigned to it by section 7701(a)(30) of the Code, except that—

(i) With respect to a corporation organized under the laws of the Commonwealth of Puerto Rico, such term does not include an individual who is a bona fide resident of Puerto Rico, if a dividend received by such individual during the taxable year from such corporation would, for purposes of section 933(1), be treated as income derived from sources within Puerto Rico.

(ii) With respect to a corporation organized under the laws of the Virgin Islands, such term does not include an individual who is a bona fide resident of the Virgin Islands and whose income tax obligation under subtitle A (relating to income taxes) of the Code for the taxable year is satisfied pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands, approved July 22, 1954 (48 U.S.C. 1642), by paying tax on income derived from all sources both within and outside the Virgin Islands into the treasury of the Virgin Islands, and

(iii) With respect to a corporation organized under the laws of any possession of the United States (other than Puerto Rico or the Virgin Islands), such term does not include an individual who is a bona fide resident of such possesion and whose income derived from sources within any possession of the United States is not, by reason of section 931 (a), includible in gross income under subtitle A (relating to income taxes) of the Code for the taxable year.

The provisions of paragraph (b), (c), or (d), respectively, of § 1.957–4 shall apply for purposes of determining whether an individual is excepted under subdivision (i), (ii), or (iii), respectively, of this subparagraph from being a U.S. person with respect to a corporation described in such subdivision.

(4) *Applicable Form 959.* The Form 959 which shall be used for purposes of this section is Form 959 (Rev. Jan. 1963) or such subsequent revision of such form as may be in use at the time the liability to file a return on Form 959 arises.

* * * * *

[F.R. Doc. 69–768; Filed, Jan. 17, 1969; 1:37 p.m.]

[T.D. 6998]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Allocation of Income and Deductions Among Taxpayers

On April 1, 1965, notice of proposed rule making with respect to amendment of the Income Tax Regulations (26 CFR Part 1) under section 482 of the Internal Revenue Code of 1954 (relating to allocation of income and deductions among taxpayers) was published in the FEDERAL REGISTER (30 F.R. 4256). On August 2, 1966, the notice of April 1, 1965, was withdrawn and a new notice of proposed rule making with respect to amendment of the Income Tax Regulations under section 482 and with respect to amendment of the Income Tax Regulations under section 861 (relating to the determination of sources of income) was published in the FEDERAL REGISTER (31 F.R. 10394). On April 16, 1968, T.D. 6952 covering all the proposed amendments to the regulations under section 482 with the exception of § 1.482–2(b)(7) was published in the FEDERAL REGISTER (33 F.R. 5848). Section 1.861–8 was continued in effect under notice of proposed rule making. Also on April 16, 1968, a new notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 5858) with respect to § 1.482–2(b)(7) and § 1.482–2(b)(3). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments under section 482 are hereby adopted to read as set forth below. Section 1.861–8 continues in effect under notice of proposed rule making and will be given further consideration before final action is taken thereon.

§ 1.482–2 Determination of taxable income in specific situations.

* * * * *

(b) *Performance of services for another.* * * *

(3) *Arm's length charge.* For the purpose of this paragraph an arm's length charge for services rendered shall be the amount which was charged or would have been charged for the same or similar services in independent transactions with or between unrelated parties under similar circumstances considering all relevant facts. However, except in the case of services which are an integral part of the business activity of either the member rendering the services or the member receiving the benefit of the services (as described in subparagraph (7) of this paragraph), the arm's length charge shall be deemed equal to the costs or deductions incurred with respect to such services by the member or members rendering such services unless the taxpayer establishes a more appropriate charge under the standards set forth in the first sentence of this paragraph. Where costs or deductions are a factor in applying the provisions of this paragraph adequate books and records must be maintained by taxpayers to permit verification of such costs or deductions by the Internal Revenue Service.

* * * * *

(7) *Certain services.* An arm's length charge shall not be deemed equal to costs or deductions with respect to services which are an integral part of the business activity of either the member rendering the services (referred to in this subparagraph as the "renderer") or the member receiving the benefit of the services (referred to in this subparagraph as the "recipient"). Subdivisions (i) through (iv) of this subparagraph describe those situations in which services shall be considered an integral part of the business activity of a member of a group of controlled entities.

(i) Services are an integral part of the business activity of a member of a controlled group where either the renderer or the recipient is engaged in the trade or business of rendering similar services to one or more unrelated parties.

(ii) (*a*) Services are an integral part of the business activity of a member of a controlled group where the renderer renders services to one or more related parties as one of its principal activities. Except in the case of services which constitute a manufacturing, production, extraction, or construction activity, it will be presumed that the renderer does not render services to related parties as one of its principal activities if the cost of services of the renderer attributable to the rendition of services for the taxable year to related parties do not exceed 25 percent of the total costs or deductions of the renderer for the taxable year. Where the cost of services rendered to related parties is in excess of 25 percent of the total costs or deductions of the renderer for the taxable year or where the 25-percent test does not apply, the determination of whether the rendition of such services is one of the principal activities of the renderer will be based on the facts and circumstances of each particular case. Such facts and circumstances may include the time devoted to the rendition of the services, the relative cost of the services, the regularity with which the services are rendered, the amount of capital investment, the risk of loss involved, and whether the services are in the nature of supporting services or independent of the other activities of the renderer.

(*b*) For purposes of the 25-percent test provided in this subdivision (ii), the cost of services rendered to related parties shall include all costs or deductions directly or indirectly related to the rendition of such services including the cost of services which constitute a manufacturing, production, extraction, or construction activity; and the total costs or deductions of the renderer for the taxable year shall exclude amounts properly reflected in the cost of goods sold of the

renderer. Where any of the costs or deductions of the renderer do not reflect arm's length consideration and no adjustment is made under any provision of the Internal Revenue Code to reflect arm's length consideration, the 25-percent test will not apply if, had an arm's-length charge been made, the costs or deductions attributable to the renderer's rendition of services to related entities would exceed 25 percent of the total costs or deductions of the renderer for the taxable year.

(c) For purposes of the 25-percent test in this subdivision (ii), a consolidated group (as defined in this subdivision (c)) may, at the option of the taxpayer, be considered as the renderer where one or more members of the consolidated group render services for the benefit of or on behalf of a related party which is not a member of the consolidated group. In such case, the cost of services rendered by members of the consolidated group to any related parties not members of the consolidated group, as well as the total costs or deductions of the members of the consolidated group, shall be considered in the aggregate to determine if such services constitute a principal activity of the renderer. Where a consolidated group is considered the renderer in accordance with this subdivision (c), the costs or deductions referred to in this subdivision (ii) shall not include costs or deductions paid or accrued to any member of the consolidated group. In addition to the preceding provisions of this subdivision (c), if part or all of the services rendered by a member of a consolidated group to any related party not a member of the consolidated group are similar to services rendered by any other member of the consolidated group to unrelated parties as part of a trade or business, the 25-percent test in this subdivision (ii) shall be applied with respect to such similar services without regard to this subdivision (c). For purposes of this subdivision (c), the term "consolidated group" means all members of a group of controlled entities created or organized within a single country and subjected to an income tax by such country on the basis of their combined income.

(iii) Services are an integral part of the business activity of a member of a controlled group where the renderer is peculiarly capable of rendering the services and such services are a principal element in the operations of the recipient. The renderer is peculiarly capable of rendering the services where the renderer, in connection with the rendition of such services, makes use of a particularly advantageous situation or circumstance such as by utilization of special skills and reputation, utilization of an influential relationship with customers, or utilization of its intangible property (as defined in paragraph (d)(3) of this section). However, the renderer will not be considered peculiarly capable of rendering services unless the value of the services is substantially in excess of the costs or deductions of the renderer attributable to such services.

(iv) Services are an integral part of the business activity of a member of a controlled group where the recipient has received the benefit of a substantial amount of services from one or more related parties during its taxable year. For purposes of this subdivision, services rendered by one or more related parties shall be considered substantial in amount if the total costs or deductions of the related party or parties rendering services to the recipient during its taxable year which are directly or indirectly related to such services exceed an amount equal to 25 percent of the total costs or deductions of the recipient during its taxable year. For purposes of the preceding sentence, the total costs or deductions of the recipient shall include the renderers' costs or deductions directly or indirectly related to the rendition of such services and shall exclude any amounts paid or accrued to the renderers by the recipient for such services and shall also exclude any amounts paid or accrued for materials the cost of which is properly reflected in the cost of goods sold of the recipient. At the option of the taxpayer, where the taxpayer establishes that the amount of the total costs or deductions of a recipient for the recipient's taxable year are abnormally low due to the commencement or cessation of an operation by the recipient, or other unusual circumstances of a nonrecurring nature, the costs or deductions referred to in the preceding two sentences shall be the total of such amount for the 3-year period immediately preceding the close of the taxable year of the recipient (or for the first 3 years of operation of the recipient if the recipient had been in operation for less than 3 years as of the close of the taxable year in which the services in issue were rendered).

(v) The principles of subdivisions (i) through (iv) of this subparagraph may be illustrated by the following examples:

Application of subdivision (i):

Example (1). Y is engaged in the business of selling merchandise and X, an entity related to Y, is a printing company regularly engaged in printing and mailing advertising literature for unrelated parties. X also prints circulars advertising Y's products, mails the circulars to potential customers of Y, and in addition, performs the art work involved in the preparation of the circulars. Since the printing, mailing, and art work services rendered by X to Y are similar to the printing and mailing services rendered by X as X's trade or business, the services rendered to Y are an integral part of the business activity of X as described in subdivision (i) of this subparagraph.

Application of subdivision (ii):

Example (2). V, W, X, and Y are members of the same group of controlled entities. Each member of the group files a separate income tax return. X renders wrecking services to V, W, and Y, and, in addition, sells building materials to unrelated parties. The total costs or deductions incurred by X for the taxable year (exclusive of amounts properly reflected in the cost of goods sold of X) are $4 million. The total costs or deductions of X for the taxable year which are directly or indirectly related to the services rendered to V, W, and Y are $650,000. Since $650,000 is less than 25 percent of the total costs or deductions of X (exclusive of amounts properly reflected in the cost of goods sold of X) for the taxable year ($4,000,000 × 25% = $1,000,000), the services rendered by X to V, W, and Y will not be considered one of X's principal activities within the meaning of subdivision (ii) of this subparagraph.

Example (3). Assume the same facts as in example (2), except that the total costs or deductions of X for the taxable year which are directly or indirectly related to the services rendered to V, W, and Y are $1,800,000. Assume in addition, that there is a high risk of loss involved in the rendition of the wrecking services by X, that X has a large investment in the wrecking equipment, and that a substantial amount of X's time is devoted to the rendition of wrecking services to V, W, and Y. Since $1,800,000 is greater than 25 percent of the total costs or deductions of X for the taxable year (exclusive of amounts properly reflected in the cost of goods sold of X), i.e., $1 million, the services rendered by X to V, W, and Y will not be automatically excluded from classification as one of the principal activities of X as in example (2), and consideration must be given to the facts and circumstances of the particular case. Based on the facts and circumstances in this case, X would be considered to render wrecking services to related parties as one of its principal activities. Thus, the wrecking services are an integral part of the business activity of X as described in subdivision (ii) of this subparagraph.

Example (4). Z is a domestic corporation and has several foreign subsidiaries. Z and X, a domestic subsidiary of Z, have exercised the privilege granted under section 1501 to file a consolidated return and, therefore, constitute a "consolidated group" within the meaning of subdivision (ii)(c) of this subparagraph. Pursuant to (c) of subdivision (ii), the taxpayer treats X and Z as the renderer. The sole function of X is to provide accounting, billing, communication, and travel services to the foreign subsidiaries of Z. Z also provides some other services for the benefit of its foreign subsidiaries. The total costs or deductions of X and Z related to the services rendered for the benefit of the foreign subsidiaries is $750,000. Of that amount, $710,000 represents the costs of X, which are X's total operating costs. The total costs or deductions of X and Z for the taxable year with respect to their operations (exclusive of amounts properly reflected in the cost of goods sold of X and Z) is $6,500,000. Since the total costs or deductions related to the services rendered to the foreign subsidiaries ($750,000) is less than 25 percent of the total costs or deductions of X and Z (exclusive of amounts properly reflected in the costs of goods sold of X or Z) in the aggregate ($6,500,000 × 25% = $1,625,000), the services rendered by X and Z to the foreign subsidiaries will not be considered one of the principal activities of X and Z within the meaning of subdivision (ii) of this subparagraph.

Example (5). Assume the same facts as in example (4), except that all the communication services rendered for the benefit of the foreign subsidiaries are rendered by X and that Z renders communication services to unrelated parties as part of its trade or business. X is regularly engaged in rendering communication services to foreign subsidiaries and devotes a substantial amount of its time to this activity. The costs or deductions of X related to the rendition of the communication services to the foreign subsidiaries are $355,000. By application of the provisions of (c) of subdivision (ii) of this subparagraph, the services provided by X and Z to related entities other than the communication services will not be considered one of the principal activities of X and Z. However, since Z renders communication services to unrelated parties as a part of its

trade or business, the communication services rendered by X to the foreign subsidiaries will be subject to the provisions of subdivision (ii) without regard to (c) of subdivision (ii). Since, the cost or deductions of X related to the rendition of the communication services ($355,000) are in excess of 25 percent of the total costs or deductions of X (exclusive of amounts properly reflected in the cost of goods sold of X) for the taxable year ($710,000×25%=$177,500), the determination of whether X renders the communication services as one of its principal activities will depend on the particular facts and circumstances. The given facts and circumstances indicate that X renders the communication services as one of its principal activities.

Example (6). X and Y are members of the same group of controlled entities. Y produces and sells product D. As a part of the production process, Y sends materials to X who converts the materials into component parts. This conversion activity constitutes only a portion of X's operations. X then ships the component parts back to Y who assembles them (along with other components) into the finished product for sale to unrelated parties. Since the services rendered by X to Y constitute a manufacturing activity, the 25-percent test in subdivision (ii) of this subparagraph does not apply.

Example (7). X and Y are members of the same group of controlled entities. X manufactures product D for distribution and sale in the United States, Canada, and Mexico. Y manufactures product D for distribution and sale in South and Central America. Due to a breakdown of machinery, Y is forced to cease its manufacturing operations for a 1-month period. In order to meet demand for product D during the shutdown period, Y sends partially finished goods to X. X, for that period, completes the manufacture of product D for Y and ships the finished product back to Y. The costs or deductions of X related to the manufacturing services rendered to Y are $750,000. The total costs or deductions of X are $24,000,000. Since the services in issue constitute a manufacturing activity, the 25-percent test in subdivision (ii) of this subparagraph does not apply. However, under these facts and circumstances—i.e., the insubstantiality of the services rendered to Y in relation to X's total operations, the lack of regularity with which the services are rendered, and the short duration for which the services are rendered—X's rendition of manufacturing services to Y is not considered one of X's principal activities within the meaning of subdivision (ii) of this subparagraph.

Example (8). Assume the same facts as in example (7) except that, instead of temporarily ceasing operations, Y requests assistance from X in correcting the defects in the manufacturing equipment. In response, X sends a team of engineers to discover and correct the defects without the necessity of a shutdown. Although the services performed by the engineers were related to a manufacturing activity, the services are essentially supporting in nature and, therefore, do not constitute a manufacturing, production, extraction, or construction activity. Thus, the 25-percent test in subdivision (ii) of this subparagraph applies.

Example (9). X is a domestic manufacturing corporation. Y, a foreign subsidiary of X, has decided to construct a plant in Country A. In connection with the construction of Y's plant, X draws up the architectural plans for the plant, arranges the financing of the construction, negotiates with various Government authorities in Country A, invites bids from unrelated parties for several phases of construction, and negotiates, on Y's behalf, the contracts with unrelated parties who are retained to carry out certain phases of the construction. Although the unrelated parties retained by X for Y perform the physical construction, the aggregate services performed by X for Y are such that they, in themselves, constitute a construction activity. Thus, the 25-percent test in subdivision (ii) of this subparagraph does not apply with respect to such services.

Application of subdivision (iii):

Example (10). X and Y are members of the same group of controlled entities. X is a finance company engaged in financing automobile loans. In connection with such loans it requires the borrower to have life insurance in the amount of the loan. Although X's borrowers are not required to take out life insurance from any particular insurance company, at the same time that the loan agreement is being finalized, X's employees suggest that the borrower take out life insurance from Y, which is an agency for life insurance companies. Since there would be a delay in the processing of the loan if some other company were selected by the borrower, almost all of X's borrowers take out life insurance through Y. Because of this utilization of its influential relationship with its borrowers, X is peculiarly capable of rendering selling services to Y and, since a substantial amount of Y's business is derived from X's borrowers, such selling services are a principal element in the operation of Y's insurance business. In addition, the value of the services is substantially in excess of the costs incurred by X. Thus, the selling services rendered by X to Y are an integral part of the business activity of a member of the controlled group as described in subdivision (iii) of this subparagraph.

Example (11). X and Y are members of the same group of controlled entities. Y is a manufacturer of product E. In past years product E has not always operated properly because of imperfections present in the finished product. X owns an exclusive patented process by which such imperfections can be detected and removed prior to sale of the product, thereby greatly increasing the marketability of the product. In connection with its manufacturing operations Y sends its products to X for inspection which involves utilization of the patented process. The inspection of Y's products by X is not one of the principal activities of X. However, X is peculiarly capable of rendering the inspection services to Y because of its utilization of the patented process. Since this inspection greatly increases the marketability of product E it is extremely valuable. Such value is substantially in excess of the cost incurred by X in rendition of such services. Because of the impact of the inspection on sales, such services are a principal element in the operations of Y. Thus, the inspection services rendered by X to Y are an integral part of the business activity of a member of the controlled group as described in subdivision (iii) of this subparagraph.

Example (12). Assume the same facts as in example (11) except that Y owns the patented process for detecting the imperfections. Y, however, does not have the facilities to implement the inspection process. Therefore, Y sends its products to X for inspection which involves utilization of the patented process owned by Y. Since Y owns the patent, X is not peculiarly capable of rendering the inspection services to Y within the meaning of subdivision (iii) of this subparagraph.

Example (13). Assume the same facts as in example (12) except that X and Y both own interests in the patented process as a result of having developed the process pursuant to a bona fide cost sharing plan (within the meaning of paragraph (d)(4) of this section). Since Y owns the requisite interest in the patent, X is not peculiarly capable of rendering the inspection services to Y within the meaning of subdivision (iii) of this subparagraph.

Example (14). X and Y are members of the same group of controlled entities. X is a large manufacturing concern. X's accounting department has, for many years, maintained the financial records of Y, a distributor of X's products. Although X is able to render these accounting services more efficiently than others due to its thorough familiarity with the operations of Y, X is not peculiarly capable of rendering the accounting services to Y because such familiarity does not, in and of itself, constitute a particularly advantageous situation or circumstance within the meaning of subdivision (iii) of this subparagraph. Furthermore, under these circumstances, the accounting services are supporting in nature and, therefore, do not constitute a principal element in the operations of Y. Thus, the accounting services rendered by X to Y are not an integral part of the business activity of either X or Y within the meaning of subdivision (iii) of this subparagraph.

Application of subdivision (iv):

Example (15). Corporations X, Y, and Z are members of the same group of controlled entities. X is a manufacturer, and Y and Z are distributors of X's products. X provides a variety of services to Y including billing, shipping, accounting, and other general and administrative services. During Y's taxable year, on several occasions, Z renders selling and other promotional services to Y. None of the services rendered to Y constitute one of the principal activities of any of the renderers within the meaning of subdivision (ii) of this subparagraph. Y's total costs and deductions for Y's taxable year (exclusive of amounts paid to X and Z for services rendered and amounts paid for goods purchased for resale) are $1,600,000. The total direct and indirect costs of X and Z for services rendered to Y during Y's taxable year are as follows:

Services provided by X:	
Billing	$50,000
Shipping	250,000
Accounting	150,000
Other	200,000
Services provided by Z:	
Selling	500,000
Total costs	1,150,000

Since the total costs or deductions of X and Z related to the rendition of services to Y exceed the amount equal to 25 percent of the total costs or deductions of Y (exclusive of amounts paid to X and Z for the services rendered and amounts paid for goods purchased for resale) plus the total costs or deductions of X and Z related to the rendition of services to Y ($1,150,000÷[$1,600,000+$1,150,000]=41.8%), the services rendered by X and Z to Y are substantial within the meaning of subdivision (iv) of this subparagraph. Thus, the services rendered by X and Z to Y are an integral part of the business activity of Y as described in subdivision (iv) of this subparagraph.

Example (16). Assume the same facts as in example (15) except that the taxpayer establishes that, due to a major change in the operations of Y, Y's total costs or deductions for Y's taxable year were abnormally low. Y has always used the calendar year as its taxable year. Y's total costs and deductions for the 2 years immediately preceding the taxable year in isue (exclusive of amounts paid to X and Z for services rendered and amounts paid for goods purchased for resale) were $6 million and $6,200,000, respectively. The total direct and indirect costs of X and Z for services rendered to Y were $1,150,000 for each of the 3 years. Applying the same formula to the costs or deductions for the 3 years immediately preceding the

close of the taxable year in issue, the costs or deductions of X and Z related to the rendition of services to Y ($3 \times \$1,150,000 = \$3,450,000$) amount to 20 percent of the sum of the total costs or deductions of Y (exclusive of amounts paid to X and Z for the services rendered and amounts paid for goods purchased for resale) plus the total costs or deductions of X and Z related to the rendition of services to Y ($\$3,450,000 \div [\$1,600,000 + \$6,000,000 + \$6,200,000 + \$3,450,000] = 20\%$). If the taxpayer chooses to use the 3-year period, the services rendered by X and Z to Y are not substantial within the meaning of subdivision (iv) of this subparagraph. Thus, the services will not be an integral part of the business activity of a member of the controlled group as described in subdivision (iv) of this subparagraph.

(Sec. 7805 of the Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved: January 15, 1969.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

[F.R. Doc. 69-767; Filed, Jan. 17, 1969; 1:37 p.m.]

Title 35—PANAMA CANAL

Chapter I—Canal Zone Regulations

SUBCHAPTER E—EMPLOYMENT AND COMPENSATION IN THE CANAL ZONE

PART 255—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Outside Employment and Other Activity and Statutory Provisions

Effective upon publication in the FEDERAL REGISTER, Part 255 of Title 35, Code of Federal Regulations, is amended as follows:

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

1. Section 255.735–32 is amended to read as follows:

§ 255.735–32 Outside employment and other activity.

* * * * *

(c) Subject to the provisions of § 255.735–39, employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, regulations of the Civil Service Commission, or the regulations in this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Commission, the Central Employment Office of the Canal Zone Civilian Personnel Policy Coordinating Board, or Board of Examiners for the Foreign Service, that depends on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Governor gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(d) [Deleted]

* * * * *

2. Section 255.735–40 is amended by adding a new paragraph, (p–2), to read as follows:

§ 255.735–40 Miscellaneous statutory provisions.

* * * * *

(p–2) The provisions relating to engaging in riots or civil disorders (5 U.S.C. 7313).

* * * * *

Subpart C—Ethical and Other Conduct and Responsibilities of Special Government Employees

3. Section 255.735–56 is amended by adding a new paragraph, (p–2), to read as follows:

§ 255.735–56 Miscellaneous statutory provisions.

* * * * *

(p–2) The provisions relating to engaging in riots or civil disorders (5 U.S.C. 7313).

* * * * *

Dated: December 20, 1968.

These regulations were approved by the Civil Service Commission on Jan. 13, 1969, and are effective on publication in the FEDERAL REGISTER.

W. P. LEBER,
Governor of the Canal Zone, President, Panama Canal Company.

[F.R. Doc. 69–755; Filed, Jan. 21, 1969; 8:45 a.m.]

Title 49—TRANSPORTATION

Chapter III—Federal Highway Administration, Department of Transportation

PART 385—COLLECTION AND COMPROMISE OF CLAIMS FOR FORFEITURES UNDER SECTION 222(h) OF THE INTERSTATE COMMERCE ACT

This amendment adds a new Part 385 to title 49, CFR. It prescribes procedures for the compromise and collection of claims for civil forfeitures, imposed under section 222(h) of the Interstate Commerce Act, 49 U.S.C. 322(h), for failures to keep records, file reports, or respond to questions as prescribed by those provisions of Part II of the Act with respect to which responsibility was transferred to the Secretary of Transportation in section 6 of the Department of Transportation Act, 49 U.S.C. 1655, and in regulations promulgated thereunder. The Secretary has delegated his authority to administer Part II of the Interstate Commerce Act to the Federal Highway Administrator (49 CFR 1.4(c)).

Under the Federal Claims Collection Act of 1966, 31 U.S.C. 951–953, the head of each Federal agency is authorized to promulgate regulations governing the collection and compromise of claims for $20,000 or less arising out of the activities of his agency. Collection and compromise of claims is to be made in conformity with standards promulgated jointly by the Attorney General and the Comptroller General. The Secretary of Transportation has delegated his authority for compromise and collection of claims under the Federal Claims Collection Act to the head of each operating Administration with respect to the activities of his Administration and has authorized the Administrators to establish rules and regulations for the exercise of their authority and to delegate their authority within their respective jurisdictions (49 CFR Part 89, 33 F.R. 5583).

This new part authorizes the Director of the Bureau of Motor Carrier Safety to make claims for civil forfeitures against persons who he believes are subject to such forfeitures for violations of provisions of the Interstate Commerce Act for which the Administrator has responsibility and the regulations issued under those provisions of the Act. The Director is also empowered to collect and to compromise such claims. It is the intention of the Administrator that the Director will exercise his power in accordance with the standards promulgated jointly by the Attorney General and the Comptroller General, now published in Chapter II of Title 4, CFR.

Since this amendment relates to management, procedures, and practices of the Federal Highway Administration, notice and public procedure thereon are not necessary, and it is effective on the date of publication in the FEDERAL REGISTER.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations is amended by adding a new Part 385 as set forth below.

Issued in Washington, D.C., on January 16, 1969.

LOWELL K. BRIDWELL,
Federal Highway Administrator.

Sec.

AUTHORITY: The provisions of this Part 385 are issued under secs. 204 and 222 of the Interstate Commerce Act, as amended (49 U.S.C. 304, 322), the Federal Claims Collection Act of 1966 (P.L. 89–503, 31 U.S.C. 951–953), and the delegation of authority contained in Part 89 of the regulations of the Office of the Secretary of Transportation.

§ 385.1 Scope of the rules in this part; exclusions.

(a) This part sets forth rules governing the collection and compromise of claims for civil forfeitures imposed pursuant to section 222(h) of the Interstate Commerce Act, as amended, 49 U.S.C. 322(h).

(b) The rules of this part do not apply to claims in excess of $20,000 or to claims as to which there is an indication of fraud, misrepresentation, or the presentation of a false claim by the respondent. For the purpose of determining

the amount of a claim, each violation of law is deemed to create a separate claim.

§ 385.2 Delegation of authority.

The functions, powers, and duties of the Federal Highway Administrator to collect and to compromise claims of the United States for civil forfeitures under section 222(h) of the Interstate Commerce Act (49 U.S.C. 322(h)) and to suspend and terminate actions to collect such claims are delegated to the Director of the Bureau of Motor Carrier Safety. The Director may redelegate the functions, powers, and duties delegated to him by this section, but he may not authorize a further redelegation of his authority.

§ 385.3 Notice of claim.

(a) Whenever the Director of the Bureau of Motor Carrier Safety has reason to believe that a person may be liable to the United States for a forfeiture under section 222(h) of the Interstate Commerce Act (49 U.S.C. 332(h)), he may send the person (hereinafter referred to as the "respondent") a notice of claim containing the information specified in § 385.4. The notice shall be signed by the Director and shall be sent to the respondent by registered or certified mail.

(b) Neither the issuance nor the contents of a notice of claim restricts the Administration from taking any enforcement or other action deemed advisable with respect to the matters contained in the notice of claim.

§ 385.4 Contents of notice of claim.

(a) A notice of claim must contain—

(1) A statement of the provisions of law the Director believes the respondent has violated;

(2) A brief statement of the facts constituting each violation;

(3) Notice of the maximum amount which the respondent may be required to forfeit on account of each violation; and

(4) The form in which and the place where the respondent may pay the claim.

(b) A notice of claim may contain—

(1) The name and address of the employee of the Federal Highway Administration authorized to discuss the merits of the claim and compromise of the amount claimed;

(2) Any action, other than imposition of a forfeiture, which may be taken against the respondent; and

(3) Any other matter which the Director deems appropriate.

§ 385.5 Response to notice of claim.

The respondent should respond to the notice of claim within 30 days after it is issued or within such further time as the Director may specify in the notice. The response should state whether the respondent is willing to pay the claim upon the terms stated in the notice, or wishes to discuss payment of the claim with the Director or his representative. If the Director or his representative and the respondent agree upon the terms of payment of the claim, they shall prepare and execute a settlement agreement that embodies those terms and that complies with § 385.6.

§ 385.6 Settlement agreement.

(a) Each settlement agreement shall contain—

(1) A statement of the statutory basis for the claim;

(2) A brief statement of the violations with which the respondent was charged;

(3) The full amount of the claim and the amount to be paid in compromise of the claim;

(4) The date, place, and form of payment, including the terms of any agreement for payment in installments;

(5) A statement that the settlement agreement has no force and effect and is not binding upon the Federal Highway Administration unless and until the Director executes it; and

(6) Such consent orders, stipulations, waivers, and other provisions as the Directors deems necessary or appropriate to assure future compliance with applicable statutes and regulations.

(b) An executed settlement agreement is binding on the respondent and the Director according to its terms. The respondent's consent to a settlement agreement that has not been executed by the Director may not be withdrawn for a period of 30 days after the date it was executed by the respondent.

[F.R. Doc. 69-790; Filed, Jan. 21, 1969; 8:48 a.m.]

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER SAFETY PROCEEDINGS UNDER SECTION 204(c) OF THE INTERSTATE COMMERCE ACT

This amendment adds a new Part 386 to title 49 CFR to prescribe procedures for the conduct of administrative proceedings and the issuance of orders under section 204(c) of the Interstate Commerce Act (49 U.S.C. 304(c)). The new Part also provides for the entry of consent orders compelling compliance with the Act, the Motor Carrier Safety Regulations (49 CFR Parts 290–297) 18 U.S.C. 831–835, and regulations issued thereunder.

Section 204(c) of the Interstate Commerce Act gives the Interstate Commerce Commission the power to issue orders compelling motor carriers to comply with applicable provisions of the Act and regulations promulgated thereunder after notice and a hearing. 18 U.S.C. 835 authorizes the Commission to employ its power under Section 204(c) to enforce the provisions of 18 U.S.C. 831–835 and regulations thereunder. The authority of the Interstate Commerce Commission under section 204(c) was transferred to the Secretary of Transportation by section 6 of the Department of Transportation Act (49 U.S.C. 1655), and the Secretary has delegated it to the Federal Highway Administrator (49 CFR 1.4(c)).

Since this amendment does not affect any substantive right or duty and relates to procedure and practice before the Federal Highway Administration, notice and public procedure thereon are unnecessary and it is effective on the date of publication in the FEDERAL REGISTER.

In consideration of the foregoing, title 49 of the Code of Federal Regulations is amended by adding a new Part 386 as set forth below.

Issued in Washington, D.C. on January 16, 1969.

LOWELL K. BRIDWELL,
Federal Highway Administrator.

Subpart A—Scope of Rules; Definitions

Subpart B—Pleadings

Subpart C—Consent Order Procedure

Subpart D—Hearing Examiner; Prehearing Conferences; Hearings

Subpart E—Decision

AUTHORITY. The provisions of this Part are issued under secs. 204, 220, and 222 of the Interstate Commerce Act, as amended (49 U.S.C. 304, 320, 322), secs. 834 and 835 of title 18, United States Code, sec. 6 of the Department of Transportation Act (80 Stat. 937; 49 U.S.C. 1655), and the delegation of authority contained in Part I of the regulations of the Office of the Secretary.

§ 386.1 Scope of rules in this part.

The rules in this part govern procedure in proceedings before the Federal Highway Administrator authorized by section 204(c) of the Interstate Commerce Act (49 U.S.C. 304(c)). The purpose of the proceedings is to enable the Administrator, after notice and hearing in accordance with 5 U.S.C. 551–559, to determine whether any motor carrier subject to the jurisdiction of the Federal Highway Administration under Part II of the Interstate Commerce Act or 18 U.S.C. 831–835 has failed to comply with any provision or requirement of those statutes or of the regulations issued under them and, if such a violation is found, to issue an appropriate order to compel compliance with the statute or regulations.

§ 386.2 Definitions.

(a) "Administrator" means the Federal Highway Administrator.

(b) "Administration" means the Federal Highway Administration.

(c) "Respondent" means a party against whom relief is sought in a notice of investigation.

(d) "Intervenor" means a party who has petitioned for, and has been granted, leave to intervene under § 386.14.

Subpart B—Pleadings

§ 386.11 Commencement of proceedings.

(a) *Notice of investigation.* Proceedings under this part are commenced by issuance of a notice of investigation. The Administrator or any authorized officer or employee of the Administration may issue a notice of investigation on his own motion or upon a complaint filed pursuant to § 386.12.

(b) *Contents.* Each notice of investigation must contain:

(1) A statement of the legal authority and jurisdiction for the institution of the proceedings.

(2) The name and address of each motor carrier against whom relief is sought.

(3) One or more clear, concise, and separately numbered paragraphs stating the facts alleged to constitute a violation of the law.

(4) The relief demanded which, where practical, should be in the form of an order for the Administrator's signature.

(5) A statement that the rules in this part require a reply to be filed within 30 days of service of the notice of investigation.

(6) A certificate that the notice of investigation was served in accordance with § 386.15.

(c) *Amendment.* At any time before the close of the hearing, the notice of investigation may be amended in the discretion of the hearing examiner upon such terms as he approves.

§ 386.12 Complaint.

(a) *Filing of complaint.* Any person, State board, organization, or body politic may file a written complaint with the Administrator, requesting the issuance of a notice of investigation under § 386.11. Each complaint must contain:

(1) The name and address of the party who files it, and a statement specifying the authority for a party (other than a natural person) to file the complaint;

(2) A statement of the interest of the party in the proceedings;

(3) The name and address of each motor carrier against whom relief is sought;

(4) The reasons why the party believes that a notice of investigation should be issued;

(5) A statement of any prior action which the party has taken to redress the violations of law alleged in the complaint and the results of that action; and

(6) The relief which the party believes the Administration should seek.

(b) *Action on complaint.* Upon the filing of a complaint, the Administrator determines whether it states reasonable grounds for investigation and action by the Administration. If he determines that the complaint states such grounds, the Administrator issues, or authorizes the issuance of, a notice of investigation under § 386.11. If he determines that the complaint does not state reasonable grounds for investigation and action by the Administration, the Administrator dismisses it.

§ 386.13 Reply to notice of investigation.

(a) *Time for filing.* Each respondent must file a reply to a notice of investigation within 30 days after it is served. The time for filing a reply may be extended by the hearing examiner only upon written motion which specifies good cause for allowance of more time.

(b) *Contents.* (1) If the allegations of the notice of investigation are contested, the reply must contain a concise statement of the facts constituting each defense and a specific admission, denial or explanation of each allegation in the notice of investigation.

(2) If the respondent elects not to contest the allegations of the notice of investigation, he must so state. In addition to a statement of his election not to contest, the respondent may propose an appropriate order for the Administrator's signature disposing of the proceedings or he may propose that the proceedings be terminated by entry of a consent order under Subpart C. A statement of election not to contest waives a hearing on the facts alleged in the notice of investigation and provides a record basis for the hearing examiner to file an initial decision under § 386.41, in which the facts alleged in the notice of investigation are found as the facts of the case.

(3) The reply must contain a certificate that it was served in accordance with § 386.15.

(c) *Default.* If a reply is not filed in accordance with this section, the respondent has waived his right to appear and contest the allegations of the notice of investigation. The hearing examiner may thereupon, and without further notice to the respondent, find the facts to be as alleged in the notice of investigation and issue his initial decision containing such findings, appropriate conclusions and an order.

§ 386.14 Intervention.

At any time before the date set for the hearing to begin, any person may petition the hearing examiner for leave to intervene. The petition must set forth the reasons why the petitioner alleges he is entitled to intervene. The petition must be served on the parties in accordance with § 386.15. Any party may file a response to the petition within 10 days after it is served. The hearing examiner may deny the petition or may permit intervention to such extent or upon such terms as he deems just. Unless the hearing examiner's order states otherwise, a party who has been granted leave to intervene is a party for the purpose of all subsequent proceedings.

§ 386.15 Filing and service of pleadings and other papers.

Whenever these rules require the filing of a pleading or other document with the Administrator, two copies of it must be sent to the Administrator, Federal Highway Administration, 400 6th Street SW., Washington, D.C. 20591. Whenever these rules require the filing of a pleading or other document with the hearing examiner, two copies of it must be sent to him at the address given in the order which appoints him. Two copies of each pleading or brief must be served on each other party in person or by registered or certified mail, first-class postage prepaid. Service of a document is complete when the document is received.

Subpart C—Consent Order Procedure

§ 386.21 Consent order.

When a respondent has filed an election not to contest under § 386.13(b)(2), or at any time before the hearing is concluded, the parties may execute an appropriate agreement for disposing of the case by consent for the consideration of the Administrator. The agreement is filed with the Administrator who may (a) accept it, (b) reject it and direct that proceedings in the case continue, or (c) take such other action as he deems appropriate. If the Administrator accepts the agreement, he enters an order in accordance with its terms,

§ 386.22 Content of consent order.

(a) Every agreement filed with the Administrator under § 386.21 must contain:

(1) An order for the disposition of the case in form suitable for the Administrator's signature.

(2) An admission of all jurisdictional facts.

(3) A waiver of further procedural steps, of the requirement that the decision or order must contain findings of fact and conclusions of law, and of all right to seek judicial review or otherwise challenge or contest the validity of the order.

(4) Provisions that the notice of investigation may be used to construe the terms of the order.

(5) Provisions that the order has the same force and effect, becomes final, and may be modified, altered, or set aside in the same manner and within the same time as other orders issued under section 204(c) of the Interstate Commerce Act (49 U.S.C. 304(c)).

(6) Provisions that the agreement will not be part of the record in the proceeding unless and until the Administrator executes it.

(b) An agreement filed with the Administrator under § 386.21 may contain:

(1) A statement that it is executed for settlement purposes only and does not admit any violations of law alleged in the notice of investigation.

(2) Provisions for the compromise of any claim for a civil forfeiture.

Subpart D—Hearing Examiner; Prehearing Conference; Hearings

§ 386.31 Hearing examiner.

(a) *Appointment.* Upon the issuance of a notice of investigation, the Administrator appoints a hearing examiner to conduct the proceedings and notifies the parties of his name and address.

(b) *Powers and duties.* Except as provided in paragraph (c) of this section, the hearing examiner has power to take

any action and to make all needful rules and regulations to govern the conduct of the proceedings, to insure a fair and impartial hearing, and to avoid delay in the disposition of the proceedings. His powers include the following:

(1) To administer oaths and affirmations.

(2) To issue orders permitting inspection and examination of lands, buildings, equipment, and any other physical thing and the copying of any document.

(3) To issue subpenas for the attendance of witnesses and the production of evidence as authorized by law.

(4) To take or cause depositions to be taken.

(5) To rule on offers of proof and receive evidence.

(6) To regulate the course of the hearing and the conduct of participants in it.

(7) To consider and rule upon all procedural and other motions, except motions which, under this Part, are made directly to the Administrator.

(8) To hold conferences for settlement, simplification of issues, or any other proper purpose.

(9) To make and file initial decisions.

(10) To take any other action authorized by these rules and permitted by law.

(c) *Powers reserved to Administrator.* Unless the Administrator specifically directs him to do so, the hearing examiner may not compel testimony of a witness who claims that such testimony may tend to incriminate him or subject him to penalty or forfeiture nor may he grant immunity from prosecution, penalty, or forfeiture to such a witness.

§ 386.32 Prehearing conferences.

(a) *Convening.* At any time before the hearing begins, the hearing examiner, on his own motion or on motion by a party, may direct the parties or their counsel to participate with him in a prehearing conference to consider the following:

(1) Simplification and clarification of the issues.

(2) Necessity or desirability of amending pleadings.

(3) Stipulations as to the facts and the contents and authenticity of documents.

(4) Issuance of and responses to subpenas.

(5) Taking of depositions and the use of depositions in the proceeding.

(6) Orders for discovery, inspection, and examination of premises, documents, and other physical objects and responses to such orders.

(7) Disclosure of the names and addresses of witnesses and the exchange of documents intended to be offered in evidence.

(8) Any other matter that will tend to simplify the issues or expedite the proceedings.

(b) *Order.* The hearing examiner issues an order which recites the matters discussed, the agreements reached, and the rulings made at the prehearing conference. The order is served on the parties and is filed in the record of the proceedings.

§ 386.33 Hearings.

(a) *Notice of hearing.* As soon as practicable after his appointment, the hearing examiner issues an order setting the date, time, and place for the hearing. The order is served on the parties and becomes part of the record of the proceedings. The hearing examiner may amend the order for good cause shown.

(b) *Conduct of hearing.* The hearing examiner presides over the hearing. Hearings are open to the public unless the hearing examiner orders otherwise.

(c) *Evidence.* Except as provided in paragraph (d) of this section, the rules of evidence and trial procedure in nonjury civil trials in the United States District Court for the District of Columbia apply in hearings held under these rules.

(d) *Information obtained by investigation.* Any document, physical exhibit, or other material obtained by the Administration in an investigation under the Interstate Commerce Act may be disclosed by the Administration during the proceeding and may be offered in evidence by counsel for the Administration.

(e) *Record.* The hearing is stenographically transcribed and reported. The transcript, exhibits, and other documents filed in the proceedings constitute the official record of the proceedings. The record is in the custody of the hearing examiner until he certifies it to the Administrator in accordance with § 386.41. A copy of the transcript and exhibits is available to any person upon payment of prescribed costs.

§ 386.34 Proposed findings of fact, conclusions of law, and orders.

Within 30 days after the hearing examiner notifies the parties that he has received the transcript, or within such other time as the hearing examiner may fix, each party may file with the hearing examiner proposed findings of fact, conclusions of law, and a proposed order, together with a supporting brief stating the reasons for each proposal. Each proposed finding of fact must include a citation to the specific portion of the record relied upon to support it, otherwise the hearing examiner may refuse to consider it.

Subpart E—Decision

§ 386.41 Initial decision.

As soon as practicable after he receives the transcript and the time allowed for the filing of proposed findings of fact, conclusions of law, orders, and briefs has expired, the hearing examiner renders an initial decision and certifies the record in the proceedings to the Administrator. The initial decision contains the hearing examiner's findings of fact, his conclusions of law, and an order disposing of the proceedings. The initial decision is served on the parties. The initial decision of the hearing examiner becomes the decision of the Administrator 30 days after it is issued, unless within that time—

(a) A petition for review under § 386.42 (a) is filed; or

(b) The Administrator elects to review the decision on his own motion under § 386.42(b).

§ 386.42 Review of initial decision.

(a) *On petition.* Within 30 days after an initial decision is issued, any party may petition the Administrator for review of the hearing examiner's initial decision. The petition is filed with the Administrator. The petition may be accompanied by exceptions to the hearing examiner's findings of fact and a brief.

(b) *On motion of the Administrator.* Within 30 days after an initial decision is issued, the Administrator may issue an order notifying the parties of his intention to review it on his own motion, specifying the scope of review and the issues he will consider. The order may also provide for the filing of briefs on those issues by the parties.

§ 386.43 Decision on review.

Upon review of an initial decision, the Administrator may adopt, modify, or set aside the hearing examiner's findings of fact and conclusions of law. He may also remand proceedings to the hearing examiner with instructions for such further proceedings as he deems appropriate. The Administrator issues a final order disposing of the proceedings. The Administrator's order is served on the parties.

§ 386.44 Reconsideration.

Within 20 days after the Administrator's final order is issued, any party may petition the Administrator for reconsideration of his findings of fact, conclusions of law, or final order. The filing of a petition for reconsideration does not stay the effectiveness of the final order unless the Administrator so orders.

[F.R. Doc. 69-791; Filed, Jan. 21, 1969; 8:48 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER I—ANCHORAGES

[CGFR 68-160]

PART 110—ANCHORAGE REGULATIONS

Subpart A—Special Anchorage Areas

HULL BAY AND ALLERTON HARBOR, HULL, MASS.

Correction

In F.R. Doc. 69-306 appearing at page 392 in the issue of Friday, January 10, 1969, the figure in the seventh line of § 110.31(a) should be corrected to read "70°53'29.5''".

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Oil Import Administration

[32A CFR Ch. X]

[Oil Import Reg. 1 (Rev. 5)]

ALLOCATIONS TO MARKETERS OF NO. 2 FUEL OIL—DISTRICT I

Notice of Proposed Rule Making

There is set forth below, in the form of a section of Oil Import Regulation 1, a proposal for the making of allocations of imports of crude oil to marketers of No. 2 fuel oil in District I. The proposal is addressed to the competitive status of such marketers. Interested persons are invited to submit written comments upon the proposal to the Administrator, Oil Import Administration, Department of the Interior, Washington, D.C. 20240, within a period of 45 days from the date of publication of the notice in the FEDERAL REGISTER.

STEWART L. UDALL,
Secretary of the Interior.

JANUARY 16, 1969.

Sec. _____ Allocations to marketers of No. 2 fuel oil—District I.

(a) For the purposes of this section "No. 2 fuel oil" means an oil which is manufactured from crude oil and which has the following physical and chemical characteristics:

Closed cup flash point, °F.	Minimum	100
Pour point, °F.	Maximum	20
Water and sediment, percent	Maximum	0.10
Carbon residue on 10 percent residuum percent.	Maximum	0.35
Distillation temperatures, °F., 90 percent point.	Maximum	640
	Minimum	540
Viscosity, Saybolt Universal seconds at 100° F.	Maximum	37.93
	Minimum	32.6
Gravity °A.P.I.	Minimum	30.0

(b) For the allocation period January 1, 1970, through December 31, 1970, 30,000 B/D of imports of crude oil are available in District I to persons having qualified terminal inputs of No. 2 fuel oil in this district.

(c) To be eligible for an allocation of imports into District I of crude oil under paragraph (e) of this section a person must:

(1) be in the business in District I of selling No. 2 fuel oil and have under his management and operational control a deepwater terminal located in District I into which there has been delivered No. 2 fuel oil which he owned at the time of delivery, such delivery being the first delivery of that oil into a deepwater terminal in District I; or

(2) be in the business in District I of selling No. 2 fuel oil and have a throughput agreement (warehouse agreement) with a deepwater terminal operator in District I under which agreement the person has delivered to the terminal No. 2 fuel oil which he owned when it was so delivered, such delivery being the first delivery of that oil into a deepwater terminal in District I. For the purposes of this section, "throughput agreement" means an agreement which provides for the delivery to a deepwater terminal by a person of No. 2 fuel oil which he owns and for a right in such person to withdraw on call an identical quantity of such oil from the terminal. A bona fide throughput agreement will be deemed to exist (1) only if the person operating under the agreement owns the oil at the time it is delivered to the terminal and only if that delivery is the first delivery of that oil into a deepwater terminal in District I; and (2) only if the person has delivered at least 100,000 barrels of No. 2 fuel oil into the terminal under the agreement during the 12 month period ending September 30, 1969, or any subsequent 12 month period ending September 30.

However, no person who is eligible for an allocation of imports of crude oil into Districts I–IV under section 9, 10, or 25 of this regulation shall be eligible for an allocation under paragraph (e) of this section.

(d) A person seeking an allocation under paragraph (e) of this section must file an application with the Administrator no later than 60 days prior to the beginning of the allocation period for which the allocation is requested. The application shall disclose in detail such information as the Administrator may require.

(e) Each applicant eligible under this section shall receive an allocation of imports of crude oil into District I computed according to the following formula:

$$\text{Applicant's qualified terminal inputs} \times \frac{\text{crude oil available for allocation}}{\text{total qualified terminal inputs}}$$

(f) (1) Only those inputs of No. 2 fuel oil which are made as provided in this paragraph (f) are qualified terminal inputs for the purposes of allocations under paragraph (e) of this section.

(2) In order to constitute a qualified terminal input a delivery of No. 2 fuel oil into a deepwater terminal must have been made during the year ending 3 months prior to the beginning of the allocation period for which an allocation is requested.

(3) An eligible applicant may count as qualified terminal inputs a quantity of No. 2 fuel oil which was delivered into a deepwater terminal in District I under his management and operational control or into a deepwater terminal with which the eligible applicant has a throughput agreement, if he owned the oil when it was placed in the terminal and if the delivery constituted the first delivery of that oil to a deepwater terminal in District I.

(4) An eligible applicant may also count as qualified terminal inputs a quantity of No. 2 fuel oil which the applicant (i) owned and (ii) sold to a person who was not in the business of selling No. 2 fuel oil and (iii) delivered to a deepwater terminal in District I under the management and operational control of the buyer, if such delivery constituted the first delivery of that oil to a deepwater terminal in District I.

(5) An eligible applicant may count as qualified terminal inputs a quantity of No. 2 fuel oil which the applicant (i) owned and (ii) sold to a Federal agency, or to an agency of a State or a political subdivision of a State, and (iii) delivered to a deepwater terminal in District I for the account of such agency, if such delivery constituted the first delivery of that oil to a deepwater terminal in District I.

(6) For the purposes of this paragraph (f), delivery of No. 2 fuel oil produced in a refinery and placed in storage at that refinery shall not be deemed to be a delivery to a deepwater terminal.

(7) If any part of a deepwater terminal is removed from the management and operational control of an eligible applicant by sale, transfer, lease, or any other means, the part so removed shall not constitute a separate deepwater terminal for the purpose of computing allocations based on terminal inputs. An allocation will be computed as if the transaction had not taken place. After the allocation for a particular allocation period has been so computed, the Administrator may, in his discretion, divide the allocation between the eligible applicants from whose management and operational control the part of the terminal was removed and the person who assumed management and operational control, if these persons agree upon, and request, a division.

(g) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred. All crude oil which is imported under an allocation made pursuant to this section shall be exchanged in District I for No. 2 fuel oil which shall be sold for use as fuel in that District.

(h) As used in this section "deepwater terminal" means a permanent land installation which (1) consists of bulk storage tanks having not less than 100,000 barrels of operational capacity, pumps, and pipelines used for the storage, transfer and handling of No. 2 fuel oil, (2) is adjacent to waterways that

permit the safe passage to the installation of a tanker rated 15,000 cargo deadweight tons, and (3) has a berth that will permit the delivery of No. 2 fuel oil into the installation by direct connection from a tanker rated at 15,000 cargo deadweight tons, drawing not less than 25 feet of water, and moored in the berth. Cargo deadweight tons represent the carrying capacity of a tanker in tons of 2,240 pounds, less the weight of fuel, water, stores, and other items necessary for use on a voyage.

[F.R. Doc. 69-775; Filed, Jan. 21, 1969; 8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 912]

GRAPEFRUIT GROWN IN THE INDIAN RIVER DISTRICT IN FLORIDA

Approval of Expenses and Fixing of Rate of Assessment for 1968–69 Fiscal Period

Consideration is being given to the following proposals submitted by the Indian River Grapefruit Committee, established pursuant to the marketing agreement, as amended, and Order No. 912, as amended (7 CFR Part 912), regulating the handling of grapefruit grown in the Indian River District in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), as the agency to administer the terms and provisions thereof:

(a) That the expenses that are reasonable and likely to be incurred by the Indian River Grapefruit Committee, during the period August 1, 1968, through July 31, 1969, will amount to $25,000.

(b) That the rate of assessment for such period, payable by each handler in accordance with § 912.41, be fixed at $0.005 per standard packed box.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals shall file the same, in quadruplicate, with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 10th day after the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27 (b)).

Dated: January 16, 1969.

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

[F.R. Doc. 69-795; Filed, Jan. 21, 1969; 8:49 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 25, 121]

[Docket No. 7976, Notice 69-3]

FLIGHT RECORDERS

Proposed Additional Data and Other Requirements

The Federal Aviation Admintration is considering amending Parts 25 and 121 of the Federal Aviation Regulations to: (1) Increase the recorded flight data required by Part 121 for large turbine-engine powered airplanes and large airplanes certificated for operations above 25,000 feet altitude; (2) change the requirements for keeping the recorded data; (3) require a device which automatically prevents data erasure after crash impact on flight recorders which erase and re-use tape; (4) require a device to assist in the location of flight recorders under water; and (5) require a means to correlate the time of recorded data with the time of radio communications between the airplane and air traffic control.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket GC-24, 800 Independence Avenue SW., Washington, D.C. 20590. All communications received on or before April 18, 1969, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

1. *Additional recorded flight data.* On February 16, 1967, the FAA issued an advance notice of proposed rule making (Notice 67-6, 32 F.R. 3226, Feb. 24, 1967) inviting public comment on additional recorded flight data parameters. Section 121.343 currently requires the recording of at least time, altitude, airspeed, vertical acceleration, and heading by an approved flight recorder on all large airplanes certificated for operation above 25,000 feet and on all large turbine-engine powered airplanes. The additional data proposed in Advance Notice 67-6 relate to airplane attitude and response to aerodynamic forces, control and control surface positions, and key indicators of engine performance.

As a result of comments received in response to Advance Notice 67-6, the FAA has made a few changes in the proposed list which are discussed below. The FAA is proposing to require the recording of additional data from which the following information can be obtained:

(1) Angle of attack;
(2) Pitch attitude;
(3) Pitch rate;
(4) Roll attitude;
(5) Roll rate;
(6) Yaw attitude;
(7) Yaw rate;
(8) Pitch trim position;
(9) Control column or pitch control surface positions;
(10) Control wheel or lateral control surface positions;
(11) Rudder pedal or yaw control surface positions;
(12) Thrust being developed by each engine;
(13) Positions of appropriate high lift devices; and
(14) Ambient air temperature.

The FAA intends to allow the listed information to be derived from recordings of any data sensing source which will yield the desired information. Direct sensing of each kind of information is not required, and a separate recording channel for each kind of information is not required.

"Roll attitude" is proposed instead of "angle of bank" as being more suitable terminology. "Yaw attitude" is added at the request of the National Transportation Safety Board as being of particular significance in many accidents. "Pitch control surface position" has been added as an alternative to "control column position", and "lateral control surface position" has been added as an alternative to "control wheel position." "Thrust being developed by each engine" has been substituted for the choice of parameters proposed in Notice 67-7 at the suggestion of engine manufacturers to permit a choice of sensors so long as a reliable indication of engine thrust can be determined. "Positions of appropriate high lift devices" is proposed instead of the term "position-wing flaps" to take into consideration other high lift surfaces in addition to flaps; and the term "appropriate" is proposed to ensure recording the position of all surfaces of the high lift system, including surfaces which are not mechanically interconnected to other parts of the system, such as leading edge slats.

Some comments received in response to Advance Notice 67-6 suggested recording more data, for the reason that insufficient information could lead to erroneous conclusions. The FAA is proposing to add only those kinds of information that experience has shown will be the most helpful in accident investigations. Adding all the kinds of flight information that can be envisioned will not eliminate the possibility of erroneous conclusions and is impractical.

One commentator questioned the value of additional information in determining the cause of an accident and urged that the cost was unjustified in view of the benefit received. The FAA believes that experience has shown the cost of flight recorders is well justified in view

of their usefulness in accident investigations. Since the Civil Aeronautics Board first adopted flight recorder regulations in the middle 1950's, improved techniques for sensing, transmitting, recording, and reading out measurements of physical phenomena (e.g., heat, pressure, vibration and motion) have been developed by industry. A great variety of recording devices has also recently been developed as a result of space and military research programs. In addition, air carriers and the FAA have been conducting experimental and developmental work on various kinds of airborne recorders for a number of purposes. The simple flight recorders presently in use were developed to suit the characteristics of airplanes in use 20 years ago, and the complexity of airplanes has increased markedly. Present recorders are far behind available technology, especially in their adaptability to computerization. The FAA believes that an increase in the capability of flight recorders will materially aid both the Government and industry in the work of finding the cause of an accident involving present and future complex airplanes. As indicated in Notice 67–6, the need for recording additional flight data as an aid to the investigation of catastrophic accidents has been recognized by those who are responsible for the investigation of accidents. In specific recognition of this need, the National Transportation Safety Board continues to recommend that additional data be required by regulatory action at an early date to improve future flight recorder systems.

The changes proposed by the FAA would allow the use of additional recorders to supplement present recorders to provide additional information at a cost which will be far less than the cost of replacing existing flight recorders with entirely new recorder systems.

Advance Notice 67–6 set forth tentative specifications for the recording of data. As a result of comments received in response to Advance Notice 67–6, the FAA has revised the tentative specifications and is now proposing these revised specifications as an Appendix to Part 121. The FAA believes that it is necessary to adopt specifications for ranges, accuracies, and recording intervals to ensure that the recorded data will be adequate for accident investigation purposes. The FAA invites industry to assist in developing reasonable and adequate specifications by submitting comments on these revised specifications. For the purpose of approving the design of flight recorders with respect to impact, penetration resistance, static crush, fire protection, and water protection, the FAA intends to apply the design requirements of TSO–C51a which appears in § 37.150 of the Federal Aviation Regulations. No proposal with respect to standardization of the method of recording and readout is being made at this time and this subject, which was discussed in the Advance Notice 67–6, will remain under study by the FAA and may be the subject of a future rule making proposal at such time as the development of new recording techniques has proceeded far enough to enable constructive recommendations on standardization of recorded data.

It is intended that this proposal apply to SST aircraft at this time. The FAA recognizes that it may be desirable to record additional data aboard a supersonic transport, and additional data for SST aircraft may be the subject of future rule making.

As stated in Notice 67–6, the FAA is encouraging the development of multiparameter (150–300) recorders which could serve as a maintenance tool to monitor airborne performance of airplane powerplants and systems, provide a basis for operational performance analysis, and ensure recording of information essential for accident investigation purposes. The FAA emphasizes, therefore, that the proposals outlined in this notice should not inhibit industry development of such devices, including telemetering techniques. The FAA, in fact, welcomes information and specific recommendations for technically and economically feasible integration of the various presently available and planned airborne recorder systems, so long as the data relative to the key information listed above can be recorded and preserved for accident investigation purposes.

The FAA believes that the additional flight recording equipment needed to comply with this amendment can be designed, approved, and in production within 2 years after the effective date of the amendment. after the additional flight recording equipment becomes available, considerable time will be needed to install wiring and sensors in the numerous types of airplanes already in service because of engineering and fleet scheduling problems. The FAA believes that 3 years will be an adequate lead time, after the equipment becomes available, for installing recording equipment, wires, and sensors in fleets of airplanes in services, and a compliance date 5 years after the effective date of the final rule is proposed for airplanes that have been manufactured and are in service on a date 3 years after the effective date of the final rule. Under this proposal, new airplanes manufactured after a date 3 years after the effective date of the final rule could not be flown without an operating flight recorder installed. The FAA believes a compliance date 3 years after the effective date is reasonable for each new airplane because the equipment can be installed during its production.

2. *Recorded data retention.* The FAA is proposing changes in the data retention requirement in § 121.343 to permit the use of data erasure and tape re-use techniques Improved recorders and high speed data reduction systems may necessitate the use of magnetic tape or wire recording media. Continuous loop tape and data erasure and tape re-use are likely to be used to reduce record container size. In view of the need for recorded data for a sufficient period before an accident to reconstruct the flight, the FAA is proposing to require that the certificate holder retain 25 hours of recorded data for presently required information and 1 hour of data for the additional information proposed in this notice.

This amendment, as proposed, imposes the same retention requirement on reusable and nonreusable tapes. The required data would remain in the recorder in the case of continuous loop tapes, and a tape capable of retaining at least 25 hours of data would be needed for presently required information. One hour of tape would be needed for the additional information proposed in this notice. Since the data needed is flight data, extra tape would be required for ground operation or the recorder must be stopped during ground operation. Presently used foil tapes would have to be kept for at least 25 hours of required recorder operating time on a particular airplane after removal of the tape. Since the retention time is proposed to be based on recorder operating time, a provision allowing disposal or re-use of the tape after 60 days is included to provide an alternative to keeping recorder operating time records for the sole purpose of disposing of tapes. In the event of an accident or occurrence requiring immediate notification of the National Transportation Safety Board, the tape must be preserved for 60 days or longer at the request of the Board or the Administrator.

3. *Recorded data erasure.* Inasmuch as data erasure and tape re-use techniques similar to those used in present cockpit voice recorders are likely to be used in new flight recorders, the FAA is proposing to amend § 25.1459 to require each flight recorder that has a data erasure feature to be installed so that it has an automatic means to stop the recorder within 10 minutes after crash impact and prevent data erasure.

4. *Location of record containers under water.* The FAA is proposing to amend Part 121 to require that each record data container have a device to facilitate its location under water. Part 25 would be amended to require that the device be secured on or adjacent to the record container. Considerable delay and expense have been experienced in locating submerged data. Underwater sound generators are available which generate signals that can be received at a range of 3,000 yards and a depth of 200 feet. The FAA believes other equally effective or more effective devices can be developed. The FAA believes 3 years to be an adequate lead time and is proposing a compliance date 3 years after the effective date of the final rule.

5. *Communication time correlation.* The FAA is proposing to amend Parts 25 and 121 to require each airplane required to have a flight recorder to also have a means of correlating data recorded by the flight recorder with the time of communications between the airplane and air traffic control.

This proposal is made upon the recommendation of the Air Line Pilots Association with the concurrence of the

National Transportation Safety Board. In the past, some accident investigations have been hampered by the lack of an accurate correlation of the time of recorded data with the time of radio communications.

The Air Line Pilots Association has recommended a modification of existing flight recorder installations by connecting the crew microphone switches to an appropriate recording channel so as to mark the activation of the microphone during crew transmissions. This would make it possible to accurately correlate the airplane's motion with the time of communications between the airplane and air traffic control and to correlate the recorded data with the time of day. Another possible means of correlating recorded data with ATC communications would be to record crew or controller voices or both on the flight recorder tape. Another possibility might be to correlate the cockpit voice recorder with the flight recorder.

There may be other means which will accomplish this objective, and therefore, the proposed amendment does not specifically require the microphone switch recommendation. The FAA believes 2 years gives adequate lead time to comply with this requirement and, therefore, is proposing a compliance date 2 years after the effective date of the final rule.

In consideration of the foregoing, it is proposed to amend Parts 25 and 121 of the Federal Aviation Regulations as follows:

1. Section 121.343 would be amended to read as follows:

§ 121.343 Flight recorders.

(a) No person may operate a large airplane that is certificated for operations above 25,000 feet altitude or is turbine-engine powered, unless it is equipped with an approved flight recorder that meets the specifications of Appendix__ of this part and that records data from which the following information may be determined—

(1) Time, altitude, airspeed, vertical acceleration, and heading; and

(2) After (date 3 years after effective date of amendment) for a new airplane having an airworthiness certificate issued after that date, and after (date 5 years after effective date of amendment) for all other airplanes, angle of attack, pitch attitude, pitch rate, roll attitude, roll rate, yaw attitude, yaw rate, pitch trim position, control column or pitch control surface positions, control wheel or lateral control surface positions, rudder pedal or yaw control surface position, thrust being developed by each engine, positions of appropriate high lift devices, and ambient air temperature.

* * * * *

(c) Except as provided in paragraph (d) of this section, each certificate holder shall keep the recorded data specified in paragraph (a)(1) until the airplane has been operated for at least 25 hours of the operating time specified in paragraph (b) and the data required by paragraph (a)(2) until the airplane has been operated for at least 1 hour of the operating time specified in paragraph (b). Except as provided in paragraph (d) of this section, no record need be kept more than 60 days.

(d) In the event of an accident or occurrence that requires immediate notification of the National Transportation Safety Board under Part 430 of its regulations and that results in termination of the flight, the certificate holder shall remove the recording media from the airplane and keep the recorded data required by paragraph (a) of this section for at least 60 days and for a longer period upon the request of the Board or the Administrator.

(e) Each flight recorder required by this section must be installed in accordance with the requirements of § 25.1459 of Part 25 of this chapter. The correlation required by paragraph (c) of § 25.1459 need be established only on one airplane of any group of airplanes: (1) That are of the same type; (2) on which the model flight recorder and its installation are the same; and (3) on which there is no difference in type design with respect to the installation of those first pilot's instruments associated with the flight recorder. The most recent instrument calibration, including the recording medium from which this calibration is derived, and the recorder correlation, must be retained by each certificate holder.

(f) After (date 3 years after effective date of amendment) each flight recorder required by this section must have an approved device to assist in locating the recorded data under water.

(g) After (date 2 years after effective date of amendment) each flight recorder must record data from which the time of each radio transmission to or from ATC can be determined.

2. Section 25.1459(a) would be amended by adding the following subparagraphs:

§ 25.1459 Flight recorders.

(a) * * *

(5) There is an automatic means to simultaneously stop a recorder that has a data erasure feature and prevent each erasure feature from functioning, within 10 minutes after crash impact.

(6) There is a means to record data from which the time of each radio transmission to or from ATC can be determined.

(7) The underwater locating device, when required by the operating rules of this chapter, is on or adjacent to the record container and is secured in such a manner that they are not likely to be separated during crash impact.

* * * * *

3. By adding the following new Appendix __ to Part 121:

APPENDIX __

AIRCRAFT FLIGHT RECORDER DATA SPECIFICATIONS

Data	Range	System accuracy, minimum (includes sensor, recorder and readout)	Recording, interval, maximum (seconds)
Elapsed time		0.125%/hour	6
Altitude	−1,000 ft. to maximum certificated altitude of aircraft.	±100 to ± 700 feet (see Table I TSO-C51a; FAR sec. 37.150).	1
Airspeed	60 knots to 1.2 V_D of aircraft	±3 kts., to 175 kias. ±5 kts. above 175 kias.	1
Vertical acceleration	−3g to +6g	±0.1 g	0.2
Heading	360°	±2°	1
Angle of attack	−20° to +40°	±½°	0.5
Pitch attitude	±90°	±1°	1
Pitch rate	±30°/second	±3°/second	1
Roll attitude	±180°	±2°	1
Roll rate	±180°/second	±3°/second	1
Yaw attitude	±30°	±2°	0.5
Yaw rate	±180°/second	±3°/second	1
Pitch trim position	Full range	±½°	1
Control column or pitch control surface positions.	do	±1°	0.5
Control wheel or lateral control surface positions.	do	±2°	1
Rudder pedal or yaw control surface positions.	do	±1°	0.5
Engine thrust	Full range, including reverse thrust, if applicable.	±2%	2
High lift devices	Full range	±3°	2
Ambient air temperature	−60° C to +55° C	±2° C	2

This amendment is proposed under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on January 14, 1969.

JAMES F. RUDOLPH,
Director, Flight Standards Service.

[F.R. Doc. 69-695; Filed, Jan. 21, 1969; 8:45 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Montana 10872(SD)]

SOUTH DAKOTA

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 2, 1968.

The Bureau of Sport Fisheries and Wildlife of the Fish and Wildlife Service filed an application, serial number Montana 10872(SD), for the withdrawal of lands described below. The withdrawal is from all forms of appropriation under the public land laws, except the mining and mineral leasing laws, subject to valid existing rights.

The applicant desires the land to preserve and protect the black-footed ferret, a species of wildlife which is rare and threatened with extinction.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 316 North 26th Street, Billings, Mont. 59101.

The Department's regulations (43 CFR 2311.1–3(c)) provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the minimum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the Bureau of Sport Fisheries and Wildlife.

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

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

BLACK HILLS MERIDIAN

T. 7 N., R. 20 E.,
Sec. 24, NE¼SE¼;
T. 5 N., R. 28 E.,
Sec. 27, N½SW¼.

The areas described aggregate 120 acres.

PARKER N. DAVIES,
Acting Land Office Manager.

[F.R. Doc. 69-774; Filed, Jan. 21, 1969; 8:47 a.m.]

CALIFORNIA

Notice of Proposed Withdrawal and Reservation of Lands

JANUARY 13, 1969.

The Forest Service, U.S. Department of Agriculture, has filed an application, Serial No. R 1983, for the withdrawal of lands described below from prospecting, location, entry, and purchase under the mining laws, subject to valid existing rights.

The lands have previously been withdrawn for the San Jacinto Forest Reserve by Presidential Proclamation of February 22, 1897, as amended by proclamation of February 14, 1907, now the San Bernardino National Forest and as such have been open to entry under the general mining laws.

The applicant desires the exclusion of mining activity to permit development of a 300 unit family campground and related improvements, which use would be incompatible with mineral development.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 1414 University Avenue, Post Office Box 723, Riverside, Calif. 92502.

The Department's regulations (43 CFR 2311.1–3(c)) provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's need, to provide for the maximum concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

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

The lands involved in the application are:

SAN BERNARDINO MERIDIAN, CALIFORNIA

SAN BERNARDINO NATIONAL FOREST

Tool Box Spring Campground

T. 6 S., R. 3 E.,
Sec. 34, NW¼.

The area described aggregates approximately 160.00 acres in Riverside County.

WALTER F. HOLMES,
Assistant Land Office Manager.

[F.R. Doc. 69-749; Filed, Jan. 21, 1969; 8:45 a.m.]

OUTER CONTINENTAL SHELF OFF LOUISIANA

Sulphur Lease Offer

Pursuant to section 8 of the Outer Continental Shelf Lands Act (67 Stat. 462; 43 U.S.C. 1331 et seq.) and the regulations issued thereunder (43 CFR Part 3380) sealed bids addressed to the Manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management, Room T-9003 Federal Office Building, 701 Loyola Avenue, New Orleans, La., or Post Office Box 53226, New Orleans, La. 70150, will be received until 9:30 a.m. c.s.t. on May 13, 1969, for the lease of sulphur in certain areas of the Outer Continental Shelf adjacent to the State of Louisiana. Bids will be opened on this date at 10 a.m., c.s.t. in the Grand Ballroom, Sheraton Charles Hotel, 211 St. Charles Street, New Orleans, La., for the tracts designated herein. The opening of bids is for the sole purpose of publicly announcing and recording bids received, and no bids will be accepted or rejected at that time.

On that day bids may be delivered in person to the Manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management, at the Grand Ballroom in the Sheraton Charles Hotel between 8:30 a.m., c.s.t. and 9:30 a.m., c.s.t. Bids delivered by mail or in person after 9:30 a.m., c.s.t. will be returned to the bidders unopened.

All bids must be submitted in accordance with applicable regulations, particularly 43 CFR 3382.1; 3382.3; 3382.4. Each bidder must submit the certification required by 41 CFR 60-1.6(b) and Executive Order No. 11246 of September 24, 1965, on Form 1140-1, December 1968. Bidders are advised that all leases granted pursuant to this notice will include in its provisions a "Certification of Nonsegregated Facilities, Form 1140-3 (May 1968)", and that, in submitting their bids, bidders are deemed to have agreed to the inclusion of this certification in any lease issued to them hereunder.

Bids may not be modified or withdrawn unless written modifications or withdrawals are received prior to the end of the period fixed for the filing of bids. Bidders are warned against violation of section 1860 of title 18 U.S.C. prohibiting unlawful combination or intimidation of bidders. Attention is directed to the nondiscrimination clauses in section 2(k) of the lease agreement (Form 3380–7, Aug. 1968). Bidders must submit with each bid, one-fifth of the amount bid, in cash or by cashier's check, bank draft, certified check or money order, payable to the order of the Bureau of Land Management. Bidders are notified that any cash, checks, drafts, or money orders submitted with their bids may be deposited in an unearned escrow account in the Treasury during the period their bids are being considered, and that such deposit does not constitute, and shall not be construed as, acceptance of any bid on behalf of the United States.

The leases will be issued for a term of 10 years and will provide for a royalty rate of 15 percent of the gross production or value of the sulphur at the wellhead, and a rental or minimum royalty of $3 per acre or fraction thereof. The leases will contain special stipulations providing that core hole drilling will be limited to 3,000 feet beneath the seabed of the leased area: *Provided, however,* That following the discovery of a valuable deposit of sulphur, the Oil and Gas Supervisor, Geological Survey, may approve the drilling of development wells without regard to the depth limitation herein specified when necessary for the proper development of such deposit. The successful bidder for each tract will be required to pay the remainder of the bid and the first year's rental of $3 per acre or fraction thereof and furnish an acceptable surety bond as required by 43 CFR 3384.1 prior to the issuance of each lease.

Bids will be considered on the basis of the highest cash bonus offered for a tract. The United States reserves the right and discretion to reject any and all bids, regardless of the amount offered. Sulphur payment, overriding royalty, logarithmic or sliding scale bids will not be considered. No bid for less than a full tract, as listed below, will be considered.

A separate bid, in a separate envelope, must be submitted for each tract. The envelope should be endorsed "Sealed bid for Sulphur lease, Louisiana (insert number of tract) not to be opened until 10 a.m., c.s.t. May 13, 1969."

Official leasing maps in a set of 25, which contains the maps for the areas in which the tracts being offered for lease may be located, can be purchased for $5 per set. The official leasing maps, copies of the lease form (Form 3380–7, August 1968) as well as the Compliance Report Certification (Form 1140–1, December 1968) and Certification of Nonsegregated Facilities (Form 1140–3, May 1968) may be obtained from the above listed manager or the Manager, Eastern States Land Office, 7981 Eastern Avenue, Silver Spring, Md. 20910.

Operations under leases which may be issued pursuant to this sale will be subject to provisions for the protection of fishing operations and aquatic values.

Tracts offered for bid are as follows:

LOUISIANA

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 1–A

(Approved Nov. 15, 1955; Revised Jan. 30, 1957; Revised Apr. 28, 1966)

West Cameron Area—West Addition

Tract No.	Block	Description	Acreage
La. 109–S	305	NW¼	1,250.05
La. 110–S	305	SW¼	1,250
La. 111–S	306	NE¼	1,250
La. 112–S	306	NW¼	1,250
La. 113–S	306	SW¼	1,250
La. 114–S	306	SE¼	1,250

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 3

(Approved June 8, 1954; Revised June 25, 1954; Revised July 22, 1954; Revised Apr. 28, 1966)

Vermilion Area

La. 115–S	124	NW¼	1,250
La. 116–S	161	SW¼	1,217.05
La. 117–S	162	All	4,924.32
La. 118–S	189	SE¼	1,250
La. 119–S	194	NE¼	1,250
La. 120–S	217	SW¼	1,250
La. 121–S	217	SE¼	1,250
La. 122–S	218	SE¼	1,250
La. 123–S	225	NE¼	1,250
La. 124–S	226	NE¼	1,250
La. 125–S	226	NW¼	1,250

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 3A

(Approved Aug. 7, 1959; Revised Apr. 28, 1966)

South Marsh Island Area

La. 126–S	38	NW¼; W½NE¼	1,875
La. 127–S	57	SE¼	1,358.08
La. 128–S	58	SW¼	1,250
La. 129–S	58	SE¼	1,250
La. 130–S	69	NE¼	1,250
La. 131–S	69	NW¼	1,250
La. 132–S	69	SW¼	1,250
La. 133–S	69	SE¼	1,250
La. 134–S	70	NE¼	1,367.11
La. 135–S	70	SE¼	1,367.11

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 3C

(Approved Sept. 8, 1959; Revised Apr. 28, 1966)

South Marsh Island Area—South Addition

La. 136–S	72	N½	2,500
	73	NW¼	

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 4

(Approved June 8, 1954; Revised July 22, 1954; Revised Apr. 28, 1966)

Eugene Island Area

La. 137–S	62	SW¼	1,250
La. 138–S	63	SE¼	1,250
La. 139–S	76	NE¼	1,250
La. 140–S	76	SE¼	1,250
La. 141–S	77	NW¼	1,250
La. 142–S	77	SW¼	1,250
La. 143–S	89	SW¼	1,250
La. 144–S	89	SE¼	1,250
La. 145–S	94	NE¼ [1]	1,250
La. 146–S	94	NW¼ [1]	1,250
La. 147–S	94	SW¼	1,250
La. 148–S	94	SE¼ [1]	1,250
La. 149–S	95	W½W½ [1]	1,250
La. 150–S	111	NE¼	1,250
La. 151–S	111	NW¼	1,250
La. 152–S	116	S½SE¼	937.5
	117	SW¼SW¼	

Footnote at end of table.

Tract No.	Block	Description	Acreage
La. 153–S	119	SE¼ [1]	1,875
	126	N½NE¼	
La. 154–S	120	SW¼ [1]	1,875
	125	N½NW¼	
La. 155–S	128	All	3,426.70
La. 156–S	128A	All	1,573.30
La. 157–S	129	All	1,175.28
La. 158–S	129A	All	3,824.72
La. 159–S	188	S½SW¼; SE¼	1,875
La. 160–S	189	W½SW¼; SE¼SW¼	937.5
La. 161–S	190	W½NE¼; NW¼	1,875
La. 162–S	190	W½SE¼; SW¼	1,875
La. 163–S	191	NE¼	1,250
La. 164–S	191	NW¼	1,250
La. 165–S	191	SW¼	1,250
La. 166–S	191	SE¼	1,250
La. 167–S	205	NE¼	1,250
La. 168–S	205	NW¼	1,250
La. 169–S	205	SW¼	1,250
La. 170–S	205	SE¼	1,250
La. 171–S	208	S½NW¼; SW¼NE¼	937.5
La. 172–S	208	SW¼; W½SE¼	1,875
La. 173–S	210	N½NE¼; NE¼NW¼	937.5
La. 174–S	218	NE¼	1,250
La. 175–S	218	NW¼	1,250
La. 176–S	218	SW¼	1,250
La. 177–S	218	SE¼	1,250
La. 178–S	219	NE¼	1,250
La. 179–S	219	SE¼	1,250

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 5

(Approved June 8, 1954; Revised Apr. 28, 1966; Revised July 22, 1968)

Ship Shoal Area

La. 180–S	93	SW¼SW¼	625
	94	SE¼SE¼	
La. 181–S	113	E½NE¼	1,875
	114	NW¼	
La. 182–S	113	NE¼SE¼	937.5
	114	N½SW¼	
La. 183–S	149	NW¼	1,875
	150	E½NE¼	
La. 184–S	149	SW¼	1,250
La. 185–S	149	SE¼	1,250
La. 186–S	154	NE¼; N½SE¼	1,875
La. 187–S	154	NW¼; N½SW¼	1,875
La. 188–S	218	NE¼	1,250
La. 189–S	218	NW¼	1,250
La. 190–S	218	SW¼	1,250
La. 191–S	218	SE¼	1,250
La. 192–S	219	E½NE¼; NE¼SE¼	937.5
La. 193–S	229	NE¼	1,250
La. 194–S	229	NW¼	1,250
La. 195–S	229	SW¼	1,250
La. 196–S	229	SE¼	1,250
La. 197–S	230	NW¼	1,250
La. 198–S	230	SW¼	1,250

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 5A

(Approved Sept. 8, 1959; Revised Apr. 28, 1966)

Ship Shoal Area—South Addition

La. 199–S	242	NE¼	1,250
La. 200–S	242	NW¼	1,250

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 7

(Approved June 8, 1954; Revised Apr. 28, 1966)

Grand Isle Area

La. 201–S	72	NW¼; N½SW¼	1,875

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 8A

(Approved Sept. 8, 1959; Revised Nov. 24, 1961; Revised Apr. 28, 1966)

West Delta Area—South Addition

La. 202–S	121	SE¼	1,250
La. 203–S	122	SW¼	1,250
La. 204–S	133	W½NE¼; NW¼	1,875
La. 205–S	134	NE¼	1,250
La. 206–S	147	NW¼	1,250
La. 207–S	147	SW¼	1,250
La. 208–S	148	NE¼	1,250
La. 209–S	148	NW¼	1,250
La. 210–S	148	SW¼	1,250
La. 211–S	148	SE¼	1,250

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 9

(Approved June 8, 1954; Revised July 22, 1954; Revised Apr. 28, 1966)

South Pass Area

Tract No.	Block	Description	Acreage
La. 212-S	60	NE¼, portion more than 3 geographical miles seaward of the line described in par. 1 of the Supplemental Decree of the U.S. Supreme Court entered Dec. 13, 1965, in United States v. Louisiana No. 9 Original (382 U.S. 288).	1,087.71
La. 213-S	60	SE¼	1,249.99

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 9A

(Approved Sept. 8, 1959; Revised Apr. 28, 1966)

South Pass Area—South and East Addition

La. 214-S	62	SE¼	1,250
La. 215-S	67	NW¼	1,250
La. 216-S	67	SW¼	1,250

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 10

(Approved June 8, 1954; Revised July 22, 1954; Revised Apr. 28, 1966)

Main Pass Area

La. 217-S	144	SE¼	1,248.63
La. 218-S	145	SW¼	1,248.63

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 10A

(Approved Sept. 8, 1959; Revised Apr. 28, 1966)

Main Pass Area—South and East Addition

La. 219-S	295	NE¼	1,140.20
La. 220-S	295	NW¼	1,710.30
	296	N½NE¼	
La. 221-S	299	NE¼	1,140.20
La. 222-S	299	NW¼	1,140.20
La. 223-S	299	SW¼	1,140.20
La. 224-S	299	SE¼	1,140.20
La. 225-S	305	NE¼	1,249.99
La. 226-S	305	SE¼	1,249.99
La. 227-S	306	NW¼	1,249.99
La. 228-S	306	SW¼	1,249.99

[1] Includes lands landward and seaward of the line 3 geographical miles seaward of the line described in par. 1 of the Supplemental Decree of the U.S. Supreme Court entered Dec. 13, 1965, in United States v. Louisiana No. 9 Original (382 U.S. 288).

Some of the tracts offered for lease may fall in fairway areas (including prolongations thereof) or anchorage areas, or both, as designated by the District Engineer, New Orleans District, Corps of Engineers, U.S. Army. For the location of these areas and for operational restrictions imposed by that agency, the District Engineer should be consulted.

Leases issued pursuant to this notice for lands which are on the date of their issuance, or are thereafter adjudicated to be, subject to the exclusive jurisdiction and control of the United States will be subject to all rules and regulations which the Secretary of the Interior is authorized to prescribe and administer under the Outer Continental Shelf Lands Act (43 U.S.C. secs. 1331–1343) including rules and regulations for the prevention of waste and for conservation of the natural resources of the Outer Continental Shelf.

It is suggested that bidders submit their bids in the following form:

Manager, Bureau of Land Management, Department of the Interior, Post Office Box 53226, T-9003 Federal Office Building, New Orleans, La. 70150.

SULPHUR BID

The following bid is submitted for a sulphur lease on land of the Outer Continental Shelf specified below:

Area _____
Official Leasing Map No. _____

Tract No.	*Total Amount Bid*	*Amount Per Acre*	*Amount submitted with bid*

N.O. Misc. No. _____

_____
Signature

_____
Company

_____
Address

IMPORTANT

The bid must be accompanied by one-fifth of the total amount bid. This amount may be cash, money order, cashier's check, certified check, or bank draft. A separate bid must be made for each tract.

JOHN O. CROW,
Acting Director,
Bureau of Land Management.

Approved: January 17, 1969.

DAVID S. BLACK,
Under Secretary
of the Interior.

[F.R. Doc. 69-838; Filed, Jan. 17, 1969; 12:53 p.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

HESS & CLARK

Notice of Filing of Petition for Food Additives Decoquinate and Procaine Penicillin

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition has been filed by Hess & Clark, Div. of Richardson-Merrell, Inc., Ashland, Ohio 44805, proposing the establishment of a food additive regulation (21 CFR Part 121) to provide for the safe use of decoquinate (ethyl 6-*n*-decyloxy-7-ethoxy-4-hydroxy-quinoline-3-carboxylate) with procaine penicillin in chicken feed as an aid in the prevention of coccidiosis in broiler chickens caused by *E. tenella, E. necatrix. E. acervulina, E. mivati. E. maxima,* and *E. brunetti* and as an aid in stimulating growth and improving feed efficiency in broiler chickens.

Dated: January 10, 1969.

J. K. KIRK,
Associate Commissioner
for Compliance.

[F.R. Doc. 69-789; Filed, Jan. 21, 1969; 8:48 a.m.]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY AND DEPUTY ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY

Delegation of Authority With Respect to Fair Housing

SECTION A. *General authority with respect to fair housing.* The Assistant Secretary for Equal Opportunity and the Deputy Assistant Secretary for Equal Opportunity each is authorized to exercise the power and authority of the Secretary of Housing and Urban Development under title VIII (Fair Housing) of the Civil Rights Act of 1968, Public Law 90-284, 42 U.S.C. 3601-3619.

SEC. B. *Authority to issue rules and regulations.* The Assistant Secretary for Equal Opportunity is further authorized to issue such rules and regulations as may be necessary to carry out the power and authority delegated herein.

SEC. C. *Authority to redelegate.* The Assistant Secretary for Equal Opportunity is authorized to:

1. Redelegate to one or more employees under his jurisdiction any of the authority delegated under section A, and authorize further redelegation of such authority to subordinate employees.

2. Redelegate to Regional Administrators and to Deputy Regional Administrators any of the authority delegated under section A except the authority to make studies and publish reports under section 808(e) of the Act, and authorize successive redelegations of such authority to subordinate employees.

(Sec. 808(c), Public Law 90-284, 42 U.S.C. 3608(b)-(d); sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Effective date. This delegation of authority shall be effective as of January 15, 1969.

ROBERT C. WOOD,
Secretary of Housing and
Urban Development.

[F.R. Doc. 69-779; Filed, Jan. 21, 1969; 8:47 a.m.]

ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY

Delegation of Authority

SECTION A. *Authority to designate Acting Assistant Secretary for Equal Opportunity and acting subordinate officials.* The Assistant Secretary for Equal

Opportunity is authorized, with respect to employees or positions under his jurisdiction, to:

1. Designate one or more employees to serve as Acting Assistant Secretary for Equal Opportunity during the absence of such Assistant Secretary.

2. Designate one or more employees to serve in an acting capacity during the absence of an appointee to a position or during a vacancy in a position.

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Effective date. This delegation of authority shall be effective as of January 15, 1969.

ROBERT C. WOOD,
Secretary of Housing and Urban Development.

[F.R. Doc. 69-780; Filed, Jan. 21, 1969; 8:47 a.m.]

REGIONAL ADMINISTRATORS AND DEPUTY REGIONAL ADMINISTRATORS

Redelegation of Authority With Respect to Fair Housing

SECTION A. *Authority with respect to fair housing.* Each Regional Administrator and each Deputy Regional Administrator of the Department of Housing and Urban Development is authorized to exercise the power and authority of the Secretary of Housing and Urban Development under title VIII (Fair Housing) of the Civil Rights Act of 1968, Public Law 90-284, 42 U.S.C. 3601-3619, except the authority to:

1. Make studies and publish reports under section 808(e) of the Act.

2. Issue rules and regulations.

SEC. B. *Authority to redelegate.* Each Regional Administrator is further authorized to redelegate to the Assistant Regional Administrator for Equal Opportunity any of the authority redelegated under section A, and authorize further redelegation of such authority to subordinate employees.

(Secretary's delegation effective January 15, 1969, 34 F.R., Jan. 22, 1969)

Effective date. This redelegation of authority shall be effective as of January 15, 1969.

WALTER B. LEWIS,
Assistant Secretary for Equal Opportunity.

[F.R. Doc. 69-781; Filed, Jan. 21, 1969; 8:48 a.m.]

ASSISTANT SECRETARY FOR MORTGAGE CREDIT AND FEDERAL HOUSING COMMISSIONER

Delegations of Authority With Respect to Interstate Land Sales

SECTION A. The Assistant Secretary for Mortgage Credit and Federal Housing Commissioner (herein called the Assistant Secretary) is hereby authorized to exercise the power and authority of the Secretary of Housing and Urban Development under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590-599, 15 U.S.C. 1701-1720 (which Act is title XIV of the Housing and Urban Development Act of 1968, Public Law 90-448), except the authority to:

1. Conduct hearings in accordance with 5 U.S.C. 556 and 557.

2. Issue orders or determinations after such hearings.

3. Sue and be sued.

SEC. B. The Assistant Secretary is authorized to issue such rules and regulations as may be necessary to carry out the power and authority delegated under section A, except rules and regulations under section 1416(a) of the Act prescribing rights of appeal from the decisions of hearing examiners.

SEC. C. The Assistant Secretary is further authorized to:

1. Redelegate to one or more employees under his jurisdiction any of the authority delegated under section A and authorize successive redelegations thereof to subordinate employees.

2. Redelegate to Regional Administrators and to Deputy Regional Administrators any of the authority delegated under section A and authorize successive redelegations thereof to Regional employees.

(Sec. 1416(a), Housing and Urban Development Act of 1968, 15 U.S.C. 1715; sec. 7(d), Department of HUD Act of 1965, 42 U.S.C. 3535(d))

Effective date. These delegations of authority shall be effective as of January 15, 1969.

ROBERT C. WOOD,
Secretary of Housing and Urban Development.

[F.R. Doc. 69-782; Filed, Jan. 21, 1969; 8:48 a.m.]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGFR 68-165]

PEMBINA, N. DAK., AS PORT OF DOCUMENTATION

Revocation of Designation

Notice of the proposed revocation of the designation of Pembina as a port of documentation and the transfer of the documentation records to Duluth, Minn., and Minneapolis, Minn., was published in the FEDERAL REGISTER of November 6, 1968 (33 F.R. 16307) as CGFR 68-112.

By virtue of the authority contained in 14 U.S.C. 633, section 2 of Act of July 5, 1884, as amended (46 U.S.C. 2), section 1 of Act of February 16, 1925, as amended (46 U.S.C. 18), and subsection 6(b) of Department of Transportation Act (49 U.S.C. 1655(b)) and the delegation of authority of the Secretary of Transportation in 49 CFR 1.4(a)(2), the following action is hereby taken effective February 15, 1969:

(a) The designation of Pembina, N. Dak., as a port of documentation is revoked;

(b) The documentation records at Pembina, N. Dak., of those owners residing in the 9th Coast Guard District are transferred to the office of the Officer in Charge, Marine Inspection, U.S. Coast Guard, Canal Park (Duluth), Minn., and the documentation records of those residing in the 2d Coast Guard District to the office of the Documentation Officer, U.S. Coast Guard, Minneapolis, Minn.

(c) Duluth is designated as home port of all vessels how having Pembina as home port whose owners reside in the 9th Coast Guard District and Minneapolis as the home port of those vessels whose owners reside in the 2d Coast Guard District.

Vessels marked with the name of Pembina as home port shall be deemed to be properly marked within the meaning of section 4178 of the revised statutes, as amended (46 U.S.C. 46) and the regulations issued thereunder for a period of 2 years from the effective date of this order.

Dated: January 14, 1969.

W. J. SMITH,
Admiral, U.S. Coast Guard, Commandant.

[F.R. Doc. 69-750; Filed, Jan. 21, 1969; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 20619; Order 69-1-68]

AIR ENTERPRISES

Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority January 16, 1969.

The Postmaster General filed a notice of intent January 3, 1969, pursuant to 14 CFR, Part 298, petitioning the Board to establish for the above captioned air taxi operator, a final service mail rate of 39.85 cents per great circle aircraft mile for the transportation of mail by aircraft between Moab and Salt Lake City, Utah, via Price and Provo.

No protest or objection was filed against the proposed services during the time for filing such objections. The Postmaster General states that the Department and the carrier agree that the above rate is a fair and reasonable rate of compensation for the proposed services. The Postmaster General believes these services will meet postal needs in the market. He states the air taxi plans to initiate mail service with Aero-Commander Model 680 or Piper Turbo Aztec, both twin-engine aircraft equipped for all-weather operation.

It is in the public interest to fix, determine, and establish the fair and reasonable rate of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the notice of intent and other matters officially noticed, it is

proposed to issue an order [1] to include the following findings and conclusions:

The fair and reasonable final service mail rate to be paid to Hugh M. Lyman, Jr., doing business as Air Enterprises in its entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 39.85 cents per great circle aircraft mile between Moab and Salt Lake City, Utah, via Price and Provo.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR, Part 302, 14 CFR, Part 298, and 14 CFR 385.14(f),

It is ordered, That:

1. Hugh M. Lyman, Jr., doing business as Air Enterprises, the Postmaster General, Frontier Airlines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Air Enterprises;

2. Further procedures herein shall be in accordance with 14 CFR, Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Hugh M. Lyman, Jr., doing business as Air Enterprises, the Postmaster General and Frontier Airlines, Inc.

[1] As this order to show cause is not a final action but merely affords interested persons an opportunity to be heard on the matters herein proposed, it is not regarded as subject to the review provisions of Part 385 (14 CFR, Part 385). These provisions for Board review will be applicable to final action taken by the staff under authority delegated in § 385.14(g).

This order will be published in the FEDERAL REGISTER.

[SEAL] MABEL MCCART,
Acting Secretary.

[F.R. Doc. 69-784; Filed, Jan. 21, 1969; 8:48 a.m.]

[Docket No. 18381]

NON-PRIORITY MAIL RATES

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on January 28, 1969, at 10 a.m., e.s.t., in Room 726, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the undersigned examiner.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report served on May 24, 1968, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., January 14, 1969.

[SEAL] MILTON H. SHAPIRO,
Hearing Examiner.

[F.R. Doc. 69-785; Filed, Jan. 21, 1969; 8:48 a.m.]

[Docket No. 20604]

OLYMPIC AIRWAYS, S. A.

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled proceeding is assigned to be held on January 24, 1969, at 10:00 a.m., e.s.t., in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Robert L. Park.

Dated at Washington, D.C., January 15, 1969.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[F.R. Doc. 69-786; Filed, Jan. 21, 1969; 8:48 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-5926 etc.]

NAFCO OIL AND GAS INC., ET AL.

Findings and Order After Statutory Hearing

JANUARY 8, 1969.

Findings and order after statutory hearing issuing certificates of public convenience and necessity, amending orders issuing certificates, permitting and approving abandonment of service, terminating certificates, substituting respondent, redesignating proceeding, requiring filing of agreement and undertaking, and accepting related rate schedules and supplements for filing.

Each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce or for permission and approval to abandon service or a petition to amend an order issuing a certificate, all as more fully set forth in the applications and petitions, as supplemented and amended.

Applicants have filed related FPC gas rate schedules or supplements thereto and propose to initiate, abandon, add to, or discontinue in part natural gas service in interstate commerce as indicated in the tabulation herein. All sales certificated herein are at rates either equal to or below the ceiling prices established by the Commission's statement of general policy No. 61-1, as amended, or involve sales for which permanent certificates have been previously issued; except that sales from areas for which area rates have been determined are authorized to be made at or below the applicable area base rates, adjusted for quality of the gas, and under the conditions prescribed in the orders determining said rates.

Nafco Oil and Gas Inc., Applicant in Docket No. CI64-200, proposes to continue the sale of natural gas heretofore authorized in said docket to be made pursuant to Fairfax Oil and Gas Corp. FPC Gas Rate Schedule No. 4. Said rate schedule will be redesignated as that of Applicant. The presently effective rate under said rate schedule is in effect subject to refund in Docket No. RI65-437. Applicant indicates in its certificate application that it will assume the responsibility for the total refund obligation from the time that the increased rate was made effective subject to refund. Therefore, Applicant will be substituted in lieu of Fairfax as respondent in the proceeding pending in Docket No. RI65-437; the proceeding will be redesignated accordingly; and Applicant will be required to file an agreement and undertaking to assure the refund of all amounts collected in excess of the amount determined to be just and reasonable in said proceeding.

The Commission's staff has reviewed each application and recommends each action ordered as consistent with all substantive Commission policies and required by the public convenience and necessity.

After due notice by publication in the FEDERAL REGISTER, no petitions to intervene, notices of intervention or protests to the granting of the applications have been filed.

At a hearing held on January 3, 1969, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and petitions, as supplemented and amended, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record:

The Commission finds:

(1) Each Applicant herein is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission or will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and will, therefore, be a "natural-gas company" within the meaning of the Natural Gas Act upon the commencement of service under the authorizations hereinafter granted.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications in this proceeding, will be made in interstate commerce subject to the jurisdiction of the Commission; and such sales by Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The sales of natural gas by Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the orders issuing certificates of public convenience and necessity in Dockets Nos. G–5926, G–6063, G–7004, CI62–191, CI63–1529, CI64–200, CI66–585, CI67–182, CI68–206, CI68–1353, and CI69–100 should be amended as hereinafter ordered and conditioned.

(6) The sales of natural gas proposed to be abandoned as hereinbefore described and as more fully described in the applications and in the tabulation herein are subject to the requirements of subsection (b) of section 7 of the Natural Gas Act.

(7) The abandonments proposed by Applicants herein are permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(8) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificates heretofore issued to Applicants relating to the abandonments hereinafter permitted and approved should be terminated or that the orders issuing said certificates should be amended by deleting therefrom authorization to sell natural gas from the subject acreage.

(9) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Nafco Oil and Gas Inc., should be substituted in lieu of Fairfax Oil and Gas Corp. as respondent in the proceeding pending in Docket No. RI65–437, that said proceeding should be redesignated accordingly, and that Nafco should be required to file an agreement and undertaking.

(10) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the FPC gas rate schedules and supplements related to the authorizations hereinafter granted should be accepted for filing.

The Commission orders:

(A) Certificates of public convenience and necessity are issued upon the terms and conditions of this order authorizing sales by Applicants of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the applications and in the tabulation herein.

(B) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as Applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

(C) The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's regulations thereunder and is without prejudice to any findings or orders which have been or which may hereafter be made by the Commission in any proceedings now pending or hereafter instituted by or against Applicants. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificates aforesaid for service to the particular customers involved imply approval of all of the terms of the contracts, particularly as to the cessation of service upon termination of said contracts as provided by section 7(b) of the Natural Gas Act. The grant of the certificates aforesaid shall not be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(D) The grant of the certificates issued herein on certain applications filed after July 1, 1967, is upon the condition that no increase in rate which would exceed the ceiling prescribed for the given area by paragraph (d)(3) of the Commission's statement of general policy No. 61–1, as amended, shall be filed prior to the applicable date indicated in the tabulation herein.

(E) The certificates issued herein are subject to the following conditions:

(a) The initial rates for sales authorized in Dockets Nos. CI69–323, CI69–324, and CI69–445 shall be the applicable area base rates prescribed in Opinion No. 468, as modified by Opinion No. 468–A, as adjusted for quality of gas, or the contract rates, whichever are lower.

(b) If the quality of the gas delivered by Applicants in Dockets Nos. CI69–323, CI69–324, and CI69–445 deviates at any time from the quality standards set forth in Opinion No. 468, as modified by Opinion No. 468–A, so as to require a downward adjustment of the existing rate, a notice of change in rate shall be filed pursuant to section 4 of the Natural Gas Act: *Provided, however,* That adjustments reflecting changes in B.t.u. content of the gas shall be computed by the applicable formula and charged without the filing of notices of changes in rates.

(c) Within 90 days from the date of initial delivery Applicants in Dockets Nos. CI69–323, CI69–324, and CI69–445 shall file rate schedule quality statements in the form prescribed in Opinion No. 468–A.

(d) Applicant in Docket No. CI69–445 shall advise the Commission of any contemplated processing of the gas under article II, section 2 of the subject contract.

(e) The certificate issued herein in Docket No. CI69–440 is conditioned upon any determination which may be made in the proceeding pending in Docket No. R–338 with respect to the transportation of liquefiable hydrocarbons.

(F) The acceptance for filing of the related rate filing in Docket No. CI68–1353 is contingent upon Applicant's filing three copies of a billing statement as required by the regulations under the Natural Gas Act.

(G) The orders issuing certificates in Dockets Nos. CI62–191, CI68–1353, and CI69–100 are amended by adding thereto or deleting therefrom authorization to sell natural gas as described in the tabulation herein.

(H) The orders issuing certificates in the following dockets are amended to reflect the deletion of acreage where new certificates are issued herein to authorize service from the subject acreage:

Amend to delete acreage	*New certificates*
G–7004[1]	CI69–451
CI67–182	CI69–439
CI68–206	CI69–436

[1] Partial succession with respect to the certificate issued to Pennzoil United, Inc., in Docket No. G–7004 and complete succession with respect to Pennzoil United, Inc., FPC Gas Rate Schedule No. 11.

(I) The orders issuing certificates in Dockets Nos. G–5926, G–6063, CI63–1529, CI64–200, and CI66–585 are amended by substituting the successors in interest as certificate holders.

(J) Permission for and approval of the abandonment of service by Applicants, as hereinbefore described, all as more fully described in the applications and in the tabulation herein are granted.

(K) The certificates heretofore issued in Dockets Nos. CI61–107 and CI63–465 are terminated.

(L) Nafco Oil and Gas Inc., is substituted in lieu of Fairfax Oil and Gas Corp. as respondent in the proceeding pending in Docket No. RI65–437 and said proceeding is redesignated accordingly.[2]

[2] Nafco Oil and Gas Inc.

(M) Within 30 days from the issuance of this order Nafco Oil and Gas Inc., shall execute, in the form set out below, and shall file with the Secretary of the Commission an acceptable agreement and undertaking to assure the refund of all amounts collected, together with interest at the rate of 7 percent per annum, in excess of the amount determined to be just and reasonable in Docket No. RI65–437. Unless notified to the contrary by the Secretary of the Commission within 30 days from the date of submission, such agreement and undertaking shall be deemed to have been accepted for filing.

(N) Nafco Oil and Gas Inc., shall comply with the refunding and reporting procedure required by the Natural Gas Act and section 154.102 of the regulations thereunder, and the agreement and undertaking filed by Nafco shall remain in full force and effect until discharged by the Commission.

(O) The rate schedules and rate schedule supplements related to the authorizations granted herein are accepted for filing or are redesignated, all as described in the tabulation herein.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Acting Secretary.

Docket No. and date filed	Applicant	Purchaser, field, and location	FPC rate schedule to be accepted		
			Description and date of document	No.	Supp.
G–9926 E 9–9–68	Nafco Oil and Gas Inc. (successor to Fairfax Oil and Gas Corp.).	Colorado Interstate Gas Co., a division of Colorado Interstate Corp., Hugoton Field, Kearny County, Kans.	Fairfax Oil & Gas Corp. FPC GRS No. 2.	23	
			Supplements Nos. 1–2	23	1–2
			Notice of succession 9–4–68.[1]		
			Effective date: 1–1–68		
G–6063 E 9–9–68	do	Colorado Interstate Gas Co., a division of Colorado Interstate Corp., Hugoton Field, Kearny and Grant Counties, Kans.	Fairfax Oil & Gas Corp., FPC GRS No. 3.	24	
			Supplements Nos. 1–11	24	1–11
			Notice of succession 9–4–68.[1]		
			Effective date: 1–1–68		
CI62–191 D 10–23–68	Ashland Oil & Refining Co. (Operator) et al.	Natural Gas Pipeline Co. of America, West Chester Field, Woodward County, Okla.	Release 5–22–63 [2 3]	74	2
CI63–1529 E 10–29–68	E. C. Butts, Agent (Operator) et al. (successor to Javelin Oil Co.).	United Gas Pipe Line Co., Bethany Field, Harrison County, Tex.	Javelin Oil Co., FPC GRS No. 2.	1	
			Supplement No. 1	1	1
			Notice of succession (Undated).		
			Assignment 12–17–64 [4]	1	3
			Assignment 9–29–65 [4]	1	3
			Assignment 11–12–65 [5]	1	4
			Assignment 11–12–65 [6]	1	5
			Assignment 12–28–65 [7]	1	6
			Assignment 12–29–65 [8]	1	7
			Assignment 2–1–66 [9]	1	8
			Effective date: 5–1–68		
CI64–200 E 9–9–68	Nafco Oil and Gas Inc. (successor to Fairfax Oil and Gas Corp.).	Colorado Interstate Gas Co., a division of Colorado Interstate Corp., Kansas-Hugoton Field, Kearny and Grant Counties, Kans.	Fairfax Oil and Gas Corp., FPC GRS No. 4.	25	
			Supplements Nos. 1–2	25	1–2
			Notice of succession 9–4–68.[1]		
			Effective date: 1–1–68.		

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

See footnotes on p. 951.

Docket No. and date filed	Applicant	Purchaser, field, and location	FPC rate schedule to be accepted		
			Description and date of document	No.	Supp.
CI66–585 E 10–24–68	Exploration Resources, Inc. (successor to Humble Oil & Refining Co.).	Tennessee Gas Pipeline Co., a division of Tenneco Inc., Waveland Field, Hancock County, Miss.	Humble Oil & Refining Co., FPC GRS No. 384.	1	
			Notice of succession 10–22–68.		
			Letter agreement 9–10–68.[10]	1	1
			Assignment 9–12–68 [11]	1	2
			Assignment 10–1–68 [12]	1	3
CI68–1353 C 11–4–68 [13]	Phillips Petroleum Co.	Northern Natural Gas Co., Gatesby Field, Woodward County, Okla.	Agreement 10–7–68 [13]	448	3
CI69–100 C 11–4–68 [13]	Patrick Petroleum Co.	United Fuel Gas Co., Union and Poca Districts, Kanawha County, W. Va.	Supplemental agreement 11–1–68.[13 14]	1	1
CI69–323 A 9–26–68	Caroline Hunt Sands et al.[13]	Northern Natural Gas Co., acreage in Crockett County, Tex.	Contract 9–3–68	15	
CI69–324 A 9–26–68	W. H. Hunt [13]	do	Contract 9–3–68	9	
CI69–433 A 11–1–68 [13]	Texaco, Inc.	Arkansas Louisiana Gas Co., Cheniere Creek Field, Ouachita Parish, La.	Contract 10–11–68 [13 15]	422	
CI69–434 A 11–1–68 [13]	Producer's Gas Co.[17]	Michigan Wisconsin Pipe Line Co., Mocane Field, Beaver County, Okla.	Contract 10–7–68 [13]	1	
CI69–436 (CI68–206) F 10–28–68	B. J. Brown (successor to Midwest Oil Corp.).	Arkansas Louisiana Gas Co., Mansfield Field, Scott County, Ark.	Contract 5–12–67 [18]	2	
			Assignment 9–16–68	2	1
			Effective date: 9–1–68		
CI69–439 A 11–1–68 [13]	M. R. Turley	Northern Natural Gas Co., acreage in Ellis County, Okla.	Contract 10–11–68 [13]	1	
CI69–439 (CI67–182) F 11–1–68	M. R. Turley (successor to Sinclair Oil Corp.).	do	Contract 7–27–66 [13]	2	
			Assignment 10–10–68 [13 19]	2	1
CI69–440 A 11–4–68 [13]	Texaco, Inc.	Cities Service Gas Co., Alabaster Field, Woodward County, Okla.	Contract 9–5–68 [13 15]	423	
CI69–445 A 11–4–68	Gulf Oil Corp.[20]	Transwestern Pipeline Co., Rock Tank Morrow Field, Eddy County, N. Mex.	Contract 10–11–68 [13]	422	
CI69–447 A 11–4–68 [13]	Lear Petroleum Corp.	Producer's Gas Co., Mocane Field, Beaver County, Okla.	Contract 10–7–68 [13]	1	
CI69–448 (CI63–460) B 11–4–68	Mobil Oil Corp.	Tennessee Gas Pipeline Co., a division of Tenneco Inc., Seeligson Field, Jim Wells County, Tex.	Notice of cancellation 10–30–68.[3 21]	330	6
CI69–450 (CI61–107) B 11–4–68	Atlantic Richfield Co.	Trunkline Gas Co., West Nona Mills Field, Hardin County, Tex.	Notice of cancellation 10–31–68.[3 21]	218	2
CI69–451 (G–2004) [22] F 10–21–68	Carl R. Morris, et al., d./b./a. Baker Gas Co. (successor to Pennzoil United, Inc.).	Equitable Gas Co., Birch District, Braxton County, W. Va.	Pennzoil United, Inc., FPC GRS No. 11.[23]	3	
			Supplement Nos. 1–2	3	1–2
			Notice of succession 10–17–68.		
			Assignment 8–26–68 [24]	3	3
			Assignment 9–19–68 [25]	3	4
			Effective date: Date of transfer of properties involved.		

[1] Fairfax was merged into Nafco, its parent, effective at the close of business on Dec. 31, 1967.
[2] Release of interest to mineral owners after termination of oil and gas lease. This acreage has never been productive.
[3] Effective date: Date of this order.
[4] Conveys certain interests from Javelin Oil Co. to F. E. Hargraves & Sons Drilling Co., Inc., et al.
[5] Conveys interests from F. E. Hargraves to A. M. Rozeman, et al.
[6] Conveys interests from F. E. Hargraves & Sons Drilling Co., Inc., to A. M. Rozeman et al.
[7] Conveys certain interests from Waymon L. Davis et al., to Robert C. Johnson, et al.
[8] Conveys certain interests from A. M. Rozeman, et al., to William G. Costin, Jr.
[9] Conveys certain interests from Robert C. Johnson et al., to A. M. Rozeman.
[10] Between Humble and Tennessee whereby Tennessee agrees to the assignment of acreage.
[11] Assigns acreage from Humble to T. A. Manhart, including acreage not dedicated to any gas sales contract.
[12] Assigns acreage from T. A. Manhart to Exploration Resources, Inc., including acreage not dedicated to a gas sales contract.
[13] Jan. 1, 1970, moratorium pursuant to the Commission's statement of general policy No. 61-1, as amended.
[14] Effective date: Date of initial delivery (Applicant shall advise the Commission as to such date).
[15] Provides for sale of gas produced from The Newburg Formation only.
[16] By letter filed Oct. 10, 1968 (dated Oct. 9, 1968), Applicant agreed to accept a permanent certificate conditioned as Opinion No. 468, as modified by Opinion No. 468-A.
[17] Covers only gas produced from the surface down to the base of The Hosstan Formation.
[18] Applicant proposes to gather and compress gas produced by Lear Petroleum Corp. for resale to Michigan Wisconsin Pipe Line Co.
[19] On file as Midwest Oil Corp. FPC GRS No. 45.
[20] Currently on file as Sinclair Oil Corp. FPC GRS No. 357.
[21] Assigns acreage from Sinclair Oil Corp. to Applicant.
[22] Contract contains processing provision by seller; Applicant states that it may process gas in future, therefore is willing to accept a permanent certificate conditioned to the outcome of the proceeding in Docket No. R-338.
[23] Applicant has stated willingness to accept a permanent certificate conditioned as Opinion No. 468, as modified by Opinion No. 468-A.
[24] Source of gas depleted.
[25] Other sales covered under Docket No. G-7004; therefore, Applicant will continue in part sales authorized under the certificate in Docket No. G-7004 and will continue in toto sales authorized to be made pursuant to Pennzoil United, Inc., FPC GRS No. 11.
[26] From Pennzoil to Gail Nutter et al.
[27] From Gail Nutter et al., to Applicant.

Suggested general undertaking in accordance with Order No. 377:

BEFORE THE FEDERAL POWER COMMISSION

(Name of Respondent) ----------

GENERAL UNDERTAKING OF (NAME OF RESPONDENT) TO COMPLY WITH REFUNDING AND REPORTING PROVISIONS OF SECTION 154.102 OF THE COMMISSION'S REGULATIONS UNDER THE NATURAL GAS ACT

(Name of Respondent) hereby agrees to comply with the refunding and reporting provisions of section 154.102 of the Commission's Regulations under the Natural Gas Act insofar as they are applicable to any present and future rate increases suspended under section 4(e) of the Natural Gas Act and collected subject to refund thereunder and has caused this undertaking to be executed and sealed in its name by a duly authorized officer this ------ day of ----------, 196--.

(Name of Respondent)
By ----------

Attest:

[F.R. Doc. 69-678; Filed, Jan. 21, 1969; 8:45 a.m.]

[Docket No. RI69-445 etc.]

SOUTHEASTERN PUBLIC SERVICE CO. ET AL.

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

JANUARY 10, 1969.

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

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

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

The Commission orders:

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

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

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

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f) on or before February 26, 1969.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Acting Secretary.

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

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in dockets Nos.
RI69-445..	Southeastern Public Service Co. (Operator) et al., 70 Pine St., New York, N.Y. 10005.	4	3	Tennessee Gas Pipeline Co., a division of Tenneco Inc. (East Barnard Area, Wharton County, Tex.) (RR. District No. 3).	$1,260	12-16-68	[11] 1-16-69	6-16-69	[15] 17.16947	[3][4][6] 18.16947	RI64-613.
RI69-446..	Marathon Oil Co. (Operator) et al., 539 South Main St., Findlay, Ohio 45840, Attention: Mr. R. N. Ayars.	80	5	Florida Gas Transmission Co. (Palacios Field, Matagorda County, Tex.) (RR. District No. 3).	26,950	12-16-68	[3] 1-16-69	6-16-69	[18] 16.0	[4][17] 19.5	
	----do----------	81	3	----do----------	8,890	12-16-68	[3] 1-16-69	6-16-69	[18] 16.0	[4][17] 19.5	
RI69-447..	Sun Oil Co. 1608 Walnut St., Philadelphia, Pa. 19103, Attention Mr. C. E. Webber.	8	9	Natural Gas Pipeline Co. of America (La Gloria Field, Jim Wells County, Tex.) (RR. District No. 4).	213	12-17-68	[3] 1-17-69	6-17-69	[3] 14.0	[4][19] 16.6687	
RI69-448..	Skelly Oil Co., Post Office Box 1650, Tulsa, Okla. 74102.	9	7	Coastal States Gas Producing Co.[23] (East Mathis Area, San Patricio County, Tex.) (RR. District No. 4).	6,688	12-13-68	[3] 1-13-69	6-13-69	12.3676	[3][4] 13.3772	RI64-361.
RI69-449..	Sinclair Oil Corp., Post Office Box 521, Tulsa, Okla. 74102.	340	3	Michigan Wisconsin Pipe Line Co. (Gageby Creek Field, Wheeler County, Tex.) (RR. District No. 10).	14,848	12-19-68	[3] 1-19-69	6-19-69	[20] 17.0	[4][20] 19.0	

See footnotes at end of table.

APPENDIX A—Continued

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate
RI69-450..	Gulf Oil Corp., Post Office Box 1589, Tulsa, Okla. 74102.	95	5	Kansas-Nebraska Natural Gas Co., Inc. (Camrick Field, Beaver and Texas Counties, Okla.) (Panhandle Area).	$1,680	12-20-68	[2] 1-20-69	6-20-69	[3] 17.0	[4] [5] 18.4	RI68-25.
	.....do.....	145	3	Kansas-Nebraska Natural Gas Co., Inc. (Hugoton Field, Kearny County, Kans.).	4,000	12-20-68	[2] 1-20-69	6-20-69	[3] 11.0	[4] [6] 12.0	
RI69-451..	Davis-Noland-Merrill Grain Co., Suite 1220, 127 West 10th St., Kansas City, Mo. 64105.	1	3	Zenith Natural Gas Co. (Aetna Field, Barber County, Kans.).	1,707	12-20-68	[2] 2- 1-69	7- 1-69	13.0	[4] 14.0	RI65-469.
RI69-452..	Holly Resources Corp., 1038 Guaranty Bank Bldg., Denver, Colo. 80202.	[11] 2	5	Colorado Interstate Gas Co. (Greenwood Field, Morton County, Kans.).	6,701	12-16-68	[2] 1-16-69	6-16-69	[12] 16.0	[4] [13] 18.0	G-17590.

[2] The stated effective date is the effective date requested by Respondent.
[3] Periodic rate increase.
[4] Pressure base is 14.65 p.s.i.a.
[5] Subject to a downward B.t.u. adjustment.
[6] Subject to 0.2163-cent dehydration charge by buyer.
[7] Increase from initial "in-line" rate to contractually provided for periodic rate.
[8] Initial "in-line" rate provided by Opinion No. 475.
[9] Increase from accepted "fractured" rate to current contract rate plus proportionate increase in tax reimbursement (base rate is 16.45 cents per Mcf).
[10] Subject to upward and downward B.t.u. adjustment.
[11] Seven-step periodic increase.
[12] Two-step periodic increase.
[13] Coastal States gathers subject gas and resells it to Natural Gas Pipeline Company of America under Coastal States' FPC Gas Rate Schedule No. 23 at a rate of 14.5 cents per Mcf which is in effect subject to refund in Docket No. G-17733.
[14] Formerly Holly Oil Company's FPC Gas Rate Schedule No. 2.
[15] The stated effective date is the first day after expiration of the statutory notice.

Southeastern Public Service Co. (Operator) et al. (Southeastern), requests that its proposed rate change be permitted to become effective without suspension. However, should the Commission suspend its increased rate, Southeastern requests that the suspension period be shortened so as to allow the collection of the increase at an early date. No reasons were given in support of the above requests. Good cause has not been shown for authorizing an earlier effective date, or for waiving the 30-day notice period, or for shortening the suspension period to allow the collection of the increase at an early date, and such requests are denied.

Skelly Oil Co. (Skelly) is proposing a periodic increase, from 12.3676 cents, currently in effect subject to refund in Docket No. RI64-361, to 13.3772 cents, for gas sold to Coastal States Gas Producing Co. (Coastal States) in the East Mathis Area, San Patricio County, Tex. (RR. District No. 4). Coastal States gathers the subject gas and resells it to Natural Gas Pipeline Company of America under its FPC Gas Rate Schedule No. 23 at a rate of 14.5 cents per Mcf which is in effect subject to refund in Docket No. G-17733. Skelly's contract is related to Coastal States' contract in that they provide for periodic increases on December 1, 1968. Coastal States has not, as yet, filed for its December 1, 1968, contractually provided for increase. Such increase, if filed for, would be suspended as exceeding the applicable area increased rate ceiling. Although Skelly's proposed rate increase to 13.3772 cents per Mcf does not exceed the area increased rate ceiling of 14 cents per Mcf for Texas Railroad District No. 4 as announced in the Commission's statement of general policy No. 61-1, as amended, it should be suspended because such ceiling is applicable to Coastal States' resale rate, not to Skelly's rate. In view of the fact that Coastal States' December 1, 1968, contractually provided rate increase would be suspended, if filed for, we conclude that Skelly's proposed rate increase should be suspended for 5 months from January 13, 1969, the proposed effective date.

All of the producers' proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's statement of general policy No. 61-1, as amended (18 CFR 2.56), with the exception of the rate increase filed by Skelly which is suspended herein for the reason set forth above.

[F.R. Doc. 69-679; Filed, Jan. 21, 1969; 8:45 a.m.]

FEDERAL RESERVE SYSTEM

DEPOSITORS CORP.

Order Approving Application Under Bank Holding Company Act

In the matter of the application of Depositors Corp., Augusta, Maine, for approval of acquisition of not less than 80 percent of the voting shares of Newport Trust Co., Newport, Maine.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and section 222.3(a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by Depositors Corp., Augusta, Maine, a registered bank holding company, for the Board's prior approval of the acquestion of not less than 80 percent of the voting shares of Newport Trust Co., Newport, Maine.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the office of the Bank Commissioner for the State of Maine and requested views and recommendation thereon. The office of the Bank Commissioner responded that it had no objection to approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on November 28, 1968 (33 F.R. 17833), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered by the Board.

It is hereby ordered, For the reasons set forth in the Board's statement[1] of this date, that said application be and hereby is approved, provided that the acquisition so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Boston pursuant to delegated authority.

Dated at Washington, D.C., this 13th day of January 1969.

By order of the Board of Governors.[2]

[SEAL] ROBERT P. FORRESTAL, *Assistant Secretary.*

[F.R. Doc. 69-754; Filed, Jan. 21, 1969; 8:45 a.m.]

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Boston.

SECURITIES AND EXCHANGE COMMISSION

CAPITOL HOLDING CORP.

Order Suspending Trading

JANUARY 15, 1969.

It appearing to the Securities and Exchange Commission that the summary suspension of trading otherwise than on a national securities exchange in the common stock and all other securities of Capitol Holding Corp. 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 10 a.m. e.s.t., January 15, 1969, through January 24, 1969, both dates inclusive.

By the Commission.

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

[F.R. Doc. 69-756; Filed, Jan. 21, 1969; 8:45 a.m.]

[2] Voting for this action: Vice Chairman Robertson and Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Absent and not voting: Chairman Martin.

[File No. 1-2250]

COMSTOCK-KEYSTONE MINING CO.

Order Suspending Trading

JANUARY 15, 1969.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock and all other securities of Comstock-Keystone Mining Co., n.k.a. Memory Magnetics International, 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 January 16, 1969, through January 25, 1969, both dates inclusive.

By the Commission.

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

[F.R. Doc. 69-757; Filed, Jan. 21, 1969; 8:45 a.m.]

MOONEY AIRCRAFT, INC.

Order Suspending Trading

JANUARY 15, 1969.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Mooney Aircraft, 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 January 16, 1969, through January 25, 1969, both dates inclusive.

By the Commission.

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

[F.R. Doc. 69-758; Filed, Jan. 21, 1969; 8:46 a.m.]

[812-2297]

NATIONAL ASSOCIATION OF SMALL BUSINESS INVESTMENT COMPANIES, ET AL.

Notice of and Order for Hearing on Application for Order of Exemption From Various Provisions of the Act

JANUARY 14, 1969.

Notice is hereby given that the National Association of Small Business Investment Companies ("Applicant"), on behalf of its members who are small business investment companies ("SBICs") registered as management, closed-end, nondiversified investment companies under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 6(c) of the Act for an order of the Commission "to secure an exemption for SBICs from those provisions of the 1940 Act not applicable to SBICs and to transfer to SBA the administration of those provisions of the 1940 Act deemed applicable to SBICs." The following SBICs, who are members of Applicant, have communicated separately with the Commission to join in the application: Advance Growth Capital Corp.; Business Capital Corp.; Capital Investors Corp. of Montana; Central Investment Corp. of Denver; Continental Capital Corp.; Delta Capital Corp.; Executive Investors, Inc.; First Connecticut SBIC; Illinois Capital Investment Corp.; La Salle Street Capital Corp.; Monmouth Capital Corp.; Narragansett Capital Corp.; Southeastern Capital Corp.; and Westland Capital Corp.; Commerce Capital Corp.; and The Citizens and Southern Capital Corp. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is a trade association, the active membership of which consists of 230 SBICs licensed by the Small Business Administration ("SBA") pursuant to the Small Business Investment Act of 1958. Of the 230 active members of Applicant, 29 are registered under the Act as management, closed-end, nondiversified investment companies.

For the reasons set forth below, Applicant has requested an order of the Commission:

a. Exempting SBICs subect to registration under the Act from sections 1, 2, 3, 10, 11, 12, 18(a)(1), 22, 26, 27, 28, 29, 45, 46, 52, and 53. Applicant asserts that said provisions of the Act either are not applicable to SBICs or are not of regulatory importance as far as SBICs are concerned.

b. Exempting SBICs subject to registration under the Act from sections 19 and 20 of the Act. Applicant asserts, however, that if deemed necessary by the Commission, these provisions could be incorporated in suitable SBA regulations.

c. Exempting SBICs subject to registration under the Act from sections 18(d) and 23(a) insofar as such provisions prohibit the issuance of stock options. In the alternative, Applicant requests that the Commission reconsider Proposed Rule 18d-1 previously submitted by Applicant which would permit SBICs to issue stock options within the limitations set forth therein.

d. Delegating to the SBA the authority to regulate SBICs in the areas covered by the following provisions of the Act: Sections 4, 5, 6, 7, 9, 13, 14, 15, 16, 17, 18(a)(2), 18(d), 21, 23, 24, 25, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 47, 48, 49, 50, and 51. Applicant asserts that said provisions, although applicable to SBICs, are adequately covered by the Small Business Investment Act of 1958 and existing SBA regulations and appear unnecessary for the regulation of SBICs. With respect to section 24 of the Act relating to registration of securities under the Securities Act of 1933, Applicant does not request an exemption.

Applicant does not request an exemption from section 8 of the Act dealing with registration of investment companies in order to accommodate SBICs electing to be taxed as regulated investment companies under section 851 of the Internal Revenue Code of 1954.

Applicant submits that the requested exemption is necessary and appropriate in the public interest because:

a. Dual regulation of SBICs by the Commission and SBA has impeded the ability of SBICs to accomplish their statutory purpose to promote small business and has inhibited the operation of SBICs.

b. It would be consistent with the recent amendment to section 308(g)(2) of the Small Business Investment Act of 1958 which requires, among other matters, that SBA include in its annual reports to Congress a report from the Commission enumerating actions undertaken by the Commission to simplify and minimize the regulatory requirements governing SBICs under the Federal securities laws and "to eliminate overlapping regulation and jurisdiction as between the Securities and Exchange Commission, the Administration, and other agencies of the executive branch."

Applicant also submits that the requested exemption would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because:

a. Investors are now adequately protected by existing SBA regulations. However, to the extent the Commission feels that investors are not adequately protected by existing SBA regulations, the Commission should delegate regulatory provisions to the SBA.

b. SBICs are the only Federally licensed and regulated entities subject to regulation under the Act. In this respect, section 3(c) of the Act specifically exempts a number of similar institutions from the provisions of the Act.

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors that a hearing be held with respect to said application:

It is ordered, Pursuant to section 40(a) of the Act, that a hearing on the aforesaid application under the applicable provisions of the Act and the rules of the Commission thereunder be held on February 19, 1969, at 10 a.m. in the offices of the Commission, 500 North Capitol Street NW., Washington, D.C. 20549. At such time, the Hearing Room Clerk will advise as to the room in which such hearing will be held. Any person desiring to be heard or otherwise wishing to participate in the proceeding is directed to file with the Secretary of the Commission on or before February 12, 1969, his application as provided by Rule 9(c) of the Commission's rules of practice, setting forth any issues of law or fact which he desires to controvert or any additional issues which he deems raised by this

notice and order or by such application. Persons filing an application to participate or be heard will receive notice of any adjournment of the hearing as well as other actions of the Commission involving the subject matter of these proceedings.

It is further ordered, That any officer or officers of the Commission to be designated by it for that purpose shall preside at said hearing. The officer so designated is hereby authorized to exercise all the powers granted to the Commission under sections 41 and 42(b) of the Act and to a hearing officer under the Commission's rules of practice.

The Division of Corporate Regulation has advised the Commission that it has made a preliminary examination of the application and that upon the basis thereof the following matters and questions are presented for consideration, without prejudice to its specifying additional matters and questions upon further examination.

a. Whether the Commission has authority to grant the requested relief; i.e., exempt SBICs from substantially all provisions of the Act and delegate its regulatory authority over SBICs registered pursuant to section 8 of the Act to the SBA.

b. Whether the granting of the requested exemptions and orders under the Act is (a) necessary or appropriate in the public interest, (b) consistent with the protection of investors, and (c) consistent with the purposes fairly intended by the policy and provisions of the Act; and

c. If the requested exemptions and orders are to be granted, what conditions, if any, should be imposed in the public interest and for the protection of investors.

It is further ordered, That at the aforesaid hearing attention be given to the foregoing matters and questions.

It is further ordered, That the Secretary of the Commission shall give notice of the aforesaid hearing by mailing copies of this notice and order by certified mail to the Small Business Administration and to the National Association of Small Business Investment Companies and those of its member companies joining in the application; that notice to all other persons shall be given by publication of this notice and order in the FEDERAL REGISTER; and that a general release of this Commission in respect of this notice and order be distributed to the press and mailed to the mailing list for releases.

By the Commission.

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

[F.R. Doc. 69-759; Filed, Jan. 21, 1969; 8:46 a.m.]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 688]

WASHINGTON

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of January 1969, because of the effects of certain disasters, damage resulted to residences and business property located in the County of Whatcom, in the State of Washington;

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

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

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

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property, situated in the aforesaid County, and areas adjacent thereto, suffered damage or destruction resulting from floods occurring on January 10, 1969.

OFFICE

Small Business Administration Regional Office, 506 Second Avenue, Seattle, Wash. 98104.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to July 31, 1969.

Dated: January 13, 1969.

HOWARD GREENBERG, *Acting Administrator.*

[F.R. Doc. 69-778; Filed, Jan. 21, 1969; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATION FOR RELIEF

JANUARY 16, 1969.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 41541—*Ethylbenzene to points in IFA and WTL Territories.* Filed by O. W. South, Jr., Agent (No. A6076), for interested rail carriers. Rates on ethylbenzene, in tank-car loads, as described in the application, from points in Alabama, Mississippi, and Louisiana, to points in Illinois Freight Association and western trunkline territories.

Grounds for relief—Market competition.

Tariff—Supplement 35 to Southern Freight Association, Agent, tariff I.C.C. S-589.

By the Commission.

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

[F.R. Doc. 69-776; Filed, Jan. 21, 1969; 8:47 a.m.]

[Notice 279]

MOTOR CARRIER TRANSFER PROCEEDINGS

JANUARY 16, 1969.

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-70922. By order of January 9, 1969, the Transfer Board approved the transfer to Evans Delivery Co., Inc., Pottsville, Pa., of Certificates Nos. MC-57591 (Sub-No. 4), MC-57591 (Sub-No. 7), MC-57591 (Sub-No. 8) and MC-57591 (Sub-No. 9), issued June 18, 1963, December 5, 1962, June 12, 1963, and July 16, 1965, respectively, to Albert L. Evans, doing business as Evans Delivery Co., Pottsville, Pa., authorizing the transportation of: General commodities, excluding household goods, commodities in bulk and other specified commodities, from and to, or between points as specified in Pennsylvania and West Virginia, and New Jersey; household goods, between Ashland, Pa., and points witthin 25 miles of Ashland, on the one hand, and, on the other, points in Pennsylvania, Ohio, West Virginia, Virginia, New Jersey, New York, Maryland, Delaware, and the District of Columbia. George A. Olsen, Jersey City, N.J. 07306; representative for applicants.

No. MC-FC-70926. By order of January 9, 1969, the Transfer Board approved the transfer to Sheridan Truck Line, Inc., Sheridan, Ark., of Certificate No. MC-70348, issued June 9, 1949, to Clarence G. Hill, doing business as Sheridan

Truck Line, Sheridan, Ark., authorizing the transportation of: General commodities, excluding household goods, commodities in bulk, and other specified commodities, between Sheridan, Ark., and Little Rock, Ark., over U.S. Highway 167, and return, serving all intermediate points. Willis V. Lewis, 200 Arch Street, Little Rock, Ark, 72201, attorney for applicants.

No. MC–FC–71015. By order of January 9, 1969, the Transfer Board approved the transfer to Joseph A. Sieber, Robert R. Sieber, and William G. Sieber, a partnership, doing business as Sieber Express, of Certificate of Registration No. MC–97274 (Sub-No. 1) issued February 2, 1965, to Joseph A. Sieber, Pittsburgh, Pa., authorizing the transportation of specified commodities to, from or between specified points in Pennsylvania. Thomas F. Lamb, 800 Porter Building, Pittsburgh, Pa. 15219, attorney for applicants.

No. MC–FC–71017. By order of January 9, 1969, the Transfer Board approved the transfer to Yellowbird Motor Lines, Inc., Quincy, Mass., of Certificate of Registration No. MC–99999 (Sub-No. 1), issued April 29, 1965, to Rapid Way, Inc., Chelsea, Mass., authorizing transportation in interstate or foreign commerce corresponding to the grant of authority in State Certificate No. 5266, issued October 30, 1961, by the Massachusetts Department of Public Utilities. Frank J. Weiner, 536 Granite Street, Braintree, Mass. 02184, attorney for applicants.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 69–777; Filed, Jan. 21, 1969; 8:47 a.m.]

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FEDERAL REGISTER

VOLUME 34 • NUMBER 14

Wednesday, January 22, 1969 • Washington, D.C.

PART II

Department of Agriculture

Consumer and Marketing Service

Milk in Georgia Marketing Area

Decision

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 1007]

[Docket No. AO-366]

MILK IN GEORGIA MARKETING AREA

Decision on Proposed Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Atlanta, Ga., on June 11–14, 1968, pursuant to notice thereof issued on May 15, 1968 (33 F.R. 7444), upon a proposed marketing agreement and order regulating the handling of milk in the Georgia marketing area.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on November 19, 1968 (33 F.R. 17634; F.R. Doc. 68–14102) filed with the Hearing Clerk, United States 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. 17634; F.R. Doc. 68–14102) are hereby approved and adopted and are set forth in full herein subject to the following modifications:

1. Under the subheading "1. Character of commerce.", the second paragraph is changed.

2. Under the subheading "2. Need for an order.", the sixth and seventh paragraphs are changed.

3. Under the subheading "Marketing area.", the first, second, third, and 13th paragraphs are changed, and the 14th paragraph is deleted and three new paragraphs are substituted therefor.

4. Under the subheading "Definition of plants.", the seventh, ninth, 10th and 33d paragraphs are changed.

5. Under the subheading "Producer-handler.", the first paragraph is changed.

6. Under the subheading "Producer.", the second paragraph is changed.

7. Under the subheading "Producer milk.", the sixth paragraph is changed.

8. Under the subheading "Fluid milk products.", the first paragraph is changed.

9. Under the subheading "Classification of milk.", the entire discussion is changed.

10. Under the subheading "Transfers.", the first, second and fourth paragraphs are changed.

11. Under the subheading "Class I price.", the second paragraph is deleted and two new paragraphs are substituted therefor, the ninth paragraph is changed, the 12th through the 16th paragraphs are deleted and a new paragraph is substituted therefor, the 17th, 18th and 20th paragraphs are changed, and two new paragraphs are added immediately after the 18th paragraph.

12. The entire "Class II price." discussion is deleted.

13. All references to "Class III" in the "Class III price." discussion are changed to "Class II".

14. Under the subheading "Butterfat differentials.", the entire discussion is changed.

15. Under the subheading "Location differentials.", the eighth, 10th, 17th and 23d paragraphs are changed.

16. Under the subheading "Base and excess plan.", the seventh and 14th paragraphs are changed.

17. Under the subheading "Payments to producers.", the second paragraph is changed.

The material issues of record relate to:

1. Whether the handling of milk produced for sale in the proposed marketing area is in the current of interstate 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 milk marketing agreement or order which will tend to effectuate the policy of the Act; and

3. If an order is issued what its provisions should be with respect to:

(a) The scope of regulations;

(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.

This decision deals with all issues considered at the hearing except the classification and pricing of skim milk and butterfat in "filled milk" and "imitation milk". This issue is reserved for a later decision.

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

The marketing area specified in the proposed order, hereinafter referred to as the "Georgia marketing area", includes all but 13 (Catoosa, Chattooga, Dade, Fannin, Floyd, Gilmer, Gordon, Murray, Pickens, Rabun, Union, Walker, and Whitfield) of the 159 counties in the State of Georgia.

Fluid milk products are distributed in the proposed marketing area from at least 13 out-of-State plants, located in Alabama, Tennessee, South Carolina, and Florida. In 1967, fluid milk sales in Georgia from out-of-State plants totaled 37 million pounds. Also, six plants in the proposed marketing area distribute milk in Alabama and South Carolina.

Eleven Alabama dairymen and nine South Carolina dairymen ship milk to Georgia plants in the proposed marketing area. Seventeen Georgia dairy farmers supply out-of-State plants.

The production of milk by producers regularly associated with the proposed marketing area is insufficient to meet handlers' demands for milk for fluid use and for the manufacture of milk products such as cottage cheese and ice cream. In 1967, 6.7 million pounds of bulk milk and cream and 2.4 million pounds of nonfat dry milk and buttermilk powder were obtained by Georgia handlers from out-of-State sources. Such shipments were received throughout the year from 10 different States, the principal sources being Alabama, Tennessee, Virginia, and Wisconsin.

Since there are limited facilities in Georgia for manufacturing products such as butter and cheese, these items must be supplied primarily from sources outside the State. Ice cream and ice cream mix made in about 20 out-of-State plants are sold in Georgia. Also, because of the limited manufacturing facilities in Georgia, milk excess to the market's needs is at times disposed of to manufacturing plants in other States.

2. *Need for an order.* Marketing conditions in the proposed Georgia marketing area justify the issuance of a marketing agreement and order.

There is no overall plan whereby dairy farmers regularly supplying milk for distribution in the proposed marketing area are assured of payment for their milk in accordance with its use. The absence of such a plan has resulted in disorderly marketing conditions that can be remedied best by the application of Federal order regulation to this market. A classified pricing plan based on the audited utilization of handlers would provide a uniform system of minimum prices to handlers for milk purchased from producers and a fair division among all producers of the proceeds from the sale of their milk.

Three dairy farmer organizations are the proponents seeking Federal order regulation for Georgia. Georgia Milk Producers is an organization (not a cooperative association) in which all Grade A dairy farmers in Georgia automatically have membership. About 1,330 of its approximately 1,440 members in December 1967 would be producers under the proposed order; most of the others are producers under the Chattanooga Federal milk order.

Georgia Association of Dairy Cooperatives is a federation of eight cooperatives, each of which operates a distributing plant; one cooperative also operates a supply plant. The cooperatives in the federation represent about 630 producers.

Georgia Milk Producers Cooperative Association, a bargaining cooperative with about 610 members, was not marketing the milk of its members at the time of the hearing. It contemplates activating the marketing agreements with its members at an early date in order to strengthen their bargaining position in the face of deteriorating marketing conditions.

Georgia Association of Dairy Cooperatives and Georgia Milk Producers Cooperative Association represent about 88

percent of the estimated 1,410 dairymen, located both within and outside Georgia, whose milk would be priced under the proposed order. Milk deliveries by Georgia producers to all plants in Georgia (including plants regulated by the Chattanooga order and producer-distributor plants) averaged 79 million pounds monthly in 1967. Comparable data on the amount of milk delivered by producers to the two out-of-State plants (in South Carolina) that would be regulated are not available in the record.

Of the 39 distributing plants expected to be regulated under the proposed order, 36 are supplied by members of the cooperatives. Members of the bargaining cooperative deliver milk to 27 of these plants. The eight distributing plants of the operating cooperatives are supplied by their own members. One of the operating cooperatives also supplies milk to several proprietary handlers. Since the number of their members is approximately 45 percent of the total producers supplying the market, the distribution of the operating cooperatives represents a substantial portion of the total fluid milk sales in the Georgia market.

The area herein proposed to be regulated has been regulated by the Georgia Milk Commission, which fixed producer prices and resale prices for milk. In October 1967, a ruling of the Supreme Court of Georgia declared the price-fixing authority of the Commission unconstitutional. Since then, no regulatory plan for milk has been applicable in the proposed marketing area.

Although the Commission operated a classified pricing plan for producers, the plan's effectiveness in recent years was virtually nullified when handlers were allowed to contract with producers on terms of sale. The prices applicable under these contracts, which covered a substantial amount of the milk marketed in Georgia, were in lieu of the Commission's stated prices.

Since the termination in 1967 of the State's regulation of producer and resale prices, producers have become increasingly apprehensive about the deteriorating marketing conditions with which they are being faced. The proponent producer organizations contend that only a device such as a Federal milk order can provide the marketing environment in which producers may obtain the full economic value of their milk under orderly marketing conditions.

The purchasing arrangements which many proprietary handlers have with their producers are resulting in decreasing returns to these producers. The handler resale practices made possible by such arrangements are in turn exerting considerable downward pressures on the prices which the operating cooperatives are able to return to their members.

Under their contracts with producers, some handlers base their Class I prices on various percentages of the returns from their wholesale and retail sales of packaged milk. For example, one major handler's Class I price is based on 54 percent of his receipts from retail sales and 55.4 percent of his receipts from wholesale sales. Although the percentages may vary slightly among handlers, a principal feature of their purchasing arrangements is that the producer price is based on the handler's net receipts from his retail and wholesale sales.

With the regulation of resale prices no longer applicable, handlers are offering stores substantial discounts—as much as 18 percent of the Commission's previous Class I price was indicated. Under the producer contracts, the lower resale prices are consequently reflected back to producers through lower prices for their deliveries. Moreover, with no fixed resale prices, any price which the handler unilaterally considers competitive may be used as a price on which to base discounts.

In order for the cooperatives operating distributing plants to remain competitive in the resale market, they must meet the discounts offered stores by proprietary handlers. Representatives of these cooperatives testified that the lower resale prices have resulted in lower returns to their members.

Producers in these circumstances have no assurance of the prices that they may expect to receive for their milk. They cannot plan their future production program with the certainty of marketing conditions needed for sound management decisions. This could tend to discourage the continuation of the necessary production resources and thereby threaten the maintenance of an adequate supply of pure and wholesome milk for the Georgia market.

The Class I price commonly referred to by handlers is not meaningful in ascertaining the prices paid by handlers for their Class I utilizations. Handlers pay less than the Class I price for milk disposed of in a number of Class I utilization categories. The stated Class I price has, in effect, become only a figure from which to subtract various amounts in determining what prices handlers will pay producers each month. Moreover, these prices are even less meaningful when it is recognized that the handlers' utilizations are not verified by audit.

The Class I price often referred to at the hearing was the Milk Commission's announced Class I price prevailing at the time price-fixing was abolished in October 1967. This price was $7.39 for milk of 4 percent butterfat content (the test at which prices have been quoted in this market). The butterfat differential was 8 cents for each one-tenth of 1 percent variation in butterfat above or below 4 percent.

If $7.39 is now paid by handlers for any portion of producers' deliveries, it is not apparently applicable to significant quantities of milk. The $7.39 price is used by handlers as a bench mark or basic price from which to make deductions in arriving at the prices they will pay producers for milk in their various Class I utilization categories.

Under the Commission, producers received $1.75 below the basic Class I price for milk disposed of in the form of buttermilk and skim milk. This practice of pricing milk in these Class I utilizations at a differential below a basic Class I price still prevails in the market.

Class I sales to schools and hospitals customarily return less to producers than the basic Class I price.

Some handlers in the market pay their producers at a flat price, irrespective of utilization. One handler, whose utilization is substantially all Class I, pays $6.40 per hundredweight to his producers for milk of 4 percent butterfat content.

A significant factor that results in lower returns to producers is the practice of paying substantially less than the stated Class I price (the Commission's announced price for military milk of 4 percent butterfat was $6.30) for Class I sales to military installations. Military sales are an important segment of the milk distribution business of handlers that would be regulated by the order. At least 10 military installations in Georgia purchase fluid milk on a bid basis and Georgia handlers occasionally have military sales in other States.

It is customary for handlers seeking military sales to negotiate with their producers on a price for milk that would be sold in this manner. The milk supply which handlers have available for such sales is normally additional to the supply regularly required for their other fluid sales. Thus, milk not sold to military bases usually must be disposed of to manufacturing outlets. Although producers are of course interested in obtaining as high a price as possible, they nevertheless are under pressure to settle on any price over the manufacturing price that will secure the contract for the handler.

No uniform pricing prevails on milk in the market that is not needed for fluid uses. Returns to producers for such milk often reflect whatever price handlers may obtain from manufacturing outlets for the milk less their transportation and handling charges. Also, the price for milk transferred between plants may bear no relationship to the ultimate use of such milk.

The utilizations on which producers in the market are paid are not audited or otherwise verified. The adoption of classified pricing with an auditing program would contribute substantially to the maintenance of stable and orderly marketing conditions in the Georgia market. This would benefit not only producers but handlers as well. For example, handlers would be assured that their competitors who are regulated under the order are purchasing milk on the same audited, classified price basis as they are.

The disorderly marketing conditions experienced by producers regularly supplying the Georgia market are attributable in part to the lack of any plan for sharing among all such producers the proceeds from the sale of their milk. To a growing degree, milk in Georgia is being distributed through larger outlets such as chain stores and military installations. There is considerable competition among plants to supply these outlets and such sales often shift from one plant to another. The failure of a handler to obtain contract renewals may

cause a substantial decrease in the returns he will be able to make to his producers, while returns to other producers in the market increase.

Also, a certain amount of reserve milk in excess of the actual fluid sales is necessary to assure an adequate supply of milk at all times. Fluctuations brought on by the seasonal nature of milk production and by changes in demand, such as are associated with the opening and closing of schools and holidays, require that some of the Grade A milk produced for the market be disposed of in manufacturing channels at certain times of the year. Milk disposed of to manufacturing outlets returns considerably less than that marketed for fluid use. Thus, a well defined and uniformly applied plan of use classification, with the proper pricing of milk in such uses, is necessary to prevent 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 participation of all those engaged in marketing milk in this market. Orderly marketing of the milk produced for fluid consumption requires uniformity of pay prices by handlers and a means whereby both the higher returns from the fluid market and the lower returns resulting from surplus milk may be shared equitably by all producers.

Producers regularly supplying the Georgia market have no assurance that their milk will not be down-allocated or replaced by their buying handlers with the surplus milk that may become available from time to time on an opportunity basis. Surplus supplies from nearby locations in South Carolina, North Carolina, and Alabama can be a threat in this regard. Although these States fix minimum prices that handlers must pay producers according to the utilization of their milk, such prices do not apply to out-of-State sales. This provides an incentive for handlers in these States to dispose of unneeded supplies at any price above that which they would realize in disposing of such supplies for manufacturing purposes.

The disposition of such milk in the proposed marketing area for Class I use, even for short periods, could have a deteriorating effect on the bargaining position of producers regularly supplying the market. The uncertainty among producers, caused by the threat of losing their market to such surplus supplies, tends to create instability in the market and to discourage rather than encourage the maintenance of an adequate supply of pure and wholesome milk for the market.

The problems of unstable marketing encountered by producers in the proposed marketing area are not uncommon in fluid milk markets where there is no overall program for effectively regulating producer milk supplies. Production of high-quality milk in Georgia requires a substantial investment. The present unstable marketing conditions could discourage continuation of the necessary production resources and thereby seriously threaten the maintenance of an adequate supply of milk for the market. A Federal order establishing class prices at reasonable levels with a marketwide pool for distribution of returns to producers would provide the needed market stability.

There is now a lack of detailed market information relative to the procurement and disposition of milk throughout the marketing area. Such information is essential to orderly marketing. The institution of Federal milk order regulation in the Georgia market would provide the basis for complete information on receipts and utilization of milk.

A marketing agreement and order for the Georgia marketing area as herein proposed would contribute substantially to the improvement of many of the conditions complained of by producers and would tend to effectuate the declared policy of the Act. The procedures required by the Agricultural Marketing Agreement Act would afford all interested parties the opportunity to take part in determining through public hearing what assistance the marketing system requires in order to insure an orderly market.

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

Marketing area. The marketing area for the proposed order should include 146 of the 159 counties in Georgia. Of the 13 counties in the State not in the proposed marketing area, seven are in the Chattanooga Federal order marketing area. These are Catoosa, Chattooga, Dade, Fannin, Murray, Walker, and Whitfield Counties. The remaining six counties border the northern perimeter of the proposed Georgia marketing area.

The 1960 census population of the 146-county area proposed to be regulated was 3,662,000. Much of the area is predominantly rural; 110 counties had less than 20,000 inhabitants in 1960. Only five counties had 100,000 or more inhabitants at that time. Principal cities in the proposed marketing area (and their 1960 population) include Atlanta (487,000), Savannah (149,000), Columbus (117,000), Augusta (71,000), Macon (70,000), and Albany (56,000).

The marketing area specified herein, plus Floyd, Gilmer, Gordon, Pickens, Rabun and Union Counties, was proposed by the producer associations and by proprietary handlers. The proponent handlers and operating cooperatives together operate 22 of the 39 distributing plants expected to be regulated by the order. However, one proprietary handler opposed the inclusion of Rabun County; another opposed the inclusion of Richmond, McDuffie, Columbia, and Burke Counties; and a third handler opposed including the counties of Floyd, Bartow, Gordon, Polk, and Haralson in the marketing area.

Until recently, the proposed marketing area was regulated by the Georgia Milk Commission. During the Commission's approximately 30-year existence, handlers and producers became accustomed to dealing with their marketing problems on a statewide basis. The producer organizations requesting an order represent all the Grade A dairy farmers in Georgia. Both handlers and producers now stress that orderly marketing in Georgia can be achieved best by applying Federal regulation to the entire State.

The disorderly marketing conditions complained of by producers are prevalent throughout the State. Therefore, in order to provide the needed market stability for such producers, it is necessary that the marketing area for the proposed order encompass the principal sales areas of the handlers being supplied by these producers.

The distribution of milk in Georgia is predominantly from plants located in the major metropolitan areas in the State. The distribution from these plants covers a wide geographical area and there is substantial overlapping of their sales areas. Several plants have sales in as many as 40 to 50 counties. The distribution routes from Atlanta plants, for example, extend northward to the Tennessee-Georgia State line and to the east and south where they overlap with sales routes of plants at cities as distant as Washington, Macon, and Albany. These distant plants similarly have overlapping distribution areas with other plants in the outlying areas from Atlanta.

Under the Milk Commission's rules, handlers were generally restricted in their sales to prescribed areas. Now, however, handlers are extending their distribution into additional areas. This may be expected to continue in view of better highways, improved transportation and refrigeration facilities, greater use of single service containers, and the increasingly important supermarket business in the various populated centers.

Because of these factors, a marketing area of lesser size than that specified herein would be inappropriate for the proposed order.

The route distribution of the Georgia plants that would be regulated is confined largely to the proposed marketing area; only seven have sales outside the proposed area. The out-of-area disposition of two plants in Columbus, which borders on Alabama, is 11 percent and 15 percent, respectively, of their total fluid sales. A plant at Augusta, which borders on South Carolina, has 34 percent of its sales outside the proposed marketing area. Four other Georgia plants have 10 percent or less of their sales outside the proposed marketing area.

A handler who operates a distributing plant at Augusta proposed that the Georgia counties of Richmond, McDuffie, Columbia, and Burke not be included in the marketing area. Inclusion of these counties would result in the full regulation of this plant. In supporting his request, the handler pointed out that the Department had denied consideration at the hearing of a proposal to include in the proposed Georgia marketing area the South Carolina counties of Aiken and Edgefield, in which counties he has fluid sales. Although he contended that regulation of the plant would place him

at a competitive disadvantage on his sales in South Carolina, the handler did not show that supplies are available to his South Carolina competitors at prices less than he would be required to pay under the proposed order.

Of the total fluid milk sales from the Augusta plant, 10 percent is made in Aiken and Edgefield Counties and 66 percent in Georgia, mostly in the four counties the handler wants excluded. Sales are also made in the four-county area from another plant in Augusta and from plants at Athens and Washington, Ga. The latter two plants, at least, would be regulated by the order even if the four counties were not included in the marketing area.

These four counties are an integral part of the sales areas of these four handlers. Producers who supply these handlers stressed the urgent need for order regulation. The disorderly marketing conditions now existing throughout Georgia are no less significant for producers supplying milk sold in these counties than for producers whose milk is sold elsewhere in the proposed marketing area.

A handler at Rome, in Floyd County, Ga., requested that the Georgia counties of Floyd, Bartow, Gordon, Polk, and Haralson not be a part of the marketing area. If these counties were left out of the marketing area, his plant would not be subject to regulation under the proposed order. He contended that because of his proximity to Chattanooga his plant should be regulated by the Chattanooga order instead of by the proposed Georgia order.

A cooperative in the Chattanooga market and the operator of an unregulated plant at Gadsden, Ala., opposed in their briefs and exceptions the inclusion of Floyd, Gilmer, Gordon, Pickens, and Union Counties in the Georgia marketing area. They argued that these five counties should be a part of the Chattanooga marketing area. The cooperative also filed concurrently with its exceptions a request for a hearing on a proposal to add the five counties to the Chattanooga marketing area.

The counties of Bartow, Haralson, Polk, Floyd, Gilmer, Gordon, Pickens, and Union were proposed in the recommended decision to be a part of the Georgia marketing area. Bartow, Haralson, and Polk Counties are an integral part of the sales areas of four Atlanta handlers who would be regulated under the order, even if the three counties were not included in the proposed marketing area. Moreover, these three counties are not a principal sales area of any handler who would not be regulated by the proposed order. Accordingly, no change should be made from the recommended decision's findings to include Bartow, Haralson and Polk Counties in the Georgia marketing area.

Floyd, Gilmer, Gordon, Pickens and Union Counties should not be included in the proposed marketing area at this time. The marketing information supplied by the Chattanooga order cooperative in support of its hearing request indicates that marketing conditions in some or all of these counties may have changed significantly since the time of the Atlanta hearing on which this decision is based. Therefore, a hearing will be called as soon as possible to receive additional and more current evidence concerning the marketing of milk in these counties and to determine which, if any, of them should be included in either the Georgia or Chattanooga marketing area.

A handler who has sales in Rabun County from both a plant in Atlanta and one in North Carolina requested that the county not be a part of the marketing area. The sales from the Atlanta plant, which would be regulated under the Georgia order on the basis of other sales in the proposed marketing area, are 0.1 percent of the plant's total fluid milk distribution. The only other sales in Rabun County, which is basically rural (1960 population—7,500), are by a North Carolina handler who also requested that the county be excluded from the marketing area. If Rabun County were included in the marketing area, the two North Carolina plants would be partially regulated under the proposed order on the basis of the distribution in this county.

Inclusion of Rabun County in the proposed marketing area is not necessary to assure orderly marketing for producers in Georgia requesting the order. The Atlanta plant would still be fully regulated with its producers sharing in the Class I sales in the market. The proposed inclusion of Rabun County in the Georgia marketing area is denied.

In the course of the operation of the order, the question may arise as to whether waterfront facilities and any governmental establishments within the boundaries of the designated marketing area are considered as within the marketing area. The handlers' proposal that they be a part of the marketing area should be adopted since they constitute regular outlets for milk by handlers who would be regulated under the order. No evidence was presented at the hearing which would justify their exemption. So that there will be no doubt as to the meaning or the intent of the application of the marketing area definition in the proposed order, it should be clear that all piers, docks, and wharves connected with any of the territory included in the marketing area shall also be a part of the marketing area. Also, all territory that is occupied by a government (municipal, State, or Federal) reservation, installation, institution, or other establishment shall be a part of the marketing area if any part of such territory is within the designated geographical limits of the marketing area.

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

If only a pool handler's "in-area" sales were subject to classification, pricing and pooling, a regulated handler with Class I sales both inside and outside the marketing area could assign any value he may choose 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.

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

Since Class I price increases are generally passed on to the public, such price increases necessitated solely because of inadequate performance standards for regulation would be contrary to the public interest. Therefore, in order to share in market pool funds, it is essential that plant operators perform marketing functions (i.e., deliver milk to market in specified amounts or proportions) which contribute to providing adequate and dependable market supplies. The marketing performance standards are essential provisions of a milk order if it is to attain the statutory purpose of assuring adequate supplies of milk in the most economical manner and in a way that best serves the public interest. The marketing performance

standards also minimize the effects of regulation on handlers who have only a minor proportion of their distribution in the regulated market. They do this by exempting such handlers from full regulation.

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

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

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

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

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

As an in-area route disposition requirement for pooling, producers proposed that a distributing plant's route disposition in the marketing area be not less than 10 percent of its total receipts. Handlers proposed that the minimum in-area route sales to qualify a distributing plant for pooling be 25 percent. Throughout the hearing, however, both producers and handlers emphasized that consideration in establishing the order's provisions must be given to the proximity of the adjacent Chattanooga order market. Under that order, a pool distributing plant must have Class I route sales in the marketing area of not less than 15 percent of its total Class I disposition, the same as herein proposed as a qualification for pooling.

Distribution is made on routes in the proposed marketing area by handlers fully regulated by the Chattanooga order. Likewise, plants that would be pool plants under the proposed order have route distribution in the Chattanooga marketing area. On the other hand, there is relatively little overlapping of sales areas of handlers who would be regulated by he proposed order and those regulated by Federal orders other than the Chattanooga order.

A plant from which milk is distributed in two marketing areas could be a pool plant under one order, in some months and in the second order in other months. This would occur, for example, when the greater quantity of monthly Class I distribution from the plant varies between the two marketing areas. A plant that qualifies as a pool plant under the two orders, as herein proposed, and as generally provided in Federal orders, would be pooled under the order in the marketing area of which its Class I distribution was greater during the month.

Because of the proximity of the marketing area of the proposed order with that of the Chattanooga order and the overlapping of sales areas of handlers under the two orders, it would be impracticable to have different standards for pooling distributing plants in the two orders. The in-area disposition requirement herein proposed has been determined to be an appropriate qualification for pooling in the Chattanooga order and can be expected to be an equally appropriate standard under the proposed order.

The 25-percent in-area factor proposed by handlers is substantially greater than that generally contained in the various orders. It was not shown that this larger than usual in-area sales requirement for pooling would accomplish anything different from that herein proposed or that it would better effectuate the intent of the Act than the 15 percent of a plant's Class I sales proposed herein as an in-area sales requirement.

The 10-percent factor proposed by producers as an in-area route disposition qualification for pooling is the percentage most frequently used for this purpose in Federal orders. This factor, however, would not be compatible with that provided in the adjacent Chattanooga order. There is greater competition for supplies and sales by handlers under the proposed order with Chattanooga order handlers than with handlers under any other order. It is appropriate, therefore, that the in-area factor to qualify for pooling under the proposed order be the same as that provided in the Chattanooga order. Moreover, under conditions in the proposed marketing area, the 10-percent factor proposed by producers would accomplish no purpose that would not appropriately be taken care of by the in-area qualification factor herein provided.

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

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

The requirement that a distributing plant's total route disposition be at least 50 percent of its receipts was proposed by both producers and handlers. This minimum percentage of a plant's receipts that must be disposed of on routes to qualify a distributing plant for pooling is provided in most orders, including the Chattanooga order. In conjunction with the minimum in-area sales requirement herein provided, the provision that a distributing plant's route disposition be at least 50 percent of its receipts should be an appropriate factor under conditions in the proposed marketing area. Moreover, since the 50 percent factor is the same as that provided in Chattanooga and most other orders, it will facilitate the coordination in the marketing of milk from common supply areas.

Limited quantities (as provided in the attached order) of Class I milk may be sold within the regulated marketing area

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

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

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

"Supply plant" is the other plant category for which standards for pooling must be provided. A supply plant would be defined to mean a plant from which a fluid milk product acceptable to a duly constituted health authority for fluid consumption is shipped during the month to a pool distributing plant.

To qualify in any month for pool plant status, a supply plant should ship to pool distributing plants in the form of fluid milk products at least 50 percent of its receipts of milk from dairy farmers. A plant thus shipping the major portion of its receipts from dairy farmers to regulated distributing plants is making a substantial contribution towards providing an adequate supply for the market and hence may reasonably be considered as an integral part of the fluid milk supply for the market.

A supply plant from which a proportionately lesser quantity of milk than herein provided is moved to pool distributing plants without otherwise having established a continuing association with the market should not, under present conditions, be considered as contributing sufficiently to the market supply to share in the pool funds.

At the present time, there is but one supply plant regularly serving the Georgia market. At irregular intervals, particularly when milk is short, supplemental supplies are received at pool distributing plants from supply plants that do not have a regular and continuing association with the market. Perhaps additional supply plants will become associated with the market in the future. Accordingly, provision should be made for such a supply plant to participate in the pool.

The demand for supply plant milk may vary seasonally and will be greatest during the season of low production. During the flush production months, milk received directly at distributing plants will generally be adequate for their needs and the demand for supply plant milk will be less. Requiring qualifying shipments to distributing plants during flush production months would result in the uneconomical movement of milk. During such months it would be more appropriate to leave the more distant milk at supply plants for manufacture in the distant area and to use local supplies for Class I. For this reason, the supply plant pooling requirements should not force milk to be transferred to distributing plants in the flush production months for manufacture in order to maintain the pool eligibility of a supply plant.

A supply plant that was a pool plant in each of the immediately preceding months of August through February should be a pool plant for the months of March through July irrespective of its shipments, unless the operator of such a plant elects nonpool status for the plant or the milk received at the plant does not continue to meet the requirements of a duly constituted health authority.

Providing pooling status to a plant in March through July on the basis of shipments in the preceding months will provide producer status to dairy farmers shipping to plants which are thus recognized as milk suppliers of the market. However, a plant should be permitted to withdraw from pool status at the operator's option in any of the months of March through July in which it has not otherwise qualified as a pool plant. In such case, it would not acquire pool status until it again met a minimum shipping requirement.

The pooling standards for supply plants herein proposed are the same as those provided in the Chattanooga order. They are reasonable and appropriate under current conditions in the proposed marketing area. In conjunction with other provisions in the proposed order, they will enable the dairy farmers associated with qualified supply plants to keep their milk pooled under the order throughout the year and will insure orderly and stable marketing conditions.

Some milk is 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 market. To do so would subject such plants to duplicate regulation. However, in order that the market administrator may be fully apprised of the continuing status of such a plant, the operator thereof should, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

A definition of "nonpool plant" is provided to facilitate formulation of the various order provisions as they apply to such a plant. A nonpool plant would mean a plant (except a pool plant) which receives milk from dairy farmers or is a milk manufacturing, processing, or bottling plant. Specific categories of nonpool plants would be defined as follows:

(1) "Other order plant" is a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act unless such plant is qualified as a pool plant under this order and a greater volume of fluid milk products is disposed of from such plant in this marketing area as route dispositions and to pool distributing plants than is so disposed of from such plant in the marketing area regulated pursuant to such other order;

(2) "Producer-handler plant" is a plant operated by a producer-handler as defined in any order (including this order) issued pursuant to the Act;

(3) "Exempt distributing plant" is a distributing plant operated by a governmental agency;

(4) "Partially regulated distributing plant" is a nonpool plant that is a distributing plant and is not an other order plant, a producer-handler plant or an exempt distributing plant; and

(5) "Unregulated supply plant" is a nonpool plant that is a supply plant and is not an other order plant, a producer-handler plant or an exempt distributing plant.

The University of Georgia maintains a dairy herd and processing plant in Athens. Producers proposed that this operation and similar operations operated by governmental agencies be designated as exempt distributing plants and be exempt from the provisions of the order.

The milk production and processing carried on at Athens are maintained in connection with the research and education functions of the University of Georgia. They are used and deemed necessary in connection with the various courses given and research done under the auspices of the University.

The extent to which other State educational institutions and mental and penal establishments within the proposed marketing area maintain herds and processing facilities to furnish milk to their residents was not presented on the record. However, it is not the practice of such institutions to sell milk in commercial channels in competition with proprietary handlers and producers.

It is not likely that the University of Georgia plant (or plants of governmental agencies similarly situated) will have production from its farm in excess of its usual requirements. Such excess production if it should develop could not be depended upon by Georgia handlers as a regular or supplemental supply during the periods when the market may be short of milk. It would clearly be surplus milk incidental to the operation of the University's milk plant. Accordingly, the order should provide that milk received at pool plants from such operations be allocated first to Class II. Any such milk allocated to Class I at a pool plant would be subject to a compensatory payment at the difference between the Class I and Class II prices.

The University of Georgia's milk plant (and similar institutions) may at times be required to purchase supplemental supplies from handlers who would be regulated by the proposed order. It may reasonably be expected that purchases in the form of fluid milk products would be needed and used for Class I purposes. The order should provide, therefore, that fluid milk products transferred or diverted from pool plants to exempt distributing plants be classified as Class I.

To qualify for pooling under the proposed order, milk must be received at a pool plant or diverted under specified conditions from a pool plant to a nonpool plant. Because an exempt distributing plant would be a nonpool plant, milk received at such plant from sources other than regulated plants and producers under the Georgia order would not be subject to the provisions of the order. Therefore, milk from producers' farms received at an exempt distributing plant could qualify as producer milk under the order only on the basis of its having been diverted from a pool plant. Otherwise, such milk would lose its producer milk status and would not be pooled or priced under the Georgia order.

Handler. The primary impact of regulation under an order is on handlers. A handler definition is necessary to identify those individuals from whom the market administrator must receive reports, or who have financial responsibility for payment for milk in accordance with its classified use value. As herein provided, the definition includes (a) persons operating pool plants; (b) a person operating a partially regulated distributing plant; (c) a cooperative association with respect to producer milk diverted from a pool plant to a nonpool plant for its account; (d) a cooperative association with respect to its members' milk delivered in a tank truck under its control from the farm to a pool plant; (e) a person in his capacity as the operator of an other order plant; and (f) a producer-handler.

Designating as handlers the operators of the various types of plants that may be associated with the market is necessary so that the market administrator may require of them the reports to determine the regulatory status of the plants.

A number of cooperatives operate plants that would qualify as pool plants under the proposed order. These cooperatives and other producer associations in the market must assume the responsibility of balancing supplies among various handlers. Milk not needed for fluid uses generally can be most economically handled either at the plants of cooperatives with manufacturing facilities or by diversion directly to nonpool manufacturing plants. To facilitate the diversion to nonpool plants, a cooperative is accorded handler status for milk which it causes to be so diverted from any pool plant for its account.

Requiring a cooperative to be a handler for milk delivered from the farm to a pool plant in a tank truck owned and operated by or under contract to the cooperative will afford a practicable basis of accounting for such milk. In addition, it will provide added flexibility to a cooperative's operations in allocating its members' milk among handlers and will facilitate the diversion of such milk to nonpool plants when it is not needed at regulated plants.

Once milk from a producer has been commingled with milk of other producers in a tank truck, there is no further opportunity to measure, sample, or reject the milk of any individual producer whose milk is included in the load. A similar situation prevails when the milk of an individual producer is delivered in a tank truck to two or more plants. The operator of a pool plant to which bulk tank milk is delivered has an opportunity to determine only the weight and butterfat tests of the total load.

If a tank truck picking up milk at the farm is operated under the supervision of a cooperative association, it is the association that determines the weight and butterfat content of each producer's milk. Handlers have no control and generally take no part in determining the weight and butterfat tests of milk at the farm. In some instances, handlers may not even know from which farms their milk is shipped.

The milk delivered by the cooperative as a bulk tank handler would be considered as a receipt of producer milk by the operator of the pool plant at which it was physically received. The pool plant operator's obligation for such milk to the producer-settlement fund, to the administration fund and to the cooperative would be the same as for producer milk received directly from the farm of an individual producer.

In some instances, as discussed elsewhere in this decision, differences between the quantities of producer milk determined at the farm and ascertained as physically received by the operator of the pool plant would be considered a receipt of producer milk by the cooperative at the location of the pool plant. For such differences the cooperative (instead of the pool plant operator) would be required to settle with the producer-settlement and administration funds.

Producer-handler. Producer-handler should be defined as any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no Class I milk from sources other than his own farm production and pool plants;

(c) Disposes of no other source milk as Class I milk; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from pool plants) and the operation of the processing and packaging business are his personal enterprise and risk.

The order is not intended to establish minimum prices for producer-handlers, but they should be required to make reports to the market administrator. Such reports are necessary to determine whether the operator continues to meet the producer-handler definition and, thus, exemption from the pooling and pricing provisions of the order.

It is expected that about seven persons would qualify as producer-handlers under the order. None of these made an appearance or testified at the hearing. Their operations were described by other witnesses as relatively small.

A producer-handler's exemption from pooling and pricing should 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 Georgia market. It is appropriate, therefore, to provide that to maintain producer-handler status the maintenance, care and management of the dairy animals and other resources necessary to produce milk and the processing, packaging and distribution of milk shall be the personal enterprise and risk of the person involved. The term producer-handler is not intended to include any person who does not accept the responsibility and risk for the operation of the plant in which the milk of his own production is processed and bottled for sale.

Although it is expected that he would rely primarily on his own farm production, a producer-handler should be allowed to obtain supplemental supplies from pool plants without losing his exemption. There may be occasions when producer-handlers need to supplement their own production to supply their regular Class I outlets. As provided herein, milk obtained by producer-handlers from pool plants would be priced at the Class I price. Handlers and cooperatives proposed that such purchases not be permitted. However, there is no indication from the record that such a restriction would be necessary to assure that producer-handlers would not have a significant advantage over regulated handlers under present marketing conditions.

Any milk which a regulated handler receives from a producer-handler would be other source milk and, therefore, would be allocated to the lowest use classification after the allocation of shrinkage on producer milk. This is appropriate since milk disposed of to

another handler normally would be surplus to the operation of the producer-handler.

It was proposed at the hearing that a producer-handler who failed to qualify as such in 1 month would lose his producer-handler status for the next 12 months. Proponents maintained that this would prevent him from exploiting the pool by becoming regulated when it was to his advantage, while retaining his exempt status at other times. Such a provision, however, could result in hardship in some instances. For example, an inadvertent failure to meet all requirements for producer-handler status in 1 month could cause a person to lose his designation as a producer-handler for an entire year. The regulatory effect of such action might too often tend to be disproportionate to the relative significance of the requirement that was not met.

It was proposed also to limit producer-handler status to operations of not more than 30,000 pounds monthly. This should not be adopted. The quantities of milk handled by the several handlers who would qualify as producer-handlers under the order was not presented on the record. Apparently, however, the milk handled by these producer-handler operations is an extremely small proportion of the milk in the market.

No testimony was presented to show that the size of a producer-handler's operation per se, currently or potentially, would provide a cost advantage on Class I milk to such operation or that such an operation handling more than 30,000 pounds of milk monthly would be a disruptive factor in the market. Moreover, it was not established that exempting those persons handling more than 30,000 pounds of milk monthly, who would otherwise qualify as producer-handlers under the order, would affect adversely the competitive position of regulated handlers or producers.

A handler, whose own production is about 10 percent of his supply, proposed that he be designated a producer-handler for his production. The production of this handler's farm is distributed under a "certified milk" label as a premium product. It is sold to consumers at a price higher than other brands of milk. The remainder of his supply, which is from other dairy farmers, is not sold as certified milk.

It is not uncommon for handlers through advertising and other means to benefit from the use of established brand names. The proponent handler, who sells milk in the Atlanta area, is apparently the only person who sells milk under a certified milk label in Georgia. He is compensated for the demand he has created for his product by the higher returns from consumers. Whether any other milks are sold in the market to consumers at a premium price was not established on the record.

If the certified milk of the proponent handler or any special milk has a greater value than other designated milks, the premium price it is able to command should be paid for by the consumers to whom it has the greater value. It would be inappropriate to provide within the framework of the order a subsidy to the producer or consumer of that milk at the expense of other producers on the market.

Route disposition. The term "route disposition" would mean a delivery to a retail or wholesale outlet (except to a plant), either directly or through any distribution facility (including disposition from a plant store, vendor, or vending machine), of a fluid milk product classified as Class I.

Fluid milk products may be moved from a milk plant to a distribution facility such as a warehouse, loading station or storage plant. The distribution from such latter points would be considered a route disposition from the milk plant. To do otherwise would be inappropriate because it would consider the disposition of fluid milk products to have been made at the temporary storage facility instead of at the location at which such products are received by retail and wholesale purchasers.

Reload point. A "reload point" should be defined as a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering the plant. A reload point would not be considered a plant. A reload operation on the premises of a plant, however, would be considered a part of the plant operations and not a reload point under the order.

A reload point is an assembly point where milk from smaller tank trucks is transferred into larger over-the-road tankers. Such over-the-road tankers are capable of traveling longer distances with a larger payload.

The operation of a reload point is distinguished from the operation of a plant in that a reload point has no facilities for either receiving, holding or processing of milk. It is a part of the transportation system for the milk en route from the farm to the pool plant.

The purpose of a reload point definition is to provide clearly that the facility at which the milk is transferred from a farm tank pickup truck to a larger truck for further transportation to a pool plant is not a plant, and is not a point of pricing, but is merely a part of the transportation system involved in transporting the milk from the dairy farm to the pool plant.

With the advent of the farm bulk tank system, the use of reload points is becoming more commonplace. Whether any are now used in Georgia was not established on the record. However, a reload point definition is desirable in the order to specifically distinguish such an operation from the operation of a plant involving the receiving, cooling, storing, and processing of milk.

The transfer of milk between tank trucks on the premises of a plant would be considered a part of the plant operation. It may reasonably be considered that any operation on the premises of a plant, whether involving a mobile or fixed facility, is a part of the plant operation.

Producer. Producer should mean any person (except a producer-handler or a governmental agency in its capacity as the operator of an exempt distributing plant) who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted therefrom to a nonpool 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 Georgia order and the receipts at handlers' plants from all other sources.

"Producer" should not include a person with respect to milk that is physically received at a pool plant as diverted milk from an other order plant if a Class II classification under this order is designated for such milk and it is subject to the pricing and pooling provisions of another Federal order. Such a provision will contribute to orderly marketing by facilitating the movement of milk for manufacturing purposes from an other order plant to a pool plant.

Producer milk. Producer milk is intended to include all milk that is fully regulated by the order. Accordingly, it should be defined as all skim milk and butterfat contained in milk received at a pool plant directly from dairy farmers and milk diverted from a pool plant to a nonpool plant under certain conditions. As provided elsewhere in this decision, milk delivered by a cooperative as a bulk tank handler would be considered as a receipt of producer milk by the operator of the pool plant at which it was physically received.

When milk is not needed in the market for Class I purposes, the movement of such milk to a nonpool plant for manufacturing purposes should be facilitated. It is necessary, however, to provide limitations on the amount of milk which may be diverted so that only that milk which is genuinely associated with the market will be diverted and only at those times when it is not needed in the market for Class I purposes.

Producers associated with this market are not expected to produce large quantities of milk in excess of the market's fluid requirements. Diversion provisions are provided herein primarily to enable handlers and cooperative associations to divert producer milk on such occasions as weekends and holidays when the milk is not needed in the market for Class I purposes.

Diversion of producer milk by a cooperative to a nonpool plant should be limited to 25 percent of the milk physically received from its producer-members at pool plants during the month. Similarly, a pool plant operator (other than a cooperative association) would be permitted to divert for his account up to 25 percent of the producer milk physically received at his plant during the month from producers who are not members of a cooperative association.

Unless it is diverted for manufacturing purposes, producer milk should not include any milk moved from a farm directly to an other order plant. Such

milk's eligibility to be included under a Federal order would more appropriately be determined at the other order plant where received. In fact, diversion to such plants, if permitted unconditionally, could result in the pricing and pooling of the same milk under two orders.

Providing for the diversion of producer milk to an other order plant for manufacturing purposes would contribute to orderly marketing by facilitating the movement of milk for manufacturing from a pool plant to an other order plant. In some instances, a pool plant operator may find that his most desirable outlet for unneeded supplies is an other order plant. Specifying under the order that such milk may be diverted if a Class II classification (or comparable utilization under the other order) is designated for such milk pursuant to the other order will tend to insure the integrity of the regulation under both orders.

Only that milk genuinely associated with the market should be eligible to be diverted to nonpool plants. Therefore, it is provided that at least 10 days' production of a producer must be received at a pool plant during the month to qualify any of his production in the same month for diversion within the limits described above. A producer shipping on an every-other-day basis would under this standard be required, in effect, to ship only 5 days. The requirement herein adopted is sufficient to establish a producer's association with the fluid market and still permit the necessary flexibility in diverting milk not needed for fluid use.

Milk diverted to nonpool plants in excess of the limitations provided would not be considered producer milk. Hence, eligibility for pricing and pooling under the order would be forfeited on a quantity of milk equal to such excess. In such instances, the diverting handler would specify which milk is ineligible as producer milk. If the handler fails to make such designation, thereby making it infeasible for the market administrator to determine which milk was overdiverted, all milk diverted to nonpool plants by such handler would be made ineligible as producer milk.

Producer milk that is diverted should be priced at the location of the plant to which diverted instead of at the location of the pool plant to which it is customarily delivered. If such milk were priced at the pool plant from which diverted, producers located close to the market would, in effect, be subsidizing more distant producers when the latters' milk is diverted to distant manufacturing plants. This is because all producers in the market would be paying through the pool a transportation cost on milk which is not moved to the market and on which an equivalent transportation charge is not incurred by the more distant producers.

Other source milk. A definition of "other source milk" is necessary to facilitate the application of the order to the various categories of receipts at a regulated plant.

Other source milk should include all skim milk and butterfat contained in or represented by (a) fluid milk products utilized by the handler in his operation (except producer milk and fluid milk products from pool plants), (b) all manufactured dairy products from any source (including those produced at the plant) which are reprocessed or converted into another product during the month, and (c) any disappearance of nonfluid milk products in a form in which they may be converted into Class I products and which are not otherwise accounted for under the order.

In order to verify the actual utilization of milk received from producers, it is necessary that the market administrator be in a position to reconcile all receipts of milk and dairy products with the disposition records of the plant. If such records cannot be reconciled, the handler must be held responsible for the shrinkage or the overrun which occurs as a result of the discrepancy between records of receipts and disposition. Otherwise, the handler with improper records would be in a position to gain an advantage over his competitors who properly account for all milk and dairy products received. It is equally necessary that the handler be required to account for all nonfluid dairy products in a form in which they can be converted into Class I products. Otherwise, a handler, by failing to keep records of the nonfat dry milk and similar products which can be reconstituted into skim milk or other fluid products, would gain a competitive advantage over other handlers in the market.

Fluid milk products. "Fluid milk products" should mean milk, skim milk, buttermilk, flavored milk, flavored milk drinks, concentrated milk, cream and mixtures of cream and milk or skim milk. The items designated as fluid milk products pursuant to this definition are those which, when disposed of by handlers, are included as Class I milk.

Producers proposed that filled milk also be a fluid milk product. This issue is reserved for a later decision.

A hearing held at Memphis, Tenn., in February, April, and May 1968 (33 F.R. 2785) dealt with the disposition or potential disposition in all Federal order markets of filled milk and certain other products containing milk or milk derivatives which are disposed of in fluid form. Evidence was received as to the need for a coordinated program of regulation of such products in all Federal order markets. No decision based on the Memphis hearing has been issued.

Producers indicated that the treatment of filled milk under the Georgia order should be coordinated with the results of the Memphis hearing. Little, if any, filled milk is being distributed in the Georgia market at the present time. Accordingly, no action is taken herein on the filled milk issue pending the outcome of the Memphis hearing.

(b) *Classification of milk.* Milk and milk products received by handlers should be classified on the basis of skim milk and butterfat according to the form in which, or the purpose for which, such skim milk and butterfat was used or disposed of as Class I or Class II milk.

Milk is received by handlers directly from dairy farmers, from other handlers, and from other sources. Milk from all these sources is commingled in handlers' plants. It is necessary, therefore, to have a plan for allocating the uses of milk to each source of supply in order to afford a means to establish the classification of producer milk and to apply the classified pricing plan.

The products included in Class I milk are required by health authorities in the proposed marketing area to be produced in compliance with the inspection requirements of a duly constituted health authority. The extra cost of getting quality milk produced and delivered to the market in the condition and quantities required makes it necessary to provide a price for milk used in Class I products considerably above the manufacturing milk price. The higher price should be at a level which will yield a blend price to farmers that will encourage production of enough milk to meet market needs.

In accordance with these standards, Class I milk should include all skim milk and butterfat disposed of in the form of milk, skim milk, buttermilk, flavored milk, flavored milk drinks, concentrated milk, cream (except sour cream), and mixtures of such cream and milk or skim milk. These Class I products would be designated in the order as "fluid milk products." Class I, however, should not include any of the above products which are sterilized and in hermetically sealed glass or metal containers. Fluid milk products to which extra skim milk solids have been added or frozen or concentrated milk disposed of for fluid use likewise would be included as Class I milk. Any skim milk and butterfat not accounted for in Class II would be included in Class I.

Buttermilk was not included in Class I in the recommended decision. Instead, a separate classification was provided for the skim milk and butterfat used to produce buttermilk.

Buttermilk sales are a significant portion of the total disposition of handlers in the market. In the aggregate, they are 10 to 15 percent of the Class I disposition in the market. The extent that handlers use fluid milk and/or nonfat dry milk to produce buttermilk is not indicated on the record.

In their exceptions, producers reiterated their request for a Class I classification for buttermilk. The record shows that fluid milk or skim milk used to produce buttermilk must come from inspected sources. Moreover, when producers are relied upon for the market's requirements for buttermilk, they incur an additional cost to meet such requirements in the same manner as they do in the production of milk of acceptable quality for all Class I products. It is appropriate, therefore, that the fluid milk and skim milk used to produce buttermilk be classified in Class I.

To the extent that nonfat milk solids are utilized in the production of "reconstituted buttermilk," the skim milk

equivalent of such solids should be classified in Class II. Georgia statute specifies the standards for reconstituting buttermilk. The nonfat solids used to reconstitute buttermilk are not subject to the inspection requirements of the health authorities in the marketing area. In addition, reconstituted buttermilk offered for sale in the marketing area must be identified as such and labeled to disclose its contents. In effect, buttermilk reconstituted from nonfat dry milk is a product different from buttermilk made from fluid milk or skim milk from inspected sources.

Under some circumstances, nonfat milk solids may be utilized through reconstitution or fortification in the preparation of fluid milk products distributed in the marketing area. For the purposes of accounting for the skim milk required to produce such products, the added nonfat milk solids should include the normal quantity of water originally associated with the solids. The volume of the reconstituted or fortified fluid milk product (except buttermilk) classified in Class I would be the quantity equivalent to the volume of the same product made without the addition of nonfat milk solids. The remaining volume of the product, which represents the skim milk equivalent of added nonfat milk solids, should be classified as Class II.

Skim milk and butterfat unaccounted for in a Class II utilization by a handler should be classified in Class I. Such a provision is necessary in the proposed order to insure the integrity of the regulation. Otherwise, a handler could gain an advantage by not fully accounting for the disposition of the milk handled in his plant. In view of this, it is necessary that the utilizations at a plant which are included in the Class II category be explicitly set forth in the order.

Class II should be all skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), sour cream, sour cream products (e.g., dips), eggnog, yogurt, aerated cream products, butter, cheese (including cottage cheese), evaporated or condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, custards and puddings, and sterilized products in hermetically sealed glass or metal containers.

Some handlers manufacture custards and puddings in connection with their milk plant operations. Because of this, handlers requested that the order specify a Class II classification for such products, which consist of varying mixtures of milk and nonmilk ingredients. It is appropriate, therefore, that the order specify that the skim milk and butterfat used to produce such products in a milk plant be included in the Class II classification.

In this market, sour cream and sour cream mixtures (e.g., "party snacks" or "dips") are sold in competition with salad dressings. Because of this, producers proposed a Class II classification for sour cream and sour cream mixtures. The butterfat in sour cream mixtures is usually below the minimum standard percentage for sour cream. Such products are not, however, generally considered in the fluid milk product category. It would be appropriate, therefore, that the skim milk and butterfat in fluid milk products combined with sour cream, and otherwise used in the manufacture of sour cream products, such as party snacks and dips, be classified in Class II.

Inventories of fluid milk products at the end of each month enter into the accounting for a handler's current receipts and utilization. To facilitate the accounting procedure, the month-end inventories of bulk fluid milk products should be classified in Class II. In the following month, they would be subtracted under the allocation procedure from any available Class II milk. The higher use value of any such skim milk and butterfat allocated to Class I in the following month would be reflected in returns to producers.

Fluid milk products on hand in packaged form at the end of the month should be classified as Class I milk. This classification conforms with the ultimate utilization of most of the packaged fluid milk products in inventory. This results in fewer adjustments in classification and handlers' obligations than if classified in Class II as in the base of bulk milk.

To insure that all handlers pay the current month's Class I milk price for Class I dispositions during the month, it is provided that, if the Class I milk price increases over the previous month, the handler will be charged the difference between the Class I milk price for the current month and the Class I milk price for the preceding month on the quantity of ending inventory assigned to Class I milk in the preceding month. Likewise, if the Class I milk price decreases, the handler will receive a corresponding credit.

Inventories would include only the skim milk and butterfat in bulk and packaged fluid milk products on hand at the end of the month. Since the disposition of skim milk and butterfat in nonfluid milk products has been accounted for when used to manufacture a dairy product (and classified as Class II, such skim milk and butterfat would not be included in inventories.

Inventories of fluid milk products at the beginning of the first month in which this order becomes effective or during any month in which a plant becomes regulated for the first time should be allocated to any available Class II utilization of the plant during the month. This procedure will preserve the priority of assignment to current receipts of producer milk of the current Class I utilization of the plant.

Skim milk and butterfat in fluid milk products dumped or disposed of by a handler for livestock feed should be classified as Class II milk. Such outlets often represent the most efficient means of disposing of surplus skim milk. Transportation and handling costs are such that it is uneconomical to ship relatively small quantities of unneeded skim milk to trade outlets for surplus disposal. In the case of route returns of such products as homogenized milk and chocolate milk it is difficult or impracticable to salvage the butterfat for further use. Such butterfat which is not salvageable should be classified as Class II when dumped or disposed of for livestock feed.

It would not be practicable to permit in an unlimited manner the dumping of skim milk and butterfat by pool plant handlers. Neither would it be appropriate to classify such skim milk and butterfat for which no better outlet is available in other than Class II. Accordingly, the order should clearly specify a Class II classification for the skim milk and butterfat in fluid milk products dumped, provided that the market administrator is notified in advance and afforded the opportunity to verify the dumping.

Skim milk and butterfat in fluid milk products delivered in bulk form to and used at a commercial food processing establishment (other than a milk plant) in the manufacture of bakery products, candy, or packaged processed food products for consumption off the premises should be classified in Class II. Such commercial food establishments usually can readily substitute concentrated milk products (e.g., condensed milk, butter, nonfat dry milk) in place of fluid milk products in their operations. To provide other than a Class II classification for the skim milk and butterfat in fluid milk products moved to commercial food establishments could result in losing for local producers these established outlets for Class II milk.

Frozen cream is most generally used to produce frozen desserts or other Class II products. Under some conditions, however, frozen cream may be ultimately disposed of as fresh fluid cream or used in the production of other Class I products such as flavored milk drinks. The classification of skim milk and butterfat used to produce frozen cream should, therefore, be based on the actual disposition of such cream. Frozen cream placed in storage should be considered as a Class II classification in the same manner as any bulk fluid milk product in a handler's inventory at the end of the month. Its Class II classification would be definitively established in any month in which it was used to produce a Class II product or qualified as a Class II transfer to another plant. Frozen cream that was not accounted for in a manufactured product would necessarily be classified in Class I.

Waste and loss of skim milk and butterfat experienced in plant operations are referred to as "shrinkage". Since shrinkage represents disappearance of milk for which the handler must account but for which no direct return is realized, it should be considered as Class II milk to the extent that the amount is reasonable and is not the result of inadequate or faulty records.

The maximum shrinkage allowance in Class II at each pool plant should be 2 percent of producer milk, plus 1.5 percent of producer milk from a cooperative as a handler and bulk fluid milk products (except cream) from other pool plants, and less 1.5 percent of bulk fluid milk

products (except cream) transferred or diverted to other plants. The 1.5 percent shrinkage allowance would be allowed on bulk fluid milk products received from other order plants and unregulated supply plants exclusive of the quantity of such receipts for which a Class II utilization is expressly requested by a handler.

The proposed 2 percent maximum shrinkage allowance of producer milk in Class II is substantially the same as provided in all but some few of the 76 orders in effect at the time of the hearing. Because of its wide applicability, handlers proposed its inclusion in the proposed order. A producer proposal would instead provide for prorating shrinkage up to 2 percent of a plant's producer milk according to the utilization at the plant. This would reduce substantially the quantity of shrinkage eligible for a Class II classification.

The basis for the producer shrinkage proposal was the claim that plant losses are directly related to utilization at a plant. No testimony was presented, however, of any specific experience in the market to substantiate quantitatively the producer claim. Neither was it otherwise shown that conditions in the proposed marketing area justify a shrinkage allowance in Class II that is substantially below that found to be reasonable and appropriate in most other Federal order markets.

Plants which are operated in a reasonably efficient manner and for which acceptable records of receipts and utilization are maintained should not have plant losses in excess of the maximums provided. Any shrinkage in excess of the maximums should be classified as Class I milk. This is reasonable and necessary to strengthen the classified pricing plan and will tend to encourage the maintenance of adequate records and the efficient handling of milk.

The maximum shrinkage allowance in Class II herein provided is based on the experience of the pool plant at which the milk classified is received. If a handler operates more than one plant, he would compute his shrinkage allowance for each plant separately. To provide otherwise would establish different standards for single and multiple plant operators and accord an unwarranted advantage to the latter. Combining the receipts and utilization figures of two or more plants for determining shrinkage could have the effect of allowing a Class II classification for shrinkage in excess of the limits herein found to be appropriate. This is because the excess shrinkage at a plant (which is subject to a Class I classification) would be eligible to be classified in Class II if combined with the classification of another plant of a handler.

The shrinkage allowance on transfers of cream that was proposed in the recommended decision is modified herein in recognition of handlers' exceptions on this issue. Although a shrinkage allowance for the transferee plant is appropriate on transfers of milk and skim milk between plants, bulk cream most frequently is moved from a pool plant to other facilities for further processing into manufactured dairy products such as butter and ice cream. The major loss in handling cream is in the separation process whereby the bulk cream is removed from the milk. It is appropriate, therefore, to allocate the full shrinkage allowance allocable to the cream to the milk at the plant at which the cream was separated, the transferor pool plant.

As provided elsewhere in this decision, a cooperative would be the handler for milk delivered from producers' farms to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative. When a cooperative is a handler under such conditions, the operator of a pool plant receiving this bulk tank milk directly from the farm would settle with the pool and the cooperative for such milk in the same manner as a receipt from producers. However, the full 2 percent allowance for shrinkage would be permitted the handler only if he is purchasing the milk on the basis of farm weights and has so notified the market administrator. Otherwise, the maximum Class II shrinkage allowed the handler on such milk would be 1.5 percent and the cooperative would be responsible for any difference between the gross weight of producer milk received in the tank truck at the farms and that delivered to pool plants. This procedure is followed in a number of other orders and provides a reasonable basis for the allocation of the shrinkage allowance in those instances wherein the cooperative is the responsible handler with respect to milk picked up at producers' farms in bulk tank trucks.

In those instances in which a pool plant operator is not purchasing farm tank milk (from a cooperative as a handler) on the basis of farm weights, any difference between the quantities of producer milk determined at the farm and ascertained as physically received by the operator of the pool plant would be considered a receipt of producer milk by the cooperative at the location of the pool plant. The cooperative would report such differences, which may reasonably be expected to be within 0.5 percent of the quantity of the producer milk determined on the basis of farm weights during the month, to the market administrator for inclusion in the monthly pool computation. Up to 0.5 percent of the producer farm tank milk involved would be reported in the pool as Class II; any such difference in excess of the maximum allowable Class II shrinkage of 0.5 percent would be Class I. The cooperative would be responsible for settling with the producer-settlement fund for the total quantity of shrinkage as reported. If the quantity of bulk tank milk physically received at a pool plant from a cooperative during the month is the same as the farm weights, the cooperative would have no settlement to make with the producer-settlement fund on such milk.

It is appropriate to limit the volume of unregulated supply plant milk and other order milk that may be classified in Class II as shrinkage since these types of receipts are allocated pro rata to class uses along with quantities received from pool plants and producers. Under the allocation system provided, such other source milk will share with producer milk in any shrinkage allocated to Class I when the specified Class II shrinkage limitations are exceeded. No specific shrinkage limit is necessary on unregulated or other order milk that does not share a pro rata assignment and thus is allocated first to Class II uses, since the allocation procedure insures assignment of such milk to Class II in an amount at least equal to the shrinkage that may be associated therewith.

To insure an equitable assignment of total shrinkage to the two categories of receipts (i.e., receipts for which there is a percentage limitation for Class II shrinkage assignment and receipts for which there is no such limitation), the total shrinkage should be prorated to these two categories.

Skim milk and butterfat are not used in most products in the same proportions as contained in the milk received from farmers and, therefore, should be classified according to their separate uses. The skim milk and butterfat content of milk products received and disposed of by a handler can be determined through certain testing procedures. Some products such as ice cream and condensed products present a difficult problem of testing in that some of the water contained in the milk has been removed. It is desirable in the case of such products to provide an appropriate means of ascertaining the amount of skim milk and butterfat used to produce such products. The accounting procedure to be used in the case of concentrated milk products, such as condensed milk or nonfat dry milk, should be based on the pounds of milk or skim milk required to produce such product.

Skim milk and butterfat used to produce Class II products should be considered to be disposed of when such products are produced. Handlers will need to maintain stock records on such products, however, to permit audit of their utilization records by the market administrator so that verification of such utilization may be made. If a handler fails to keep the necessary records for verification purposes, the skim milk and butterfat will be reclassified as Class I milk.

Each handler must be held responsible for a full accounting of all his receipts of skim milk or butterfat in any form. A handler who first receives milk from dairy farmers should be held responsible for establishing the classification of and making payment for such milk. Fixing responsibilities in this manner is necessary to effectively administer the provisions of the order.

Except for the quantities of shrinkage that may be classified in Class II, all skim milk and butterfat for which the handler cannot establish utilization should be classified as Class I milk. This provision is necessary to remove any advantage that might accrue to handlers who fail to keep complete and accurate records and to assure that dairy farmers receive payment for their milk on the

basis of its use. Accordingly, the burden of proof should be on the handler to establish the utilization of any milk as other than Class I.

Transfers. Some fluid milk product items may be disposed of to other plants for Class II use. It is necessary, therefore, to provide specific rules so that the classification of such transfers may be determined under this order.

Fluid milk products transferred from a pool plant to the pool plant of another handler should be Class I unless both plant operators claim a Class II classification on their monthly reports to the market administrator and sufficient Class II utilization is available at the transferee plant after the allocation of its receipts of other source milk. If other source milk (e.g., nonfat dry milk) to which a surplus value inherently applies is received at the shipping plant during the month, the skim milk or butterfat in fluid milk products involved in such transfer should be classified so as to allocate the least possible Class I utilization to such other source milk. If the shipping handler receives other source milk from an unregulated supply plant or an other order plant, the transferred quantities, up to the total of such receipts, should not be Class I to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant.

The above provisions governing transfers between pool plants will contribute to obtaining the best possible utilization of producer milk. Such provisions will tend to insure that producer milk used in Class I will not be classified in a lower class when interplant shipments involve a pool plant with receipts of other source milk. Unless such safeguards are provided, a high-utilization plant could be used as a conduit for assigning milk obtained from nonpool sources for manufacturing purposes to a higher utilization (at the expense of producer milk) than it would receive by direct delivery to the plant at which it is actually utilized.

Fluid milk products transferred or diverted to a nonpool plant (other than transfers to the plant of a producer-handler, an exempt distributing plant, or an other order plant) should be classified as Class I milk unless a lower classification is requested and the operator of the nonpool plant makes his books and records available to the market administrator for the purpose of verifying the receipts and utilization of milk and milk products in the nonpool plant. Such transfers to the nonpool plant should be assigned first to its Class I disposition in regulated areas and thereafter to other Class I usage in excess of receipts from dairy farmers who regularly supply the nonpool plant, and the remainder to the Class II uses of the plant. Provision should also be made for sharing the Class I utilization of the nonpool plant when transfers to the plant are made from other regulated plants.

The method herein provided for classifying transfers and diversions to nonpool plants accords equitable treatment to order handlers and also gives appropriate recognition to handlers in other regulated markets in the classification of milk transferred to a common nonpool plant. Giving highest use priority to dairy farmers directly supplying a nonpool plant recognizes that they are the regular and dependable source of supply of milk for fluid use at such plant. The proposed method of classification will safeguard the primary functions of the transfer provisions of the order by promoting orderly disposal of reserve supplies and in assuring that shipments to nonpool plants will be classified in an equitable manner.

Fluid milk products transferred to other order plants would be classified according to the utilization assigned them at such other order plants. The findings and conclusions in this decision relating to the allocation provisions and the findings and conclusions adopted therein substantiate the procedures for effectuating such interorder transfers.

Allocation. Because the value of producer milk is based on its classification, the order must prescribe an assignment of receipts from all sources during the month to establish such classification.

The system of allocating handlers' receipts to the various classes should be basically the same as that adopted in the decision issued June 19, 1964, for 76 milk orders integrating into each order's regulatory plan milk which is not subject to classified pricing under any order and receipts at pool plants from other order plants. Official notice was taken of that decision at the hearing (29 F.R. 9002). 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.

Producers and handlers testified that the method adopted 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. Accordingly, they adopted the findings and conclusions contained in that decision as their own justification for incorporating these provisions in the proposed order.

The aforesaid decision sets forth the standards for dealing with unregulated milk under Federal orders 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.

The allocation provisions of the order should specify that a handler may receive packaged fluid milk products from a federally unregulated plant (without a compensatory payment charge) if an equivalent amount of Class I milk under the order was transferred or diverted to that plant. Such a provision, which is included in the nearby Chattanooga and Knoxville orders, was proposed by handlers. There was no opposition to it.

It is not always economically practicable for a handler to package every fluid milk product sold by him in the various sizes and types of containers demanded by the trade. When some such items are not prepared in their plants, handlers may obtain them from other plants. It is necessary, however, to protect the integrity of the pool by insuring that such products received at pool plants are subject to the same treatment as other fluid milk products handled at the plant.

If Class I milk is transferred or diverted from pool plants to a federally unregulated plant in an amount equal to the packaged fluid milk products received from the unregulated plant, the integrity of the pool will be insured. On the other hand, if the quantity of packaged fluid milk products received from the unregulated plant exceeds the amount of Class I milk transferred or diverted from pool plants, the difference would be treated the same as other source milk received from an unregulated plant.

Incorporation of the proposed provision in the order will contribute to orderly marketing and to the optimum utilization of producer milk.

(c) *Class prices—Class I price.* The price for Class I milk should be computed by adding specified amounts to a basic formula price (Minnesota-Wisconsin manufacturing milk price series).

For the first 12 months that the order is fully effective, the Class I price should be the basic formula price plus $2.30. For the purpose of computing Class I prices, the basic formula price should not be not less than $4.33.

The order should provide also that the Class I price shall be not less than the Chattanooga order Class I price for the same month plus 15 cents. In their exceptions, producers pointed out that plus supply-demand adjustments under the Chattanooga order of more than 20 cents would result in the Chattanooga Class I price being higher than the Georgia Class I price. Adoption of this fixed intermarket price relationship, in conjunction with the location adjustment provisions herein provided, will insure the maintenance of an appropriate alignment of Class I prices between the orders.

The method of adding a differential to such basic formula price in determining the price for Class I milk gives appropriate consideration to the economic factors underlying the general level of prices for milk and manufactured dairy products. Prices for milk used for fluid purposes in the proposed marketing area have a direct relationship to the prices paid for milk used for manufacturing purposes.

A differential over manufacturing milk prices is necessary to cover the extra costs of meeting quality requirements in the production of milk for fluid uses and in transporting the milk to market. Moreover, it is a necessary incentive for dairy farmers to produce and deliver an

adequate supply of quality milk to meet the demand for fluid milk.

Producers proposed that the Class I price be computed by adding a specified differential to a basic formula price. As the basic formula price, they proposed the Minnesota-Wisconsin manufacturing milk price series. This series is based on prices paid at a large number of manufacturing plants in each of the two States. Plant operators report the total pounds of manufacturing grade milk received from farmers, the total butterfat content and the total dollars paid to dairy farmers for such milk, f.o.b. plant. These prices are reported on a current month basis and the announced Minnesota-Wisconsin price is available on or before the fifth day of the following month. The Minnesota-Wisconsin price series is the basic formula price in most Federal order markets, including markets that would serve as sources of supplemental milk for Georgia handlers.

This price series reflects a manufacturing 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 such products within a highly coordinated marketing system which is national in scale. The series is appropriate for use in establishing milk prices under the Georgia order.

Since the Class I price for the current month would be announced by the fifth day of the month, the basic formula price used in computing the Class I price should be that reflecting the Minnesota-Wisconsin price for the preceding month. This procedure is commonly used in other Federal orders.

Producers and handlers proposed that a Class I differential of $2.40 be added to the basic formula price. Producers proposed also that the basic formula price be not less than $4.33 through April 1969.

The Class I price must be established at a level which, in conjunction with the Class II price, will result in returns to producers high enough to maintain an adequate, but not excessive, supply of quality milk to meet the requirements of consumers, including the necessary market reserves. The Class I price also must be in alignment with those prevailing in nearby Federal order markets. It should not be at a level, though, which exceeds the cost of obtaining milk of acceptable quality and regular availability from alternative sources.

The Class I price proposed herein will tend to maintain an adequate supply of milk for the market. Also, it will be appropriately aligned with the Class I price in the Chattanooga order. There is substantial competition between Chattanooga order handlers and those under the proposed order in procurement and sales. In addition, the Class I price will be aligned with those other Federal order markets from which alternative milk supplies would be available to Georgia handlers.

The Chattanooga marketing area is made up of nine counties in Tennessee and seven in Georgia. The city of Chattanooga is the major distribution point and the center of heaviest concentration of population in that marketing area. It is 119 miles from Atlanta, which is also a major distribution point and the heaviest concentration of population in the proposed marketing area. There is a significant overlapping of the sales and procurement areas of the Chattanooga order handlers and handlers who would be regulated by the proposed order. It is necessary, therefore, that appropriate recognition be given to the Class I price under the Chattanooga order in establishing the Class I price under the proposed order.

The Chattanooga order provides for a Class I price computed by adding $1.95 to a basic formula price (Minnesota-Wisconsin manufacturing milk-price series) of not less than $4.33, and plus or minus a supply-demand adjustment. For the year ending with September 1968, such adjustments averaged plus 20 cents. Adding this average supply-demand adjustment to the above pricing factors which are currently in effect obtains a Class I price of $6.48, 15 cents less than the $6.63 price that would result under the proposed Georgia order when the Chattanooga supply-demand adjustment is plus 20 cents. (Official notice is taken of the Chattanooga order monthly Class I price announcements issued after the close of the hearing.)

The proposed Class I price differential of $2.30 recognizes the average 20-cent supply-demand adjustment that has been applicable under the Chattanooga order in the year ending September 1968. The effect of the supply-demand adjustment in determining the Chattanooga Class I price over an extended period of time is uncertain. For the 5 years through 1967, the Chattanooga supply-demand adjustments have averaged zero. It would be inappropriate, therefore, to utilize the Chattanooga supply-demand adjustments as a factor in determining the Georgia Class I price on other than a temporary basis. Thus, it is proposed herein that the Georgia Class I price be effective only for the first 12 months in which the order is fully effective. At that time, sufficient experience under the order would be available to determine whether the Class I pricing basis should be changed.

At 1.5 cents per hundredweight for each 10 miles (the location differential rate herein proposed and commonly applicable in Federal orders), an 18-cent charge would be computed on the basis of the 119 miles between Chattanooga and Atlanta, the principal cities in these adjacent marketing areas. The $2.30 proposed Georgia Class I differential (vs. $1.95 in the Chattanooga order plus the average 20-cent supply-demand adjustment) gives recognition to this.

In the recommended decision, it was noted that the Chattanooga order had been amended on May 1, 1968, to provide through April 1969 for a minimum basic formula price of $4.33 for computing Class I prices and a 20-cent increase in the Class I price differential. These amendments were based on a hearing that resulted in similar temporary price increases through April 1969 in 70 other Federal orders. It was found in the recommended decision that the marketing conditions which warranted the temporary price increases in these other markets existed similarly in the Georgia market. Accordingly, the temporary price provisions were incorporated in the proposed Georgia order contained in the recommended decision.

Effective January 1, 1969, the April 1969 expiration date for the temporary price increases was terminated in all orders. This has the effect of continuing indefinitely the minimum basic formula price of $4.33 and the 20-cent increase in the Class I price differential. To assure the continued alignment of the Georgia Class I price with Class I prices in other orders after April 1969, the April 1969 expiration date is deleted from the Class I price provisions that were proposed in the recommended decision.

Deliveries of dairy farmers supplying handlers who would be regulated under the proposed order may not be adequate in all months for the buying handlers' needs. In establishing Class I prices under this order, consideration must be given to the cost of obtaining milk, whether for supplemental needs or as a regular supply, from alternative sources. The Chicago area is a major source of supplemental supplies for markets throughout the United States. The basis for pricing milk received from Chicago is the Chicago Class I price plus the cost of transporting milk from Chicago to the receiving market.

Official notice is here taken of the Chicago Regional order which became effective July 1, 1968 (33 F.R. 9005). The current Class I price under that order is $5.53 (a basic formula of $4.33 plus a $1.20 differential). At 1.5 cents per hundredweight per 10 miles, the cost of moving milk the 692 miles from Chicago to Atlanta is $1.05. This would obtain a price of $6.58 for the Chicago milk f.o.b. Atlanta, an amount approximating the $6.63 under the proposed order when the Chattanooga order supply-demand adjustment is plus 20 cents.

The cost to Georgia handlers for milk from Chicago and from other Federal order markets will not vary significantly. This is because the Class I prices in all such markets must bear a reasonable relationship to each other. The proposed Georgia Class I price represents a reasonable alignment with prices in other markets from which milk may be obtained.

Class II price. The Class II price should be the basic formula price for the month.

The basic formula price (Minnesota-Wisconsin manufacturing milk price series) reflects the value of manufacturing milk in the major production areas of the United States. Because manufactured milk products compete on a national basis, it is important that the price for surplus uses in the market be in close alignment with similar uses nationally. Both producers and handlers supported the Class II price herein proposed. That price in the year ending with September 1968 averaged $4.10.

The Minnesota-Wisconsin price series is representative of prices paid to farmers for about half the manufacturing grade milk in the United States. In Minnesota about 84 percent of the milk sold off farms is manufacturing grade and in Wisconsin about 58 percent. Official notice is here 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, U.S. Department of Agriculture. This price series reflects a price level determined by competitive conditions which are affected by demand in all major uses of manufactured dairy products. Also, it reflects the supply and demand of manufactured dairy products within a highly coordinated marketing system which is national in scope.

The production of milk for Class II purposes by Georgia producers results basically from their maintaining a level of production to meet the Class I needs of the market. Accordingly, handlers depend on shipments of products in manufactured form for a substantial portion of their Class II requirements.

The Class II price should be at such a level that handlers will accept and market whatever quantities of milk in excess of Class I needs may arise from time to time. The price, however, should not be so low that handlers will be encouraged to seek milk supplies solely for the purpose of converting them into Class II products.

The Class II price herein proposed, because it reflects the competitive value of manufacturing milk on a national basis, will be an appropriate measure of the value of reserve supplies of producer milk utilized for manufacturing purposes under the order.

Butterfat differentials. Because of variations in the butterfat content of milk delivered by individual producers and in milk and milk products sold by different handlers, it is necessary to provide "butterfat differentials" to insure equitable payments reflecting such variations in butterfat.

The Class I butterfat differential should be 12 percent of the Chicago butter price for the preceding month and the Class II differential should be 11.5 percent of the Chicago butter price for the current month. For 1967, this would have resulted in an average Class I differential of 8 cents and an average Class II differential of 7.6 cents.

The butterfat differential to producers should be calculated at the average of the Class I and Class II butterfat differentials weighted by the proportion of butterfat in producer milk classified in each class during the month. Thus, returns to producers will reflect the actual value of their butterfat at the class prices provided by the order.

The butterfat differentials herein provided were the only ones proposed at the hearing. There was no opposition to them. They have wide acceptance in the industry and are the butterfat differentials most applicable in Federal orders.

The Class II price and butterfat differential will not be announced until after the end of the month and should be based on current month prices. Although handlers will not know the exact cost of Class II milk as it is utilized, they will know that their costs tend to follow daily and weekly dairy product prices and the cost of milk to their principal competitors.

The proposed Class I and Class II butterfat differentials, by pricing butterfat in producer milk competitively with butterfat for comparable uses from alternative sources of supply, will facilitate the orderly marketing of producer milk under the proposed order.

Location adjustments. Location adjustments should be incorporated into the order to provide an appropriate adjustment of the Class I and uniform prices. Such adjustments should be based on the location of any plant at which producer milk or other source milk is received.

A location differential of minus 15 cents should apply to milk received at plants in a 29-county area in northern Georgia designated in the proposed order as the "Northern Zone". It would be defined to mean all the territory in the Georgia counties of Banks, Bartow, Catoosa, Chattooga, Cherokee, Dade, Dawson, Elbert, Fannin, Floyd, Forsyth, Franklin, Gilmer, Gordon, Habersham, Hall, Hart, Jackson, Lumpkin, Madison, Murray, Pickens, Rabun, Stephens, Towns, Union, Walker, White, and Whitfield. ("Southern Zone" would be defined to mean all the territory in Georgia that is not within the Northern Zone.)

For milk received at plants that are outside Georgia, north of an east-west line extending from Atlanta, and 100–110 miles from the nearer of the city halls in Atlanta and Augusta, the Class I price should be reduced 15 cents. For plants beyond the 110-mile limit, the Class I price should be reduced 15 cents plus an additional 1.5 cents for each 10 miles or fraction thereof that such plants are more than 110 miles from the nearer of the city halls in Atlanta and Augusta. The applicable mileage for determining the location adjustment would be measured by the shortest hard-surfaced highway distance as determined by the market administrator.

Class I milk products, because of their bulky, perishable nature, incur a relatively high transportation cost if such products or the milk used to produce them are moved considerable distances. Milk delivered directly by farmers to plants in or near the urban centers in the defined marketing area, therefore, is worth more to a handler than milk which is received from farmers at a plant located many miles from the market. This is so because, in the latter instance, the handler must incur the additional cost of moving that milk to the central market. Under these conditions, the value of producer milk delivered to plants located some distance from the market is reduced in proportion to the distance (and the cost of transporting such milk) from the point of receipt to the market. Providing location differentials based on the cost of moving milk to the market will insure uniform pricing to all handlers regardless of the location where the milk is procured.

To be equitable to all handlers, the Class I price should not be dependent on the type of plant receiving the milk. To the extent that milk is received at distributing plants from producers at a considerable distance from the market and brought to the market by the handler, he has assumed a transportation cost which might otherwise be borne by producers. Accordingly, the Class I price should be adjusted at such plants to reflect the cost of hauling milk to market.

Producers proposed that the Class I price for milk received at plants in Georgia and Florida be increased 1.5 cents for each 10 miles from the nearest of the city halls in Augusta, Columbus, and Macon. They proposed that no location adjustment, plus or minus, apply at Georgia plants north of the designated cities or at plants in Alabama and South Carolina. For milk received at plants outside Georgia, Florida, Alabama, and South Carolina and more than 115 miles from the State Capitol in Atlanta and the city hall in Toccoa, Ga., producers proposed that the Class I price be reduced 1.5 cents for each 10 miles beyond 115 miles from the nearer of Atlanta or Toccoa.

Handlers proposed that no location differential, plus or minus, be applicable at any plant in Georgia. They proposed, however, that for milk received at plants in Floyd and Bartow Counties, Ga., the Class I price should not exceed the Chattanooga order Class I price by more than 15 cents.

There is substantial competition in both procurement and sales in the Northern Zone between Chattanooga handlers and handlers who would be regulated by the proposed order. Seven of the 29 counties in the Northern Zone are in the Chattanooga marketing area. Testimony at the hearing urged that other Northern Zone counties should also be included in the Chattanooga marketing area instead of the proposed Georgia marketing area. A number of plants having distribution in the Northern Zone have sales in both the Chattanooga and proposed Georgia marketing areas. It is important, therefore, that the location differential applicable at plants in the Northern Zone result in a Class I price under the proposed order that approximates the Chattanooga Class I price. The 15-cent location differential here proposed for milk received at plants in the Northern Zone is an appropriate factor for accomplishing this purpose.

The cost of obtaining milk from alternative sources of supply in the major milk production areas of the country (all of which are to the north) is an important factor in establishing Class I prices. In recognition of this, the structure of the Class I price under the order provides a higher Class I price in the southern portion (Southern Zone)

of the marketing area than in the Northern Zone. It would be inappropriate, therefore, to provide for downward adjustments in the Class I price for milk received at plants south of the major points of distribution in the marketing area.

Atlanta is the major point of distribution in the marketing area. Of the 39 plants that would be regulated under the proposed order, 12 are in the Atlanta area. Of the approximately 1,410 producers supplying the market in May 1968, 642 delivered to these 12 plants. More than 25 percent of the approximately 4 million people in Georgia live in the Atlanta metropolitan area.

A number of Alabama and South Carolina plants have some route disposition in the marketing area. Several will qualify as fully regulated plants under the order. The others would be subject to the order as partially regulated distributing plants. Accordingly, appropriate consideration must be given to differentials which would be applicable at plants in these adjoining States.

The Atlanta, Augusta, Columbus, Macon, and Savannah metropolitan areas are among the principal areas of population in the State and represent the areas in which the greater portion of sales in the market are made. Also, they represent the principal points at which milk is processed for distribution throughout the marketing area. Of these cities, Atlanta and Augusta are so situated geographically as to serve as appropriate measuring points from which to determine location adjustment mileages.

The order should specify also the line north of which location adjustments would apply at plants outside Georgia. An east-west line extending from the city hall in Atlanta would be most suitable for this purpose.

The location adjustment at any plant in Alabama or South Carolina should be not more than 15 cents. Under the proposed order, the only plants in these States at which such adjustments could be applicable are those north of the east-west line extending from Atlanta and at least 100 miles from the nearer of Atlanta and Augusta. The 29-county area in Georgia designated as the Northern Zone is geographically between the northern portions of Alabama and South Carolina. A 15-cent location differential is applicable for milk received at all locations in the Northern Zone.

An important consideration in establishing the 15-cent location differential in the Northern Zone is the alignment of the Class I price in that area with the Chattanooga order Class I price. It would be impractical to provide a lower Class I price at plants in northern Alabama and northern South Carolina than at plants in the Northern Zone, as would result if the order provided a location adjustment of more than 15 cents at any plants in Alabama or South Carolina. It would likewise be impractical to provide for a lower Class I price in Alabama and South Carolina (by a location adjustment) than that provided in the nearby Chattanooga order.

The basis set forth in this decision for a 15-cent location adjustment throughout the 29 Georgia counties in the Northern Zone is equally applicable with respect to the locations in Alabama and South Carolina at which greater location adjustments would otherwise be applicable. Limiting the location adjustment at plants in Alabama and South Carolina to not more than 15 cents will insure orderly marketing in the area by maintaining an appropriate alignment of prices among handlers.

The producer proposal to increase the Class I price by a plus location differential of 1.5 cents for each 10 miles that a plant is south of Augusta, Columbus, and Macon should be denied. Of the 3.9 million people in Georgia in 1960, 2.9 million were in the metropolitan areas of Atlanta, Augusta, Columbus, Macon, and Savannah. Except for these metropolitan centers and a relatively limited number of smaller urban areas, Georgia is predominantly rural. Of the 146 counties in the proposed marketing area, seven had populations of 100,000 and over, 29 had populations of 20,000 to 99,999 and 110 had populations of less than 20,000.

Milk produced for the market is moved principally to Atlanta and other major cities in the marketing area for processing for distribution throughout the marketing area. A relatively small proportion of the total production for the market is delivered to plants in southern Georgia, which is predominantly rural. A higher price for milk delivered to plants in southern Georgia would provide an incentive for producers now supplying the Class I needs of processing plants in the northern part of the State to shift to Southern Georgia plants, even though their milk was not needed at the latter plants for Class I purposes. Instead of contributing to the maintenance of an adequate supply of milk for the market, a higher Class I price in southern Georgia would provide an incentive to move milk from plants where it is needed for Class I purposes to plants in southern Georgia for manufacturing purposes.

A higher price at southern Georgia plants than at plants in Atlanta and other locations in the marketing area is not necessary to maintain an adequate supply of milk for southern Georgia handlers. There is no indication that, historically, a higher price has been necessary to maintain an adequate supply of milk for southern Georgia plants than for other plants in the State. The interest of the market would best be served by providing the same Class I price for milk delivered at all plants in the Southern Zone instead of providing an increasingly higher level of prices in southern Georgia as proposed by producers.

The location differentials herein proposed are economically sound and would be applicable at all plants from which any milk is marketed under the order. These differentials reflect the efficiency resulting from technological changes in the marketing of milk in recent years. Such changes, as better roads and larger tank trucks, have tended to reduce unit hauling costs for both producers and handlers, thereby enabling milk to be moved to the market from farms at increasingly greater distances from the marketing area.

The 1.5-cent rate provided by this decision appropriately reflects the cost of moving milk efficiently under present economic conditions in the market. It is the rate most applicable in Federal orders throughout the United States and is recognized as an appropriate and representative rate for transporting milk to the market. Because of its wide applicability, it will insure a reasonable alignment of prices between this and other orders at the various locations at which handlers under the different orders compete.

Uniform prices (except for excess milk) paid to producers supplying plants at which location differentials apply should be adjusted to reflect the value of milk f.o.b. the plant to which delivered. All producers who share in the Class I proceeds in the pool should be in a position to move their milk to the market for Class I use. If a producer chooses to move his milk directly from the farm to a plant with no location differential, he pays the full transportation cost in delivering the milk. Thus, it is appropriate that differences in prices to producers delivering their milk to other plants where location differentials apply reflect a value for the milk at these locations representative of the cost of moving milk from these points to the market for Class I use.

No adjustment should be made in the Class II price and in the uniform price of excess milk because of the location of the plant to which the milk is delivered. (It may reasonably be expected that the uniform price for excess milk under this order will approximate the Class II price.) There is little difference in the value of milk for Class II uses associated with the location of the plant receiving the milk. This is because of the low cost per hundredweight of milk involved in transporting manufactured products and the concentrated products which may be used for Class II purposes.

To insure that milk will not be moved unnecessarily at producers' expense, the order should contain a provision to determine whether milk transferred between plants may receive the location differential credit. This should provide that, for the purpose of calculating such credit, fluid milk products received from pool plants shall be assigned to any Class I milk at the transferee plant that is in excess of the sum of producer milk receipts at such plant and receipts from other order plants and unregulated supply plants which are assigned to Class I. Such assignment would be made first to receipts from plants at which no location adjustment is applicable and then in sequence beginning with receipts from the plant with the lowest location adjustment. This sequential assignment of milk will tend to discourage the unnecessary moving of milk between pool plants for other than Class I purposes at the expense of producers and will provide an equitable basis for facilitating the movement of milk between pool plants for Class I purposes.

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 determined by the Secretary to be equivalent to the price which is 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 price quotations which are customarily used and thereby will prevent any unnecessary interruption in the operation of the order.

(d) *Distribution of the proceeds to producers.* A marketwide equalization pool should be included in the proposed order as a means of distributing to producers the proceeds from the sale of their milk. Such a pool will assure a producer supplying the order market a return based on his pro rata share of the total Class I sales of such market. The "blend" that a producer receives for each month's deliveries will be a price based on the overall utilization of all producer milk received at the pool plants of all regulated handlers during such month.

The uniformity of payments to producers provided under a marketwide pool permits a handler either to maintain a manufacturing operation in his plant to handle the seasonal and daily reserve supplies of milk or to limit the operation at his plant to the handling of milk for Class I purposes only, without affecting the blended prices payable to his producers as against other producers in the market.

The facilities in the various plants in the area for handling producer milk in excess of that needed for Class I purposes vary considerably. While a number of plants in the market are exclusively Class I operations and handle little or no surplus milk, others utilize varying proportions of their supplies for manufacturing purposes. Under these conditions, a marketwide pool in the Georgia marketing area will facilitate the marketing of producer milk. A marketwide pool will make it possible for producer associations to assist in diverting seasonal reserve milk and thus keep producers on the market who are needed to fulfill the year-round requirements of the market. It will assist also in apportioning among all producers the lower returns from reserve milk where otherwise this burden would be placed on individual groups of producers. A marketwide pool will thereby contribute to market stability and the attainment of an adequate and dependable supply of producer milk.

Base and excess plan. A "base and excess" plan should be incorporated in the order and producers paid uniform base and excess prices in each month. Base and excess plans have been widely used in the market for a number of years. Georgia producers are accustomed to them and claim they have worked satisfactorily in the market.

The primary purpose of the proposed base-excess plan is to encourage producers to maintain even production throughout the year. Without some incentive to producers, production normally tends to fluctuate more during the year than handlers' Class I requirements. Georgia producers have found it uneconomic to produce milk for manufacturing uses. They have operated base plans that have resulted in production being closely correlated with the fluid milk needs of the market. As under these plans, the base plan proposed herein would tend to assure that excess production on the part of some producers would not affect adversely the returns to all other producers on the market.

The base and excess plan herein proposed would establish a base for each producer by dividing his total deliveries to pool plants in the preceding September through January period by 153, the number of days in the 5 months. The base would be computed in this manner only for those producers who delivered to pool plants on not less than 100 days in the 5 months. For the purpose of computing the base of a producer, the number of days included in his milk deliveries would be the number of days of production represented by his deliveries. A single delivery by a producer on an every-other-day delivery basis, for example, would be considered as 2 days' production for the purpose of computing a base.

Producers would establish new bases each year. They would be computed by the market administrator to be effective from March 1 through February of the following year. By March 5 of each year, the market administrator would notify each producer, the handler receiving his milk and the cooperative association of which he is a member of the producer's base.

"Base milk" would mean producer milk received during the month which is not in excess of the producer's base milk multiplied by the number of days of production that such milk was received at pool plants during the month. "Excess milk" would mean producer milk received during the month which is in excess of the base milk received from the producer during the same month.

Class I disposition in the market would first be assigned to base milk. If the aggregate Class I disposition is more than the base milk received from producers in any month, such additional Class I milk would be allocated to excess milk and the excess milk price increased accordingly.

As provided in this decision, location adjustments would be applied to the price paid producers for base milk. Since excess milk will represent principally producer milk classified in Class II to which no location adjustment is applicable, the producer price for excess milk should not be subject to the location adjustment provisions of the order. The producer butterfat differential applicable to the uniform price should be used to adjust the uniform prices for base milk and excess milk.

A producer from whom no milk was received at pool plants in September through January or who made such deliveries on less than 100 days during such months should be assigned a base of 50 percent of his average daily deliveries of producer milk for each month until a base is computed for him on the basis of deliveries of not less than 100 days in the following September–January period. In addition, a producer who had been assigned a base on the basis of deliveries of more than 100 days during the preceding months of September–January should be permitted, in lieu thereof, to receive a base in the same manner as a new producer or a person who shipped less than 100 days in the base-making period.

The rate of 50 percent of deliveries for assigning bases of those producers who are not eligible for a base on the basis of their deliveries in the base-making period is reasonable under the conditions in the market. It is likewise appropriate that a producer who has earned a base be allowed to relinquish his base and receive an assigned base not less than that of a new producer. The proposed 50 percent rate is not so high as to encourage new producers to come on the market at a time that their production is not needed for Class I purposes. Neither is it so low as to discourage a producer who intends to become permanently associated with the market from coming on the market.

If a plant that was a nonpool plant in the preceding September–January period became a pool plant, the dairy farmers supplying that plant should be assigned bases in the same manner as if they had been producers during such period. Their bases would be calculated from their deliveries to that plant in the preceding September–January base-making period. Such a provision, which was proposed by producers, is commonly provided in Federal orders.

To acquire pool plant status under the order, such a plant must dispose of a specified percentage of its receipts on routes in the marketing area or to other pool plants. It is expected that when such a plant becomes a pool plant it will add Class I sales to the pool comparable to such sales in prior periods when it operated as a nonpool plant. It is appropriate, therefore, that those dairymen who have been supplying the plant have bases computed for them on the basis of their deliveries to the plant in the base-making period.

The order should provide appropriate rules for the handling of base transfers and for other conditions that arise in connection with the administration of the base and excess plan.

The base earned by a producer by delivering to pool plants on not less than 100 days in the preceding September–January period should be transferable. This will facilitate adjustments by those producers desiring to expand or contract their operations. In addition, it would provide producers with opportunities for more economical production of milk and thereby contribute to the maintenance of an adequate supply of milk for the market. Accordingly, the transferability of bases, as herein provided, would be in the best interest of the public, existing producers and prospective producers.

Under the proposed plan, a base could be transferred only to a person who is currently, or would become by the last day of the month, a producer under the order. Those persons who acquire a priority claim to the market's Class I sales should be in a position to supply milk for the fluid needs of the market.

The amount of base transferred could be in its entirety or an amount of not less than 100 pounds. These limits are administratively practical and should be adequate under the proposed base and excess plan in this market.

A base could be transferred only after the baseholder had notified the market administrator in writing on or before the last day of the month of the transfer of the name of the person to whom the transfer is to be made, the effective date of the transfer and the amount to be transferred. These provisions would insure that there will be no misunderstanding between the parties involved concerning transfers.

If more than one producer ships from a farm, one base should be computed for the farm to be allocated to each producer according to his share in the sale of milk from the farm. Provision should also be made for division of a jointly held base. These provisions will facilitate the operation of the base and excess plan herein proposed.

The first base-forming period under the proposed order is expected to be September 1969 through January 1970. Complete data would be available at the end of that period to compute bases. It would be appropriate, therefore, to delay application of the base and excess provisions of the order until March 1, 1970, when complete and verifiable data are available for determining producers' bases.

Payments to producers. Each handler under the order should pay each producer for milk received from such producer, and for which payment is not made to a cooperative association, at not less than the applicable uniform prices. Provision also is made for partial payments for milk received during the first half of the month.

For milk received during the first 15 days of a month, handlers should make a partial payment to producers at not less than the Class II price for the preceding month. On or before the 15th day of the following month, handlers would be required to pay producers at the applicable uniform prices for milk received in the preceding month, less the partial payment made, and authorized deductions. The above dates for paying producers were proposed by producers and were unopposed at the hearing.

Provision should be made for a cooperative to receive payment for producers' milk which it causes to be delivered to a pool plant. Receiving payment for the milk of its members and the blending of proceeds from the sale of such milk will tend to promote orderly marketing and will assist a cooperative in discharging its responsibilities to its members and to the market.

The Act provides for the payment by handlers to cooperatives for milk delivered by them and permits the blending of all sales from members' milk. The contracts with their members authorize the principal cooperatives in the market to collect for producer deliveries. Therefore, each handler, if requested by an authorized cooperative, would pay it an amount equal to the sum of the individual payments otherwise payable to the producers. Handlers should be required to make payments to cooperatives for producer milk on or before the day prior to the date payments are due individual producers. This will enable the cooperatives to pay their members by the same time other producers receive payment.

At the time settlement is made for milk received from producers during the month, the handler should furnish each producer (or cooperative association) a supporting statement. This statement should show the pounds and butterfat tests of milk received from such producer, the rate(s) of payment for such milk and a description of any deductions claimed by the handler.

A proposal by producers would require pool plant operators to pay the market administrator at the applicable class prices for all producer milk delivered to their plants. The market administrator, in turn, would distribute such monies to producers either directly or to cooperatives authorized to collect for their members. Although producers claim that their proposal would be advantageous to handlers, handlers opposed it at the hearing.

Producers claim that if handlers were required to pay the market administrator for producer milk as proposed, he would know promptly when a handler is delinquent in his payments for producer milk. In testifying on the benefits of the proposed provisions to handlers, producers claim such provisions would relieve handlers of most of the work involved in preparing producer payrolls and would reduce the number of checks that handlers have to write in paying producers.

Other reasons cited by producers for having the market administrator pay producers are (1) the handlers' accounting to the pool would be simplified, (2) any misunderstanding or confusion involving payments by handlers to, and their withdrawing of monies from, the producer-settlement fund would tend to be dispelled, and (3) it would insure more prompt collection of monies due producers and would permit the market administrator to institute action more promptly than otherwise in the collection of such payments in default.

It was not established how this proposed method of payment would insure a more prompt payment for milk, as producers contend. Regardless of the payment system used, handlers need a reasonable time each month to file their reports with the market administrator. Likewise, the market administrator must, in turn, have adequate time to compute the uniform prices. The date for producer payments provided in this decision are the earliest feasible in view of the necessary functions of reporting and price computations.

There is no assurance that the producers' proposed method of payment would reduce the risk of loss to producers from a handler's failure to meet his obligations to the marketwide pool. The method of payment producers proposed could not assure that a handler would not go out of business or that he would always remit his full obligation to the pool in the manner required. When it is necessary to use enforcement procedures authorized by the Act to collect proceeds to producers, this may be done under the method of payment herein provided.

Handlers stated that they prefer to pay their own producers. Having the market administrator pay producers, handlers contend, would unnecessarily add an additional party to the transaction between them and their producers in settling for producer deliveries. The producers' claim, that the proposed provision could be economically advantageous to handlers because it would eliminate some work in the preparation of producers' payrolls, was denied by handlers.

The record evidence does not establish that conditions in this market at the present time justify adopting a procedure requiring handlers to pay the market administrator the full class value of their producer milk receipts and for the market administrator to pay producers. In view of this fact and in view of the opposition of the handlers, who would be significantly affected by it, the proposal is denied.

Producer-settlement fund. All producers will receive payment at the rate of the applicable marketwide uniform prices each month. Because the payment due from each handler for producer milk at the applicable class prices may be more or less than he is required to pay directly to producers, a method of equalizing this difference is necessary. A producer-settlement fund should be established for this purpose. A handler whose obligation for producer milk received during the month is greater than the amount he is required to pay producers for such milk at the applicable uniform prices would pay the difference into the producer-settlement fund and each handler whose obligation for producer milk is less than the applicable uniform price values would receive payment of the difference from the 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 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 established in the attached order at not less

than 4 nor more than 5 cents per hundredweight of producer milk in the pool for the month.

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. Provisions should be made in the order for furnishing 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 will 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 producers.

To enable the market administrator to furnish these marketing services, provision should be made for a maximum deduction of 6 cents per hundredweight with respect to receipts of milk from producers for whom he renders such marketing services. Comparison of the number of producers involved and the expected volume of milk with that of other markets indicates that a 6-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.

Expense of administration. Each handler should be required to pay to the market administrator, as his proportionate share of the cost of administering the order, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, on producer milk (including milk of such handler's own production) and on other source milk allocated to Class I (except milk so assessed under another Federal order).

The market administrator must have sufficient funds to enable him to administer properly the terms of the order. The Act provides that such cost of administration shall be financed through an assessment on handlers. A principal function of the 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, therefore, by applying the administrative assessment on the basis of milk received from dairy farmers and on other source milk allocated to Class I milk.

The proposed order provides that a cooperative shall be the handler for its members' milk which it delivers in tank trucks from the farms to pool plants of other handlers. The cooperative is the handler for such milk basically 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 shouldl pay the administrative assessment on it. The cooperative, however, would be liable for the administrative assessment for any amount by which the farm weights of the producer milk exceeded the weights at the plant on which the plant operator purchases the milk from the cooperative.

The market administrator must verify by audit the receipts and utilization at pool plants, whether the plant operator buys his milk directly from producers or through a cooperative as a handler. No plant of the cooperative is involved in this particular circumstance. Such cooperative's function as a handler is primarily one of recordkeeping. It is appropriate, therefore, that the pool plant operator receiving such milk pay the administrative assessment on it on the same basis that he pays such assessment for all other producer milk received at his plant.

The order specifies minimum performance standards that must be met to obtain regulated status. The operator of a plant not meeting such standards (i.e., a partially regulated distributing plant) is required to either (1) 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 (2) otherwise pay into such fund and/or to dairy farmers an amount not less than the classified use value of his receipts from dairy farmers computed as though such plant were a fully regulated plant.

The market administrator, in administering an order as it applies to such nonpool route distributor, must incur expenses in essentially the same manner as in applying the order to pool handlers. However, the order is not applicable to such distributor to the same extent as to regulated handlers. Hence, payment of the administrative assessment on his in-area sales would reasonably constitute his pro rata share of the administrative expense.

In the case of unregulated milk which enters the market through a regulated plant for Class I use, it is the regulated handler who utilizes the unregulated milk and who must report to the market administrator the receipt and use of such milk. Also, the receipts and utilization of all milk at his plant are subject to verification by the market administrator. Hence, it is appropriate that the regulated handler be responsible for payment of the administrative assessment on such unregulated milk.

The order is designed so that the cost of administration is shared equitably among handlers distributing milk in the proposed marketing area. However, to prevent duplication, an assessment should not be made on other source milk on which an assessment was made under another Federal order.

Provision should be made so that the Secretary may reduce the amount of the administrative assessment without the necessity of amending the order. The rate can thus be reduced when experience indicates a lower rate will be sufficient to provide adequate funds for the administration of the order.

The proposal to require producer-handlers to make payments to the administration fund is denied. As proposed by handlers, producer-handlers would pay an administrative assessment on their Class I sales in the marketing area.

In contrast to other handlers, any expense incurred by the market administrator in connection with producer-handlers would be incidental to administering the order. The market administrator must obtain reports each month from the operators of pool plants and partially regulated distributing plants. From these reports, he would determine the handlers' utilizations and their obligations under the order. After the pool computation, the market administrator would make an extensive audit of each handler's records to verify the reported receipts and utilization of milk from dairy farmers and from all other sources. Thus, the primary function of the market administrator would be to determine a monthly uniform price to be paid to all producers in the market based on the reports of the handlers whose milk is priced under the order.

Under the proposed order, producer-handlers would be exempt from the pooling and pricing provisions of the order and would have no obligation to the producer-settlement fund. A producer-handler must make reports to the market administrator only at such time and in such manner as the market administrator may prescribe. Periodic reports submitted to the market administrator would keep him apprised that the several such operations in the market are bona fide producer-handlers and continue to qualify for exemption from the pricing and pooling provisions of the order.

Interest payments on overdue accounts. Provision is made for the payment of interest on amounts due to the market administrator for each month

or portion thereof that such obligation is overdue.

Prompt payment of amounts due to the market administrator is essential to the operation of order provisions. Interest charges will encourage payment of amounts due on or before the specified date. The rate provided herein is reasonable to compensate for the cost of borrowing money in accord with normal business practices.

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 and to set forth the powers and duties for such agency essential to the proper functioning of such office.

Records and reports. Provision 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 therefor. Such reports are necessary for the computation of the uniform prices 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 veryify all payments required under the orders.

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 orders 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, is equally applicable in this situation and is adopted as a part of this decision.

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.

General findings. (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.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Georgia Marketing Area," and "Order Regulating the Handling of Milk in the Georgia 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.

Referenda order; determination of representative period; and designation of referenda agents. 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 Georgia 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. Such referendum shall be conducted to determine whether the issuance of the proposed order provisions except those applicable to the base and excess plan, as specified in the attached order, are approved or favored by the producers.

It is hereby directed that a separate referendum in which each individual producer has one vote to be conducted to determine whether the issuance of the base and excess plan of payment to producers, as specified in the attached order regulating the handling of milk in the Georgia marketing area, is separately approved or favored by the producers, as defined under the terms of the order, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of November 1968 is hereby determined to be the representative period for the conduct of such referenda.

A. T. Radigan and Aaron L. Reeves are hereby designated agents of the Secretary to conduct such referenda in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (7 CFR 900.300 *et seq.*), such referenda to be completed on or before the 30th day from the date this decision is issued.

Signed at Washington, D.C., on January 15, 1969.

TED J. DAVIS,
Assistant Secretary.

Order[1] Regulating the Handling of Milk in the Georgia Marketing Area

AUTHORITY: The provisions of this Part 1007 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1007.0 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 Georgia 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:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1007.45(a) (5) and (9) and the corresponding steps of § 1007.45(b); and

(c) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Georgia marketing area shall be in conformity to, and in compliance with, the following terms and conditions:

The provisions of §§ 1007.1 to 1007.112, both inclusive, of the proposed order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on November 19, 1968 (33 F.R. 17634; F.R. Doc. 68–14102) shall be and are the terms and conditions of this order and are set forth in full herein subject to the following revisions:

Sections 1007.6, 1007.7, 1007.14, 1007.15, 1007.16(c), 1007.27(j)(2), 1007.41, 1007.42(b), 1007.43(b) (1) and (3)(iv), (c) and (d), 1007.45, 1007.50, 1007.51, 1007.52 (b), 1007.60 (c) and (e), 1007.61a(b), 1007.62 (a)(1) and (b)(4), 1007.70(a)(1), 1007.74(b)(2), and 1007.111(b) are changed and a new paragraph (f) is added in § 1007.43.

DEFINITIONS

§ 1007.1 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.).

§ 1007.2 Secretary.

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

§ 1007.3 Department.

"Department" means the U.S. Department of Agriculture.

§ 1007.4 Person.

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

§ 1007.5 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 be engaged in making collective sales of, or marketing milk or milk products for, its members.

[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.

§ 1007.6 Georgia marketing area.

The "Georgia marketing area", hereinafter called the "marketing area", means all the territory, including all waterfront facilities connected therewith, geographically within the boundaries of the State of Georgia except the counties of Catoosa, Chattooga, Dade, Fannin, Floyd, Gilmer, Gordon, Murray, Pickens, Rabun, Union, Walker, and Whitfield. The marketing area shall include all territory that is occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part of such territory is within the designated geographical limits of the marketing area.

§ 1007.7 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, concentrated milk, cream and mixtures of cream and milk or skim milk.

§ 1007.8 Distributing plant.

"Distributing plant" means a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and which has route disposition in the marketing area during the month.

§ 1007.9 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority for fluid consumption is shipped during the month to a pool plant.

§ 1007.10 Pool plant.

"Pool plant" means a plant specified in paragraph (a) or (b) of this section that is neither an other order plant, a producer-handler plant, nor an exempt distributing plant.

(a) A distributing plant that has route disposition during the month of not less than 50 percent of the fluid milk products approved by a duly constituted health authority for fluid consumption that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1007.16 and that has route disposition in the marketing area during the month of not less than 15 percent of its total Class I disposition during the month.

(b) A supply plant from which not less than 50 percent of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1007.16 during the month is shipped as fluid milk products to pool plants pursuant to paragraph (a) of this section. A plant that was a pool plant pursuant to this paragraph in each of the immediately preceding months of August through February shall be a pool plant for the months of March through July unless the milk received at the plant does not continue to meet the requirements of a duly constituted health authority or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through July during which it would not otherwise qualify as a pool plant.

§ 1007.11 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1007.10 and a greater volume of fluid milk products is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route dispositions in its marketing area.

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

(c) "Partially regulated distributing plant" means a nonpool plant that is a distributing plant and is not an other order plant, a producer-handler plant or an exempt distributing plant.

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is not an other order plant, a producer-handler plant or an exempt distributing plant.

(e) "Exempt distributing plant" means a distributing plant operated by a governmental agency.

§ 1007.12 Route disposition.

"Route disposition" means a delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I pursuant to § 1007.41 (a)(1).

§ 1007.13 Handler.

"Handler" means:

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

(b) Any person in his capacity as the operator of a partially regulated distributing plant;

(c) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant to a nonpool plant for the account of such cooperative association;

(d) A cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(e) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant; and

(f) A producer-handler.

§ 1007.14 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no Class I milk from sources other than his own farm production and pool plants;

(c) Disposes of no other source milk as Class I milk; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from pool plants) and the operation of the processing and packaging business are his personal enterprise and risk.

§ 1007.15 Producer.

"Producer" means any person, except a producer-handler as defined in any order (including this part) issued pursuant to the Act or the operator of an exempt distributing plant, who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is physically received at a pool plant or diverted pursuant to § 1007.16 from a pool plant to a nonpool plant. "Producer" shall not include a person with respect to milk that is physically received at a pool plant as diverted milk from an other order plant if a Class II classification under this order is designated for such milk and it is subject to the pricing and pooling provisions of another order issued pursuant to the Act.

§ 1007.16 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk:

(a) Received at a pool plant directly from a producer or a handler pursuant to § 1007.13(d): *Provided*, That if the milk received at a pool plant from a handler pursuant to § 1007.13(d) is purchased on a basis other than farm weights, the amount by which the total farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler pursuant to § 1007.13(d) at the location of the pool plant;

(b) Diverted from a pool plant to a nonpool plant that is neither an other order plant nor a producer-handler plant subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted

for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account only the milk of member producers: *Provided*, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received from member producers at all pool plants during the month shall not be producer milk;

(5) The operator of a pool plant other than a cooperative association may divert for his account only the milk of producers who are not members of a cooperative association: *Provided*, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant during the month from producers who are not members of a cooperative association shall not be producer milk; and

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to subparagraphs (4) and (5) of this paragraph. If the handler fails to make such designation, no milk diverted by him shall be producer milk; or

(c) Diverted from a pool plant to an other order plant if a Class II classification (or its equivalent) is designated for such milk pursuant to the provisions of another order issued pursuant to the Act and such milk is not subject to the pricing and pooling provisions of such order. The conditions described in subparagraphs (1) through (6) of paragraph (b) of this section shall apply to this paragraph as if set forth fully herein.

§ 1007.17 Other source milk.

"Other source milk" means the skim milk and butterfat contained in or represented by:

(a) Fluid milk products from any source except:

(1) Producer milk; and

(2) Fluid milk products from pool plants;

(b) Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed, converted into or combined with another product in the plant during the month; and

(c) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for pursuant to § 1007.33.

§ 1007.18 Reload point.

"Reload point" means a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant. A reload point shall not be considered a plant except that a reload operation on the premises of a plant shall be considered a part of the plant operation.

§ 1007.19 Chicago butter price.

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

§ 1007.20 Northern Zone.

"Northern Zone" means all the territory in the Georgia counties of Banks, Bartow, Catoosa, Chattooga, Cherokee, Dade, Dawson, Elbert, Fannin, Floyd, Forsyth, Franklin, Gilmer, Gordon, Habersham, Hall, Hart, Jackson, Lumpkin, Madison, Murray, Pickens, Rabun, Stephens, Towns, Union, Walker, White, and Whitfield.

§ 1007.21 Southern Zone.

"Southern Zone" means all the territory in the State of Georgia that is not within the Northern Zone.

MARKET ADMINISTRATOR

§ 1007.25 Designation.

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

§ 1007.26 Powers.

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

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

§ 1007.27 Duties.

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

(a) Within 30 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

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

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

(d) Pay out of the funds received pursuant to § 1007.77 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses, except those incurred under § 1007.76, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

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

(f) Publicly announce at his discretion, unless otherwise directed by the Secretary, by posting in a conspicious 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 either reports pursuant to §§ 1007.30 through 1007.32 or payments pursuant to §§ 1007.70, 1007.74, 1007.76, 1007.77, and 1007.78;

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

(h) Verify all reports and payments of each handler by audit of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends, and by such investigation as the market administrator deems necessary;

(i) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information;

(j) Publicly announce on or before:

(1) The fifth day of each month, the Class I price and Class I butterfat differential, both for the current month;

(2) The fifth day of each month, the Class II price and the Class II butterfat differential, both for the preceding month; and

(3) The 11th day of each month the uniform price and the producer butterfat differential, both for the preceding month;

(k) 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 the milk caused to be delivered by the cooperative association for its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month;

(l) Whenever required for purposes of allocating receipts from other order plants pursuant to § 1007.45(a)(10) and the corresponding step of § 1007.45(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(m) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received skim milk and butterfat in the form of fluid milk products from an other order plant, the classification to which such receipts

are allocated pursuant to § 1007.45 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such reports; and

(n) Furnish to each handler operating a pool plant who has shipped fluid milk products to an other order plant the classification to which such fluid milk products were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

REPORTS, RECORDS, AND FACILITIES

§ 1007.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler (except a handler pursuant to § 1007.13 (e) or (f)) shall report to the market administrator for such month with respect to each plant at which milk is received, reporting in detail and on forms prescribed by the market administrator:

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

(1) Producer milk (or, in the case of handlers pursuant to § 1007.13(b), milk received from qualified dairy farmers);

(2) Fluid milk products received from other pool plants;

(3) Other source milk;

(4) Milk diverted pursuant to § 1007.16; and

(5) Inventories of packaged and bulk fluid milk products at the beginning and end of the month;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing the respective amounts of skim milk and butterfat in route disposition in the marketing area; and

(c) Such other information with respect to the receipts and utilization of skim milk and butterfat as the market administrator may prescribe.

§ 1007.31 Producer payroll reports.

(a) Each handler pursuant to § 1007.13 (a), (c), and (d) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the 20th day after the end of the month his producer payroll for such month which shall show for each producer:

(1) His identity;

(2) The quantity of milk received from such producer at each plant and the number of days, if less than the entire month, on which milk was received from such producer;

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

(4) The net amount of such handler's payment, together with the price paid and the amount and nature of any deductions.

(b) Each handler operating a partially regulated distributing plant who does not elect to make payment pursuant to § 1007.62(b) shall report to the market administrator on or before the 20th day after the end of the month the same information required of handlers pursuant to paragraph (a) of this section. In such report, payments to dairy farmers delivering milk that is approved by a duly constituted health authority for fluid consumption shall be reported in lieu of payments to producers.

§ 1007.32 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 who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(c) Each handler pursuant to § 1007.13(d) shall report to the market administrator, in detail and on forms prescribed by the market administrator on or before the seventh day after the end of the month the quantities of skim milk and butterfat in producer milk delivered to each pool plant in such month.

§ 1007.33 Records and facilities.

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

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

(b) The weights and butterfat and other content of all milk and milk products handled during the month;

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

(d) Payments to dairy farmers and cooperative associations, including the amount and nature of any deductions and the disbursement of moneys so deducted.

§ 1007.34 Retention of records.

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

CLASSIFICATION OF MILK

§ 1007.40 Skim milk and butterfat to be classified.

The skim milk and butterfat required to be reported pursuant to § 1007.30 shall be classified each month pursuant to the provisions of §§ 1007.41 through 1007.45: *Provided*, That such skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat in producer milk or in other source milk proves to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 1007.41 Classes of utilization.

Subject to the conditions set forth in § 1007.43, the classes of utilization shall be as follows:

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

(1) Disposed of in the form of a fluid milk product except as provided in paragraph (b) of this section;

(2) In packaged fluid milk products in inventory at the end of the month; and

(3) Not accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be:

(1) Skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), sour cream, sour cream products (e.g., dips), eggnog, yogurt, aerated cream products, butter, cheese (including cottage cheese), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, custards and puddings, and sterilized products in hermetically sealed glass or metal containers.

(2) Skim milk and butterfat in fluid milk products delivered in bulk form to and used at a commercial food processing establishment (other than a milk plant) in the manufacture of bakery products, candy, or packaged food products (other than milk products) for consumption off the premises;

(3) Skim milk and butterfat in fluid milk products disposed of by a handler for livestock feed;

(4) Skim milk and butterfat in fluid milk products dumped by a handler after notification to, and opportunity for verification by, the market administrator;

(5) Skim milk and butterfat in inventory of bulk fluid milk products at the end of the month;

(6) Skim milk represented by the nonfat solids used in produce reconstituted buttermilk;

(7) Skim milk represented by the nonfat solids added to a fluid milk product which is in excess of an equivalent volume of such product prior to the addition;

(8) Skim milk and butterfat, respectively, in shrinkage at each pool plant but not in excess of:

(i) Two percent of producer milk (except that received from a handler pursuant to § 1007.13(d));

(ii) Plus 1.5 percent of producer milk received from a handler pursuant to

§ 1007.13(d): *Provided*, That if the handler receiving such milk files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage pursuant to this subdivision shall be 2 percent;

(iii) Plus 1.5 percent of bulk fluid milk products (except cream) received from other pool plants;

(iv) Plus 1.5 percent of bulk fluid milk products received from other order plants exclusive of the quantity for which Class II utilization was requested by the operators of both plants;

(v) Plus 1.5 percent of bulk fluid milk products received from unregulated supply plants exclusive of the quantity for which Class II utilization is requested by the handler; and

(vi) Less 1.5 percent of bulk fluid milk products (except cream) transferred or diverted to other plants; and

(9) Skim milk and butterfat in shrinkage of other source milk assigned pursuant to § 1007.42(b)(2).

§ 1007.42 Shrinkage.

The market administrator shall allocate shrinkage over each pool plant's receipts as follows:

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

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

(1) The net quantity of producer milk and other fluid milk products specified in § 1007.41(b)(8); and

(2) Other source milk exclusive of that specified in § 1007.41(b)(8).

§ 1007.43 Transfers.

Skim milk or butterfat in the form of a fluid milk product shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred in the form of a fluid milk product from a pool plant to the pool plant of another handler, subject to the following conditions:

(1) The skim milk or butterfat so assigned to each class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1007.45(a)(10) and the corresponding step of § 1007.45(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1007.45(a)(5), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1007.45(a)(9) or (10) and the corresponding steps of § 1007.45(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant.

(b) As Class I milk, if transferred or diverted in the form of a fluid milk product to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(1) The transferring or diverting handler claims classification in Class II in his report submitted pursuant to § 1007.30;

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

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any route disposition in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(ii) Any route disposition in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool plants 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.

(c) As follows, if transferred in the form of a fluid milk product 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 under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferror and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as Class II milk to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk and allocations to other classes shall be classified as Class II milk; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1007.41.

(d) As Class II milk, if diverted as producer milk to an other order plant.

(e) As Class I milk, if transferred or diverted in the form of a fluid milk product from a pool plant to an exempt distributing plant.

(f) As Class I milk, if transferred in the form of a fluid milk product from a pool plant to a producer-handler.

§ 1007.44 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and other obvious errors all reports submitted pursuant to § 1007.30 and compute for each handler the total pounds of skim milk and butterfat in each class: *Provided*, That the skim milk contained in any product utilized, produced or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all the water originally associated with such solids.

§ 1007.45 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1007.44, the market administrator shall determine the classification of producer milk for each handler for each month as follows:

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

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1007.41(b)(8);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products received from an unregulated supply plant

or the pounds of skim milk classified as Class I milk and transferred or diverted during the month to such plant, whichever is less;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants as follows:

(i) From Class II milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class II pursuant to § 1007.41(b)(7) plus 2 percent of the remainder of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in inventory of packaged fluid milk products at the beginning of the month: *Provided*, That this subparagraph shall not be applicable to a pool plant in any month immediately following a month in which such plant was not fully subject to the pooling and pricing provisions of this order;

(5) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products for which appropriate health approval is not established, or which are from unidentified sources;

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

(iv) Receipts of fluid milk products from an exempt distributing plant;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from unregulated supply plants, excluding a quantity equal to the pounds of skim milk subtracted pursuant to subparagraph (2) of this paragraph:

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

(*b*) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk, the sum of the pounds of skim milk in producer milk, in receipts of fluid milk products from pool plants of other handlers, and in receipts of fluid milk products 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 utilization was requested by the operator of such plant and the handler;

(7) 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 fluid milk products at the beginning of the month that were not subtracted pursuant to subparagraph (4) of this paragraph;

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

(9) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (2) and (6)(i) of this paragraph;

(10) 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 other order plants, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraph (6)(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 utilization of skim milk announced for the month by the market administrator pursuant to § 1007.27(1) or the percentage that the Class II utilization remaining is of the total remaining utilization of skim milk of the handler; and

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

(11) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received from pool plants of other handlers according to the classification of such products pursuant to § 1007.43(a); and

(12) If the pounds of skim milk remaining exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage".

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of producer milk in each class as computed pursuant to paragraphs (a) and (b) of this section.

Minimum Prices

§ 1007.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the Department for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential (rounded to the nearest one-tenth cent) at the rate of the Chicago butter price times 0.12 and rounded to the nearest cent. For the purpose of computing Class I prices, the basic formula price shall not be less than $4.33.

§ 1007.51 Class prices.

Subject to the provisions of §§ 1007.52 and 1007.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* For the first 12 months from the effective date of this section, the Class I price shall be the basic formula price for the preceding month plus $2.10 and plus 20 cents: *Provided*, That the Class I price shall be not less than the Class I price for the same month pursuant to Part 1099 (Chattanooga) of this chapter plus 15 cents.

(b) *Class II price.* The Class II price shall be the basic formula price for the month.

§ 1007.52 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices pursuant to § 1007.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the Chicago butter price for the preceding month by 0.12; and

(b) *Class II price.* Multiply the Chicago butter price for the month by 0.115.

§ 1007.53 Location differentials to handlers.

(a) The Class I price for producer milk and other source milk (for which a location adjustment is applicable) at a plant in the Northern Zone shall be reduced 15 cents and at a plant that is outside Georgia, north of an east-west line extending from the city hall in Atlanta and more than 100 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) from the nearer of the city halls in Atlanta and Augusta, Ga., shall be reduced 15 cents and an additional 1.5 cents for each 10 miles or fraction thereof in excess of 110 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Atlanta and Augusta: *Provided*, That the location differential pursuant to this paragraph applicable at a plant in Alabama or South Carolina shall not be more than 15 cents.

(b) For the purpose of calculating location differentials, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee plant that is in excess of the sum of producer milk receipts at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment is applicable pursuant to this section and then in sequence beginning with receipts from the plant with the lowest applicable location adjustment.

§ 1007.54 Use of equivalent price.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price that is required.

Application of Prices

§ 1007.60 Computation of the net pool obligation of each handler.

The net pool obligation of each handler pursuant to § 1007.13 (a), (c), and

(d) during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class as computed pursuant to § 1007.45(c) by the applicable class price;

(b) Add the amount obtained from multiplying the overage deducted from each class pursuant to § 1007.45(a)(12) and the corresponding step of § 1007.45(b) by the applicable class price;

(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 § 1007.45(a)(7) and the corresponding step of § 1007.45(b);

(d) 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 § 1007.45(a)(4) and the corresponding step of § 1007.45(b). If the Class I price for the current month is less than the Class I price for the preceding month the result would be a minus amount;

(e) Add an amount equal to the difference between the Class I and Class II price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1007.45(a)(5) and the corresponding step of § 1007.45(b); and

(f) Add the value at the Class I price adjusted for location of the nearest nonpool plant(s), from which an equivalent volume was received, of the skim milk and butterfat subtracted from Class I pursuant to § 1007.45(a)(9) and the corresponding step of § 1007.45(b).

§ 1007.61 Computation of uniform price.

For each month, the market administrator shall compute a uniform price as follows:

(a) Combine into one total the values computed pursuant to § 1007.60 for all handlers who filed the reports pursuant to § 1007.30 for the month, except those in default of payments required pursuant to § 1007.74 for the preceding month;

(b) Add or subtract for each one-tenth percent that the average butterfat content of milk represented by the values specified in paragraph (a) of this section is less or more, respectively, than 3.5 percent, the amount obtained by multiplying such difference by the butterfat differential pursuant to § 1007.71 and multiply the result by the total hundredweight of such milk;

(c) Add an amount equal to the total value of the minus location differentials computed pursuant to § 1007.72(a);

(d) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1007.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

§ 1007.62 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 20th 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 §§ 1007.30 and 1007.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section.

(a) An amount computed as follows:

(1) The obligation that would have been computed pursuant to § 1007.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1007.60(f) and a credit in the amount specified in § 1007.74(b)(2) with respect to receipts from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified below in this subparagraph. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1007.30 a similar report for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1007.10(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation, deduct the sum of:

(i) The gross payments made by such handler for milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph; and

(ii) Payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk in the marketing area on routes;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(4) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location or at the Class II price, whichever is higher.

PAYMENTS

§ 1007.70 Time and method of payment.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) On or before the last day of the month to each producer who had not discontinued shipping milk to such handler before the 15th day of the month, not less than the Class II price for the preceding month per hundredweight of milk received during the first 15 days of the month less proper deductions authorized in writing by such producer; and

(2) On or before the 15th day of each month to each producer for milk received during the preceding month, not less than the uniform price per hundredweight, adjusted pursuant to §§ 1007.71, 1007.72, and 1007.76, subject to the following:

(i) Minus payments made pursuant to subparagraph (1) of this paragraph;

(ii) Less proper deductions authorized in writing by such producer; and

(iii) If by such date such handler has not received full payment from the market administrator pursuant to § 1007.75 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

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

less than the total due such producer-members pursuant to paragraph (a) of this section, subject to the following:

(1) Payment pursuant to this paragraph shall be made for milk received from any producer beginning on the first day of the month following receipt from the cooperative association of its certification that such producer is a member, and continuing through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

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

§ 1007.71 Butterfat differential to producers.

The uniform price shall be increased or decreased for each one-tenth percent that the butterfat content of such milk is above or below 3.5 percent, respectively, at the rate (rounded to the nearest one-tenth cent) determined by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1007.45 by the respective butterfat differential for each class and dividing the sum of the resulting amounts by the total pounds of butterfat in producer milk.

§ 1007.72 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant at the rates set forth in § 1007.53; and

(b) For the purpose of computations pursuant to § 1007.74(b), adjustments pursuant to this section shall be computed according to the location of the nonpool plant from which other source milk was received.

§ 1007.73 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1007.62 and 1007.74 and out of which he shall make all payments from such fund pursuant to § 1007.75: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1007.74 Payments to the producer-settlement fund.

On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a) of this section exceed the amounts specified in paragraph (b) of this section:

(a) The net pool obligation pursuant to § 1007.60 for such handler; and

(b) The sum of:

(1) The value of such handler's producer milk at the applicable uniform price; and

(2) The value at the uniform price applicable at the location of the plant(s) from which received (not to be less than the value at the Class II price) of other source milk for which a value is computed pursuant to § 1007.60(f).

§ 1007.75 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1007.74(b) exceeds the amount computed pursuant to § 1007.74(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1007.76 Marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) If the Secretary determines that a cooperative association is performing for its members the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such members and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

§ 1007.77 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th 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 such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1007.45(a) (5) and (9) and the corresponding steps of § 1007.45(b); and

(c) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

§ 1007.78 Adjustment of accounts.

When verification by the market administrator of reports or payments of a handler discloses errors resulting in monies due the market administrator from such handler, such handler from the market administrator, or a 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 not later than the date for making payment next following such disclosure.

§ 1007.79 Interest payments.

The unpaid obligation of a handler pursuant to §§ 1007.74, 1007.76, 1007.77, and 1007.78 shall be increased one-half of one percent for each month or portion thereof that such obligation is overdue.

§ 1007.80 Termination of obligations.

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

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

(1) The amount of the obligation;

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

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

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

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section,

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the milk involved in the claims was received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler, if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

§ 1007.90 Effective time.

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

§ 1007.91 Suspension or termination.

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

§ 1007.92 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons or agency as the Secretary may designate.

(b) The market administrator or such other person as the Secretary may designate shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand together with the books and records of the market administrator, or such other person, to such person as the Secretary shall direct; and (3) if so directed by the Secretary, execute such assignment or other instruments necessary or appropriate to vest in such person full title to all funds, property and claims vested in the market administrator or such person pursuant thereto.

§ 1007.93 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part, the market administrator, or such person as the Secretary may designate shall, if so directed by the Secretary liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such other person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1007.100 Separability of provisions.

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

§ 1007.101 Agents.

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

Base and excess plan. The following provisions are necessary to effectuate a base and excess plan in the preceding order. If approved by producers voting individually in a separate referendum, they will be added to the preceding order provisions or substituted for such specified order provisions as indicated below:

1. Sections 1007.22 and 1007.23 are added and read as follows:

§ 1007.22 Base milk.

"Base milk" means producer milk received during the month which is not in excess of the producer's base multiplied by the number of days of production that such milk was received at pool plants in such month: *Provided*, That from the effective date of this order through February 1970 all producer milk received at pool plants shall be base milk.

§ 1007.23 Excess milk.

"Excess milk" means producer milk received during the month which is in excess of the base milk received from the producer during such month.

2. In § 1007.27(j), the following language is substituted for subparagraph (3):

§ 1007.27 Duties.

* * * * *

(j) * * *

(3) The 11th day of each month the uniform prices pursuant to §§ 1007.61 and 1007.61a and the producer butterfat differential, all for the preceding month.

* * * * *

3. In § 1007.30(a), the following language is substituted for subparagraph (1):

§ 1007.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) Producer milk (or, in the case of handlers pursuant to § 1007.13(b), milk received from qualified dairy farmers), including the total quantities of base milk and excess milk;

* * * * *

4. In § 1007.31, the following language is substituted for paragraph (a):

§ 1007.31 Producer payroll reports.

(a) Each handler pursuant to § 1007.13 (a), (c), and (d) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the 20th day after the end of the month his producer payroll for such month which shall show for each producer:

(1) His identity;

(2) The total pounds of milk received from such producer indicating the pounds of base milk and the pounds of excess milk;

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

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

(5) The net amount of such handler's payment, together with the prices paid and the amount and nature of any deductions.

* * * * *

5. Section 1007.61a is added and reads as follows:

§ 1007.61a Computation of uniform price for base milk and excess milk.

The market administrator shall compute uniform prices for base milk and excess milk each month as follows:

(a) Determine the aggregate amount of producer milk in each class included in the computation pursuant to § 1007.61 and the hundredweight of such milk that is base milk and that is excess milk;

(b) Determine the total value of excess milk by assigning such milk in series, beginning with Class II, to the hundredweight of milk in each class as determined pursuant to paragraph (a) of this section, multiplying the quantities so assigned by the respective class prices for milk containing 3.5 percent butterfat, and adding together the resulting amounts;

(c) Divide the total value of excess milk in paragraph (b) of this section by the total hundredweight of such milk. The quotient, rounded to the nearest cent, shall be the uniform price for excess milk;

(d) Multiply the total hundredweight of excess milk by the uniform price for excess milk computed pursuant to paragraph (c) of this section;

(e) Multiply the hundredweight of milk specified in § 1007.61(f)(2) by the uniform price for the month;

(f) Subtract the total values arrived at in paragraphs (d) and (e) of this section from the amount resulting from the computations pursuant to paragraphs (a) through (e) in § 1007.61; and

(g) Divide the amount obtained in paragraph (f) of this section by the total hundredweight of base milk determined in paragraph (a) of this section and subtract not less than 4 cents nor more than 5 cents from the price thus computed. The resulting figure, rounded to the nearest cent, shall be the uniform price for base milk.

6. In § 1007.70(a), the following language is substituted for the introductory text of subparagraph (2):

§ 1007.70 Time and method of payment.

(a) * * *

(2) On or before the 15th day of each month to each producer for milk received during the preceding month not less than the applicable uniform prices per hundredweight pursuant to § 1007.61a, adjusted pursuant to §§ 1007.71, 1007.72, and 1007.76, subject to the following:

* * * * *

7. The following language is substituted for § 1007.71:

§ 1007.71 Butterfat differential to producers.

The uniform prices pursuant to §§ 1007.61 and 1007.61a shall be increased or decreased for each one-tenth percent that the butterfat content of such milk is above or below 3.5 percent, respectively, at the rate (rounded to the nearest one-tenth cent) determined by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1007.45 by the respective butterfat differential for each class and dividing the sum of the resulting amounts by the total pounds of butterfat in producer milk.

8. In § 1007.72, the following language is substituted for paragraph (a):

§ 1007.72 Location differentials to producers and on nonpool milk.

(a) The uniform price and the uniform price for base milk shall be reduced according to the location of the pool plant at the rates set forth in § 1007.53; and

* * * * *

9. The following center heading is added after § 1007.101 and §§ 1007.110, 1007.111, and 1007.112 are added and read as follows:

DETERMINATION OF BASE

§ 1007.110 Base.

The market administrator shall determine a base for each producer whose milk in the immediately preceding months of September through January was delivered to pool plants on not less than 100 days by dividing the total pounds of such producer's deliveries by 153, subject to the following conditions:

(a) For the purpose of computing the base of a producer pursuant to this section, the number of days included in his producer milk deliveries shall be the number of days of production of producer milk;

(b) Any producer who, during the preceding months of September through January, delivered his milk to a nonpool plant which became a pool plant after the beginning of such period shall be assigned a base in the same mnaner as if he had been a producer during such period, calculated from his deliveries during such September–January period to such plant;

(c) If no milk is received from a producer at a pool plant in September through January or if milk is received on less than 100 days during such months, the base of such producer shall be 50 percent of his average daily deliveries of producer milk for each month until a base is computed for him on the basis of deliveries on not less than 100 days in a subsequent September–January period; and

(d) A producer for whom a base has been established pursuant to this section based on deliveries on not less than 100 days during the preceding months of September through January may, in lieu thereof, by notifying the market administrator in writing prior to March 15, be accorded a base computed pursuant to paragraph (c) of this section.

§ 1007.111 Base rules.

The following rules shall apply in the establishment and assignment of bases:

(a) Subject to the provisions of paragraph (b) of this section, the market administrator shall assign a base calculated pursuant to § 1007.110 to each producer for whose account producer milk was delivered to pool plants during the months of September through January.

(b) Except for the bases assigned pursuant to § 1007.110 (b), (c), and (d), a base may be transferred in its entirety or in an amount not less than 100 pounds by a person holding such base to any other person who is currently, or will become by the last day of the month of transfer, a producer pursuant to § 1007.15. Such transfer shall be effective as of the end of the month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to be transferred: *Provided*, That if such a base is held jointly, the entire base shall be transferable only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred; and

(c) A base which has been established by two or more persons operating a dairy farm as a partnership may be divided between the partners on any basis agreed to by the partners if written notification of the agreed division of base signed by each partner is received by the market administrator prior to the first day of the month on which such division is to be effective.

§ 1007.12 Announcement of established bases.

On or before March 5 of each year the market administrator shall notify each producer, the handler receiving his milk and the cooperative association of which he is a member of the producer's base computed pursuant to § 1007.110. Such base shall be effective from March 1 of such year through February of the following year.

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